

IN THE COURT OF PROBATE FOR NOVA SCOTIA

Citation: *Broussard Vs. Broussard Estate*, 2021 NSSC 100

Date: 20210323

Docket: Probate Court, No. 62049

Hfx. No. 498918

Registry: Halifax

Between:

Sheila Desjardins Broussard

Appellant

v.

The Estate of John Joseph Broussard

Respondent

Judge: The Honourable Justice Ann E. Smith

Heard: October 16, 2020, in Halifax, Nova Scotia

**Post-Hearing
Written**

Submissions: Sheila Broussard – December 8, 2020
Estate of John Joseph Broussard - November 6 and December 9, 2020

**Further
Submissions:** Sheila Broussard – February 11, 2021
Estate of John Joseph Broussard – March 4, 2021

Counsel: Brian Church, for the Appellant
Philip Whitehead, for the Respondent

By the Court:

[1] Ms. Sheila Broussard seeks to appeal the passing of the accounts of the estate of the late John Joseph Broussard (the “Estate”) by Registrar Cora Jacquemin, Registrar of Probate (the “Registrar”) on March 11, 2020. Ms. Broussard is a sibling of John Broussard. An Order Passing the Accounts (the “Order”) was issued by the Registrar on March 11, 2020.

[2] John Broussard died on December 14, 2014 and his Last Will and Testament (the “Will”) was admitted to Probate for the County of Halifax on March 9, 2015.

[3] Ms. Broussard filed a Notice of Appeal of the Order on March 11, 2020 and an Amended Notice of Appeal on April 16, 2020.

[4] A Motion for Date and Directions was scheduled for September 24, 2020 but was adjourned to October 16, 2020.

[5] The Motion for Date and Directions was held before this Court on October 16, 2020. Mr. Philip Whitehead participated as counsel for the personal representative, Linda Anne Poirier. Mr. Brian Church participated as counsel for Ms. Broussard. During the course of the Motion for Directions, Mr. Whitehead raised the issue of Ms. Broussard’s standing to appeal the Registrar’s decision. Mr. Church raised the issue of a motion for fresh evidence on the part of Ms. Broussard.

[6] The Court advised that it would receive written submissions on the issue of Ms. Broussard's standing to appeal on behalf of the personal representative on or before November 6, 2020 and submissions in response on behalf of Ms. Broussard by November 27, 2020. The Court received submissions on behalf of the personal representative and on behalf of Ms. Broussard, although not until December 9, 2020.

Procedural Background

[7] Ms. Poirier filed an Affidavit on August 8, 2019 setting out the procedural background of the matters relating to the Estate up to that point in time. The procedural history is also evident from the Court record.

[8] A property at 6 Forrest Avenue, Halifax, Nova Scotia (the "Property") was at the centre of a dispute between Ms. Broussard and the Estate. An Application between Ms. Broussard and the Estate addressing those issues was determined by Justice James Chipman of this Court in a decision dated March 23, 2017.

[9] Ms. Broussard did not appeal Justice Chipman's decision. Subsequent to that decision, on August 1, 2017, Ms. Broussard signed a Form 38-"Consent-Accounting Not Required".

[10] Ms. Broussard on that same day, August 1, 2017, also signed a Form 36A-“Release Regarding a Specific Gift”. It is noted that Ms. Broussard is not a residuary beneficiary pursuant to the Will.

[11] As a result of the decision of Justice Chipman, the Property’s ownership was transferred to Ms. Poirier and Ms. Broussard as tenants-in-common.

[12] The Property sold on March 18, 2019. The Estate requested Ms. Poirier’s portion of the proceeds as per the Will of John Joseph Broussard and the decision and Order of Justice Chipman. Richard Bureau, on behalf of Ms. Broussard, indicated that an application would be necessary to release the funds.

[13] The Estate filed an Application to Pass Accounts on August 8, 2019, seeking to obtain an Order to close the Estate and address the release of the held funds.

