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Court case on grandparents' liability for maintenance of a grandchild

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Van Zyl NO v Getz NO [2020] ZASCA 84

L and T had a daughter B before they were divorced. After the divorce L left South Africa and went to live in the USA. T raised B on her own. B is mentally handicapped to some extent and receives a small state grant as a result. L's parents, S and N, were both alive at the time of the divorce of L and T. Upon the death of S a claim for maintenance was lodged with G, the executor in the deceased estate and respondent in this matter, by T on behalf of B. This claim was rejected by G and the distributable balance of the estate was awarded to N in accordance with S's will. The appellant, VZ in her capacity as curatrix ad litem for B, claimed damages from G in the Western Cape High Court on the grounds that G should not have paid the full residue to N, knowing that B has a claim for maintenance. The claim was dismissed without written reasons being given.

A stated case was prepared for appeal in which VZ asked the SCA to extend the rule in



refused to extend the rule. The court's reasons were that there was no evidence that L could not be traced or what steps were taken to trace him in order to enforce his duty to support B. The court also held that extending the rule may lead to undesirable consequences and that it is preferable that if any extension is necessary, it be done by Parliament via legislation.

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