

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 557 OF 2000

BETWEEN:

RAPHAEL KYDD

Claimant

v

LORENCIA KYDD-HAZELL

Defendant

Appearances:

Mr. Sylvester Raymond-Cadette for the Claimant

Mr. Joseph Delves for the Defendant

2004: November 22

2006: April 24

JUDGMENT

[1] BRUCE-LYLE, J: On the 3rd February 1998, Lennie Kydd (deceased) gave his land and house thereon in Walker Piece, New Montrose to his granddaughter, the Defendant, by Deed of Gift registered as Deed Number 339 of 1998.

[2] This action was brought by the Claimant, a son of the deceased Lennie Kydd, for the revocation of Deed of Gift Number 339 of 1998 and for a declaration that the Claimant's mother was entitled to one half (1/2) share in the property which is the subject of Deed Number 339 of 1998, and as such the deceased Lennie Kydd held the property in trust for himself and his wife in equal shares.

[3] The Claimant Raphael Kydd as already mentioned in this judgment is the son of Lennie Kydd (deceased) and Cornis Kydd, his wife, also deceased. Cornis Kydd died in 1990.

They both had ten children, seven of whom are alive. They were married in the late 1940's and lived together as husband and wife until her death in 1980. Lennie Kydd was employed as a policeman and Cornis Kydd a teacher, became a housewife who baked cake, fudges which she sold and was also a seamstress.

- [4] The main bone of contention is that Lennie Kydd made a Deed of Gift of the family property situate at Walker Piece, New Montrose, to the Defendant his granddaughter who is the daughter of Abigail Kydd, Lennie's daughter. This was in the year 1998. In the year 1999, he subsequently made a will in favor of all of his children of the marriage including the Claimant.
- [5] The Claimant contends that the late Lennie Kydd was suffering from Alzheimer's disease at the time he made the said Deed of Gift and as such could not give a valid consent to the disposition of the family home. He also contends that even if the Court finds otherwise the family property was held in trust for himself and his deceased wife Cornis Kydd in equal shares, a declaration that his mother was entitled to a half share in the property given to the Defendant and an injunction to restrain the Defendant from acts of interference with the said property.
- [6] The Defendant on the other hand contends that the subject property was owned solely by Lennie Kydd and that he was in his rightful mind when he executed the Deed of Gift to her, and that Cornis Kydd, having died in 1980, the Claimant is barred by the provisions of the Limitation Act, Cap 90 of the Laws of Saint Vincent and the Grenadines 1990 Edition, from bringing any claims arising from the estate of Cornis Kydd. She therefore counterclaims for an order of possession and for mesne profits of \$500 per month from the date of Lennie Kydd's death to the date the Claimant delivers possession.
- [7] The Claimant gave evidence on his own behalf and also had Dr. Debnath, Dr. Miriam Sheridan-Francis, Mr. Fitzroy Burgess a postman, Mr. Adolphus Delpesche a Sergeant of Police, Mr. Osborne Barker an ex-policeman, Agatha Layne also testified on his behalf.

There were also medical records compiled by one Doctor Doshi admitted into evidence as part of the Claimant's case since Dr. Doshi had left the State.

- [8] The issues to be determined are simple to my mind. They are:
- (a) Can the Claimant sustain a claim that a half share in the property belonged to Cornis Kydd, deceased?
 - (b) Should the Deed of Gift to the Defendant be revoked?
- [9] From the evidence of the Claimant himself, it is clear that he has never explained how it came to be that Lennie Kydd held one-half of this property interest for Cornis Kydd. The Court is therefore left to guess at the factual and legal basis for the claim. None of the Claimant's witnesses nor himself has led any evidence to show how Cornis became a half share owner of the property in issue, except for the Claimant's evidence where he states that after the marriage Cornis Kydd resigned her teaching career and began a family and that during her stay at home she made cakes, fudges and other homemade stuff which she sold to augment her husband's salary as a policeman. There is also some evidence that she also became a seamstress and made clothes for others including her children. But does this automatically entitle her to a half-share in her husband's property which on her death he holds in trust for her as put forward by the Claimant?
- [10] I would answer this question in the negative in light of the absence of any other evidence supporting the bare assertions made on this issue by the Claimant. For instance, the Claimant has led no evidence as to how this "tenancy in common" arose by way of evidence as to Cornis' contribution to the purchase of the property or contribution to the erection of any structure on the land or whether she repaid or helped to repay a mortgage. None of this has been put forward by the Claimant in support of the first limb of the two issues this court has to determine. I do not agree with the Claimant's assertion that "Lennie Kydd, the deceased, by interpretation of law by the courts, was a tenant in common of the family home with his late wife Cornis Kydd who predeceased him in 1980. On her death this ½ interest accrues to her estate and as said interest was undivided at her death, the said Lennie Kydd held it together with is interest in trust for her" quoting

