

**EASTERN CARIBBEAN SUPREME COURT
ANGUILLA**

**IN THE HIGH COURT OF JUSTICE
(CIVIL)**

CLAIM NO: AXAHCV2021/0031

Between

KEVIN PICKERING
(as a beneficiary in the estate of John Waddington Hodge)

Claimant

AND

RHONA RICHARDSON
(as the Personal Representative for the Estate of John Waddington Hodge, deceased)

Defendant

Before: His Lordship The Honourable Justice Ermin Moise

Appearances:

Mr. Kevin Pickering in person and self-represented
Mr. D. Michael Bourne for the defendant

2022: October 21st;
November 10;
2023: February 6th.

Judgment

[1] **Moise, J.:** On 14th July, 2021, the claimant filed a Fixed Date Claim seeking a determination as to the meaning or interpretation of “the land within the curtilage thereof” as used in Clause 6 of the Last Will and Testament of Mr. John Waddington Hodge. Despite the narrow nature of what has been claimed, the matter has taken a rather contentious course. It is hoped therefore that this judgment would go some way in reducing the temperature and ensuring that some measure of finality can be brought to what has been a much longer process in administering a broader estate which had been left un-administered for a number of generations.

The Facts

- [2] Mr. John Waddington Hodge (Mr. Hodge) died on 29th September, 1996 and left a last will and testament dated 23rd June, 1996. In Clause 6 of that will, Mr. Hodge left his interest in **“the dwelling house and contents at Long Bay and the land within the curtilage thereof”** to Mr. Kevin Pickering, the claimant. In that will, Mr. Hodge described Mr. Pickering as his foster son. Also of importance to the issues at hand, are two other clauses in Mr. Hodge’s will. These are Clauses 5 and 8. In Clause 5, Mr. Hodge devised his rights and interest in the Richardson and Hodge’s Estate to his great nephews Euston and Yanick Richardson. In Clause 8 he devised the remainder and residue of his estate to his great nephews Euston and Yanick Richardson, as well as his nephew Mr. Oliver Hodge. At that point, the property upon which the house devised to Mr. Pickering is built formed part of the Hodge Estate.
- [3] Before coming to a conclusion on the interpretation of the various clauses in this will, it is important to recount a brief history of Mr. Hodge’s ownership and occupation of the land in question. This is because at the time of his death, Mr. Hodge was not the owner in title to the premises which are now the subject of this dispute. In fact, the property can be considered to be family land at the time and formed part of an estate which went back at least two generations prior to Mr. Hodge’s. Although somewhat contrary to his actual pleadings and what he had to say in his closing arguments, some of the property which Mr. Pickering insisted at trial should be vested in him as part of the curtilage of the house devised to him was not vested in Mr. Hodge’s estate; even after what can best be described as a rather long and intricate process in administering three (3) generations of family lands. Given that Mr. Pickering is unrepresented and expressed some disagreement with the extent of what ought to have been pleaded by his previous attorney, I will address the issues raised so as to attempt to bring some clarity to the case in general.
- [4] As I understand it, Mr. John Waddington Hodge was one of a number of children of Mr. John Charles Hodge. Mr. John Charles Hodge was himself a son and beneficiary in the estate of Mr. Thomas Henry Hodge. At the time of his death, John Charles Hodge was a co-executor of the estate of his father. It is apparent from the evidence that Thomas Hodge’s estate was never fully administered by the time John Waddington Hodge himself passed away in 1996. In any event, John Charles Hodge came to occupy a portion of land in his father’s estate and it also appears that this

portion of land was considered by the family to belong to him. For the purposes of this claim, the portion of land which came to John Charles Hodge's estate which is the subject of this dispute was that parcel of land registered in the Land Registry of Anguilla as Block 18011B Parcel 56. That parcel of land was not formally vested in John Charles Hodge's estate until 30th October, 2015.

