THE EASTERN CARIBBEAN SUPREME COURT
ANTIGUA AND BARBUDA

IN THE HIGH COURT OF JUSTICE

CLAIM NO. ANUHCV2018/0224

BETWEEN:

ELKAH FORDE
[as next friend for Zhanira Jadeoir Raenique Pereira (a minor)]

TARYN ST. LOUIS
[as next friend for Andreas Antonio Pereira (a minor)]

JAMALIKA SAMUEL
[as next friend for Ta' Janae Sofia Pereira (a minor)]

Claimants

And

DAWN JOSEPH PEREIRA
[Administrator of the estate for Troy Anthony Pereira]

ANTHONY PEREIRA
[Administrator of the estate for Troy Anthony Pereira]

Defendants

Appearances:
Mr. Vere Bird III for the Claimants
Mr. Sherfield Bowen for the Defendants

2023: October 6th
2024: September 27th

JUDGMENT

[1] **WILLIAMS, J.:** The Deceased Troy Anthony Pereira died intestate on 12th July 2015. His parents- the Defendants Dawn and Anthony Pereira obtained letters of administration to his estate on 19th November 2015 for the benefit of his children Zhanira Jadeoir Raenique Pereira, Andreas Antonio Pereira and Ta'janae Sofia Pereira. The Claimants Elka Forde, Taryn St. Louis and Jamalika Samuel are the mothers of the previously mentioned children and are acting as the next friend for each of their respective offspring.

The Proceedings

[2] The Claimants commenced proceedings against the Defendants by Fixed Date Claim Form filed on 18th April 2018 seeking the following:

1. An account from the Defendants of the Estate of Troy Anthony Pereira Deceased and an order that any amounts of the proceeds of the Estate in property, cash or kind that are shown to be due are distributed in equal shares to the beneficiaries of the estate forthwith.
2. A declaration that the beneficiaries are entitled to the three-bedroom dwelling house and land located thereon in Herberts, St. John's Antigua and proceeds from the deceased's life insurance policy with Sagicor Life Inc.
3. Money received by the Defendants for the benefit of the beneficiaries and retained by them and converted to their own use.
4. An account of all money received as a thrift fund and severance for Troy Anthony Pereira and the manner in which the Defendants applied the money.
5. An inquiry as to the balance of money remaining in the Defendants possession or control belonging to the estate of Troy Anthony Pereira.
6. An order that the Defendants do pay to the beneficiaries such sum as may be found due upon taking the Account and making the inquiry including interest thereon.
7. Interest thereon at such rate and for such period as the court may think fit pursuant to section 27 of the Eastern Caribbean Supreme Court Act, Cap. 143.
8. Fees and costs.

[3] The Claim was supported by affidavits sworn to by each of the Claimants who essentially alleged that since the grant of Letters of Administration to the Defendants for the benefit of Troy's children no distribution of the assets had taken place. This was despite several requests for distribution and an accounting.

[4] The Defendants filed an Acknowledgment of Service on 30th April 2019 having been served with the proceedings on 25th April 2019. By application filed on 5th July 2019 they sought an extension of time to file a Defence. By order dated 16th January 2019 Madame Justice Agnes Actie dismissed the Defendants' application with costs of $1000.00 and gave case management directions.

[5] The Defendants by application filed on 31st October 2019 sought leave to appeal Madame Justice Actie's decision. On 24th June 2020 Madam Justice Robertson granted leave to appeal. The appeal was heard on 2nd October 2020 and the Court of Appeal made the following order on the same day:

1. The appeal is dismissed.
2. The costs of the appeal shall be borne by the appellants agreed in the sum of $2000.00

[6] There were further hearings of the claim and further directions were given. On 28th June 2022 Madam Justice Robertson made the following order:

"It is declared that:

1. Zhanira Jadeoir Raenique Pereira, Andreas Antonio Pereira and Tajanae Sofia Pereira are children of the deceased and are the beneficiaries of the estate of the deceased.

