

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Hood Estate v. Young, 2008 NSSC 146

Date: 20080523

Docket: SN 249572

Registry: Sydney

Between:

Margaret Hood, Executrix of the Estate
of Robert Wilson Hood, Deceased

Plaintiff

v.

Melvin Young

Defendant

Judge:

The Honourable Justice Frank Edwards

Heard:

February 13, May 1 and 2, 2008, in Sydney, Nova Scotia

Counsel:

Lisa Fraser-Hill, for the plaintiff

M. Louise Campbell, Q.C., for the defendant

By the Court:

Introduction: The Plaintiff, Margaret Hood, challenges the Defendant, Melvin Young's assertion that her late husband, Melvin's biological father, gave Melvin his money. The money was contained in a joint account operated by the late Mr. Hood and Melvin. I have found that Mr. Hood did give the money to Melvin and Melvin's son Blenis. Melvin has successfully rebutted the presumption of a resulting trust. I am also satisfied that there was no undue influence pertaining to the monetary gift.

[1] **Facts:** Margaret Hood is 87 years of age and is the widow of the late Robert Wilson Hood, who died on February 15, 2005, at the DVA Veterans Hospital in Sydney Mines, Nova Scotia. Mr. and Mrs. Hood were married on May 15, 1978, and resided together as husband and wife for approximately 27 years prior to Mr. Hood's death. They were both 58 years of age at the time of their marriage. This was Mrs. Hood's second marriage and Mr. Hood's only marriage. Mrs. Hood had seven children from her former marriage and was widowed when she married Mr. Hood.

[2] Mr. Hood had one son, the Defendant, Melvin Young (born September 22, 1950), who was given up for adoption by his biological mother as an infant. At the time of his marriage to Mrs. Hood, Mr. Hood did not know his biological son. Prior to the marriage, however, Mr. Hood had disclosed his son's existence to Mrs. Hood. Mr. Hood was unaware of his son's whereabouts.

[3] Melvin Young met his father for the first time in October 1984. Mrs. Hood maintains that, although there was contact between Melvin Young and the late Mr. Hood following their initial meeting in 1984, their relationship was never close. Melvin Young (Melvin) maintains he had a good relationship with his biological father from the time they first met in 1984.

[4] Having carefully considered all of the evidence, I am satisfied that Melvin and his father developed a good father/son relationship after 1984. I have no doubt but that there were tensions from time to time but overall theirs became a normal father/son bond. There was normal contact on family occasions such as birthdays and Christmas. Melvin visited his father several times a year. Melvin's home is a two-hour drive from his father's. In 2003, Robert Hood quit claimed his interest in some Hood family property to Melvin. He also gave Melvin his service medals

from the war. Melvin testified, and I believe him, that his father asked Melvin to change his name to Hood. Melvin refused.

[5] Melvin's son, Blenis, now age 25, developed a good relationship with his grandfather and referred to him as "Grandpa". Blenis' emotional attachment to his grandfather was obvious when Blenis was on the witness stand. At one point, he broke down when recounting a conversation between he and his grandfather regarding the impending birth of Blenis' son.

[6] Robert Hood was in poor health in the fall of 2004 and suffered a stroke on November 30, 2004. He was initially admitted to the Cape Breton Regional Hospital in Sydney and then transferred to the Northside General Hospital three to four days later for observation and treatment.

[7] In early January 2005, he was transferred to the long-term care facility at the Harbour View Hospital in Sydney Mines, Nova Scotia, as it was determined he was not well enough to return to his home with Mrs. Hood.

[8] During the first year of the Hood's marriage, they held a joint bank account together at the Royal Bank of Canada in North Sydney, Nova Scotia. Then they had a disagreement and separated for approximately a week. This was the only time the parties separated throughout their 27 year marriage.

[9] After they reconciled, the parties no longer used the joint bank account at the Royal Bank and held separate accounts registered in their individual names. Mr. Hood's account was used to pay all of the monthly household expenses, including rent, heat, lights, phone, insurances, and any other utilities that were necessary. Mrs. Hood used her Canada Pension income of approximately \$1,000.00 a month to buy extras, furniture, household items, and groceries. Mrs. Hood feels this arrangement worked very well throughout their 27 year marriage.

[10] When Mr. Hood became ill and was admitted to the hospital on November 30, 2004, Mrs. Hood retained the bank card and PIN number and was able to access the account while her husband was hospitalized. She also had a chequebook for Mr. Hood's bank account and was able to write cheques and have them signed by Mr. Hood while he was in the hospital.

[11] In late December, 2004, Mrs. Hood had her granddaughter, Margaret Quirk, attend at the Royal Bank of Canada in North Sydney. Ms. Quirk attempted to access funds in Mr. Hood's account by using his client card. The client card would not access the account. She was informed by the bank that the account had been changed to a joint account and the card was no longer valid. The account had been made joint with the Defendant, Melvin Young, and there was a balance in the amount of approximately \$64,460.00 remaining.

[12] On January 4, acting on Mr. Hood's instructions, Melvin withdrew approximately \$60,000.00 from the joint account and deposited the entire balance in a separate account registered solely in his name at the Royal Bank of Canada. There was just \$5,977.43 left in Mr. Hood's original account.

[13] Robert Hood died suddenly on February 15, 2006. At some point after his death, Melvin transferred the \$65,730.05 plus interest to a CIBC account in Antigonish. Melvin insists that the balance in the account at the time of Mr. Hood's death was intended to be given to him and his son, Blenis, as an inheritance from the late Robert Hood. Margaret Hood maintains the funds belong to the estate.