- [5] It is apparent from the evidence that John Charles Hodge occupied this land and built his home on it. At the time of his death there was a house erected on that land which is referred to as the family home. In his last will and testament, John Charles Hodge, at clause 3, bequeathed to his wife, Jemima Hodge and all his children, **"...the dwelling house to be enjoyed by all..."** As such, this home was never devised or vested in any one of his children in particular. The house was a wooden house, with a cistern constructed nearby. There was also an outdoor kitchen and I understand that there was a hot stone oven on the outside which was used for cooking. By Mr. Pickering's own account, this house sat on an expanse of land measuring slightly less than three (3) acres in total.
- [6] I find as a matter of fact that the family had generally occupied and enjoyed this home together. However, it is also apparent from the evidence that John Waddington Hodge occupied this house for some time after his father's death. It is not clear from precisely when he began to live there exclusively. However, there is no evidence to suggest that any of his siblings objected to this. He too was a co-executor of his father's will and did not take steps during his lifetime to administer the will, nor did he appear to stake any particular claim to any of the land in question insofar as attempting to obtain legal title to it in his own right.
- [7] The evidence presented in this case also suggests that, as it relates to both the house and land, the property was enjoyed by the family in general. Mr. John Waddington Hodge cultivated portions of the property. So did his brother Garfield Hodge, who also erected a pen for his sheep on the land. In his own affidavit in support of the claim, Mr. Pickering accepted at paragraph 10 that the land was enjoyed by all the family. He states precisely that **"[w]hile my adopted father was alive, Parcel 301 was always used in its entirety for family purposes."** Whilst it is true that Mr. John Waddington Hodge continued to live on the premises, I am prepared to find as a matter of fact that he did not exclusively occupy or enjoy the benefits of the land in general. Those were enjoyed by other members of the family as well.

- [8] Sometime in the 1980s Mr. John Waddington Hodge constructed his own house on the property. His home was built within close proximity to the old family house. He continued to use the cistern of the family home and occupied the premises in much the same way as he always did, along with members of the family.
- [9] Prior to Mr. Hodge constructing his home, Mr. Pickering came to live with him. That was in 1975. At the time Mr. Pickering was only 11 years old. It is unclear to me as to the true nature of the relationship and how it is that Mr. Pickering came to live with Mr. Hodge. Mr. Pickering described himself in the pleadings as an adopted son. However, it is apparent that there was never any formal adoption. In the last will and testament he was described by Mr. Hodge as a foster son. Whatever the relationship, Mr. Pickering resided with Mr. Hodge until 1983, at which point he migrated out of Anguilla; first to Saint Martin and then to the United States. He resided there for many years until his recent return to Anguilla.
- [10] The exact year of the construction of Mr. Hodge's house was not clear from the evidence, but it appears to have been built from at least 1980. However, I note that Mr. Pickering left the island in 1983. It is unlikely therefore that he resided at this particular house for any extended period of time. Although there was some intimation in the evidence that Mr. Hodge only took Mr. Pickering in to help him out as a young boy, he obviously felt some affinity to Mr. Pickering as he in fact made express provision for him in his will.
- [11] However, Mr. Hodge died in September, 1996 having never administered his father's estate. In fact, at that point even the estate of Thomas Hodge had remained unadministered. It was therefore left to the members of the family and those to whom probates and grants of letters of administration had been made to administer three generations of estates. It is not necessary to go into detail of the facts of those processes. It would suffice to say that the estates seemed to relate to vast expanses of land and the court's intervention was sought on a number of occasions. As it relates to Mr. John Waddington Hodge's estate, the Executor, Mr. Oliver Hodge was eventually replaced by the defendant, Ms. Rhona Richardson (Ms. Richardson), by way of court order, in 2004. She was however not the administrator of John Charles Hodge's estate. It is apparent therefore, that the administration of those three (3) estates was a long and drawn out process which was not completed until more than 25 years after Mr. Hodge's own death.

