

REPUBLIC OF TRINIDAD AND TOBAGO

IN THE HIGH COURT OF JUSTICE

CV2008 - 01258

IN THE MATTER OF THE WILL AND PROBATE

ORDINANCE, CHAP. 8:02

AND

IN THE MATTER OF THE SUCCESSION ACT,

NO. 27 of 1981 (PART VIII)

AND

IN THE MATTER OF THE DISTRIBUTION OF ESTATES ACT,

NO. 28 of 2008

AND

IN THE MATTER OF THE ESTATE OF **FITZROY EDWARDS**,
DECEASED, OF NO. 19 RITA STREET, ENTERPRISE, CHAGUANAS

BETWEEN

EUCHRIST ANTOINE

CLAIMANT

AND

ERLENE HILLOCKS

DEFENDANT

BEFORE THE HON. MADAME JUSTICE JOAN CHARLES

Appearances:

For the Claimant: Ms. Veena Badree-Maharaj

For the Defendant: Ms. Janette James-Sebastien

Date of Delivery: 27th May 2011

JUDGMENT

BACKGROUND

- [1] The Claimant was the common law wife of the Deceased, Fitzroy Edwards; they cohabited from April 1973 until the Deceased's death on the 18th August, 2003. The parties had no children together but the Claimant had children of her own, who resided with them. The Defendant is the sister of the Deceased.

- [2] The Deceased obtained a lease, by Deed No. 4640 of 1977, for lands situate at No. 19 Rita Street, Enterprise, Chaguanas. The Deceased and the Claimant jointly began the construction of a home on the said lands in February 1977, and moved in around March 1977 into an incomplete structure. The house was completed in or about 1983.

- [3] The Deceased published his last Will and Testament on the 3rd August, 2001 whereby he named the Defendant as his sole executrix. A Grant of Probate was obtained by the Defendant on the 1st December, 2006.

- [4] On 11th February, 2004, pursuant to **SECTION 25(1)** of the **DISTRIBUTION OF ESTATES ACT 2000**, Tam J. ordered that the Claimant was entitled to a share and/or interest in the estate of the Deceased and declared that she was a cohabitant within the meaning of the Act.

- [5] The Defendant, through her Attorney-at-Law, wrote to the Claimant on the 19th February, 2008 requesting that she vacate the property on or before the 30th April, 2008. The Claimant's Attorney-at-Law replied the same day by letter, recalling the Order of Tam J. and offered to purchase the property. There was no response by the Defendant to this letter.

[6] The Claimant subsequently filed this action on the 7th April, 2008, whereby she is seeking:

- i. A Declaration that she is entitled to the dwelling house and the tenancy rights to the property on the lands;
- ii. Alternatively, a Declaration that she has an equitable interest in the dwelling house on the lands;
- iii. An injunction restraining:
 - a. The Defendant, her servants and/or her agent from entering the said lands;
 - b. The Defendant from removing the Claimant from the said lands.
- iv. An Order that the Defendant as Executrix of the estate of the Deceased to transfer to the Claimant the said lands.

THE DEFENCE

[7] The Defendant contends that the common law relationship which existed between the Claimant and the Deceased came to an end in or about 1989, when proceedings were filed by the Claimant against the Deceased to obtain a joint interest in the property.

[8] The Defendant avers that although this action was discontinued by the Claimant and she returned to the home, the common law relationship did not resume between the parties, as they occupied separate bedrooms and lived as two separate households.

[9] Further, when the Deceased became ill the Defendant was the one that accompanied him to the doctor. She further alleged that the Claimant did

not in any way assist the Deceased as further proof that they did not live in a common law relationship.

- [10] The Defendant contends that as a result of the relationship between the Claimant and Deceased having ended some twelve (12) years prior to the Deceased's death, the Claimant cannot now seek relief under the **DISTRIBUTION OF ESTATES ACT** and the **SUCCESSION ACT CHAP. 9:02**. She counterclaims for possession of the subject property.

THE REPLY

- [11] In response to the Defendant stating that the Claimant was not the common-law spouse of the Deceased, the Claimant produced a funeral pamphlet, made by the Defendant, where the Claimant was referred to as the "wife" of the Deceased.

- [12] In response to the High Court Action, the Claimant asserts that after this action, they immediately reconciled their differences and continued their common law relationship. She stated that the Deceased was a diabetic and had lost sight in his right eye; as a result she was responsible for his maintenance, *i.e.* cooking, cleaning, washing etc. Further, the Deceased was unable to work and the Claimant was solely responsible for the payment of his medical bills and the utility bills for the said property.

ANALYSIS

- [13] The Claimant is relying on **SECTION 95(1)** of the **SUCCESSION ACT** to contend that, by virtue of the Will of the Deceased, he failed to make

reasonable provision for her as he left the property, where they resided, to the Defendant to her exclusion.