[14] Mr. Whitehead arranged to have Ms. Broussard served with the Application to Pass Accounts as a courtesy, because his client took the position that Ms. Broussard was not a “person interested in the Estate” given that she signed a Form 36A and had supposedly received her gift under the Will.

[15] Ms. Broussard was served with the Application to Pass Accounts and accompanying documentation by registered mail on September 9, 2019. The

Registered Mail signature slip signed by Ms. Broussard on September 9, 2019 was in evidence before this Court.

[16] Mr. Whitehead inadvertently did not include a blank Form 42-“Notice of Objection” with the material sent to Ms. Broussard by registered mail on September 9, 2019. However, Mr. Whitehead included a blank Form 42 in a subsequent letter to Ms. Broussard dated September 8, 2019. This letter was also sent to Ms. Broussard by registered mail. The Registered Mail signature slip signed by Ms. Broussard on September 20, 2019 was in evidence before this Court.

[17] The Application to Pass Accounts contained the proposed hearing date of October 31, 2019 at 10:00 a.m.

[18] On September 26, 2019 Mr. Whitehead filed Form 43-“Affidavit of the Proctor-Passing Accounts” and therein relied on Ms. Broussard’s Form 36A release having been filed and the lack of a Notice of Objection on Ms. Broussard’s part. Mr. Whitehead did not include the registered mail signature slips of September 9 and September 20, 2019, as his client took the position that Ms. Broussard was served only as a courtesy.

[19] In his submissions to this Court of December 8, 2020, Mr. Church says that after the Property was sold on March 18, 2019 Ms. Broussard “found a copy of a

bank draft from Scotia Bank to John Broussard in the amount of \$65,000.00”. Mr. Church advises that Ms. Broussard took the view that this was fresh evidence that could change Justice Chipman’s decision, which had not been in her favour.

[20] On October 25, 2019, Mr. Church wrote to the Registrar on behalf of Ms. Broussard and requested an adjournment of the October 31, 2019 hearing date on the basis that Ms. Broussard intended to file an application for fresh evidence. However no such application was filed.

[21] Mr. Whitehead wrote to the Registrar by letter dated October 25, 2019 advising that his client took the position that Mr. Church’s letter of the same date was not a Notice of Objection and nor had any Notice of Objection been filed at least 10 days before the October 31, 2019 hearing date.

[22] By letter to Mr. Whitehead and Mr. Church dated October 28, 2019 the Registrar advised that the application to pass accounts was adjourned without day pending the result of Mr. Church’s proposed application to the Supreme Court (to introduce fresh evidence). The Registrar states in this letter, “As noted by Mr. Whitehead, the filing deadline for objecting to the accounts has passed.”

[23] The Passing of Accounts was eventually rescheduled for March 11, 2020 at 10:00 a.m. and heard on that day. Mr. Church and Mr. Whitehead were advised of

the hearing date and time in an email message to them on February 5, 2020 from the Deputy Registrar of Probate.

[24] Neither Ms. Broussard, nor Mr. Church on her behalf, filed a Notice of Objection at any point formalizing Ms. Broussard's objection to the Passing of the Accounts. Neither Ms. Broussard nor Mr. Church attended the hearing of the Passing of the Accounts on March 11, 2020 at 10:00 a.m.

[25] The Order Passing the Accounts was issued by the Registrar on March 11, 2020.

[26] Ms. Broussard filed a Notice of Appeal on April 9, 2020 and an Amended Notice of Appeal on April 16, 2020.

[27] On October 15, 2020, the day before the Motion for Date and Directions before this Court, Mr. Church filed the Affidavits of Ms. Broussard and Kayla Vaillancourt, Mr. Church's legal assistant.

[28] Ms. Broussard states in her Affidavit that she attended for the Passing of Accounts Hearing at 11:00 a.m. on March 11, 2020 and learned that the hearing had taken place at 10:00 a.m. that morning.

