

SUPREME COURT OF NOVA SCOTIA

Citation: *McNeil/Maidment v. Forbes*, 2020 NSSC 16

Date: 2020-01-15

Docket: Sydney No. 489251/491353

Registry: Sydney

Between:

Linda McNeil as attorney for Richard D. Maidment
(also known as Richard McNeil)

Applicant

v.

Emeline Forbes as Trustee for Devon McNeil

Respondent

LIBRARY HEADING

Judge: The Honourable Justice Frank C. Edwards
Heard: January 7, 2020 in Sydney, Nova Scotia
Subject:

- Life Insurance policy, beneficiary designation
- Effect of a finding of not criminally responsible upon beneficiaries right to receive insurance proceeds.

Facts: In 2017, Richard Maidment (aka McNeil) was found not criminally responsible after he had caused his wife's (Sarabeth Forbes') death. In 2015, the wife had named Richard Maidment as the primary beneficiary in her life insurance policy. She also named her infant son Devon as the contingent beneficiary. Richard's mother as attorney for her son applies for an order declaring Richard as the rightful beneficiary. Emeline Forbes (Sarabeth's mother) applies on Devon's behalf for the insurance proceeds.

Issues: Who is the lawful beneficiary of Sarabeth Forbes' Life Insurance Policy?

Result: Richard Maidment is the rightful beneficiary. A finding of not criminally responsible in Sarabeth's death does not

disqualify Richard from receiving the life insurance proceeds.

Cases Noticed: *Winko v British Columbia (Forensic Psychiatric Institute)*,
[1999] 2 SCR 625, 175 DLR (4th) 193

Jollimore Estate v. Nova Scotia (Public Archives), 2011
NSSC 218

Dhingra v Dhingra, 2012 ONCA 261

Nordstrom v Baumann, (1962] SCR 147, 31 DLR (2d) 255

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Respondent

Judge: The Honourable Justice Frank C. Edwards

Heard: January 7, 2020, in Sydney, Nova Scotia

Counsel: A. Robert Sampson, Q.C., for the Applicant
Emeline Forbes, self-represented, Respondent

[1] The Applicant is seeking an Order to declare Richard D. Maidment (McNeil) the rightful beneficiary of one hundred percent of life insurance proceeds which were paid into Court by Co-operators Life Insurance Company pursuant to an Order of the Honourable Justice Patrick J. Murray, dated May 16, 2019, in relation to the life of Sarabeth Forbes. Further, the Applicant seeks an Order that the proceeds of the life insurance policy be paid to Richard D. Maidment (McNeil).

[2] The Applicant also asks this Court to dismiss the application filed by Emeline Forbes as Trustee for Devon McNeil, seeking an Order declaring Emeline Forbes as Trustee for Devon McNeil the rightful beneficiary of one hundred percent of the life insurance proceeds.

[3] I am granting the Application in favor of Richard Maidment (McNeil). Accordingly, I adopt in their entirety the facts, law, and submissions as set out in Counsel's brief. With minor editing and some additional commentary, the brief reads as follows:

Background

[4] Richard Dwayne Maidment ("Richard") was born on January 30, 1977. At the time of his birth, Richard's parents, Linda Maidment ("Linda") and George McNeil were not married. Linda chose to give her son her surname,

Maidment. After Richard's birth, Linda and George (his natural father) were married. Both Linda and Richard assumed the surname McNeil. Although Richard assumed the last name McNeil upon his parents' marriage, no application was ever made seeking to legally change Richard's surname from Maidment to McNeil. For most of his life, Richard has primarily used the name Richard Dwayne McNeil. Both his birth certificate and driver's licence, however, bear his legal name, Richard Dwayne Maidment.

[5] Sarabeth Forbes ("Sarabeth") and Richard had been in a common law relationship for over ten years before Ms. Forbes' tragic death on April 18, 2017. Together, Sarabeth and Richard had one child, Devon Richard McNeil ("Devon"), on November 9, 2007. In 2008, Richard began working for Nova Scotia Power as a welder. In 2009, Richard and Sarabeth purchased a home in Gardiner Mines together. Richard was diagnosed with schizophrenia in 2012, which rendered him unable to continue working for Nova Scotia Power. Shortly thereafter, Richard began receiving long term disability benefits.