from a letter from the Claimant's Solicitor dated 8th April 2004 to the Defendant's Solicitor which repeats paragraph 3 of the Statement of Claim of the Claimant.

[11] I am therefore left to ponder as to what was the nature and extent of that share interest and how it arose. This remains unanswered by the Claimant. As I said earlier it cannot simply be assumed that because Lennie and Cornis were married then the wife automatically becomes half owner. The Claimant's claim in this regard is therefore misconceived and I so hold.

[12] Now to the most important aspect of this claim to my mind. During the lifetime of Cornis Kydd and her marriage to Lennie Kydd, there is no evidence of her bringing or instituting any legal proceedings by way of petition or otherwise claiming for a share in the matrimonial property which is what is an issue in this case. There is no evidence that she was ever divorced from Lennie Kydd. The big question therefore is can her son, the Claimant now purport to claim for her share in the matrimonial home? My answer is a resounding no. It is only her personal legal representative who has the right to sue in respect of her property on her death. The Claimant is not her personal legal representative and has not instituted this claim in that capacity. The instant Claimant in his Statement of Claim states: "...an application is being processed for letters of administration to be granted in the estate of Cornis Kydd otherwise known as Cornis Kidd." It is interesting to note that this claim was filed in December 2000. Under cross-examination, the Claimant stated categorically that he is not the executor or administrator of the estate of Cornis Kydd. What then is his locus standi in bringing this claim? I repeat that only the legal personal representative of a deceased has the right to sue in respect of a deceased's property – Veronica Henry, Administratrix of the Estate of Ebenezer Granderson, deceased v Jane Buchanan [1996] E.C.C.R. 120 (St. Kitts). It is my view, and I agree with the submissions of Learned Counsel for the Defendant that this is fatal to the Claimant's case. I could end my judgment here, but other factors need to be considered for the sake of completeness.

- [13] Once married parties are not divorced or where there is no decree absolute, any relief, division of assets after the death of a party "must of necessity" be denied – Sheila Harrigan and Conell Harrigan (deceased) v Dolykin Harrigan [1996] E.C.C.R. 213 (Anguilla). The Matrimonial Homes Act Cap 177 also provides that where Cornis may have been entitled to register a right of occupation, which does not include part ownership, death defeats and ends her rights. This is provided for or stipulated in Sections 4(3); 4(6) and 7 of the said mentioned act.
- [14] Then as if to further compound matters in administering in the Estate of Lennie Kydd, the Claimant described the deceased property as "Land situate in New Montrose and admeasuring 7494 square feet with all buildings and erections thereon" – see Exhibit L.K.H. 4 which is attached to the witness statement of the Claimant. The issue here is that the estate was not described as comprised of a half share in the New Montrose property. In the will of Lennie Kydd he stated: "I give and bequeath my properties situate at Walker Piece, New Montrose to my children..." Nowhere in that will did the testator Lennie Kydd say, "my half share." These words were inserted subsequently. The impression or inference that this leads me to is that the Claimant Raphael Kydd is only interested in the half share of this estate. The point here is that the Claimant was suing only for a half share of the estate when in fact the estate of Lennie Kydd was comprised of the entire interest in the Montrose property.
- [15] The Limitation Act, whichever way one looks at it, either by way of Section 17(1) or Section 17(3) or 23(2) presents another major hurdle to the Claimant. The Limitation Act Cap 90 of the Laws of Saint Vincent and the Grenadines specifies periods of 12 years and 6 years as the case may be, within which a person seeking to recover land may bring an action if the right of action accrued to that person, or if it first accrued to some person through whom he claims, to that person. This right of action is being claimed by the Claimant as he claims through Cornis Kydd. Time therefore begins to run from the date Cornis Kydd first became a "tenant in common" with Lennie Kydd. It is clear that 12 years have long since passed since Cornis Kydd died in 1980. If one looks at the six year period Section 23(3), this still

defeats the Claimant's claim. On this score alone, the Claimant's case comes to a halt. It must fail and I so hold.