[14] The Court accepts the evidence of the Claimant that she lived with the Deceased in a common law relationship until the time of his death. This is supported by the evidence of Helen Joy, who testified to knowing the Claimant and the Deceased since 1973 when they were living neighboring to her on Jackson Street, Enterprise in rented accommodations. Helen Joy further stated that the Claimant and Deceased thereafter moved to Rita Street in 1977 where she was a regular visitor to their home and even assisted them with the construction of their home. She asserts that at all times she knew the Claimant and Deceased to be living as man and wife until his death.

[15] Further, the Claimant was already deemed to be a cohabitant within the meaning of the **DISTRUBUTION OF ESTATES ACT** by Tam J. **SECTION 2** provides that a 'cohabitant' means a woman who has been living with a or who has lived together with a man in a *bona fide* domestic relationship for a period of not less than five (5) years immediately preceding the date of his death.

[16] The Court therefore finds that the Claimant falls under **SECTION 95(1) of the SUCCESSION ACT** ("the Act"), which provides:

"Where after the commencement of this Act a person dies domiciled in the State or dies outside the State leaving any estate in the State and is survived by ... (aa) a cohabitant ... that person may apply to the Court for an order under [this section] on the ground that the disposition of the deceased's estate effected by his Will ... is not such as to make reasonable financial provision for the applicant."

[17] While **SECTION 96(1)(c)** of the Act empowers the Court to make “*an order for the transfer to the applicant of such property comprised in the estate as may be specified.*” In this case, the estate consists of one major asset: the matrimonial home. The Court accepts that this home was jointly built by the Claimant and the Deceased that they pooled their financial resources and engaged in manual labour, i.e. mixing cement etc., to ensure the completion of their home in a timely manner.

[18] In determining whether and in what manner the Court may exercise its discretion to make an award under **SECTION 96**, **SECTION 97** of the Act sets out the following considerations:

- a. The financial resources and financial needs which the Claimant has and is likely to have in the foreseeable future;
- b. The financial resources and financial needs of any beneficiary both now and in the foreseeable future;
- c. The size and nature of the net estate of the Deceased;
- d. Any other conduct of the applicant or any other person which in the circumstances of the case the Court may consider relevant;
- e. The age of the Claimant and the duration of the cohabitational relationship;
- f. The contribution made by the Claimant to the welfare of the family, including any contribution made to look after the home.

[19] Applying the relevant factors in **SECTION 97**, the Court finds the following:

- a. The Claimant is an elderly woman, she is a seamstress and has very little prospect of improving her financial situation.

- b. The Defendant is sole beneficiary of the Deceased's estate; who supports herself as a telephone operator. She lives in her own home separate from that which forms the subject of these proceedings.
- c. The cohabitational relationship between the Claimant and the Deceased lasted about thirty (30) years.
- d. The Claimant started to cohabit with the Deceased in rented accommodation, until the Deceased acquired rented lands and they started to build their home on the land. She invested what she earned into the property and household.

[20] The issue to be determined is whether based on the foregoing the Claimant is entitled to the property in dispute. In answering this question, the guiding principle is what is reasonable in all the circumstances. There is no hard or fast rule; each case turns on its own facts: **Theresa Shaw v Judith Shaw**, H.C.A. 103/2003.

[21] The test of reasonable provision is an objective one. In **Re Goodwin** [1969] 1 Ch. 283, Megarry J in construing the similar English provision to SECTION 97 of the Act, stated at p. 287:

"The statutory language is thus wholly impersonal. The question is simply whether the will ... has made reasonable provision, and not whether it was unreasonable on the part of the deceased to have made no provision ... for the dependant ... the question is not subjective but objective. It is not whether the testator stands convicted of unreasonableness, but whether the provision in fact made is reasonable."

[22] Wynn-Parry J in **Re Inns** [1947] Ch. 576 at p. 581, construed the same section and stated:

“[this section] proceeds upon the postulate that a testator should continue to have freedom of testamentary disposition provided that his disposition as regards dependants should be capable, having regard to all circumstances, of being regarded by the court as reasonable.”

[23] In applying the criteria laid down by **SECTION 97** of the Act and considering what is reasonable in the circumstances, the Court finds it only equitable to transfer the interests of the Deceased in the property and land to the Claimant.

CONCLUSION

[24] In the circumstances, the Court makes the following orders:

- i. A Declaration that the Claimant is entitled to the house and tenancy rights occupied by her and the Deceased, at No. 19 Rita Street, Enterprise, Chaguanas;
- ii. The Defendant, as executrix of the estate of the Deceased, to transfer to the Claimant the house and tenancy rights to the property at No. 19 Rita Street, Enterprise, Chaguanas;
- iii. The Defendant to pay the Claimant's costs in this action.

JOAN CHARLES
JUDGE