



What Can You Do When Someone Close to You Has No Control Over Their Spending?

“A prodigal is a person who, through some defect of character or will, squanders his or her assets with such abandon that he or she threatens to reduce himself or herself and/or her dependents to destitution” (extract from judgment below)

What can you do when someone you know (often but not always an elderly relative and/or someone with a gambling, drug or drink problem) starts squandering their money and property irresponsibly and recklessly? **Note that we are talking here not about a mentally ill person but about someone “of sound mind but unsound habits”.**

The good news is that you don’t have to look on helplessly while they spend themselves (and their dependants if they have any) into destitution. Our law provides a remedy in the form of a High Court order declaring the person to be a “prodigal” and appointing a curator bonis to manage their financial affairs.

It is however a drastic remedy, and you will have to make out a clear and strong case to succeed. Let’s look at a practical example -

The “hard drinker” accused of giving his estate to prostitutes

- After a 30 year “romantic relationship” soured and ended, one partner sued the other for R2m (or 50% of his estate), repayment of R15k, and maintenance of R7,500 p.m. On the receiving end of this claim was a 68-year-old “semi-retired bookkeeper” who defended it on the basis that he and his former co-habitant had never intended to create a joint estate nor to form a partnership.
- She then applied for him to be declared a prodigal and “incapable of managing his own affairs”. She claimed that he was “being manipulated and needed assistance” and that he was “busy alienating and giving his estate to prostitutes” to her prejudice. Already a “hard drinker”, she said that “his intake of alcohol had tripled on a daily basis since he got involved with prostitutes”.
- The man’s version was very different. He admitted spending more than his income but said this “was not out of the ordinary”, he denied spending irresponsibly and said he wasn’t as reckless or wasteful as alleged, the only change in his drinking habits had been a move to drinking at home rather than at the pub since the pandemic struck, he “considered his girlfriend and her daughter as special and wanted to contribute financially towards their well-being” and he was continuing to contribute to his ex-partner’s financial needs “as he always did for the last 30 years”.
- In dismissing the application, the Court commented that to be declared a prodigal “would be one of the most drastic remedies in the law for the protection of a major person which had the potential to impact on his constitutionally protected rights such as dignity, privacy and freedom ... **A court will not appoint a curator bonis until it is absolutely satisfied that the patient has to be protected against loss which would be caused because the patient is unable to manage his affairs.**” (Emphasis supplied)
- The onus to prove your case is on you as applicant, and it is a heavy one: “The appointment of a curator constitutes an interference with the right of the person concerned to manage his own affairs. The right should not lightly be interfered with, especially not on the basis of what amounts to no more than vague and unsubstantiated allegations ... A proper enquiry into the mental condition of the alleged patient should be held before a court could interfere with the right of an adult to control his own affairs.”
- “It is clear” concluded the Court “that no real factual basis was laid to justify the granting of the relief sought”. Application dismissed, with costs.

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