

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

CLAIM NO. 2006 / HCV 04249

BETWEEN GHITA BLAKE APPLICANT

AND PATRICIA CAMPBELL RESPONDENT

AND IN THE MATTER OF ESTATE JOSEPH BLAKE, LATE OF
MORNINGSIDE DISTRICT, JUNCTION P.O. IN THE PARISH
OF ST. ELIZABETH, DECEASED TESTATE

AND IN THE MATTER OF AN APPLICATION BY GHITA BLAKE
UNDER THE INHERITANCE (PROVISION FOR FAMILY
AND DEPENDENTS) ACT.

Ms. Audrey Clarke instructed by Judith Clarke & Company for Applicant

Mr. Gordon Steer and Ms. Debra Dowding for Respondent

Heard: July 19 and September 24, 2007

Straw, J

HISTORY

Mrs. Ghita Blake, the applicant, is the fifty-nine year old widow of the late Joseph Blake who died on June 25, 2005. This was his second marriage. She has two children by a previous marriage. They are all adults.

She met Mr. Blake in March 2003 while visiting her native parish of St. Elizabeth. At the time, she lived in Kingston and worked as a cook at the University Hospital of the West Indies. Mr. Blake was smitten with love and encouraged her to

leave her job, give away her furniture and to live with him at his home in Morningside District, Junction, St. Elizabeth.

As a result, she came to live with him sometime in the latter part of 2003. They got married on November 20, 2004. Between that time and his death, he provided for all her financial needs while she took care of him and the house.

It was not to be a tale of 'Happy Ever After,' however, as death intervened quickly after only several months of married bliss.

Mr. Blake has an adult daughter, Patricia Campbell, the respondent and an adult granddaughter. They both live in the United States of America. In his will, he appointed the respondent as his executor.

Apart from the land and house at Morningside District, the testator also owned a 1999 Toyota Corolla.

By the terms of the will, the land with the house thereupon was left to his daughter and granddaughter in equal shares. The 1999 Corolla was also bequeathed to his daughter, Patricia.

However, the widow was given a life interest in a bedroom and bathroom situated downstairs. She was also given the benefit of his pension.

Mr. Blake is what is commonly described as a returning resident to the island of Jamaica. He received his pension in pound sterling.

It would appear that Mr. Blake wanted the benefit of his earthly possessions to be shared amongst the three women in his life. The will stated that he had spoken to his wife Ghita about the living arrangements and that she had agreed. By all appearances Mrs. Blake would have both a house to live in and money to meet her expenses.

However, trouble, apparently, is never absent from paradise. Sometime after Mr. Blake's death, the respondent attempted to restrain Mrs. Blake's possession of the house to the area described in the will. However, there is not a proper bathroom, only a powder room. She has also complained that she would have no access to a kitchen or other reasonable facilities.

At the present time, she also has no access to the pension as her enquiries at the British High Commission revealed that the benefit would only be available to her when she has attained the age of 60 years. She will be 60 years in February 2008.

The Claim

Mrs. Blake has made an application by way of Fixed Date Claim Form under the Inheritance (Provision for Family and Dependents) Act.

Section 4 (1) of the Act reads as follows:

“An application for an order under Section 6 may be made by any of the persons referred to in subsection (2) on the grounds that the disposition of the deceased's estate effected by his will - - -, is not such as to make reasonable financial provision for the maintenance of the applicant.”

Section 2 delineates the category of applicants which includes the wife of the deceased.

Section 6 (1) of the said Act states as follows:

“Subject to the providing of this Act, where an application is made for an order under this section, the court may, if it is satisfied that the disposition of the deceased estate effected by his will - - -, is not such, at the time of the hearing of the application, as to make reasonable financial provision for the maintenances of the applicant, make any one or more of the following orders.”

The section then proceeds to list from a to f, the various orders that could be made by the court including an order for periodic payment to the applicant out of the net

estate of the deceased, an order for a lump sum payment out of the estate and an order for transfer of property comprised in the estate to the applicant.

Mrs. Audrey Clarke, on behalf of the widow, has asked that the court transfer title of the Toyota Corolla motor car to the claimant or that it be sold at the current market value for the purpose of making immediate financial provision.

Secondly, she has asked that the entire legal and beneficial interest in the property situated at Morningside District be transferred to the claimant.

On the other hand, Mr. Steer, on behalf of the respondent, has asked the court not to interfere with the testator's disposition as it reflects his intention to provide for his child, grandchild and wife.

He has also argued that reasonable financial provision has been made for the applicant as she has the pension, that it was the pension that both herself and the deceased lived on during their period of cohabitation. He has further submitted that she has failed to show that she has needs or requirements that cannot be met from her own resources up to the time that she would qualify for her husband's pension.