[7] The order continued:

1. The said beneficiaries are to benefit in equal shares together with any other issue of the deceased in accordance with section 4(e) and (f) of the Intestate Estates Act.
2. The defendants to file an account verified by affidavit filed on or before 12th July 2022. Failure to file an account in accordance with this order may result in the defendants being penalized personally in costs.
3. The Claimants to reply, if necessary, on or before 26th July, 2022.
4. The hearing on the accounts is listed for hearing on the 29th July 2022 at 11:00 a.m.

[8] There was delay on the part of the Defendants in complying with this order. It appears first that they filed a statement of accounts which was not verified by an affidavit as required by the order of 28th June 2022. The Honourable Justice Robertson by order dated 18th November 2022 extended the time for compliance to 23rd November 2022.The Defendants filed the required affidavit on 28th November 2022.

[9] The Court by further order made on 17th February 2023 required the Defendants to exhibit the documents referred to in the said affidavit. A further extension to comply with the order of 17th February 2023 was ordered by this court on 21st April 2023. The Defendants filed the required exhibits on 4th May 2023.

[10] It is not necessary to go into the account provided by the Defendants since the Claimants accept most items of expenditure disclosed by the Defendants. It suffices to mention that the Deceased at the date of his death owned property at Herberts. The Defendants upon receipt of the proceeds of an insurance policy from Sagicor paid off a Scotiabank mortgage on the property as well as other debts. The Defendants therefore undertook to transfer the property to the Claimants in trust for the minor children.

[11] However, there were delays in registering the instrument of transfer to the Claimants. This was partially due to the presence of a Restriction imposed on the property on the application of the Claimants. Fortunately, that aspect of this matter was satisfactorily addressed by the last hearing held on 6th October 2023.

Issues

[12] At the hearing of 6th October 2024 counsel for the Claimants outlined that his clients had only two issues with the account provided by the Defendants. These were:

1. Legal fees paid to Stapleton Chambers of $13,1555.00;
2. Miscellaneous Expenses of $3,500.00

[13] Accordingly, I ordered the parties to file submissions in relation to these outstanding matters by 10th November 2023 and reserved the decision on these outstanding matters. The Claimants filed written submissions on 10th November 2023. However, it appears that no submissions were ever filed on behalf of the Defendants.

Legal fees paid to Stapleton Chambers

[14] The Defendants' account discloses the sum of $13,155.00 paid to Stapleton Chambers as legal fees. Stapleton Chambers represented the Defendants until the latter part of these proceedings both in the High Court and in the Court of Appeal as outlined above. The Claimants argue that actions "were not to benefit the beneficiaries of the estate but to dent the beneficiaries their father inheritance."[1]

[15] The Claimants rely on the Privy Council decision in **Commissioner of Stamp Duties** v. **Livingston**[2] where the court noted that a trustee held the unadministered property not for his own benefit but as a fiduciary for the benefit of the estate. The Claimants also rely on the statutory trust imposed on personal representatives by **section 6(1)** of the **Intestate Estates Act**.[3] The Claimants state that personal representatives are personally liable for wrongful distribution unless they have been ordered by the court to do otherwise.

[16] The above-propositions of law cited by the Claimants are not controversial. I will however briefly examine the issue of legal costs incurred by a personal representative in bringing or defending a claim against the estate. **Halsbury's Laws of England** summarizes the position as follows:

> "The personal representative is entitled to be reimbursed from the estate, or may pay out of the estate, expenses properly incurred by him when acting on behalf of the estate, without any special provision to that effect…. The charges and expenses include the costs of probate proceedings, and of claims relating to the estate, which were brought or defended with the leave of the court, or which, though no leave had been obtained, it was proper to bring or defend."[4]

[17] The question is whether it was proper to defend the instant proceedings. Guidance has been given in the case of **Re Beddoe** as follows:

> "The principle of law to be applied appears unmistakeably clear. A trustee can only be indemnified out of the pockets of his cestuis que trust against costs, charges, and expenses properly incurred for the benefit of the trust - a proposition in which the word "properly" means reasonably as well as honestly incurred. While I agree that trustees ought not to be visited with personal loss on account of mere errors in judgment which fall short of negligence or unreasonableness, it is on the other hand essential to recollect that mere

[1] Claimants Submissions at paragraph 10
[2] [1964] 3 All ER 692
[3] Cap. 34
[4] Halsbury's Laws of England (2021 ed.) Vol. 102 para. 1021

bona fides is not the test, and that it is no answer in the mouth of a trustee who has embarked in idle litigation to say that he honestly believed what his solicitor told him, if his solicitor has been wrong-headed and perverse." [5]

[18] It is necessary to put this matter in its proper context. These proceedings were brought by the Claimants against the Defendants seeking an account and distribution of the estate. It was therefore reasonable for the Defendants to seek legal advice. However, having obtained a grant of representation of the estate for the benefit of the minors, it is unclear to see on what basis the Defendants intended to defend the claim.

