

**SUPREME COURT OF NOVA SCOTIA**  
**Citation:** *Northcott v. Dupres*, 2024 NSSC 149

**Date:** 20240516  
**Docket:** 528971  
**Registry:** Halifax

**Between:**

Belinda Joy Northcott and Patricia Rhyno

Applicants

and

Ernest Dupres

Respondent

<b>DECISION</b>
-----------------

**Judge:** The Honourable Justice Jamie Campbell

**Heard:** May 2, 2024, in Halifax, Nova Scotia

**Counsel:** Alan Freckelton, for the Applicants  
Jonathan Hooper, for the Respondent

**By the Court:**

[1] Richard Dupres and Patsy Dupres were married in 1973. Their son, Ernest, or “Ernie” was born in 1979. The family moved to Nova Scotia from Ontario when Ernie was 4 years old. Ernest Dupres is now 45 years old. He always lived with his father and mother. His father died in 2004. His mother died in 2022. This dispute arose after Patsy Dupres’ death. Ernest Dupres says that before his death, his father gave him the mobile home in which the family lived provided that his mother could live there as long as she wanted. He and his mother continued to live together in that home for about another 18 years after Richard Dupres’ death. Ernest Dupres thought it was his, based on what he says his father had told him. He sold it, just before his mother died and put some of the money away to pay for her expenses in a continuing care facility. But just after his mother died, he got rather a shock. His half sister, with whom he had never had much if any relationship, contacted him to say that she and his other half siblings, Patsy Dupres’ children from a previous relationship, were entitled to a share in the proceeds of sale of the mobile home. This case was their application for a declaration that the proceeds of sale of the mobile home are held in trust by Ernest Dupres for the Estate of Patsy Dupres.

**Issue**

[2] The issue is whether the proceeds of sale of the mobile home are held in trust by Ernest Dupres.

**The Claim**

[3] The applicants, Belinda Northcott and Patrica Rhyno say that the mobile home that their half-brother thought was his, was owned by their mother and the proceeds of sale should be held in trust for her estate. That would mean that the money would be divided equally among the four children of Patsy Dupres, according to her will. They maintain that Patsy Dupres gave the mobile home to Ernest Dupres sometimes in or around 2022. There was no suggestion at all that this was done with undo influence from Ernest Dupres but there is no evidence that Ernest Dupres paid for the mobile home. Ms. Northcott and Ms. Rhyno argued through their counsel, Alan Freckelton, that a resulting trust arose when Patsy Dupres gave the mobile home to Ernest Dupres, and he gave her no money for it. In the case of such a gratuitous transfer to an adult child there is no longer a presumption of advancement, but instead there is a rebuttable presumption of a

resulting trust. Another way of saying that is that in the past the law presumed that the parent intended to give the adult child a gift. Now the presumption is that the parent transferred formal ownership of the item but intended that the child would just hold it in trust. The onus would be on Ernest Dupres to show that Patsy Dupres intended to give the mobile home to him, as a gift. *Pecore v. Pecore*, 2007 SCC 17.

[4] Ms. Northcott and Ms. Rhyno assumed that the property had been transferred to Ernest Dupres by their mother some time around 2022. They based that assumption on the fact that Ernest Dupres sold the mobile home in 2022 so that he must have had ownership of it and that it must have come to him through their mother. But there was no evidence to support that assumption. There were no documents as evidence of such a gratuitous transfer. There were no witnesses to any conversation between Patsy Dupres and Ernest Dupres in which Patsy Dupres gave him the mobile home. There were no witnesses who stated that Patsy Dupres during her lifetime said that she had given the mobile home to Ernest Dupres. The claim that Ernest Dupres held the proceeds of sale of the mobile home in trust for the Estate of Patsy Dupres could not be based on a gratuitous transfer of ownership from Patsy Dupres because there is no evidence that Patsy Dupres conveyed ownership to Ernest Dupres.

[5] Ms. Northcott and Ms. Rhyno did not advance an alternative argument. That was it. They were aware, based on Ernest Dupres' affidavit and the brief file by his counsel, Mr. Hooper, that Ernest Dupres' evidence would be that it was not Patsy Dupres who gave him the mobile home but his father, Richard Dupres. But there was no argument put forward that if the home had been transferred by Richard Dupres that the applicants in this matter would still have an interest in the proceeds of sale.