Finally, he states that the respondent is willing to extend the bedroom to include a shower and a small kitchen and therefore that the orders sought should be refused.

Both counsel cited authorities including:

Tataryn v Tataryn Estate (1994) 2 SCR 807

Bosch v Perpetual Trustee Co. Ltd. 1938 AC 463

Singer v Berghouse 1994 HCA 40

Louise Williams v Stephen Mavou et al, a decision by Mr. Justice

Harrison in the Supreme Court on May 17, 2000.

Goodwin v Goodwin and others 1969 Law Reports volume 1 page 283

Rajabally v Rajabally and others 1987, 2 FLR, page 390

Application of the Law

Before making any order under Section 6, the court must first decide the will made no reasonable provision for the applicant having regard to the facts known to the court at the date of hearing (see **Rajabally v Rajabally and Others**)

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 or no larger provision for the dependent (per **Goodwin v Goodwin** supra, see Megarry J at page 287)

The court does find that the precondition has been satisfied by the applicant on two limbs. Firstly, the housing accommodation is totally unsatisfactory as there are no proper bathroom or kitchen facilities attached to the downstairs bedroom. It maybe that Mr. Blake expected his wife and the other beneficiaries to exist in a reasonable manner but this has not happened.

In fact, there is undisputed evidence that the respondent served papers for recovery of possession for the premises at Morningside District on the widow. The respondent, however, did make clear that the order sought would exclude one bedroom and one bathroom situated downstairs.

Secondly, in relation to financial provision, it would appear that the testator was not aware that his wife would only benefit from his pension at the age of 60 years. At the time of the writing of this judgment, this is still five months away.

Having come to the above conclusion, the court now consider what orders are to be made in order to assist the applicant.

Section 7 of the Act sets out factors to guide the court in determining whether and in what manner it shall exercise its powers. These are now set out below in alphabetical order:

a. The size and nature of the net estate of the deceased

This consists of the residential premises at Morningside District which has six bedrooms, two bathrooms, two kitchens, living and dining room and a 1999 Corolla motor vehicle which is presently in the possession of one Martin Hamilton, a nephew of the deceased.

b. The financial resources and financial needs which the applicant has or is likely to have in the foreseeable future

The applicant has not thought it fit to provide the court with any evidence or assistance in relation to her financial needs. She has merely indicated that she has no means of earning a living. She has stated that she has bills outstanding in relation to medical treatment that she has received since 2006 for cervical cancer and kidney disease.

She has admitted doing some farming on the property in St. Elizabeth but states that it has merely been for her own consumption. She states that there is a balance on the hospital bills presented to the court. These bills reflect medical services tendered between May 2006 to April 2007. The totality of bills reflect \$256,816.00. She has not indicated what is owing. As to the rest, the court will have to presume her financial needs.

- c. The financial resources and financial needs which any other applicant for an order under Section 6 has or is likely to have in the foreseeable future

In relation to the above, no other applicant is before the court.

- d. Any obligations and responsibilities which the deceased had towards any applicant for an order under Section 6 or towards any beneficiary of the estate of the deceased.

Apart from the moral and legal responsibility to maintain his spouse, there is no cogent evidence of any other responsibility due to any of the beneficiaries. They are both adults. The respondent has asserted in her affidavit that the Toyota Corolla was purchased by herself and her father for her use whenever she visited the island and that she paid the costs associated with the purchase of the vehicle. This has not been supported by any form of documentation although it has not been contested by the applicant.

It is instructive that there has been no assertion that the title to the vehicle is in the names of the testator and Mrs. Campbell. There is a strong inference to be drawn that it was purchased for the use and benefit of the testator, Mr. Blake. The will reveals that it was his intention that the ownership be transferred to his daughter. However, there is no evidence of any obligation owed. This is also true for the land and house.

- e. Any physical or mental disability of any applicant for an order or any beneficiary.

There is no evidence of any such disability in relation to either beneficiary.

However, the applicant has tendered medical certificates in relationship to her physical health. Her affidavit avers that she was diagnosed with cancer and kidney disease since early 2006.

There is a medical certificate from Dr. T. Jackson dated April 27, 2007. Dr. Jackson states that she was diagnosed with cervical cancer in June 2006. Further, that due to obstructions caused by the cancer to the left kidney a nephrostomy was placed in the left kidney. He has stated that her kidney function has taken a while to return to normal.

Mrs. Blake stated that she has been on dialysis and goes to Kingston twice per week for that purpose and is on medication in relation to the dialysis but that she has completed her treatment for the cancer of the cervix.

There is no indication from the medical report as to whether she has to continue dialysis or for how long. However, it is absolutely clear that she has suffered from two serious disorders/illnesses since her husband's death which may require continuing or further intervention.