[16] So we now turn to the inevitable question, which forms the second limb of the issues the Court is required to consider in this case. Should the Defendant's Deed of Gift be revoked? My answer is a loud sounding no!!

[17] The main plank of the Claimant's case, as it seems to me, is that at the time the Deed of Gift was executed Lennie Kydd was not in his right mind. This is borne out in paragraph 6 of the Claimant's statement of Claim. I have read the Claimant's witness statement and analyzed his viva voce evidence under cross-examination. Nowhere does the Claimant adduce any evidence cogent enough for me to conclude that Lennie Kydd was not of sound mind at the time of execution of the Deed of Gift.

[18] It is my view having considered the evidence adduced by the Claimant and his witnesses, that he has one very insurmountable hurdle – credibility. On one hand the Claimant alleges that the Deed of Gift of February 3, 1998 to the Defendant was not valid because Lennie Kydd suffered from Alzheimer's disease. Then in the next vein he asserts that he is the executor of the estate of Lennie Kydd because Lennie Kydd was of sound mind on February 2, 1999 when he executed the will. It is clearly preposterous for the Claimant to expect the court to believe that Lennie Kydd was of sound mind in February 1999 when he revoked a power of attorney to the Defendant and then executed a will, but then could not have been of sound mind in February 1998 one year earlier, when he executed the Deed of Gift. This boggles the mind especially in view of the evidence of Drs. Debnath and Miriam Francis-Sheridan. The other witnesses for the Claimant frankly did not impress me. They struck me as witnesses of convenience, close friends of the Claimant, who were bent on assisting him win his case at all costs.

[19] The two witnesses I will concentrate on are the two doctors who testified on behalf of the Claimant. Their evidence to me is crucial in unraveling Lennie Kydd's state of mind. First there is the evidence of Dr. Debnath by way of his witness statement which was tendered

as his evidence in chief. He was not cross-examined by the defence. The essence of his evidence was that he did not meet Lennie Kydd on any occasion. He formed certain opinions having analyzed the hospital records documenting Lennie Kydd's admission and stay at the Kingstown General Hospital in January 1999. Dr. Debnath happens to be having been the Consultant Psychiatrist at the Mental Hospital, Glen, Saint Vincent when he did this analysis. He compiled a report subsequent to his analysis. That report formed part of his evidence. At page one of his report Dr. Debnath stated that "All observations and opinions made on my report are solely based on my understanding and evaluation of the writing and opinion made by his physicians who treated him during his hospital stay in early 1999." Lennie Kydd died in 2000. He was admitted to the Hospital on 23rd January 1999. The Deed of Gift was executed in February 1998. Dr. Debnath's report therefore does not have any bearing on the patient's state of mind prior to the 23rd January 1999, especially February 1998. This is also the case as regards the evidence of Dr. Sheridan.

[20] At page two of his report Dr. Debnath goes further and states –

"There is no record of the detailed mental status of Mr. Kydd to substantiate Dr. Doshi's findings and opinion... There is no record of the evaluation of the mental status and cognitive function of Mr. Lennie Kydd during the time of his hospital stay. No effort was made to have a formal evaluation from the Department of Psychiatry. So, though I do not wish to disagree with the diagnosis of the attending doctors but at the same time it is difficult for one to confirm the diagnosis because of the lack of documentary evidence to support such a finding."

I point out again that Dr. Debnath's evidence was not challenged by the Defence, the simple reason being that it did not advance the Claimant's case or hurt the case for the Defendant in any way. To my mind it was rather damaging evidence and dealt the Claimant's case a severe blow or rather another severe blow, considering the other issues dealt with in this judgment which has the Claimant's case tottering.

[21] Dr. Miriam Sheridan stated her diagnosis as "Alzheimer's". She stated that this diagnosis was based on Dr. Doshi's findings. In her witness statement however she did not say that Lennie Kydd suffered from Alzheimer's but that during his stay at the Thompson Home, he

had to be looked after for all his needs as he was disoriented to time, person and place, which were all manifestations of Alzheimer's disease.