[6] Ernest Dupres' evidence was that he was given the mobile home from his father, before he died in 2004 and that he and his mother lived in the mobile home that he owned, for the next 18 years until 2022. He did not pay his father for the mobile home, so the question is whether the mobile home came to him for his benefit or was also subject to a resulting trust in favour of the estate of Richard Dupres. If the mobile home came into Ernest Dupres' ownership as a gift, without a resulting trust, Ernest Dupres would have had the right to the proceeds of sale in 2022. There was no evidence to suggest that Richard Dupres was subject to undue influence in giving his mobile home to his son. But if the mobile home was subject to a resulting trust, the proceeds of sale would be held for the Estate of Richard Dupres. Richard Dupres' will was never proven or filed in probate. There has been

no Estate of Richard Dupres opened. If that will were to be proven it may provide that all Richard Dupres' property would go to Patsy Dupres, and through her estate, would be divided amongst Ernest Dupres and his 3 half siblings.

[7] Based on the evidence in the application, the issue is not whether Patsy Dupres' gratuitous transfer of the mobile home to Ernest Dupres means that the proceeds of sale are subject to a resulting trust in favour of her estate. The issue is whether Ernest Dupres has rebutted the presumption of a resulting trust arising from Richard Dupres' gratuitous transfer of ownership to him so that Ernest Dupres got ownership of the mobile home as a gift from his father.

### **Evidence**

[8] Richard Dupres was a taxi driver. Patsy Dupres was a stay-at-home mother. In 1991 Richard and Patsy Dupres moved into the mobile home park at Sackville Mobile Home Estates. Ernie Dupres was 12 years old then. In April 1999 Richard Dupres bought a new mobile home. He bought it from Havill's/Northland Mini & Mobile Home Sales for about \$54,000 before taxes and a credit for trade in. There was no dispute that Richard Dupres paid for it himself. Patsy Dupres had no source of income and there was no suggestion that the home was bought in trust for her, using her money. She would of course have had a matrimonial property interest in Mr. Dupres' assets upon his death or their separation.

[9] Richard Dupres, Patsy Dupres and Ernest Dupres lived in the mobile home at 42 Alan Street in Sackville Mobile Home Estates. Richard Dupres was diagnosed with terminal cancer. He died 18 months later, on July 18, 2004. He appears to have written a document on November 1, 1990, that purports to be a will. There are written revisions to the typewritten document and those revisions appear to have been dated April 9, 2003, after his cancer diagnosis. The will provides that his estate would go to his wife, and "in the case of her demise" to his son Ernest Dupres. That document has never been proven as a will. It has never been filed in probate. The amendment made in 2003, after Richard Dupres' cancer diagnosis, was to change the apartment number of the person named as guardian of Ernest Dupres though by that time he was too old to have a legal guardian.

[10] If that document were proven as a will, it would not grant ownership of the mobile home to Ernest Dupres. The intent expressed in that document was to give all Richard Dupres' property to his wife. Only if she were dead at the time of his death would his property be given to Ernest Dupres.

[11] Ernest Dupres said that when Richard Dupres was diagnosed with terminal cancer, he also wrote a memorandum that dealt with his property. It said that Mr. Dupres wanted his son Ernest to have his 2001 Buick Century and run his taxi business after he died. In his affidavit, Ernest Dupres says, “The Memo also stated he gifted me the Mobile Home but wanted Patsy to live in the Mobile Home until she died or was no longer able to. The Memo specifically stated my father wanted me to have the Mobile Home after he died.” Technically, those two sentences in the affidavit probably do not mean the same thing. In the first sentence Ernest Dupres says that Richard Dupres gifted the mobile home to him, subject to Patsy Dupres’ life interest. The mobile home was given from Richard Dupres to his son, while he was still alive. In the second sentence the mobile home was given to Ernest Dupres, effective upon Richard Dupres’ death. Ernest Dupres did not draw that legal distinction. To him, his father just gave him the mobile home. He said that his father kept repeating that.