- [12] In the end, Parcel 56 was vested in the estate of John Charles Hodge. That parcel of land would have therefore been subdivided into the estates of his children, to whom he had jointly devised the benefits and interest in his estate¹. The land was therefore subdivided into separate parcels; that is Parcels 300 to 304. Of those parcels of land, Parcel 301 was vested in the estate of John Waddington Hodge.
- [13] It is on this Parcel 301, the house of John Waddington Hodge is located. The old family home, or what is left of its foundation, along with the cistern remained on Parcel 301. At this stage Mr. John Waddington Hodge's house is in a very dilapidated state. I understand that it may not have been occupied since Mr. Hodge's death. The court visited the site and observed that although he had died since 1996, Mr. Hodge's clothes still remain in wardrobes on the property. It has not been maintained since then and Mr. Pickering complains that he is only being vested an old dilapidated house. He argues that no attempt was made by the defendant to preserve the house and maintain it in a good condition.
- [14] Parcel 301 initially comprised approximately half an acre of land and was further subdivided into three (3) actual lots. A forth lot emanating from that mutation is outlined as an access road. One of those new parcels has been earmarked for Mr. Pickering and it contains a total of in excess of 7000 square feet upon which the house is located. The cistern was also included as part of the lot earmarked for Mr. Pickering. It is argued by Ms. Richardson, that this is sufficient to constitute the curtilage of the house as what was provided for in Mr. Hodge's will. The remaining parcels are intended to be vested in Mr. Hodge's great nephews, Euston and Yannick Richardson in keeping with Clause 5 of the will.
- [15] Mr. Pickering complains that the 7000 square feet of land allotted to him is not reflective of the curtilage of the land associated with the house. He made the argument during the trial that Mr. Hodge occupied the entirety of Parcel 56 and as such Parcel 56 is what is reflective of the curtilage. He insisted then that he is entitled to the entirety of Parcel 56. As I indicated before, that does not seem to be in keeping with what he had actually pleaded. Towards the end of the trial, after having already heard the evidence, I indicated to Mr. Pickering that I was not prepared to find that Parcel

¹ Given that his wife was deceased at that point

56 ought to be allotted him. In the end his closing submissions modified that view somewhat. He complains that what was allotted to Mr. Hodge from Parcel 56 was not an accurate reflection of what Mr. Hodge was entitled to and that had Mr. Hodge been given his full entitlement, the curtilage of the house being allotted to him would have been more. However, I wish to make two observations in relation to this.

[16] Firstly, Parcel 56 was vested in the estate of John Charles Hodge. It seems clear to me that John Charles Hodge's estate did not belong to Mr. John Waddington Hodge exclusively. This estate was administered and portions of Parcel 56 were vested in the estates of John Waddington Hodge's siblings. The substance of the case before me is not one which seeks to set aside those vesting deeds. Indeed no claim has been brought against the administrators of John Charles Hodge's Estate or any of the other persons interested in the properties which had been vested in them. There is no claim before me seeking an order that Mr. John Waddington Hodge was entitled to more than was vested in him during the administration of his father's estate. I can see no proper basis therefore to disturb this process which is now complete.

[17] The second observation is that Mr. Pickering appears to be conflating the meaning of the term "occupation" with that of "curtilage". I will return to that issue in my assessment of the law, but it would suffice to say that the mere fact that Mr. John Waddington Hodge may have occupied portions of the entire parcel of land does not necessarily mean that the entire parcel is to be considered the curtilage of the house which has been vested in Mr. Pickering. In any event, the evidence does not suggest, and I find that it does not prove, that Mr. Hodge occupied the entirety of Parcel 56. Neither is there evidence to suggest that his estate had not been given what it was entitled to. For the purpose of these proceedings therefore, Mr. Pickering will have to confine himself with the curtilage of the land which can be derived from Parcel 301; as there is no basis for a claim to any more lands from Parcel 56.

