EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF SAINT CHRISTOPHER AND NEVIS
SAINT CHRISTOPHER CIRCUIT

IN THE HIGH COURT OF JUSTICE

CLAIM NO. SKBHCV2017/0015

BETWEEN:

MURIEL BROWNE

Claimant

and

BRIAN MIQUITA HAMILTON

Defendant

Appearances:

Mr. Damien Kelsick for the Claimant
Mr. Terence V. Byron for the Defendant

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2017: May 15;
2018 January 22
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RULING

Introductory

[1] **LANNS, J. [AG]:** In this case before me, I have to decide how the capital value of the life interest of the claimant Muriel Browne in the residuary estate of her late husband Maxwell Browne, deceased, is to be computed under the Intestacy Act Cap 12.06; in particular, what actuarial tables are to be used by the personal representatives in calculating the said capital value.

Brief Background

[2] Maxwell Browne, late of New Road, St Peter's Parish, died on the 2nd day of April 2014, in Basseterre, St Kitts, intestate, leaving him surviving Muriel Bowne, (Mrs. Browne) his widow, and Brian Miquita Hamilton, his natural son.

[3] On the 19th day of June 2015, Letters of Administration of the Estate which devolves to and vests in the personal representatives of the said Maxwell Browne, (the intestate or the deceased) were granted by the Eastern Caribbean Supreme Court at the Registry thereof in Basseterre, St Kitts to Muriel Browne and Brian Miquita Hamilton lawful widow and the natural son of the intestate.

[4] On the 24th day of January 2017, Mrs. Browne filed a fixed date claim form and statement of claim pursuant to CPR 67.1 seeking directions as to the proper basis for quantification of her life interest (as the surviving widow) under the estate of her deceased husband. Mrs. Browne also swore to and filed an affidavit in support of the fixed date claim, wherein she repeated the averments contained in her statement of claim.

[5] It is said that the estate of the intestate comprises substantially of damages in the sum of US$175,000.00[1] paid by Royal Caribbean Cruise Ltd in settlement of the claim by the deceased's estate in respect of his wrongful death on 2nd April 2014. This amount has been converted to EC$470,435.00 at the bank rate of US$1.00 = EC$2.6882.

[6] In her prayer for relief, Mrs. Browne claims:

1. Directions as to the method of calculating the capital value of her interest under her husband's estate;
2. All necessary and consequential directions;
3. Directions that the costs of this application be paid from the estate of the deceased;
4. Such other further directions or other relief as the court deems just.

[7] On the 27th February 2017, an acknowledgment of service was filed indicating that the defendant intended to defend the claim. A note to the form of acknowledgment of service advises that if a defendant intends to defend the claim, he should do so within 28 days of the service of the claim on him. Accordingly, the defence was due on the 23rd March 2017. To date, no such defence has been filed.

[1] Mr. Byron disclosed there are certain minor amounts due to the estate, which has come to his attention, such as a funeral grant from Social Security Board and an ex gratia contribution by the deceased's employers, S.L. Horsford & Co. Ltd. He was uncertain as to the amounts, and whether such amounts were paid to the claimant. He was of the view that all amounts received and paid out on behalf of the estate should be brought into account.

[8] On the 15th May 2017, the fixed date claim came before me for first hearing whereupon counsel for the parties made certain representations to the court. Mr. Byron indicated that he agreed with what is stated in the statement of claim, but differs in his view as to the basis on which to calculate the valuation of Mrs. Browne's life interest. Notably, at paragraph 6 of the statement of claim, it is averred that the claimant and the defendant agreed that the claimant's life interest be redeemed, but are unable to agree on the basis by which the capital value of such life interest is to be calculated.

[9] At the hearing on 15th May 2017, there ensued discussions concerning the actuarial tables that should be used. In the end, the parties' counsel agreed that submissions be filed identifying the relevant actuarial tables. Mr. Byron asked the court to give him a 'generous adjournment' as his research was not complete. Accordingly, the court ordered as follows: (1) that the parties provide written submissions (no more than five pages); and brief authorities (no more than five) by the 3rd July 2017; (2) The issue in contention will be considered on the written representations submitted by the parties; (3) Counsel for the claimant will have carriage of this order.