[22] But then these symptoms are also manifested in other conditions such as a stroke. No testing of Lennie Kydd was done by Dr. Sheridan to substantiate her diagnosis of Alzheimer's. To go even further there is the letter of Dr. Harold Rampersaud dated 10th February 1999 where he states that Mr. Lennie Kydd suffered a stroke. This letter was addressed to the Chairperson of the Thompson Home Committee and was duly filed by the Defendant before the trial. Dr. Sheridan under cross-examination admitted that stroke victims sometimes have these same symptoms of disorientation as described above. Besides there is no dispute to the fact that no specific medication to treat Alzheimer's was prescribed. So what exactly was Lennie Kydd ailing from? We do not know. On a balance of probabilities therefore and having regard to all the circumstances of the case on this issue I hold that the Claimant has failed woefully in establishing that Lennie Kydd had Alzheimer's disease at the time of the execution of the Deed of Gift or was not in his right mind.

[23] There is ample evidence from the Defendant and her witnesses that Lennie Kydd was in his good senses when he executed the Deed of Gift. Three of Lennie Kydd's daughters and one of his brothers filed witness statements on behalf of the defence. It is interesting to note that if the Deed of Gift is revoked they stand to gain as they would become part owners of the said property in issue. Yet they case their lot with the Defendant. Is it because they know the defence's case to be the truth? I would say yes. Why would one act consciously and knowingly against one's interest in a situation like that at hand if it is not to establish the truth and honesty? I fully endorse the evidence of the Defendant and her witnesses on this score and reject that of the Claimant. What the witnesses for the Defendant and the Defendant have established firmly in my mind taking all the evidence adduced into consideration is that Lennie Kydd executed this Deed of Gift because of his profound love for the Defendant and also because of her love and care for him.

[24] There is one more matter I wish to deal with before I conclude logically from what I have stated earlier in this judgment. It is trite law and needs no rehashing that a Deed of Gift may be revoked because the donor was mentally infirmed and unduly influenced by the donee, in this case the Defendant. It is also trite law that he who alleges must prove. This burden of proving an allegation of undue influence rests on the person who claims to have been wronged – see Royal Bank of Scotland v Etridge (AP) [2001] UKHL 44 (11th October 2001) at paragraphs 6 – 31. In this case, first of all the Claimant has never alleged undue influence either generally or in particular. All that was pleaded by the Claimant was that Lennie Kydd was not in his right mind and relied on the hospital records prepared by Dr. Doshi and the evidence of Drs. Debnath and Sheridan which I have rejected. So what does the Claimant stand on at this point in my judgment? He stands on nothing and is already in the quick sands with his case about to be swallowed.

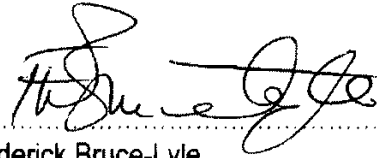
[25] To my mind this case should not have reached this stage at all. The Claimant from inception had no case. For some reason he persisted with the case all the way to trial. I would not want to hazard or posit a reason as to why the Claimant has persisted with this claim. I am satisfied on a balance of probabilities and having regard to all the circumstances of the case that the execution of the Deed of Gift by Lennie Kydd was an exercise of the true desire on his part to the Defendant because she had cared for him when everyone else including the Claimant had not.

ORDER

[26] The Claimant's claim is hereby dismissed and judgment is hereby entered for the Defendant on her counter claim per her amended defence and counterclaim filed on the 25th June 2004, as follows:

- (a) The Claimant is to quit and deliver up possession of the said property to the Defendant forthwith;
- (b) The Claimant is to pay mesne profits of \$500 to the Defendant from the date of the deceased's death on the 24th March 2000 to the date Defendant takes possession of the said property;

- (c) The Claimant is to pay the Defendant's costs in the sum of \$14,000 as ordered by the Learned Master at Case Management on the 23rd of March 2004.

A handwritten signature in black ink, appearing to read 'F. Bruce-Lyle', written over a horizontal dotted line.

Frederick Bruce-Lyle
HIGH COURT JUDGE