

COPY

Date: 19980716
Docket: S041899
Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

NEW WESTMINSTER

AUG 10 1998

REGISTRY

Oral Reasons for Judgment
Mr. Justice Preston
Pronounced in Chambers
July 15, 1998

BETWEEN:

BONITA WRIGHT

PLAINTIFF

AND:

BONITA WRIGHT, as Executrix of the
Estate of GEORGINA RUBY LADORE GROAT, Deceased,
JEFFREY EAGHAN HEATHER, ALLAN MATTHEWS GROAT and
BARBARA LYNN GROAT

DEFENDANT

Counsel for the Plaintiff:

T. Todd

Counsel for the Defendant:

R.P. Hamilton

[1] THE COURT: This is an application pursuant to Rule 18A for an order under the Wills Variation Act in favour of the two natural children of the testatrix, Georgina Groat.

[2] Georgina Groat died on February 17th, 1997 at seventy-three years of age. She had been married twice.

She had two children from her first marriage and two step-children from her second marriage.

[3] Her second marriage was a long marriage of approximately fifteen years. Her second husband, Albert Groat, died in February 1995. His property passed to her by right of survivorship. His estate was not probated, because it was not of sufficient value to justify the expense of probate.

[4] After Albert Groat's death in February of 1995, Georgina Groat executed the will that is the subject of these proceedings. That took place on March 22nd, 1995. The will is simple and straightforward. It directs that after her estate is realized and the expenses of the estate are paid, the estate is to be divided into four equal shares and distributed among her natural children and her step-children.

[5] These proceedings have arisen because of matters that took place in September of 1995. Georgina Groat was legally blind and had some health difficulties. One of her natural children, Bonita Wright, decided with the testatrix that Bonita Wright and her husband would sell their house, the testatrix would sell her house and a house would be purchased from the combined funds. They would all live together in that house. Bonita Wright

would be available to provide care to her mother in her declining years. That is what took place.

[6] The house that they all lived in was the subject of a conveyance dated September 19th, 1995. In the course of that property transaction, the parties to it took care to document exactly the nature and intention of that transaction. Broadly, the intention of the parties was that the house which was purchased out of their combined monies would be held in joint tenancy and that Bonita Wright and her husband would obtain the interest of Georgina Groat upon her death by right of the operation of the joint tenancy. That, of course, removed a major asset from the estate and led the solicitor who documented the transaction to advise that statutory declarations setting out the intention of the parties be prepared and that was done.

[7] The statutory declaration sworn by Georgina Groat on September 19th, 1995 reads

1. I fully appreciate that the property ...

it then describes the subject property,

... is registered in joint tenancy with myself, my daughter, Bonita Yvonne Wright, and my son-in-law, Murray Allan Wright as joint tenants.

2. I understand that upon my death, my daughter, Bonita Yvonne Wright, and my son-in-law, Murray Allan Wright, will be the registered owners of the property pursuant to their rights of survivorship and it is my intention that they have both the legal and beneficial ownership of the property.

3. I confirm that I was not unduly influenced or pressured in any way by my daughter, Bonita Yvonne Wright, or my son-in-law, Murray Allan Wright, when the joint tenancies referred to above were established.

4. I realize that, as a result of the joint tenancies referred to above, my son, Allan Matthews Groat, will receive no interest in the property referred to above.

5. As a result of the joint tenancies referred to above, I fully appreciate that my estate will be of a relatively minor value, notwithstanding the provisions of the Wills Variation Act. I appreciate that I have only provided my son, Allan Matthews Groat, with one-quarter of the residue of my estate.

[8] All of this would probably have proceeded without event and this litigation would have been avoided; however, the solicitor who handled the actual conveyance, who was not the solicitor who documented the agreement between the parties, failed to ensure that the property was transferred into joint tenancy. As a result, the property was transferred into a tenancy in common, and contrary to the intention of the parties to the September 1995 transaction, Georgina Groat's interest in the house which she jointly purchased with Bonita Wright and her husband fell into Georgina Groat's estate; hence, this Wills Variation application.