[12] Ernest Dupres no longer has that memorandum that he spoke of. He gave it to the Taxi Commission in 2004 because it referred to the transfer of Richard Dupres’ car and taxi license to him. The Taxi Commission kept the memorandum and no one in the offices of the Halifax Regional Municipality can locate it. Mr. Dupres says that he does not even have a copy of the memorandum. Whether Richard Dupres intended to make a gift of the mobile home to Ernest Dupres comes down to Ernest Dupres’ testimony and the evidence of the surrounding circumstances.

[13] After Richard Dupres’ death in 2004, Patsy Dupres and her son Ernest continued to live in the mobile home. There was no documentation about a change in ownership. One thing they had to do was to change the land lease. Mobile homes are owned as chattels and can be placed on land that it either owned by the owner of the mobile home or on land that is leased. In this case the land was leased from Sackville Mobile Home Estates. Ernest Dupres said that even though by this time he owned the mobile home, the land lease was changed to his mother. Richard Dupres’ land lease dated from 1991. If the land lease was transferred to someone other than a spouse, the rental amount would double, and costly upgrades would be required. Those would have included installing a new water meter, and tearing down and replacing the decks and storage buildings to meet the requirements that were in place for leases in 2004.

[14] Owners of mobile homes are required to pay municipal taxes. Ernest Dupres said that after his father died in 2004, he started to pay the taxes. He provided a

copy of the last property tax invoice from Halifax Regional Municipality addressed to him and dated March 4, 2022. Mr. Dupres said that his mother could not have afforded to stay in the mobile home on her own. She had only a small government pension. But the two of them, mother and son, continued to live in the same mobile home. That was the case until May 2022. Then, Patsy Dupres had to go into a care facility.

[15] That left Ernest Dupres alone in the mobile home that he had lived in for 23 years. He then had to change the land lease into his name only. That triggered the change in the costs and meant that repairs and improvements had to be done. He realized that he could not afford to keep his mother in a care facility and the costs of keeping the mobile home. He decided to sell it and set aside some money to pay for the costs of his mother's care. He did some renovations, installed a new heat pump and bought new appliances. Altogether that cost about \$20,000. He had not been able to afford the taxes and needed to have them paid in order to sell. He borrowed \$2,000 from Belinda Northcott and paid her back as soon as the mobile home was sold.

[16] The mobile home was sold on August 3, 2022 for \$164,000.

[17] Patsy Dupres died on August 30, 2022. She left a will that has been filed in probate. That will, dated May 9, 2014, appoints Ernest Dupres as executor and divides the estate equally among Patsy Dupres' four children. Those are Ernest Dupres and her three children born before her marriage to Richard Dupres. And that is where the applicants, Belinda Joy Northcott and Patricia Rhyno come into the picture. Their brother Garfield Rhyno did not want to participate in the matter. He was not served with notice but was contacted by telephone, in court and on the record, to confirm that because of his ill health he did not want to participate in the matter. Belinda Northcott and Patricia Rhyno say that they are entitled to a share of the proceeds of sale of the mobile home and that those proceeds should be divided according to Patsy Dupres' will.

[18] Ernest Dupres said that while he had no relationship to speak of with Patricia Rhyno, he was on reasonably good terms with his half sister, Belinda Northcott. She had helped him paint the mobile home in preparation for sale and had loaned him money to pay the taxes just before the sale. During the time from his father's death until the sale of the mobile home, no one had contacted him to express the view that he did not own the mobile home. But, after his mother's death he was contacted by Patricia Rhyno who said that she and her siblings were entitled to

some of the proceeds of sale. That prompted Ernest Dupres to contact Belinda Northcott in the hope that she would arrange for a document to be signed by herself, her sister and her brother confirming his ownership in the mobile home. They would not provide such a document. They say that the texts from Ernest Dupres asking if they would confirm his ownership of the mobile home show that he was not confident that he owned it. And so, this began.

### **Transfer from Patsy Dupres to Ernest Dupres**

[19] Belinda Northcott, Patricia Rhyno and their brother Garfield Rhyno are older than Ernest Dupres. They were never supported by Richard Dupres and Patsy Dupres after their marriage. They claim under the Estate of Patsy Dupres. They argue that Patsy Dupres never intended to transfer ownership of the mobile home to Ernest Dupres. They say that their mother gave the mobile home to Ernest Dupres but that her intent was that it would be held in trust, for her estate.