[10] Mr. Kelsick, on behalf of Mrs. Browne, fully complied with the court's order, but to date, I have not received any written submissions or authorities from Mr. Byron[2]. I shall proceed to give my decision, and propose to pay regard to the defendant's position as gleaned from correspondence between the parties' legal representatives, contained in the file.

Position of the Defendant

[11] In essence, the position of the defendant (as gleaned from correspondence between counsel for the parties, and from my notes taken at the hearing) is as follows:

(1) The basis on which to calculate the valuation of Mrs. Browne's life's interest is what, according to the learning in Halsbury's Laws of England (2nd Edition) around the 1930's, was the practice relative to what is still the law of St Kitts and Nevis, namely reckoning according to the tables appended to the Succession Duty Act, 1853.

[2] However, I believe Mr. Byron's general position can be gleaned from and regard be paid to the documents including correspondence between counsel for the parties on file, although no authorities which have interpreted the statutory provisions have been forthcoming. My personal notes taken at of the hearing on 15th May 2017 are also helpful.

(2) The law has developed in England but the difficulty is that we have not changed our law. The law is that the surviving spouse will get $5000 or 10 per cent of the value of the estate.

(3) We received that law from 1925 and have not changed it. But England has changed their law.

Position of the Claimant

[12] In summary, the position of Mrs. Browne as put forward by Mr. Kelsick is grounded on the following submissions:

(1) The issue is to be resolved by the terms of Section 7 (1) of the Intestacy Act Cap 12.06 (the Act) which clearly states that the capital value is to be "reckoned according to tables selected by the personal representatives;

(2) .The meaning of the phrase "what … was the position relative to what is still the law of St Kitts and Nevis" is obscure. Mr. Byron appears to equate English practice with St Kitts and Nevis law. The question is, what is the law of St Kitts and Nevis - not what was the practice in England.

(3) At the time the 2nd Edition of Halsbury's Law of England was written, the equivalent UK provision to section 7 (1) of the Act was section 48 of the Administration of Estate Act of 1925 which was in identical terms. Therefore, under the UK provision, the tables were to be chosen by the personal representatives. There was no rule which required an English personal representative to choose the tables appended to the Succession Duty Act, 1853.

(4) At the time of the 3rd Edition of Halsbury's Laws of England, the Intestate Succession Act 1952 had been passed, but in relation to deaths which occurred after 1925 (when the Administration of Estates Act 1925 was in force), and before 1953 (when the Intestate's Succession Act had come into force), the practice apparently remained as set out in the 2nd Edition of Halsbury's Laws of England. In Volume 16, at paragraph 787, it is stated that "[t]he life interest of a surviving spouse … may be redeemed by the personal representative paying the capital value thereof, reckoned according to the table selected by the personal representative. … "This repeats the language of section 48 of the Administration of Estates Act of the UK and section 7 (1) of the Intestacy Act

(5) Note (1) to the passage in Volume 16, paragraph 787 reads as follows: "Reference could be made to the tables in the Succession Duty Act 1853 … and to the tables in life insurances societies. There is therefore no suggestion in this extract that the personal representative was required to use the tables in the Succession Duty Act, and in fact any such suggestion would be contrary to the Act which provided that the tables are to be chosen by the personal representative.

(6) The mere fact that this was at one time a practice, cannot elevate that practice into a rule of law in derogation of the clear wording of the statute.

(7) In any event, note (1) to the extract from Halsbury's clearly shows that reference could, in addition to the Succession Duty Act, be had to the tables of life insurance policies. Whatever was the position in the 1930's (when 2nd Edition of Halsbury's was published), by 1953, there was no rule of law or practice in the United Kingdom which required personal representatives to use the tables in the Succession Duty Act 1853.

(8) The tables appended to the Succession Duty Act would have been calculated based upon life expectancies from that period. Life expectancy has increased dramatically in the 164 years since that Act was passed. It would therefore be unjust in 2017 (where the average female is expected to live to 77), to apply tables compiled when the average female was expected to live to be 43.

(9) There is nothing in the Act which requires the personal representatives to adopt such an unjust approach. A practice adopted in the United Kingdom up to the 1930's cannot be relied upon as settling the law to be applied in 2017.

(10) In the circumstances, the administrators should be directed to refer to the most current actuarial tables from reputable life insurance companies doing business in the Caribbean, and be permitted, if they cannot agree a value based on such tables, to retain an expert to calculate the value.

