

BRITISH VIRGIN ISLANDS

IN THE COURT OF APPEAL

CIVIL APPEAL NO. 8 OF 2002

BETWEEN:

JAMEEL FARRELL
(A minor by his next friend Keturah Thomas)

Appellant

and

MARILYN FLANDERS

Respondent

Before:

The Hon. Mr. Albert Redhead
The Hon. Mr. Adrian D. Saunders
The Hon. Mr. Ephraim Georges

Justice of Appeal
Justice of Appeal
Justice of Appeal [Ag.]

Appearances:

Mr. D. Boreland with Mr. J. Hilsdon for the Appellant
Mr. C. Williams with Mr. R. Davis for the Respondent

2003: June 18;
2004: June 7.

JUDGMENT

- [1] **SAUNDERS, J.A.:** Marilyn Flanders, the Respondent, had a son called Floyd Farrell. Floyd in turn had a son named Jameel. In December, 1998, Floyd purchased 0.23 of an acre of land ("the property") on which he subsequently built an apartment building. The property, when purchased by Floyd, was conveyed to "Floyd E. Farrell in trust for himself and his son Jameel F. Farrell". Floyd died intestate on 13th May, 2001. Jameel was then still a minor.
- [2] After purchasing the property, Mr. Farrell obtained a series of loans from the Bank of Nova Scotia. These loans were secured by charges on the property. The last such charge is due to be repaid by 27th October, 2004. This case is about the

disposition of the property after Floyd Farrell's death. Who now owns the property? Does the property, in its entirety, belong to Floyd's estate? Or does it belong entirely to Jameel? Should it be shared between Jameel and Floyd's estate? These are the questions raised by this matter. The parties to the suit are Jameel, by his mother and next friend, and Mrs. Marilyn Flanders as defendant.

[3] The trial Judge had determined that, subject to the rights of the Bank of Nova Scotia the property should be held in equal shares by the parties to the action. Jameel has appealed to this court. His case hinges on two arguments. First it is said that there existed here a joint tenancy and that Jameel, as the survivor, is the sole owner of the property. Secondly, Counsel argues that the presumption of advancement should be applied to this case and if it does, then the entirety of the property should vest in Jameel.

[4] It is established law that where a father purchases property in the name of a child, there is a presumption that a gift is made of that property to the child¹. In my view however, neither a joint tenancy nor the presumption of advancement can be implied here for the reason that the property was purchased, not in the name of Jameel, or even in the names of Floyd *and* Jameel. The property was purchased in the father's sole name and therefore neither a joint tenancy nor the presumption of advancement applies. I think that the learned trial Judge, Matthew, J., was right when he took the view that Floyd and Jameel were not joint proprietors and that Floyd's personal representative held the property in trust for Floyd's estate and for Jameel in equal shares.

[5] Jameel is still a minor. Another question that arose in the case was who should act as trustee of his half share in the property. At the trial, it was conceded that Mrs. Flanders, the Administratrix of Floyd's estate, should continue to so act. We agree that, as Jameel's grandmother, she will safeguard his interests until he attains his

¹ See Halsb 4th Edn. Vol 48 para 607

majority. If for any reason it were to appear that she were not doing so then a further application can always be made to the court.

- [6] The only remaining issue that arose for determination is whether Jameel was entitled to share in Floyd's intestacy. Jameel was born out of wedlock. His parents never got married to each other and so Jameel was never "legitimated" under the provisions of the Legitimacy Act, Chapter 271. The combined effect of section 11 of the Legitimacy Act, Chapter 271, and section 4 of the Intestate Succession Act, Chapter 34, is that the only person entitled to succeed to Floyd's estate, which would include Floyd's share of the property, is his mother, Marilyn Flanders.
- [7] In all the circumstances this appeal is therefore dismissed and the orders made by the trial Judge are affirmed. Each party will bear his/her own costs of this appeal.

Adrian Saunders
Justice of Appeal

I concur.

Albert Redhead
Justice of Appeal

I concur.

[Sgd.]
Ephraim Georges
Justice of Appeal [Ag.]