Life Insurance

[6] On July 29, 2015, Sarabeth applied for a life insurance policy through Cooperators Life. Sarabeth named Richard, using his legal name, Richard D. Maidment, and identifying him as her boyfriend, as the primary beneficiary on this policy. Sarabeth then named Devon, as her contingent beneficiary, with her mother Emeline Forbes as trustee for Devon in the event Devon received any benefits before reaching the age of twenty-five. The policy defines Contingent Beneficiary as “...the person who becomes the beneficiary if all primary beneficiaries predecease the Life Insured **or are otherwise disqualified from receiving the death benefit.**” (Emphasis added)

Sarabeth's Death

[7] Around the Easter weekend of 2017, Richard's mental health began rapidly deteriorating. Due to Richard's deteriorating condition, on April 17, 2017, which was Easter Monday, Sarabeth and Devon slept over at Linda and her common law partner David MacNeil's ("David") home. At the time, Linda, David and Sarabeth unsuccessfully sought medical help for Richard. On the morning of April 18, 2017, Sarabeth returned to the home she and Richard shared in Gardiner Mines. It was at that time that Richard killed Sarabeth. Richard was arrested and charged

with Sarabeth's murder. On December 4, 2017, Richard was found not criminally responsible, on account of mental disorder, for Sarabeth's death.

Payment of Funds into Court

[8] Richard was then confined to the East Coast Forensic Hospital. Linda and David took responsibility for maintaining the home where Sarabeth, Richard and Devon had resided. Through checking the mail which continued to be delivered to the home, Linda discovered the existence of Sarabeth's life insurance policy held with Co-operators Life. Linda claimed the funds on Richard's behalf, by way of Richard's power of attorney. Emeline Forbes also claimed entitlement to the funds as trustee for Devon. Co-operators Life admitted liability for the insurance money under the policy. Because of the two competing claims, Co-operators paid the funds into Court on May 16, 2019.

Issue

[9] Who is the rightful beneficiary of Sarabeth's Life Insurance policy?

LAW & ARGUMENT

Beneficiary Designation

[10] When Sarabeth applied for a life insurance policy through Co-operators Life on July 29, 2015, she listed Richard D. Maidment (Boyfriend) as her primary beneficiary, and Emeline R. Forbes as trustee for Devon R. McNeil (Son) as her contingent beneficiary.

[11] Life insurance contracts in Nova Scotia are governed by the *Insurance Act*, RSNS 1989, c 231. Subsection 192(1) of the *Insurance Act, supra* provides, with respect to life insurance, that an insured may designate a beneficiary through the insurance contract, or by declaration:

Designation of beneficiary

192 (1) An insured may, in a contract or by a declaration, designate himself, his personal representative or a beneficiary to receive insurance money.

(2) Subject to Section 193, the insured may alter or revoke the designation by a declaration.

(3) A designation in favour of "heirs", "next of kin", or "estate", or the use of words of like import in a designation, shall be deemed to be a designation of a personal representative.

[12] In this case, Sarabeth designated her beneficiary through the life insurance contract at the time the policy was purchased.

[13] Richard during his life has consistently used two names, both his legal name, Richard Maidment, and the name he informally assumed upon his parents'

marriage, Richard McNeil. Significant evidence has been filed proving that Richard uses both names, and that both the names Richard McNeil and Richard Maidment refer to Richard. From the evidence, it is clear that both names were known to Sarabeth, as the couple gave their son the last name McNeil, and Sarabeth held property together with Richard under the name Richard McNeil. Sarabeth named Richard as the beneficiary of her life insurance policy using the name Richard D. Maidment. Richard's identity has been clearly established. The fact that Richard has used a name other than the one appearing on his birth certificate for much of his life does not preclude him from benefitting under a life insurance policy where he has been designated by his legal name.

Inapplicability of Public Policy Rule

[14] There is a public policy rule which says criminals should not be permitted to benefit from their crimes. That public policy rule has no application to this case. Richard has been found to be not criminally responsible. He is not a criminal.

[15] Following the criminal trial arising from Sarabeth's death, I remarked that it "would be obvious to anybody who has listened to the evidence, and the testimony of the doctors, and the submissions of Counsel, that the not criminally responsible defence has been made out". The Crown had agreed Richard should be found not

criminally responsible. On December 4, 2018, I found Richard not criminally responsible for Sarabeth's death, on account of mental disorder, in accordance with subsection 16(1) of the *Criminal Code*, RSC, 1985, c C-46. Subsection 16(1) of the *Criminal Code, supra*, provides as follows:

No person is criminally responsible for an act committed while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.