[29] In her Affidavit Ms. Broussard says that she was given notice by a Probate clerk on February 28, 2020 at 4:20 p.m. that the hearing of the Passing of Accounts was to be at 11:00 a.m. on March 11, 2020.

[30] Ms. Broussard attaches to her Affidavit an Exhibit which she says is a recording of the voicemail from Probate Court to Ms. Broussard.

[31] Ms. Broussard's Affidavit also attaches a bank draft from Scotia Bank Group titled "Investment Directions" dated November 9, 2010 on the non-registered personal savings account of John Broussard in the amount of \$65,419.89.

[32] Ms. Vaillancourt's Affidavit attaches a transcription of this voicemail message which provides that the hearing is to proceed on March 11, 2020 at 11:00 a.m.

[33] Ms. Broussard states in her Affidavit that she is requesting a new Passing of Accounts Hearing before Probate Court and a hearing relating to new evidence which she says would impact the calculations of monies owed to her by the Estate.

Issue 1: Does Ms. Broussard have standing to Appeal the Passing of the Accounts heard by the Registrar on March 11, 2020 which resulted in the Order on Passing Accounts issued in March 11, 2020?

[34] As noted above, on August 1, 2017, Ms. Broussard signed a release – Form 36A – "Release Regarding a Specific Gift".

[35] Pursuant to section 56(3) of the *Probate Court Practice, Procedure and Forms Regulations* (the “*Regulations*”) made under section 106 of the *Probate Act*, a beneficiary of a specific gift under a Will is entitled to an accounting in respect to that gift only, but once the gift has been received by the beneficiary, the beneficiary is no longer entitled to that accounting.

[36] As noted earlier in this decision, Ms. Broussard did not file a Notice of Objection to the Passing of the Accounts of the Estate. To file a Notice of Objection a person must be a “person interested in an estate”.

[37] Is Ms. Broussard a “person interested in an estate”?

[38] Section 58(2) of the *Regulations* provides that if a person has not filed and served a Notice of Objection (not less than 10 days before the date set for passing the accounts) the person is “deemed to have consented to the administration of the estate as contained in the accounts.”

[39] Ms. Broussard did not file a Notice of Objection, whether or not she was “a person interested in an estate” or not, and accordingly, was not entitled to be served with notice of the Application to Pass the Accounts. She was served as a courtesy only.

[40] I conclude that Ms. Broussard does not have standing to appeal the Registrar's decision passing the Estate's accounts.

Issue 2: Has Ms. Broussard presented fresh evidence before this Court?

[41] On January 21, 2021, this Court conducted a conference call with counsel. The Court requested additional affidavit evidence and submissions on the following issues:

- (a) Whether the "Investment Directions" is fresh evidence or whether it was already considered as part of Justice Chipman's decision;
- (b) Whether fresh evidence is admissible because an appeal is a *de novo* hearing;
- (c) Evidence concerning the timing of the finding of the "Investment Directions". The Court indicated to counsel that it was unclear what Ms. Broussard did between the time she found the "Investment Directions" and the Passing of the Accounts.

[42] As a result of the January 21, 2021 conference call, Ms. Broussard filed an Affidavit with the Court sworn February 10, 2021. In this Affidavit, Ms. Broussard repeats the evidence from her October 13, 2020, Affidavit that she found a "bank draft" from Scotia Bank to the late Mr. Broussard. She does not say when, just that

she found the document after the house on Forrest Street was sold (March 18, 2019), as she was unpacking her belongings after moving to an apartment.

[43] The Passing of Accounts occurred over a year after Ms. Broussard says she found the Investment Direction. She provided this Court with no evidence as to why she did nothing to advance her position during that time period.

[44] Further, Ms. Broussard did not appeal Justice Chipman's decision of March 23, 2017 and resulting Order. The Registrar of Probate had no ability to re-adjudicate matters that were ruled on by Justice Chipman.

