



Ruiz Nunez v Rau [2026] NSWSC 908: A Significant Family Provision Decision for De Facto Partners

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E&A Lawyers acted for the successful plaintiff in *Ruiz Nunez v Rau* [2026] NSWSC 908, a recent decision of the Supreme Court of New South Wales concerning family provision, de facto relationships and the need for secure accommodation for the surviving de facto spouse.

The decision provides an important illustration of the circumstances in which a surviving de facto partner may be entitled to further provision from a deceased estate, notwithstanding the receipt of a substantial superannuation death benefit.

Background:

The deceased tragically died unexpectedly. His Will had been made in 2007, before he commenced his relationship with the plaintiff. As a result, the Will made no provision for his de facto partner. The Will made provision for any children of the Deceased at the time of his death to equally share in the estate. The children of the Deceased were the minor child of the plaintiff and the deceased, and the two adult children of the Deceased from a previous marriage.

The plaintiff and the deceased had been in a long-term de facto relationship and had a child together. The plaintiff received a superannuation death benefit of \$541,508.45. However, she was not a beneficiary under the deceased's Will. The superannuation death benefit did not provide her security of housing.

The Issue Before the Court:

The central issue before the Court was whether provision available to the plaintiff was adequate for her proper maintenance, education, and advancement in life, having regard to all the circumstances.

The superannuation benefit received by the plaintiff was an important consideration. However, the Court was required to consider her overall financial and personal circumstances rather than treating the superannuation payment in isolation.

Those circumstances included the length and nature of the relationship, the plaintiff's responsibilities as the primary carer of a dependant child, her financial position, her future income prospects, and her need for secure accommodation.

The Court's Decision:

The Court ultimately determined that further provision should be made for the Plaintiff. A significant aspect of the decision was the Court's consideration of the former family home.

The Court made orders which enabled the plaintiff to retain the benefit of the family home, subject to conditions including responsibility for the mortgage and payments for the benefit of the Deceased's children. In essence, the Court swapped the recipients of the superannuation benefit and the family home

The decision demonstrates that family provision orders are not necessarily limited to lump-sum payments. Depending on the circumstances, the Court may make orders concerning real property and structure provision in a manner intended to address an applicant's long-term needs.

The Importance of Housing Security

The case also highlights the importance of secure accommodation in family provision proceedings and the need for a de-facto partner to have secure accommodation following the death of their partner. For a surviving partner who is responsible for caring for a dependant child, maintaining a stable home may be a fundamental aspect of proper maintenance.

The decision demonstrates the practical nature of the Court's assessment. The question is not simply how much money an applicant has received, but whether the provision available to them is adequate when their actual circumstances and future needs are considered.

What Can We Learn From Ruiz Nunez v Rau?

The decision highlights several important principles:

1. De facto partners may have significant rights under NSW succession law.
2. Superannuation must be considered in the context of the claimant's overall circumstances.
3. Housing security can be a critical consideration.

4. The circumstances of dependant children are highly relevant.

5. Estate planning should be regularly reviewed.

This matter demonstrates the importance of obtaining specialist advice in family provision disputes. Family provision proceedings are highly fact specific. The strength of a claim will depend upon the individual circumstances of the applicant, the deceased, and the estate.

If you believe you have not been adequately provided for following the death of a loved one, obtaining legal advice at an early stage is important.

This article is of a general nature and should not be relied upon as legal advice. If you require further information, advice or assistance for your specific circumstances, please contact E&A Lawyers.