[20] Belinda Northcott and Patricia Rhyno believe that at “some point in or around 2022” Patsy Dupres transferred ownership of the mobile home to Ernest Dupres. They both agreed that the idea that their mother transferred ownership to Ernest Dupres was speculation on their part. They based that speculation on the fact that Ernest Dupres sold the mobile home in 2022 so therefore he must have been given ownership of it by Patsy Dupres. There is no evidence that Patsy Dupres became the owner of the mobile home or if she did, that she conveyed ownership of the mobile home to Ernest Dupres. There is no written record of a transfer and no witness to a verbal statement by Patsy Dupres that she was giving the mobile home to Ernest Dupres. Patsy Dupres did not own the mobile home. She did not transfer the mobile home to Ernest Dupres and no trust can be imposed based on a transfer of title for which there is no evidence.

### **Presumption of Resulting Trust: Transfer from Richard Dupres to Ernest Dupres**

[21] Ernest Dupres sold the mobile home. It was bought by his father and was owned by his father. Ernest Dupres said that he did not get the mobile home from his mother. He got it from his father. He said either that his father gave the mobile home to him before he died, with the idea that his mother could live in it for as long as she wished or that his father expressed the wish that upon his death the mobile home would be owned by his son, subject to Patsy Dupres’ life interest.

The mobile home was transferred to him and there was no evidence of any money changing hands or of any other consideration.

[22] In the past the presumption of advancement would have applied when property was transferred from a parent to a child. It was assumed that the intention on the part of the parent was to make a gift of the property. That has changed. There is now a presumption of a resulting trust when the child who receives the property is an adult. The Supreme Court of Canada in *Pecore* held that the main reason for the presumption of advancement was the legal obligation of a parent to support a dependent child. Once the child has reached the age of majority that obligation typically ceases. The court also noted that often transfer of property are made by the parent to allow the adult child to assist with their financial affairs. In this case, the gratuitous transfer of the ownership of the mobile home from Richard Dupres to Ernest Dupres activates the presumption of a resulting trust. Ernest Dupres has the onus of proving that the mobile home was given to him as a gift and not for some other purpose.

[23] The presumption applies to the resulting trust and not to whether the transaction happened at all. In this case, Ernest Dupres' evidence was that his father gave him the mobile home. There is no presumption against that. But there must be corroborating evidence of it.

***Evidence Act, RSNS 1989, c. 154, s. 45***

[24] Ernest Dupres' statement that his father gave the mobile home to him as a gift runs up against s. 45 of the *Evidence Act*.

On the trial of any action, matter or proceeding in any court, the parties thereto, and the persons in whose behalf any such action, matter or proceeding is brought or instituted, or opposed, or defended, and the husbands and wives of such parties and persons, shall, except as hereinafter provided, be competent and compellable to give evidence, according to the practice of the court, on behalf of either or any of the parties to the action, matter or proceeding, provided that in any action or proceeding in any court, by or against the heirs, executors, administrators or assigns of a deceased person, an opposite or interested party to the action shall not obtain a verdict, judgment, award or decision therein on his own testimony, or that of his wife, or of both of them, with respect to any dealing, transaction or agreement with the deceased, or with respect to any act, statement, acknowledgement or admission of the deceased, unless such testimony is corroborated by other material evidence. (R.S., c. 154, s. 45)



[25] What all that means is that when Ernest Dupres gave evidence about his father's expressed intent to give him the mobile home, because his father is dead, that must have been supported by corroborating evidence. The policy reason for that requirement is that an estate could be significantly diminished if it could be established that assets were gifted away before death, based only on the evidence of the person who received the gift. There must be corroborating evidence or in other words, something to back it up. The only witnesses of that intention could be Patsy Dupres and Shirley Banfield who Ernest Dupres said were present for the discussions about the memorandum. Both Ms. Dupres and Ms. Banfield are dead. The memorandum that Ernest Dupres says that his father wrote is nowhere to be found.

[26] In *Re McCarthy* (1970), 16 D.L.R. (3d) 72, O'Hearn, Prob. Ct. J., considered how the corroborating evidence as required by the *Evidence Act* should be treated. Judge O'Hearn provided a list that has been cited with approval several times over the last 50 years.

