

Suit No. P 961 of 1999

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA  
IN PROBATE AND ADMINISTRATION

In the Matter of the Inheritance{Provision  
for Family and Dependants} Act

BETWEEN                      INA EUGENIE THORNE                      PLAINTIFF

AND                              ERROL THORNE  
(Executor of the Estate of Rudolph  
Hudson Thorne, Deceased)

AND                              CARMEN REID                              DEFENDANTS

Mr. H. Haughton Gayle instructed by H. Haughton Gayle & Co., for the Plaintiff,  
Mr. Roger Davis instructed by Roger Davis & Co. for the First Defendant.

Heard: April 25 & 27, 2001

JUDGMENT

ANDERSON R

This matter has come on for hearing before me on the 25<sup>th</sup> of April 2001, by way of an Originating Summons filed on behalf of the Plaintiff, the widow of the deceased testator, seeking redress pursuant to the provisions of the Inheritance (Provisions for family and Dependants) Act, which in short provides for the court to exercise a discretion to make an appropriate order, where it is of the view that a proper applicant under the Act, has not been provided for adequately in all the circumstances, by the deceased.

The will of the deceased (which will has not yet been probated) provides in material part for certain devises, among which appears the following:

“I give and devise my real estate known as 2 Glenmuir Drive, May Pen, Clarendon, to my daughter Carmen Reid, nee Thorne. My wife Ina Thorne should however occupy the house without molestation till her death”.

The affidavit of Mrs. Thorne, the widow, which is before us, and which has not been contradicted by either of the defendants, (the second defendant being presently in the process of losing her legal representation), seems intended to show that:-

1. the property, the subject of the above devise, was in fact held by the deceased and his wife as tenants in common; and
2. the deceased had no right or ability in law to transfer the whole of the estate or interest in the said property to the said beneficiary; and
3. in any event, her contributions to the acquisition of the land and the construction was such that she was in fact beneficially entitled to more than a half interest in the property.

Her Originating Summons requested the following relief.

1. ORDER the transfer by the first named Defendant to the Plaintiff of all the estate and interest of the deceased Rudolph Hudson Thorne in all the parcel of land (with dwelling house thereon) part of Coates Pen in the parish of Clarendon being the lot numbered twenty-two (also known as 2 Glenmuir Drive, May Pen) on the plan of Coates Pen aforesaid deposited in the Office of Titles on the 21<sup>st</sup> day of May 1962 of the shape and dimensions and butting as appears by the plan thereof annexed to and being the land comprised in certificate of title registered at volume 1028 folio 597 of the Register Book of Titles on the ground that the disposition of the estate of the Plaintiff's deceased husband Rudolph Hudson Thorne effected by his will dated 2<sup>nd</sup> July 1998 is not such as to make reasonable financial provision for her maintenance.
2. ORDER that the costs of these proceedings be paid to the Plaintiff by the first named Defendant out of the said estate excluding 2 Glenmuir Drive aforesaid.
3. Declare that –

- (a) The Plaintiff is the legal owner of the one-half share and interest in 2 Glenmuir Drive aforesaid and the equitable and beneficial owner of a further share and interest amounting to about twenty-five percent of the whole and that
- (b) The devise by the said Rudolph Hudson Thorne of 2 Glenmuir Drive aforesaid to the second named Defendant is invalid.

To the extent that the suit was brought under the Inheritance (Provision for Family and Dependents) Act, it was grounded in the claim of inadequate provision for the applicant by her deceased husband's will. Apart from the declaration sought concerning the invalidity of the devise, and one that the Plaintiff was in fact beneficially entitled to up to seventy-five percent (75%) of the property, the main order sought by the Plaintiff was an Order for the transfer of the entire interest in 2 Glenmuir Drive to her. This would in effect nullify the purported devise to the second defendant, a daughter of the testator, of such interest as the testator was able to pass. No authority was cited providing for such act by the Court, save for section 6 of the Act which provides as follow:

1. Subject to the provisions 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's estate effected by his will or the law relating to intestacy, or the combination of his will and that law, is not such, at the time of the hearing of the application, as to make reasonable financial provision for the maintenance of the applicant, make any one or more of the following orders-
  - (a) an order for the making to the applicant out of the net estate of the deceased of such periodical payments and for such term as may be specified in the order;
  - (b) an order for the payment to the applicant out of that estate of a lump sum of such amount as may be so specified;
  - (c) an order for the transfer to the applicant of such property comprised in that estate as may be so specified

- (d) an order for the setting up of a trust fund out of the net estate for the benefit of two or more applicants;
- (e) an order for the settlement for the benefit of the applicant of such property comprised in that estate as may be so specified;
- (f) an order for the acquisition, out of property comprised in that estate, of such property as may be specified and for the transfer of the property so acquired to the applicant or the settlement thereof for his benefit.

The evidence before me suggests that the deceased was also conscious of his obligations for the proper maintenance of the widow. Thus, his will provides:

“I give and devise my real estate known as 10 Manchester Avenue, Pay Pen, Clarendon, (popularly known as Seymour Place), located between Cable and Wireless Jamaica Ltd., and Midland Court Buildings, as tenants in common to my sons Karl Seymour Thorne and Errol Thorne”.....

It further provides that his widow should be provided with living expenses from the net profits of the operation of Seymour Place which we understand to be a complex comprising several shops and offices. Thus the final paragraph of the will provides.....

“Concerning 10 Manchester Avenue, May Pen, Clarendon, (known as Seymour Place), which shall be maintained in good condition by the beneficiaries, after the deduction of all operating expenses, insurances, etc. a portion of the net profit should be given to Mrs. Ina Thorne for her living expenses”.

While it is clear that the statute pursuant to which relief is sought is intended to help the family and the dependants of the deceased, it does not seem to me that it ought to be used unless there is a clear need to provide for the “maintenance” of those dependants. Thus, where as here the parties to the action apparently agree that the ongoing financial provisions being made by the executor for the plaintiff’s living expenses, including medical expenses both locally and overseas, out of the net profits of the Manchester Avenue property are quite adequate, in the absence of authority, I would hold that a court

does not have the power to completely disregard the stated intent of the testator in proceedings of this nature. I say so for four (4) reasons.

1. The Plaintiff clearly has interests in the property at 2 Glenmuir Drive that cannot be defeated by the purported devise to the second-named defendant; a beneficial interest as a tenant in common, and a life interest in the whole estate.
2. There was evidence which indicated that the property at 2 Glenmuir Drive has an attached apartment, usually occupied by the second defendant when she is in Jamaica, but which has now been rented out and which will provide both company and an additional source of income for the plaintiff. This will give additional "provision".
3. The plaintiff clearly has an interest in the property at Glenmuir Drive, which she can devise by her will, as she decides.
4. To grant the order sought by the plaintiff in respect of the transfer of the property entirely to her, is likely to create litigation with the second defendant who would no doubt seek to challenge such an order. Further such a dispute is likely to continue as between successors in the title both the plaintiff and the second-named defendant.

I believe that it would be irresponsible in the absence of compelling authority to the contrary to grant the order as prayed. It will expose the plaintiff who is in the evening of her life to unnecessary, and the almost certain prospect, of drawn out litigation. Further, the introductory words of section 6 (i) already quoted above, make it clear that an order for relief under the section on an application under the Act, may only be granted where the court "is satisfied that the disposition of the deceased's estate effected by his will or the laws relating to intestacy, or a combination of his will and that law, is not such, at the time of hearing of the application, as to make reasonable financial provisions for the maintenance of the applicant". That is not the situation in this case. In the circumstances, I would make the following order on the summons.

It is declared that:

- (1) The devise by the deceased Rudolph Hudson Thorne, of 2 Glenmuir Drive is invalidated in so far as it purports to give the entire estate and interest in the said 2 Glenmuir Drive, May Pen, to his daughter Carmen Reid.
- (2) Ina Thorne the Plaintiff has a beneficial interest as Tenant in Common in the 2 Glenmuir Drive property, which she may transfer or devise.

It is also ordered that the occupation and use of the Glenmuir Drive property shall be by and for the plaintiff until her death, and any mesne profits deriving from the rental of the said property or any rent paid thereby shall be solely for the plaintiff, and the second defendant or anyone claiming through her, shall have no entitlement thereto.