

SUPREME COURT OF NOVA SCOTIA

Citation: *David v. Beals Estate*, 2015 NSSC 288

Date: 20151022

Docket: Halifax No. 433776

Registry: Halifax

Between:

Julia Marie David, Shenner May Williams, Sydney Willis, Greta Beals, Leonard Dion Beals, Gwendolyn Beals, Garfield Beals Jr., Lavinia Thompson, Murphy Beals, Gerald Beals, Myles Nelson Beals, Cheryl Francis, Ranosker Beals, Phillip Fraser, Elma Fraser, Saunderson Fraser, Clay Fraser, Laverne Beals, Wade Beals, Derrek Beals, Wanda Beals, Denise Beals, and Caunise Smith

Applicants

v.

Myles Dominic Beals in his capacity as Executor of The Estate of the Late
Garfield Beals

Respondent

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Judge: The Honourable Justice Arthur J. LeBlanc

Heard: May 11 and 12, 2015, in Halifax, Nova Scotia

Final Written Submissions: April 14, 2015

Decision: October 22, 2015

Subject: Wills; application for variation; dependant's relief legislation

Summary: The applicants brought an application for dependants' relief under s. 3(1) of the *Testator's Family Maintenance Act* seeking to vary the terms of the last will and testament of their

father. The testator's estate was comprised of real estate worth \$46,000. The testator left his entire estate to his grandson, who had lived with the testator until his death and had assisted the testator with household chores and personal care.

Issues: Were the applicants entitled to relief under s. 3(1) of the *Act*?

Result: Application dismissed. Although the applicants were natural-born children of the testator and were clearly dependants within the meaning of the *Act*, they failed to show on a balance of probabilities that the testator had not made adequate provision for their proper maintenance and support. The estate was relatively small. The applicants provided minimal evidence of their needs and financial circumstances. The grandson had a strong moral claim, based on his having lived with the testator until his death, and assisting with household chores and personal care. The testator had chosen to benefit one person greatly, rather than benefiting many people very little. This fell within the range of what was appropriate and accordingly the *Act* should not be used to interfere with the testator's testamentary freedom.

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