Is a partner in a same sex relationship still entitled to benefit from the intestate testate of his/her deceased partner?

This constitutional issue was initially decided in the case of *Gory v Kolver 2007 (4) SA 97 (CC).*The Constitutional Court ("CC") declared the wording of sec1(1) of the Intestate Succession Act 81 of 1987 to be unconstitutional, and ordered that the words "or partner in a permanent same sex life partnership in which the partners have undertaken reciprocal duties of support" should be read in after the word "spouse". At the time this judgment was handed down marriages between same sex partners had no legal force or effect, as the Civil Union Act ("CUA") was not yet effective. This meant that these partners had no way to benefit from the intestate estate of their deceased partners.

With the CUA coming into effect on 30 November 2006 and the Gory-judgement being given on 23 November 2006, the question was created of whether the CUA has repealed the Gory-judgment. The answer was finally provided by the CC in *Laubscher N.O. v Duplan and Another 2017 (2) SA 264 (CC).*

In this case two partners, in a same sex relationship, lived together since 2003 but failed to registered their relationship in terms of the CUA. In 2015 one partner sadly passed away and left behind his brother, the Applicant, and his life partner, the Respondent. As the deceased left no will his estate was to be wound up under the rules of the law of intestate succession. The Applicant went to court and sought an order declaring that the Respondent was not allowed to inherit because the Gory-judgment was repealed by the CUA.

The court *a quo* found that it was not at liberty to deviate from the Gory-case because of the doctrine of *stare decisis.* The Applicant, relying on the principle that once the reason for a law falls away the law itself ceases to exist, appealed directly to the CC.

The CC found that the court in the Gory-case foreseen the enactment of the CUA and still envisioned that same-sex partners would continue to be protected despite not including a marriage. Thus, civil union partners are protected by the CUA and same-sex permanent partners, who have undertaken reciprocal duties of support but have not registered under

the CUA, enjoy the protection of the Gory-order.

It is, in my opinion, clear that this case is discriminating against partners in a permanent opposite-sex relationship who will not be allowed to inherit from each other's intestate estates unless they are married. This case again proves the importance of having a will to ensure that your estate is bequeathed according to your wishes.

You can complete out wills instruction sheet here: Testament Instruksievel / Will Instruction Sheet

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