[14] *Issues and Analysis: (a) Did Robert Hood give his money to his son and grandson?* The answer is an unequivocal yes. I have no doubt but that Robert Hood harboured a deep suspicion that, unless he acted, his funds would find their way to his wife's family by her first marriage. I am satisfied also that he felt guilty about the fact that Melvin had been given up for adoption. Mr. Hood believed that after his death Mrs. Hood would get along fine with her own resources and the survivor benefits from his pension. I believe the evidence of Melvin especially as it relates to the aforementioned conclusions.

[15] After he added Melvin to his account, Mr. Hood was assessed on February 3, 2005, by Dr. J. Ferguson, a geriatric psychiatrist. Dr. Ferguson noted in her report (Exhibit 2) that Mr. Hood had some cognitive impairment. However, she also noted that he discussed his finances knowledgeably (page 2) and had a good appreciation of turning his money over to his son (page 3). Dr. Ferguson noted that Mr. Hood reported that his wife gives some of their joint income to her children from an earlier marriage. "He now feels that he owes something to the son due to neglect from earlier years." (page 1)

[16] When Robert Hood decided to add Melvin to the account, he asked Melvin to have a power of attorney prepared. That form was unacceptable to the Bank. Accordingly, on December 21, 2004, at Mr. Hood's request, Melvin had Stacey McGean, then a senior account manager with the Royal Bank, meet in private with Mr. Hood in his hospital room. Ms. McGean explained the operation of a joint account to Mr. Hood and satisfied herself that he understood. Significantly, Ms. McGean says that she explained to Mr. Hood that, in the event of his death, Melvin Young would become the sole owner of the funds in the account. Though she was not sure of his exact words, she felt that Mr. Hood communicated "That's what I want." Mr. Hood even alluded to having a joint account previously (apparently that with his wife when they first married) and that it did not work well for him.

[17] I am therefore satisfied that Melvin is being truthful when he quotes what his father told him in the hospital. In particular, Melvin says his father told him "when I'm done, whatever money I have is yours and my grandson's." That quote is entirely consistent with what Mr. Hood told both Dr. Ferguson and Stacey McGean. It is also consistent with the tension which I am satisfied did exist between Mr. Hood and Mrs. Hood's family from her first marriage.

[18] In short, I am satisfied that Mr. Hood made a gift of his money to his son and grandson just as Melvin described it. This is not a situation which the courts frequently see where someone is added to an account strictly for convenience and assistance purposes. Robert Hood believed that he had to take the steps he did to ensure that, when he died, his biological son Melvin and grandson Blenis would benefit.

[19] The applicable law is set out in *Niles v. Lake* (1947), 2 D.L.R. 248:

“The law is well settled, I think, that when a person transfers his own money into his own name jointly with that of another person, except in cases with which we are not concerned, then this is prima facie a resulting trust for the transferor. This presumption, of course, is a presumption of law which is rebuttable by oral or written evidence or other circumstances tending to show there was in fact an intention of giving beneficially to the transferee.

All these authorities, as well as many others which it would be superfluous to cite here, clearly indicate that a mere gratuitous transfer of property, real or personal, although it may convey the legal title, will not benefit the transferee unless there is some other indication to show such an intent, and the property will be deemed in equity to be held on a resulting trust for the transferor.”

[20] For the reasons I have previously outlined, I am satisfied that Melvin has successfully rebutted the presumption of a resulting trust. He has demonstrated convincingly that his father gave the money to him and Blenis.

[21] **(b) Undue Influence:** The burden is on the Plaintiff to establish a presumption of undue influence. In the Supreme Court of Nova Scotia Decision of *Harold Edward O'Legg and Lillian Melina Nicholson*, (2002) 208 N.S.R. (2d) 142, the court discussed the evidence that would be necessary to establish a presumption of undue influence. It is stated at page 146:

“What then must a plaintiff establish in order to trigger a presumption of undue influence? In my view, the inquiry should begin with an examination of the relationship between the parties. The first question to be addressed in all cases is whether the potential for domination inheres in the nature of the relationship itself. This test embraces those relationships which equity has already recognized as giving rise to the presumption, such as solicitor and client, parent and child, and guardian and ward, as well as other relationships of dependency which defy easy categorization.”

[22] I have considered the fact that Mr. Hood was elderly and in fragile health, with some cognitive impairment. As such, he was possibly vulnerable to domination by his son Melvin. Melvin is a forceful personality. Accordingly, I examined Melvin's evidence with caution.

[23] Robert Hood wanted to go home from the hospital in December 2004. Melvin supported Mr. Hood's wish but it was rebuffed by Mrs. Hood. Mrs. Hood simply was not physically capable of looking after her husband and she did not want Melvin to move in to assist her. No doubt Mrs. Hood's refusal to take him home did not play well with Mr. Hood. But it would be highly speculative, and lacking in any evidentiary support, to conclude that that somehow unduly influenced Mr. Hood's ability to make financial decisions. There is no evidence that Melvin used the issue to influence his father's financial judgement. On the contrary, as I have already outlined, Robert Hood had his own reasons for wanting to benefit his son and grandson. Based on my review of all the evidence, my impression is that Robert Hood was no pushover. If there was a dependency relationship between Robert Hood and Melvin, it was clearly one of Robert Hood's independent choice.

[24] In short, I am satisfied that the Plaintiff has failed to trigger a presumption of undue influence. Even if I were to conclude otherwise, I would have no difficulty in determining that Melvin has successfully rebutted any such presumption.

[25] I am therefore dismissing the Plaintiff's case with costs to the Defendant. Ms. Campbell should make a written submission on costs within seven days of receipt of this decision. Ms. Fraser will have seven days after receipt of Ms. Campbell's submission to respond.

Order accordingly.

J.