

GRENADA

IN THE COURT OF APPEAL

CIVIL APPEAL NO.10 OF 2001

BETWEEN:

MACLENA PAUL

Appellant/Defendant

and

MARY FELIX

(Personal Representative in the Estate of Flora Gabriel (Deceased))

Respondent/Plaintiff

Before:

The Hon. Sir Dennis Byron
The Hon. Mr. Albert Redhead
The Hon. Mr. Ephraim Georges

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

Appearances:

Mrs. Celia Edwards for the Appellant
Mrs. Brenda Waddelly Beaumont for the Respondent

2002: November 28;
2005: May 25.

JUDGMENT

[1] **REDHEAD J.A.:** The late Cornelius Williams made a Will dated 10th August 1970. He died on the 29th January 1971. By this Will, Cornelius Williams devised most of his property to his common law wife Flora Gabriel now deceased,

[2] The Appellant is the stepdaughter of the testator Cornelius Williams. The Appellant was raised with her mother and her mother's husband, the deceased Cornelius Williams. The Respondent Mary Felix is the daughter of Flora Gabriel. The learned trial Judge found as a fact that this common law relationship between Flora Gabriel and the

deceased lasted up to the date of his death. At paragraph 30 of the judgment the learned trial Judge wrote:

“I also find that the deceased and Flora Gabriel were in a common law relationship which lasted up to the date of his death and that the Defendant, who had grown up with the deceased and lived on a portion of the deceased land, together with her husband and other persons removed the deceased on 20th January 1971 to her house hours before his death while Flora Gabriel had stepped out, no doubt, to enhance her claims to his properties.”

- [3] In 1973 Ben Jones, Solicitor for Mary Felix, (the Respondent) applied for a grant of probate of the Will of Cornelius Williams. He was then advised by the Chief Registrar, Mr. Wilkinson, that Letters of Administration of the Estate of Cornelius Williams (deceased) were granted on 21st June 1971 to Maclena Paul, (the Appellant), as a creditor.
- [4] One of the witnesses, John Mason, testified that after the deceased's death, the executor of the will Mr. Clarence Raymond indicated to the Appellant, in his presence, that the deceased made a will and left part of his estate to Flora Gabriel. At trial the viva voce and documentary evidence disclosed that the Appellant obtained a grant of Letters of Administration as a creditor of the Estate, less than five months after the death of the deceased. The learned trial Judge noted this to be a most unusual occurrence and found that after the Defendant received information that the deceased had made a Will leaving the properties to Flora Gabriel and one of the Defendant's children, she hastened to obtain Letters of Administration before any steps could have been taken to probate the Will, and took control of the properties of the deceased.
- [5] The Respondent/Plaintiff, Mary Felix, as Personal Representative of the Estate of Flora Gabriel (deceased) brought this action in the Supreme Court of Grenada against the Appellant/Defendant, Maclena Paul, seeking the following declaration and order:
- (a) A declaration that she (Mary Felix) is entitled to share in the estate of Flora Gabriel (deceased);
 - (b) An order that the defendant transfer Real Property belonging to the estate of Flora Gabriel to the Plaintiff
 - (c) An account.

In her Statement of Claim Mary Felix alleged, inter alia, that Flora Gabriel was the principal beneficiary under the Will of Cornelius Williams deceased who by his last Will and Testament dated 10th August 1970, appointed Clarence Raymond to be the sole executor. The said Clarence Raymond renounced probate of the Will and Letters of Administration was granted to Maclena Paul as creditor of the said estate. Maclena Paul failed to formally divest herself of the estate to the beneficiaries and instead sold part of the land that had been devised to Flora Gabriel in the Last Will and Testament of the deceased. Maclena Paul as a Personal Representative in the said estate was a creditor of the estate and as such could not benefit from the sale of the trust property.

[3] The defence did not provide information. It simply denied and refused to admit everything in the statement of claim except that Letters of Administration were granted to Maclena Paul.

[4] At trial Maclena Paul challenged the validity of the Will, although nowhere in her pleadings did she raise that as an issue. At paragraph 21 of the judgment the learned trial Judge wrote:

“The Defendant’s submission was in effect a challenge to the validity of the Will of Cornelius Williams under which the Plaintiff is making claim through her mother, Flora Gabriel, deceased”

[5] And at paragraph 23 the learned Judge continues:

“Now the Defendant gave no evidence at the trial. Nowhere in her defence did she even allege that the deceased did not make a Will or that the photocopy of the Will which was put forward by the Plaintiff was a “false Will” or that there was a defect in its execution or that the deceased was incapable of making a will on 20th August 1970 for whatever reason.”

[6] The learned trial Judge rejected the defendant’s submission and found that the validity of the Will was not an issue in the case. I agree. However, the learned trial judge opined:

“... but whether there was a valid Will or not I find that Flora Gabriel was a person who would have had an entitlement or interest, or claim in the Estate of Cornelius Williams deceased, and whatever entitlement, interest or claim she would have had whether by virtue of the Will or by virtue of this common-law

relationship and/or her caring for him up to his death, the Plaintiff, as the daughter of Flora Gabriel deceased, in her capacity as a Personal Representative of her Estate, is entitled to claim that interest. The law is, a creditor has no right to oppose a grant to a person entitled to administer. This is not an insolvent Estate – **17 Halsburys Laws of England¹**.

