

NOVA SCOTIA COURT OF APPEAL

Citation: *Comeau v. Gregoire*, 2007 NSCA 73

Date: 20070614

Docket: CA 263772

Registry: Halifax

Between:

Frank J. Comeau

Appellant

v.

Rachel Gregoire and Jeanne Akerley

Respondent

Judge: Honourable Justice Linda Lee Oland

Appeal Heard: May 31, 2007

Subject: *Wills, estates and trust law - Joint bank accounts - Right of survivorship - Gifts inter vivos*

Summary: The appeal concerned the ownership of monies in a joint bank account in the name of the late Elizabeth Scott and her daughter, the respondent Jeanne Akerley. The late Mrs. Scott died intestate, and the respondent Rachel Gregoire serves as administratrix of the estate. After hearing two days of testimony, the probate court judge determined that the monies in the joint account belong to Ms. Akerley. The signature card signed when the account was opened could not be found for the hearing. Relying on the evidence of the bank representative who testified that she had had that card when she closed the account and who presented the form of the applicable account agreement, the judge was satisfied that it was a joint account with right of survivorship. He also found on a strong balance of probabilities that the late Mrs. Scott intended to make an *inter vivos* gift to Ms. Akerley and, alternatively, that the evidence before him rebutted any presumption of resulting trust in favour of the late Mrs. Scott or her estate. The appellant, another of Mrs. Scott's children, appeals.

Issue: Whether the probate court judge erred by

(a) making that determination when the evidence was not sufficient for him to do so, and based only on speculation and hearsay rather than as required by law; and

(b) by not ruling on allegations of breach of trust and conflict of interest against the administratrix of the estate.

Result: Appeal dismissed. The probate court judge accepted the testimony of all the witnesses and did not find that any lacked credibility. He did not misapprehend the evidence, lack an evidentiary basis for his findings, rely upon incorrect legal principles, or fail to apply or misapply the law. There were no grounds for appellate intervention in his decision regarding ownership of the joint account. The hearing before the judge pertained only to ownership of the joint account. By not addressing the appellant's allegations during the hearing of breach of trust and conflict of interest against the administratrix, he did not err.

This information sheet does not form part of the court's judgment. Quotes must be from the judgment, not this cover sheet. The full court judgment consists of 7 pages.