[9] The Wills Variation Act provides in Section 2,

Despite any law or statute to the contrary, if a testator dies leaving a will that does not, in the Court's opinion, make adequate provision for the proper maintenance and support of the testator's wife, husband or children, the Court may in its discretion in an action by or on behalf of the wife, husband or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the testator's estate for the wife, husband or children.

Paragraph (5) of that Act reads,

(1) In an action under Section 2, the Court may accept the evidence it considers proper of the testator's reasons so far as ascertainable,

(a) for making the dispositions made in the will; or

(b) for not making adequate provision for the wife, husband or children, including any written statements signed by the testator.

(2) In estimating the weight to be given to a statement referred to in subsection (1), the Court must have regard to all the circumstances from which an inference may reasonably be drawn about the accuracy or otherwise of the statement.

[10] It is clear from the authorities and in particular

Re: Brannon Estate, a February 22nd, 1991 decision of the British Columbia Court of Appeal reported at 1991 Estates and Trusts Reports, 210, at page 219, that the time at which that intention is to be examined is the time at which the will was executed. Mr. Justice Cumming said in

Brannon:

The Court must give full effect to the testator's intentions so far as possible. Those intentions are to be determined in light of the circumstances existing when the will was executed.

[11] The overall circumstances of the dealings between the parties would lead me to infer that the intention to have Georgina Groat's interest in the house pass to her daughter and son-in-law was coincident with the property transaction in September. There is nothing in the circumstances which would lead me to infer that that intention was present at the time that she made the will on March 22nd, 1995.

[12] The form of the will is not unusual in all of the circumstances. The step-children's father had recently died. His property, although modest (I am told that it was in the amount of approximately thirty thousand dollars), became the property of Georgina Groat. The will contains the not unusual provision that the four children, whether they be natural or step-children would share equally in the estate. I cannot find an intention at the time of the making of the will to exclude the interest in the property purchased in September 1995 from the estate.

[13] I must, however, examine the distribution under the will in light of s. 2 of the *Wills Variation Act*, to determine whether adequate provision for the proper

maintenance and support of the testatrix's children has been made. I am invited to draw a distinction between beneficiaries who are natural children and those who are step-children. In the circumstances of this estate, I am satisfied that distinction is not appropriate. All of the children are adults and they are independent.

[14] The estate is substantial, some three hundred and forty-two thousand dollars. All of them would obtain a substantial benefit under the will. I cannot find that the will fails to make adequate provision for the proper maintenance and support of the testatrix's children. Accordingly, there is no basis for me to exercise my discretion to alter the dispositive provisions of the will.

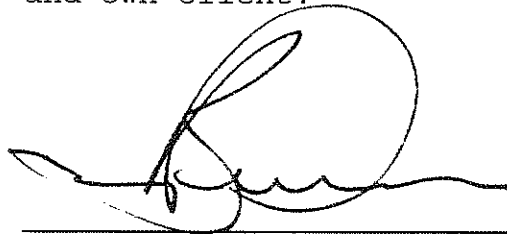
[15] Accordingly, I am satisfied that the matter is a proper one for disposition under Rule 18A and I am satisfied that the application of the plaintiff should be dismissed. I will hear from counsel on the matter of costs; however, in the circumstances that have been outlined to me, it would seem to me proper at this point to make an order that the parties be indemnified for their expense from the estate in the usual way.

(SUBMISSIONS RE: COSTS)

[16] THE COURT: Costs will come out of the estate. I take it that that may well be the subject of a claim in the other action.

[17] COUNSEL: Oh, yes. Now costs, is that solicitor and own client or party?

[18] THE COURT: Solicitor and own client.

A handwritten signature in black ink, appearing to be 'Preston', written in a cursive style. The signature is positioned above a horizontal line.

Mr. Justice Preston