- f. The financial resources and financial needs which any beneficiary of the estate has or is likely to have in the foreseeable future.

Mrs. Campbell, the respondent, is an adult who resides in the state of Connecticut, USA. There is no evidence available to this court in relation to her financial resources. She has not alleged that she has any financial needs. The same is also true for her daughter. At this present time, neither are using the property or the car on a daily or even regular basis.

- g. The deceased's reasons, so far as they are ascertainable, for making provision or for not making provision or for not making adequate provision, as the case maybe, for any person by his will.

The court bears in mind that both Mr. and Mrs. Blake have adult children from previous marriages or relationships. Mrs. Blake did not contribute financially to either the acquisition of the house or car. They had been married for less than one year at the time of his death.

In the will, he states that Mrs. Blake had agreed to the provision of the bedroom and bathroom downstairs. He had also stipulated that her children were not to live at the house.

The court cannot read the mind of Mr. Blake, but it is fair to infer that he wished to provide for his widow until she died but he wished also that his daughter and grandchild would benefit from his property.

h and i The conduct of the applicant towards the deceased and (i) the relationship of the applicant to the deceased and the nature of the provision for the applicant which was made by the deceased during his lifetime.

The applicant is the widow of the deceased. Although the marriage was brief, there is nothing to indicate anything other than that it was full of happiness and contentment. Mr. Blake took the applicant to live with him. She had access to the entire house.

He provided for all her financial needs while she took care of him and all household and domestic matters.

She was added as a signatory to his savings account at Bank of Nova Scotia where his pension was lodged.

j. Any other matter which, in the circumstances of the case, the court may consider relevant.

Mrs. Blake had access to £5,101.32 that she withdrew from Mr. Blake's savings account on or before August 24, 2005.

She will be receiving a widow's pension denominated in pound sterling after her 60th birthday in February 2008.

The respondent has stated that she will build adequate bathroom and kitchen facilities downstairs for the applicant's use.

In coming to a decision as to the orders to be made, the court bears several principles in mind. Firstly, the reasonable financial provision is for the maintenance of the applicant.

In re **Duranceau** 1952 3 DLR 714 at 720, it was expressed that maintenance should be sufficient to enable the dependent to live decently and comfortable according to his or his station in life and neither luxuriously nor miserably.

Secondly, the testator's intentions are not to be interfered with lightly but only in so far as the statute requires (see **Tataryn v Tataryn Estate** supra).

Thirdly, in the case of a spouse, the length of the marriage, the quality of the relationship and the contribution of a spouse towards property influences the type of order made.

In **Franklyn v Biddy** (1960) 2 WIR, 346, the testator was married in 1937 to the plaintiff who left the matrimonial home in 1944. The defendant became the mistress of the testator in 1947 until 1956 when he died.

In Clause 4 of the will, the testator declared that he had been separated from his wife since June 1944 and her whereabouts remained unknown to him. He further stated that she was not to benefit except for £25.00 bequeathed to her.

The court, in refusing the plaintiff's request to interfere with the testator's disposition, included the issue of the moral as well as his legal obligations and the desertion by the wife as relevant factors.

In **Louis Williams and Mavaou et al** (supra), Harrison J made an order granting 70% of the estate of the testator (the matrimonial home situated at 3 Hellshire Drive) to the applicant whose husband had made no provision at all for her in his will.

The court took into consideration (among other factors) that the applicant and deceased had been married for 24 years and that they had pooled their resources to maintain and improve the said property.

Having regard to the above principles and to the circumstances as presently exists, it is clear that the husband's provision for his wife is not reasonable.

She lacks security in terms of housing and at present, she has no access to any funds for adequate living expenses.

She did benefit from £5,000.00 in August 2005. However, the court bears in mind that she has been treated for some serious illnesses between 2006 and 2007. Furthermore, the necessity of dialysis two times per week would have restricted her ability to secure a job.

However, the court also bears in mind that she will be benefiting from a widow's pension in February 2008.

The court therefore makes an order for the transfer of title to the 1999 Toyota Corolla to the applicant for her immediate use and benefit within 60 days of the date herein.

It is not necessary, however, that the interest in the land and house be transferred to her in order to provide security in her accommodation. She is to enjoy access to all necessary facilities in the house to enable her to benefit from her life interest.

The respondent has indicated that she would construct proper facilities of bathroom and kitchen to the downstairs bedroom. Both parties should agree on the adequacy of the arrangements to be made. These arrangements should include access to outside facilities. She is to have occupation of the master bedroom with bathroom, a kitchen and other facilities while proper construction is being done.

Since there may be issues to be worked out in relation to this matter, liberty to apply is granted.