[19] If there was any doubt as to the manner in which the estate should have been distributed, the Defendants should have applied to the court for directions pursuant to **Rule 67.4** of the **Civil Procedure Rule (Revised Edition) 2023**. Based on the documentation filed in support the account I note that most of debts owed by the estate had been paid by 2016. Thus, distribution of the residue of the estate should have been completed shorty thereafter. Rather, the Claimants were forced to commence proceedings in order to obtain the entitlements due to the beneficiaries.

[20] I therefore find that the sum of $13,155.00 paid to Stapleton Chambers was not properly incurred for the benefit of the estate. I will however, take into account the sum of $3000.00 which was ordered as costs in this court and the Court of Appeal so as to avoid a double-recovery. The Defendants are therefore liable to pay the Claimants the sum of $10,155.00.

Miscellaneous Expenses

[21] The Claimants have objected to the sum of $3500.00 identified by the Defendants as Miscellaneous Expenses. The exhibits to the Defendants' account does not contain documentation which indicates what these miscellaneous expenses are.

[22] In the context of the sums left over after the payment of debts and expenses, the sum of $3500.00 is significant and the Defendants have a duty to account for it. In the absence of any documentation to support this expenditure it is impossible for the court to assess whether the Defendants acted reasonably and honestly in incurring it. In the circumstances, I hold that the Defendants have failed to account for the sum of $3500.00 identified as Miscellaneous Expenses and are liable to pay the sum to the Claimants as the next friends of the beneficiaries of the estate.

Costs

[23] This claim commenced in 2018, but it was not until May 2023 that the Defendants filed a complete account despite several orders of the court. **Rule 41.6(d)** of the **Civil Procedure (Revised Edition) 2023** permits the court to make costs awards where there has been undue delay in taking an account.

[5] [1891-94] All ER Rep Ext 1697

[24] The Claimants have had to attend several hearings over the course of this matter due to the Defendants' delay. Although, cost awards have been made on occasion these will not be sufficient to compensate the Claimants for legal expenses incurred as a result of numerous adjournments. In the circumstances pursuant to CPR Rule 41.6(d) I award costs of $5,000.00 to the Claimants.

Interest

[25] The Claimants have sought pre-judgment interest pursuant to **section 27** of the Eastern **Caribbean Supreme Court Act**.[6] The decision as to whether to grant interest and the rate at which it should be granted are discretionary. In this case I decline to award pre-judgment interest on the basis that the Defendants have not themselves benefited from the payments made out of the estate. The Claimants are however entitled to post judgment interest pursuant to the **Judgments Act**[7] as a matter of course.

Postscript

[26] This litigation has lasted for several years and I am certain it has severely strained the relationship between the parties. I sincerely hope that this decision brings some level of finality for the sake of the minors concerned. I also take this opportunity to apologise to the parties for the delay in delivering this decision.

Order

[27] Accordingly, the court hereby orders as follows:

1. Judgment is entered for the Claimants for the reduced sum of $13, 655.00 to be paid by the Defendants personally.

2. The Claimants are awarded costs in the sum of $5,000.00 to be paid by the Defendants personally.

3. The Claimants are entitled to interest at the rate of 5% per annum on the sums awarded from the date of this judgment until payment.

4. Upon payment of the said sums as aforesaid the Defendants shall be deemed released from their obligations to the Estate of Troy Anthony Pereira.

Rene Williams
High Court Judge

EASTERN CARIBBEAN SUPREME COURT
SEAL
HIGH COURT

By The Court

Registrar

[6] Cap. 143
[7] Cap. 227