

NOVA SCOTIA COURT OF APPEAL

Citation: *Séide v. Ross Estate*, 2005 NSCA 157

Date: 20051130

Docket: CA 250440

Registry: Halifax

Between:

Yanick Séide

Appellant

v.

The Estate of Stephen Robert Ross

Respondent

Judges: Cromwell, Oland and Fichaud, JJ.A.

Appeal Heard: November 30, 2005, in Halifax, Nova Scotia

Held: Appeal allowed per oral reasons for judgment of Oland, J.A.; Cromwell and Fichaud, JJ.A. concurring.

Counsel: Stephanie Atkinson and Erin O'Brien Edmonds, for the appellant
Vanessa Lou-Ellen Ross, administratrix of the estate, in person, for the respondent

Reasons for judgment:

[1] This is an appeal by Yanick Séide from the decision and order of Justice Gregory M. Warner which dismissed her application for “Reversal of Beneficiary Designation of the Supplementary Death Benefit.”

[2] Ms. Séide appeals on the grounds, *inter alia*, that the judge made palpable and overriding errors and erred in law by failing to distinguish between the supplementary death benefit and a pension and that, where she had been self-represented, he failed to follow the requirements of natural justice by not assisting her further and by failing to order an adjournment of the application. She seeks a declaration that she is the beneficiary and alternatively, that the judgment be rescinded so that the matter can be reheard.

[3] It is my view that the decision of the trial judge does not prevent Ms. Séide from bringing her application again. Let me explain.

[4] Although her documents named the Estate of Stephen Robert Ross as respondent, no one other than Ms. Séide appeared when her application was heard. That application was supported by affidavits sworn by her and by a physician. Ms. Séide advised the judge that she was the widow of the late Mr. Ross and that as a federal government employee, he was entitled to superannuation; however, he had changed the beneficiary from her to the estate before his passing. The judge raised several procedural matters with Ms. Séide. These included whether a legal representative of the estate had been appointed, whether the estate had been served, and just what the superannuation authorities might need to make any change to the beneficiary designation.

[5] During the hearing, the judge advised Ms. Séide:

. . . I suspect you may end up having to come back here again. I may end up having to either dismiss your application or adjourn it so that you can supplement it with a lot more information that isn't in the file that has to be in the file before any Court could look at it and make their decision.

He also considered an order attached to Ms. Séide's affidavit. That order, which had been issued by the Supreme Court Family Division on December 12, 2002, divided Mr. Ross' pension 20 percent to Ms. Séide and 80 percent to Mr. Ross.

[6] The judge decided:

. . . I'm going to dismiss the application because it's not - - well, it's not either in the right place or it's not well founded, based on the information before me. That doesn't mean that - - my order does not prevent you from proceeding if there is another way to proceed on behalf of your children, and it doesn't prevent you from trying to seek a proper division order that carries out Judge Gass' order of December, 2002 . . . (Emphasis added)

[7] It appears that the judge did not intend his dismissal of the application to be the final determination of this matter. He recognized that the information before him was procedurally and substantively incomplete, and that Ms. Séide should bring the application again. In the alternative, Ms. Séide seeks to have the matter heard again and in our view she ought to be permitted to do so. The appeal therefore is allowed. Justice Warner's order is varied by adding at the conclusion of his operative paragraph, the words "without prejudice to the application being renewed on proper material and notice." We direct that on the renewed application, the Chambers judge shall be advised of the existence of all known and potential creditors of the estate. There shall be no award of costs.

Oland, J.A.

Concurred in:

Cromwell, J.A.

Fichaud, J.A.