[16] The Supreme Court of Canada considered subsection 16(1) of the *Criminal Code, supra*, in its decision, *Winko v British Columbia (Forensic Psychiatric Institute)*, [1999] 2 SCR 625, 175 DLR (4th) 193. In *Winko, supra*, Justice McLachlin, as she then was, confirmed that a finding of not criminally responsible on account of mental disorder is not a verdict of guilt, and that a person so found is not morally responsible for his or her act. Justice McLachlin further affirmed in *Winko, supra*, that a person found not criminally responsible on account of mental disorder is "not to be punished" as "Parliament has signalled that the NCR accused is to be treated with the utmost dignity and afforded the utmost liberty compatible with his or her situation".

[17] The public policy rule was acknowledged by Justice Coughlan in *Jollimore Estate v. Nova Scotia (Public Archives)*, 2011 NSSC 218. In *Jollimore Estate, supra*, Justice Coughlan confirmed the existence of an exception to the public

policy rule, whereby a person who has killed another, but is found to be of unsound mind, will not be disqualified from benefitting from the deceased person's estate:

[10] There is an exception to the general rule. If it can be established the person who killed another is of unsound mind, the person is not disqualified from taking a benefit from the estate of the person he or she killed. The onus is on the person claiming on behalf of the person who killed the other. (In re Pollock: *Pollock v. Pollock*, [1941] 1 Ch. 219)

[18] In *Dhingra v Dhingra*, 2012 ONCA 261, the Ontario Court of Appeal held that where a husband, who had been named as the beneficiary of his wife's life insurance policy, was found not criminally responsible for his wife's death, there was no rationale for disqualifying the husband from the benefit under the life insurance policy. The Court reasoned that because the public policy rule is based on the theory that people should not profit from their wrongs, and a person who is found "not criminally responsible on account of mental disorder is not 'morally responsible' for his or her act", there is no rationale for applying the rule.

[19] This is consistent with the Supreme Court of Canada's decision in *Nordstrom v Baumann*, (1962] SCR 147, 31 DLR (2d) 255, where Justice Ritchie held that while the public policy rule precluding a person from benefiting from his or her own crime applies to intestacies, the rule has no application where the person was "insane" at the time of the killing.

[20] In my decision finding Richard not criminally responsible for Sarabeth's death, I described Sarabeth's death as "an unspeakably horrendous and tragic event for everyone involved." On April 18, 2017, both Sarabeth and Richard, as well as their families, tragically fell victim to Richard's schizophrenia. Together, Sarabeth and Richard had been facing Richard's schizophrenia since his diagnosis in 2012. While the particular circumstances leading to Sarabeth's death are fortunately uncommon, the inherent unpredictability, illness and loss are squarely what life insureds seek to guard their loved ones against by purchasing a life insurance policy.

[21] There is absolutely no public policy argument in support of disqualifying Richard from benefitting under the life insurance policy Sarabeth purchased from Cooperators Life.

Conclusion

[22] In 2015, Sarabeth designated Richard as the beneficiary of one hundred percent of her life insurance policy, and Emeline Forbes as Trustee for Devon, as the contingent beneficiary of one hundred percent of her life insurance policy, in the event that Richard predeceased Sarabeth. Sarabeth did not revoke or change her beneficiary designation before her death in 2017. Since Richard survived

Sarabeth, Richard is the rightful beneficiary of one hundred percent of Sarabeth's life insurance policy. To paraphrase the insurance policy, a finding of not criminally responsible does not “disqualify” (Richard) from receiving the death benefit.

[23] There is no lawful reason to disqualify Richard from benefitting under Sarabeth’s life insurance policy. I have carefully considered the arguments put forward on Ms. Forbes’ behalf by her brother, Mr. Hugh Smith. The argument appears to be that Richard cannot make a claim as Richard Maidment after using the name Richard McNeil for much of his life. With respect, that argument is not tenable. In oral argument, Mr. Smith conceded that Richard Maidment and Richard McNeil was the same person.

[24] Mr. Smith also appeared to argue that there is a public policy reason that prevents Richard from claiming the insurance proceeds. I have already accepted the reasons why that is not so. Richard, because of his mental illness, is not morally blameworthy for Sarabeth’s death. If I had convicted Richard of murdering Sarabeth, he could not claim the life insurance proceeds. But I did not and could not find him guilty of murder. As noted above, it was obvious that Richard was not criminally responsible for Sarabeth’s death. (My full decision dated December 4, 2017 is attached as an appendix to this decision.)