- (a) Corroboration is of no avail if the claimant's story is not believed.
- (b) A mere scintilla of corroborating evidence is not sufficient.
- (c) Evidence that is consistent with two views or two opposing views is not corroboration of either.
- (d) The corroborating evidence need not be sufficient in itself to establish the case.
- (e) The direct testimony of the second witness is unnecessary for sufficient corroboration.
- (f) The corroboration may be afforded by circumstances alone.

[27] Corroboration is of no value to Ernest Dupres if his version of events is not believed. Corroboration of a narrative that for whatever reason is just not believable does not salvage it. In this case, Mr. Dupres' statement that before his death but while dealing with a diagnosis of terminal cancer, his father gave the mobile home to him, is believable. Corroboration is not put forward in this case to try to salvage a story that would otherwise not be believed. Ernest Dupres' evidence was internally consistent and consistent with the otherwise proven facts. He was not evasive or argumentative on cross-examination. He told his version of events as he understood them. I accept what he said as being the truth.

[28] While the corroborating evidence itself does not have to establish the case, it must be more than just a small scrap of evidence. It does not have to be evidence

from another witness. The corroboration can come from the circumstances. In this case the circumstances can be used to provide both the corroborating evidence required by the *Evidence Act* and the evidence to rebut the presumption of a resulting trust.

### **The Type of Gift**

[29] Ernest Dupres' evidence that his father gave the mobile home to him is believable and establishes that Richard Dupres gave his son the mobile home. Ernest Dupres evidence could be interpreted as meaning either one of two kinds of gift.

[30] It could have been an *inter vivos* gift. That would mean that Richard Dupres intended the mobile home to be Ernest Dupres' immediately, subject to allowing Patsy Dupres to live in it for her lifetime. The evidence could be interpreted to mean that Richard Dupres intended that his son, Ernest Dupres, would own the mobile home, subject to his mother's life interest, only after Richard Dupres died. That would be a gift *donatio mortis causa*. The gift would not become effective until Richard Dupres' death.

[31] Justice Davison in *Murphy Estate (Re)*, [1998] N.S.J. No. 324, summarized the requirements for a gift *donatio mortis causa*. The gift must be made in contemplation of death of the donor, though not necessarily in expectation of death. There must be delivery of the subject matter of the gift to the person who receives it. And, thirdly, the circumstances must establish the gift is to take complete effect upon the death of the donor.

[32] Richard Dupres had been diagnosed with terminal cancer. The gift to his son would have been made very much in contemplation of death. The subject matter of the gift was a mobile home. There would have been no deed to sign. In this case there would have been no keys to deliver or way in which Ernest Dupres would be given full access to the mobile home. He already had full access to the place he had been living, with his mother and father. The circumstances establish that the gift was to take effect upon Richard Dupres' death. If this were not an *inter vivos* gift, to take effect immediately, the intention was that it would at least become effective upon Richard Dupres' death. In these circumstances it does not matter whether the transfer was *inter vivos* or *donatio mortis causa*.

### **The Surrounding Circumstances**

[33] Ernest Dupres must then provide corroborating evidence that the transfer of ownership took place, and evidence to rebut the presumption that if the transfer did take place, it was for his benefit and not subject to a resulting trust.

[34] The mobile home was bought by Richard Dupres in 1999. He got a bill of sale for it. He bought it with his own money and with a loan. There was no evidence that the home was bought with money provided by Patsy Dupres so that it was owned by Richard Dupres in trust for her. It was placed on leased land at Sackville Mobile Home Park. Patsy Dupres had rights under the *Matrimonial Property Act* that would allow her to make an application for division of assets upon separation or on the death of Richard Dupres. No application was ever made. There was no evidence that the ownership of the mobile home was ever transferred to Patsy Dupres.

[35] The mobile home was sold by Ernest Dupres in 2022. He paid the taxes on the property from the time of his father's death in 2004. He provided a tax assessment that was sent to him during the time that both he and Patsy Dupres lived in the mobile home. That evidence corroborates Ernest Dupres' evidence that his father transferred ownership of the mobile home to him. I accept his evidence and it is corroborated by the tax assessment. I am satisfied, on the balance of probabilities, that Richard Dupres, before his death in 2004, conveyed the ownership of his mobile home to his son, Ernest Dupres.