Discussion Findings and Disposition

[13] The submissions of Mr. Kelsick are very attractive and forceful indeed. In fact, I prefer and accept the submissions on the law as advanced by Mr. Kelsick in preference to those of Mr. Byron; and

thus, for the reasons set out below, I propose to make an order in the terms suggested by Mr. Kelsick.

[14] I find that the law governing the issue to be decided is the Intestacy Act Cap 12.06, section 7, which reads as follows:

> "Where a surviving husband or wife is entitled to a life interest in the residuary estate or any part thereof, the personal representative may, either with the consent of any such tenant for life (not being also the sole personal representative) or, where the tenant for life is the sole personal representative, with the leave of the Court, purchase or redeem such life interest (while it is in possession) by paying the capital value thereof **reckoned according to tables selected by the personal representative** to the tenant for life or the persons deriving title under him or her and costs of the transaction, and thereupon the residuary estate of the intestate may be dealt with or distributed from such life interest." (Bold mine)

[15] I am unable to agree with Mr. Byron that the tables to be used are those appended to the Succession Duty Act 1853, as those tables would have been calculated based upon life expectancy of 43 years for females. Rather, I am in agreement with the submission of Mr. Kelsick that life expectancy of women has increased dramatically from 43 years in 1853 to 83 years in 2017, and it would be unjust to use such tables in 2017.

[16] Mr. Kelsick has exhibited a chart on life expectancy in the UK from 1841 to 2011 which shows that life expectancy at present for females is 83. This documentary evidence of present life expectancy of females has not been disputed or challenged by Mr. Byron.

[17] The court finds and holds that there is nothing in the Act which requires the personal representatives to adopt the approach suggested by Mr. Byron, that tables formulated in 1853 under the Succession Duty Act 1853 are to be used in calculating the capital value of the interest of the claimant. I am of the view that it is an unjust approach, as it is based on a practice adopted in the United Kingdom up to the 1930's, when life expectancy for females was but 43 years, as opposed to present when life expectancy for females is 83 years; and thus, I decline to adopt Mr. Byron's suggestion, and uphold the law as clearly stated in the Intestacy Act that the capital value of the life interest is to be **reckoned according to tables selected by the personal representative**. (Bold mine). As Mr. Kelsick has quite correctly stated, the question is not what the practice in England was; the true question is what the law of St Kitts and Nevis is.

[18] In all the circumstances, the court is persuaded by, and accepts the submission of Mr Kelsick that the best approach is to direct the administrators to refer to the most current actuarial tables available from reputable life assurance companies doing business in the Caribbean, which tables are to be used by the personal representatives in calculating the capital value of the life interest of the claimant.

Conclusion

[19] On the statutory provisions as contained primarily in the Intestacy Act, Cap 12.06, section 7, and being in agreement with the submissions advanced by Mr. Kelsick, I have come to the conclusion that the court must, and do hereby issue the following directions and orders:

1. That the method of calculating the capital value of the interest of Mrs. Muriel Browne under the estate of her late husband Maxwell Browne deceased, be in accordance with the actuarial tables available from reputable life assurance companies doing business in the Caribbean;

2. That Mrs. Muriel Browne and Brian Miquita Hamilton, personal representatives of the Estate of Maxwell Browne, deceased, do refer to the most current actuarial tables available from reputable life assurance companies doing business in the Caribbean, within 30 days of delivery of a sealed copy of this judgment. To facilitate an accurate determination of the capital value, the personal representatives must present a full and or up-to-date inventory of the estate of the deceased, Maxwell Browne, within 30 days of the date of delivery of a sealed copy of this judgment, and in any event, prior to their computation of the capital value.

3. That in the event the personal representatives cannot agree a value based upon such actuarial tables as suggested in directions/orders, 1 and 2, above, they are at liberty to retain an expert (such as a professional accountant) to calculate the said value; and any costs associated therewith be paid from the estate;

4. That the costs of these proceedings be paid from the estate of the deceased.

5. That there be liberty to apply for further directions or otherwise.

[20] Mr. Kelsick has presented me with very helpful and well written submissions. I am grateful to him for his assistance.

Pearletta E. Lanns
High Court Judge [Ag]

By the Court

Registrar