[7] The learned trial Judge then went on to make the following declaration and orders:

- (1) “It is declared that the property conveyed by Deed No.2353 of 1991 in Liber 1-9, page 136 to the Defendant and any other property of the deceased which is still in the Defendant’s possession is held in trust by the Defendant for the due administration of the Estate of Cornelius Williams, deceased.
- (2) An order that the Defendant exhibit a true and proper inventory of the Estate of Cornelius Williams, deceased, and render a true account thereof within 28 days. Thereafter the matter is to come up for further consideration on the application of either party.
- (3) The grant of Letters of Administration 85 of 1971 which was made in favour of the Defendant is revoked.
- (4) The cost of this action is reserved for further arguments.”

[8] The Appellant, Maclena Paul being dissatisfied with the judgment of the learned trial Judge appealed to this Court. Seven grounds of appeal are filed on behalf of the Appellant. All of these grounds, with one exception, challenged the Judge’s failure to rule that the will was invalid.

- (1) The learned trial judge erred in law when he found that the validity of the Will is not an issue in the case.
- (2) The learned trial judge erred when he found that nowhere in her defence did the Defendant allege that the deceased did not make a Will.
- (3) The learned trial judge erred in law in making no finding on the validity of the Will.
- (4) The learned trial judge erred in finding that whether there was a valid Will or not Flora Gabriel would have an interest in the estate of the deceased.
- (5) The learned trial judge erred in not taking into account the witness George Mason’s evidence when he said that he did not sign the Will.
- (6) The learned trial judge failed to consider that the witness George Mason said that the Testator signed by “making some scratches ugly, ugly on the paper” whereas the purported signature of the Testator in the purported Will presented is a perfectly legible, perfectly executed signature.
- (7) The learned trial judge erred in failing to consider that for the Plaintiff to succeed she must establish an interest of Flora Gabriel in the estate of the deceased and in order to do so must establish a validly executed Will, which she has failed to do.”

¹ 4th Edition, para. 952.

- [9] In my considered view all the grounds on the will can conveniently be taken together. The learned trial Judge gave his judgment predicated upon the pleadings in this case.
- [10] The defence did not challenge the validity of the Will, and never alleged that the deceased did not make a Will. In my judgment the learned trial Judge was right when he ruled that the validity of the Will was not an issue before the Court. What was then the issue before the Court? What was the relief which the Respondent was seeking?
- [11] The Statement of Claim, brought to the forefront the issue of the Will particularly in paragraphs 3 which alleged that Flora Gabriel was the primary beneficiary under the Will of Cornelius Williams, deceased. In spite of these allegations the defence did not raise any issue so far as the validity of the will was concerned. The arguments on behalf of the Appellant before the Court of Appeal centered mainly on the validity of the Will. There was no issue raised as to whether or not there was any debt owed to the Appellant. The validity of the Will not being before the Court below the Appellant ought not to be allowed to raise it in the Court of Appeal.
- [12] The Respondent established that Maclena Paul, obtained Letters of Administration to the Estate as a creditor despite the fact that Cornelius Williams had made a Will which devised property to the Respondent's mother and her son, and that Maclena Paul sold part of the property, and retained the remainder without investing the beneficiaries with their appropriate shares of property.
- [13] The learned trial Judge ruled:
“...that a creditor cannot appropriate the estate of an intestate to her own use and benefit. She is a trustee of the properties that form the Estate and by the nature of the very administration oath which the Defendant would have sworn to, led up to the Grant, she is bound to administer according to law all the Estate which by law devolves to and vests in the personal representative of the deceased and exhibit a true and proper inventory of the said Estates and tender an account thereof when required by law so to do.”
- [14] I make two observations. This is not the estate of an intestate estate. If a creditor cannot appropriate the estate of an intestate to his own use and benefit, it is obvious

that a creditor cannot appropriate the estate of a testate person. The learned trial Judge ruled, rightly in my view, that the validity of the Will was not an issue before the Court (the High Court).

[15] The learned trial Judge having so ruled, the legal validity of the Will remains unassailed. It cannot be called into question unless that ruling is set aside.

[16] In my considered opinion I do not think it was necessary for the learned trial Judge to opine that Flora Gabriel was a person who would have had an entitlement by virtue of his Will or by virtue of the common-law relationship and/or her caring of him up to his death. In my view the Will having remained unchallenged, Flora Gabriel would have her inheritance under the Will. The Plaintiff is the daughter of Flora Gabriel. Flora Gabriel died apparently without leaving a Will because the Plaintiff took out Letters of Administration to her Estate. At the time of her death, Flora Gabriel had two children, the respondent and one Felicity Gabriel. The Plaintiff would therefore be entitled to share in Flora Gabriel's Estate.

[17] The Appeal is therefore dismissed. The decision of the learned trial Judge is affirmed. The respondent is entitled to prescribed costs. Therefore on the basis of the claim being valued in accordance with CPR Part 65.5 (2)(b) (iii), costs of the appeal are awarded to the respondent in the sum of \$ 9333.33.

Albert Redhead
Justice of Appeal

I concur.

Sir Dennis Byron
Chief Justice

I concur.

Ephraim Georges
Justice of Appeal [Ag.]