[25] I am therefore prepared to issue an Order;

1. Declaring Richard D. Maidment (also known as McNeil), the rightful beneficiary of one hundred percent of life insurance proceeds which were paid into Court by Co-operators Life Insurance Company pursuant to an Order of the Honourable Justice Patrick J. Murray, dated May 16, 2019;

2. Directing that the life insurance proceeds which were paid into Court by Co-operators Life Insurance Company pursuant to an Order of the Honourable Justice Patrick J. Murray, dated May 16, 2019 (Syd. No.487376), be paid to Sampson McPhee in trust for Linda McNeil as attorney for Richard D.Maidment (also known as Richard McNeil); and

3. There will be no order for costs.

Order accordingly,

Justice Frank C. Edwards



SUPREME COURT OF NOVA SCOTIA

Citation: *R. v. MacNeil*, 2017 NSSC

Date: 2017-12-04

Docket: *Syd.* No. 464957

Registry: Sydney

Between:

Her Majesty the Queen

v.

Richard Wayne MacNeil

Judge: The Honourable Justice Frank Edwards

Heard: November 30 and December 4, 2017, in Sydney, Nova Scotia

Oral Decision: December 4, 2017

Written Release of December 18, 2017

Oral Decision:

Counsel: Stephen Drake, for the Crown
Darlene MacRury, for the Defence

By the Court (Orally):

[1] This afternoon I am going to make a few remarks orally. The written version of what I am about to say will have the Agreed Statement of Facts and the reports of Drs. Theriault and Hucker attached to it as appendices. I may elaborate on some of what I have to say when the written version of my decision is released. At this point, today, I do not see any useful purpose in recounting the gruesome details of what was an unspeakably horrendous and tragic event for everyone involved. The families on both sides have the Court's sympathy but I appreciate, in the circumstances, that may be of little consolation.

[2] My job is to determine whether or not the evidence establishes on a balance of probabilities that the accused, Mr. MacNeil, is not criminally responsible for the act of killing Ms. Forbes. The provisions of s. 672.34 and s.16 of the **Criminal Code** are the pertinent sections. The germane part of 672.34 says that if I am satisfied that he had committed the act but at the time was suffering from a mental disorder so as to exempt him from criminal responsibility by virtue of 16(1), "the judge shall render a verdict that the accused committed the act but is not criminally responsible on account of a mental disorder", and I so find.

[3] Section 16(1) reads:

“No person is criminally responsible for an act committed while suffering from a mental disorder that rendered the person incapable of appreciating the nature and quality of the act or omission or of knowing that it was wrong.”

[4] It would be obvious to anybody who has listened to the evidence, and the testimony of the doctors, and the submissions of Counsel, that the not criminally responsible defence has been made out. As my colleague, Justice Coady, said in *R. v. Race*, 2014 NSSC 6, just to paraphrase him, the unanimity here of the two psychiatrists coupled with the Crown’s position fairly well determines the outcome of this proceeding. I found nothing in the evidence that counters these two factors.

[5] We heard first from Dr. Theriault. In his lengthy report, Dr. Theriault detailed the considerations he took into account, the evidence and the psychiatric considerations, and he concluded on page 18 of his report as follows:

As a result of his failure to understand that Mr. McNeil killed his wife, Mr. McNeil does, in my opinion, meet criteria laid out in section 16(1) of the Criminal Code of Canada for exemption from criminal responsibility. I have considered the possibility that Mr. McNeil is feigning or malingering his symptoms; however, the evidence in my view that Mr. McNeil is suffering from a mental disorder and the evidence that it was deteriorating in the period of time immediately preceding the death of Ms. Forbes is, in my opinion, overwhelming. Hence, I do not think that Mr. McNeil is feigning symptoms of his illness or that he is being disingenuous in his expression of his belief that he did not kill his wife.

[6] I would add parenthetically there my total agreement with Dr. Theriault. There is absolutely nothing in the evidence to support the opinion of anyone that this was all put up for show to justify the killing. This was a man with a long-standing psychotic illness which has been well documented, both before and after the commission of the offence. The bizarre behaviour exhibited by him both before the commission of the offence and afterwards is undeniable evidence that his fateful actions on that day were the product of his mental disorder, schizophrenia.