[36] Having established that the property was given to him by his father, Ernest Dupres, as an adult child, has to rebut the presumption that it was given to him to hold in trust for his mother. The fact that Ernest Dupres was Richard Dupres' son does not establish the gift. It is however part of the circumstances of the case. Ernest Dupres was not a stranger, a friend, or an acquaintance. He is Richard Dupres' only child. He is the only child of the relationship between Patsy Dupres and Richard Dupres. Patsy Dupres' other children were never dependent on Richard Dupres. A wish expressed by Richard Dupres that his son should have the mobile home subject to making sure that his wife has a place to live for as long as she wants, is entirely consistent with those relationships.

[37] In *Pecore*, the trial judge found that Paula Pecore and her father had a very close relationship and that she was the person, other than his wife, that he was closest to and most concerned about. Her father preferred her over her other siblings. The nature of that relationship was evidence of an intent to benefit Paula

Pecore, rather than having her hold the property in trust. While there is no presumption of advancement, relationships still matter.

[38] Ernest Dupres must rebut the presumption of a resulting trust. The absence of evidence of any intent on the part of Richard Dupres to either protect the mobile home from creditors by transferring it to his son, or to transfer ownership to allow Ernest Dupres to deal with the asset on his father's behalf during his father's lifetime should not change the burden. The fact that there was no apparent reason why Richard Dupres would transfer ownership of the mobile home to his son, but subject to a resulting trust, is evidence of the context in which the transfer took place. Richard Dupres would have been aware that the legal transfer of ownership to his son would result in changes to the land lease. That would have been a very good reason not to have transferred legal ownership to his son with the intent that he would hold that legal title in trust for Patsy Dupres. The transfer in those circumstances was more likely intended to be a transfer of beneficial ownership.

[39] The nature of the relationships is not artificially excluded from the consideration of context. It is part of the circumstantial evidence. Richard Dupres' unproven will offers some insight into his relationship with his only child. He appears to have wanted to provide exclusively for his son in the event of the death of his wife. If his wife predeceased him, he gave all his property to Ernest Dupres and none of it to the son and two daughters of Patsy Dupres from a prior relationship. If Patsy Dupres was alive everything went to her, but the evidence from the will is that Richard Dupres was concerned about providing for his own son. Ernest Dupres has proven that his father gave the mobile home to him. There is no evidence that he gave it to Patsy Dupres. The document purporting to be his will is evidence of his intent to benefit Ernest Dupres.

[40] The presumption of a resulting trust has been rebutted by the evidence. Ernest Dupres was Richard Dupres' only son. He was substantially younger than the three children of Patsy Dupres, who were Richard Dupres' stepchildren. Ernest Dupres lived with his parents since his was born, lived in that mobile home park since he was 4 years old and lived in that mobile home from the time it was bought by Richard Dupres.

## **Conclusion**

[41] The applicants have not established that Ernest Dupres was given the mobile home by their mother, with the intention that it be held in trust for her

estate. They have not proven that the mobile home was conveyed by Patsy Dupres to her son, Ernest Dupres.

[42] Ernest Dupres said that his father gave him the mobile home before he died. I believe and accept his evidence. There is corroboration of it, in the form of a tax bill showing that the mobile home was assessed to him before his mother went into a care facility.

[43] Ernest Dupres has rebutted the presumption of a resulting trust in favour of the Richard Dupres' estate. Richard Dupres conveyed the mobile home to his son Ernest Dupres as a gift for the benefit of Ernest Dupres. There was no evidence of an attempt to avoid creditors or evidence to suggest that the transfer was intended for other estate planning purposes. Richard Dupres' unproven will offers some evidence that he intended to benefit his only child who had lived with Richard and Patsy Dupres for his whole life to that time. Richard Dupres did not convey ownership to Patsy Dupres, as he could have done. He conveyed it to Ernest Dupres. If it was conveyed to Ernest Dupres, it was not to benefit Patsy Dupres or her children. It was for the benefit of Ernest Dupres.

[44] The application is dismissed.

[45] I will receive written submissions on the matter of costs within 30 days of the date of this decision.

Campbell, J.