[45] In her Amended Notice of Appeal from the Registrar's decision, Ms. Broussard stated:

2a) Objection to the Accounts of the Personal Representative on the following grounds of: "The Investment Direction" Scotiabank form in the amount of \$65419.89 GIC dated Nov 9, 2010 shown as evidence by Mr. Whitehead at the Supreme Court March 2017 that this is where John Joseph must have withdrawn the \$65000 to give me.

[emphasis added]

[46] Ms. Broussard is clearly saying here that the evidence before Justice Chipman included a GIC dated November 9, 2010 and that "this is where John Joseph must have withdrawn the \$65000 to give me."

[47] In his brief to the Court dated March 4, 2021, Mr. Whitehead notes that he believes the Investment Directions were considered as part of Justice Chipman's

decision. He refers to an exhibit to an Affidavit of Ms. Poirier filed on June 7, 2016. In that Exhibit, on the late Mr. Broussard's Scotiabank statement for the period October 1 to December 1, 2010, a withdrawal of \$65,419.89 is made on November 9, 2010. As pointed out by Mr. Whitehead in his most recent submissions to the Court, that bank withdrawal amount and date, all match the Investment Directions document attached as an exhibit to Ms. Broussard's October 14, 2020 Affidavit.

[48] In her Amended Notice of Appeal Ms. Broussard, after saying that John Joseph must have withdrawn the \$65,000 to give to her, goes on to state that there are no records in her bank account to show a deposit of \$65,000. She then says:

...This \$65,000 was to have been given to me to put against the Capital Street Mortgage and if there is a DRAFT or some record with my name on it in the amount of \$65000.00 please provide and then Sheila and John Joseph Broussard's records would be clarified. The records from HRM Tax Invoices show both names on it and being sent to Street Capital for payment. (will follow).

[emphasis added]

[49] It is clear that Ms. Broussard feels that her brother intended to give the \$65,000 to her. However the Investment Direction, as well as the evidence before Justice Chipman did not establish that John Broussard intended to give Ms. Broussard the \$65,000.

[50] The Investment Directions is not new evidence. It merely confirms the same evidence, in a different format, that was before Justice Chipman.

Conclusions

[51] Ms. Broussard does not have standing to appeal the Registrar's decision for the reasons outlined above. She did not file a Notice of Objection. Her appeal is dismissed.

[52] Ms. Broussard had counsel and no Notice of Objection was filed. The fact that she wished to attend the Passing of Accounts and may have been inadvertently advised of the wrong time of that hearing does not change the fact that she had no right to participate in the hearing. Further, her counsel had notice of the hearing (March 11, 2020 at 10:00 a.m.) on February 5, 2020.

[53] The October 31, 2019 Passing of Accounts was adjourned for more than four months specifically to afford Ms. Broussard the opportunity to bring a motion for fresh evidence before Justice Chipman, or otherwise attempt to deal with the information she thought would affect Justice Chipman's decision. She never did so.

[54] Further, Ms. Broussard could have appealed Justice Chipman's decision to the Court of Appeal and sought to have the Court of Appeal consider fresh evidence. She has not done so.

[55] Further, the Investment Directions is not new evidence.

Costs

[56] The Personal Representative of the Estate requests costs in the amount of \$500.00 with a multiplier of two applied to yield total costs of \$1,000.00.

[57] Costs are in the discretion of the Court. The Court did not receive costs submissions on behalf of Ms. Broussard.

[58] The Personal Representative of the Estate was successful in having Ms. Broussard's appeal dismissed for lack of standing.

[59] There was no hearing of the motion on standing. It proceeded by way of written submissions. There were further written submissions on the issue of the alleged fresh evidence.

[60] I find that a costs award of \$750.00 payable by Ms. Broussard to the Estate does justice between the parties. That amount must be paid in full by April 30, 2021.

[61] I ask Mr. Whitehead to prepare a draft form of order for the consent, as to form, of Ms. Broussard's counsel.

Smith, J.