[7] Dr. Hucker's report, as well, recounts his review of the evidence involved. As he testified, he interviewed Mr. MacNeil personally on two occasions, and Dr. Hucker's conclusion (page 34 of his report) reads in part as follows:

Mr. MacNeil suffers from schizophrenia, the type of severe mental illness that has been typically accepted as a 'mental disorder' by the courts in Canada for the purpose of evaluating criminal responsibility defenses.

I was unable however to determine from Mr. MacNeil himself what specifically triggered the murderous act. His utterances to Ms. Boone and Mr. O'Brien at the surrounding time suggest that his motive was that Sarah was having an affair and that she was making him miserable and therefore "had to get rid of her." The reasoning appears nonetheless incomplete. This murderous act certainly is reported to have been completely out of character for him. I strongly suspect that there was more going on. All who saw him around this time noted a very significant change in him to the extent that they did not want to (be) around him, fearing what he might do, and realizing that he required psychiatric intervention. He had not been taking medication for some 5 days and acute psychotic decompensation was occurring.

Based on his own utterances and the observations of others in my opinion Mr. MacNeil was suffering from an acute deterioration in his mental functioning such that he was not in touch with reality at the time of the alleged offence. It would have been very highly likely that he was "unable to appreciate the nature and quality of his act." Specifically if, as appears the case, he believed that his wife was unfaithful (and there seems no evidence that in fact this was the case at any time) then he did not grasp the reality of the situation and he would have been unable to apply rationally any intellectual knowledge that the act of murder is legally and morally wrong.

[8] Some might mistakenly liken this situation to that of a person who drinks too much and kills someone while intoxicated. In that situation, self-induced intoxication is not a defence. That person will at least be held criminally responsible for manslaughter.

[9] The situation here is markedly different. A person with schizophrenia coming off his meds does not have the same awareness as a person who voluntarily drinks too much. The latter knows the effect the excess drinking will likely have on him. A person, like Mr. MacNeil, who stops taking his medication, does not have that insight. Both doctors confirm that the coming off medication is in itself a product of the mental disorder. It is a demonstration of his lack of insight into his mental illness. The fact that he came off his medication does not therefore count in favour of holding Mr. MacNeil criminally responsible. It is part of the illness.

[10] During his submission, Mr. Drake (the Crown attorney) invited me to find that (despite the existence of the mental disorder, and despite the fact that Crown is

agreeing that Mr. MacNeil should be found not criminally responsible) there was planning and deliberation by Mr. MacNeil. Mr. Drake pointed out some factors which might support such a finding. With respect, I do not agree that the evidence supports that the killing of Ms. Forbes that day was planned and deliberate. For one thing, there was no evidence that Mr. MacNeil knew that Ms. Forbes was coming to their home that morning. I agree with Dr. Hucker that, even if there was planning and deliberation, the reasoning behind it would have been distorted by Mr. MacNeil's delusions. Planning and deliberation would therefore have been a product of Mr. MacNeil's mental disorder. Although we will never know, I am more inclined to agree with Dr. Hucker's evidence that the trigger that precipitated this act of obvious outrage on April 18 was likely either Ms. Forbes' threat to leave with their son or her insistence that Mr. MacNeil get professional help. We will never know for sure.

[11] I am satisfied that the defence of not criminally responsible has been made out, that s. 16(1) of the **Criminal Code of Canada** applies, that Mr. MacNeil was incapable of appreciating the nature and quality of the act of killing Ms. Forbes. The amended Agreed Statement of Facts contains his acknowledgment that he did commit the act and I so find. But I conclude that at the time he was suffering from

a mental disorder so as to exempt him from criminal responsibility by virtue of s. 16(1) of the **Criminal Code**.

[12] The ancillary Orders requested by the Crown pertaining to DNA and the forfeiture of weapons is hereby granted. I am going to make no disposition but rather remit the matter to the Review Board. Those of you present heard Dr. Theriault explain that the Review Board has to meet within 45 days to decide what will happen to Mr. MacNeil. One of the options that the Review Board has under s. 672.54(c) of the **Code** is that they can by order direct that the accused be detained in custody in a hospital subject to such conditions as the Review Board considers appropriate. You heard Dr. Theriault explain what happens after a detention order is made. There are periodic reviews and recommendations which go before the Board, along with the opportunity for the victim's family, or those otherwise entitled to make representations to the Review Board. There is an opportunity to present victim impact statements when the Board initially meets to determine whether there will be a detention order.



Edwards, J.