[18] In his affidavit evidence, Mr. Pickering states that he became aware of the sub-division of Parcel 301 into three (3) lots. He complains that as a beneficiary in Mr. Hodge's estate he was not consulted in this process and his approval was not sought. He disagrees with the surveyor's interpretation of the term curtilage and argues that based on the usage of the land, the entirety of Parcel 301 should constitute the curtilage of the house. He states for example, that the old family

home now falls on lot number 2 which is not earmarked to him. He states that Mr. Hodge had a sheep pen on the area marked out as lot 2 during his lifetime. All of this, in his mind, should be considered part of the curtilage of the house. He however also indicated that Mr. Hodge's brother, Garfield, also kept a sheep pen on that lot and that in fact, both Mr. Hodge and his brother, Garfield, had allowed their animals to graze on the entire lot.

[19] Mr. Pickering also states that the sheep raised were used for food and also sold. He argues that Mr. Hodge ploughed and made extensive use of the grounds/field beyond where he used to cook. He primarily planted corn and peas which were cooked by him, shared with others or sold. He argues that all of this proves that the curtilage of the house extends beyond what was allotted to him. He states that whilst occupying the old house, Mr. Hodge used a clothes line which was set up between an orange and lime tree on the property. He continued to do so even after he built his home. He also states that the family congregated under a guinep tree which was located next to the old foundation of the house. It is unclear as to what Mr. Pickering refers to when he said "our family". However, it also seems clear to me that Mr. Hodge's family including his siblings continued to make use of the land in question.

[20] Ms. Rhona Richardson, the defendant, states in her own affidavit in reply, that Mr. Hodge's estate remained unadministered until she brought an action to replace the executor in 2004. This application was granted by consent and Ms. Richardson became the administratrix with a will annexed in Mr. Hodge's estate. She states that she eventually engaged the services of a surveyor to subdivide the land in order to give effect to Mr. Hodge's will. In her evidence she states that the land was in fact devised to Mr. Hodge's great nephews. However, in keeping with Clause 6 of the will, it was important to carve out a portion of land which would be considered the curtilage of the house which was devised to Mr. Pickering.

[21] Ms. Richardson said that the use of the land on which the house was built was historic. It was important for her to take into account the fact that, prior to Mr. Hodge's death, the use of the land was shared by the family. She therefore engaged the services of Mr. Cecil Niles, Land Surveyor in order to carry out the sub-division. She also took into account the historical use of the land and advised Mr. Niles in order to assist with the work he was now called upon to do.

- [22] Insofar as it relates to the use of the land, Ms. Richardson states that Mr. Hodge and all his siblings initially lived in the family home built by his father. Over time, the other siblings moved out and Mr. Hodge remained in occupation. However, the old family house fell into disrepair and Mr. Hodge built his own home on the land. She states that although his brother, Garfield had also built his home, he too continued to make use of the family home. As it relates to Mr. Hodge's own home, Ms. Richardson states that he continued to use the cistern of the old house. It is for this reason, when she came to consider the curtilage of Mr. Hodge's home, it was felt that the cistern should be included in the parcel to be earmarked to Mr. Pickering, as it would have naturally formed part of the usage of the house which he had built.
- [23] Over time all that was left of the old family home was the foundation. Ms. Richardson therefore states that the two other parcels carved out from Parcel 301 are not lands which were ever used for purposes incidental to Mr. Hodge's house. They were part of the old family lands which had later been vested in his estate. She denies that clothes lines and other incidentals were contained on parcels earmarked for other persons. Ms. Richardson insists that although Mr. Hodge did rear animals and was engaged in other agricultural practices on the land, he did not do so exclusively. That was also done by other members of the family. In any event it is argued that animal husbandry and other forms of agriculture are not activities which were incidental to the use of the house which was devised to Mr. Pickering and therefore did not form part of the curtilage thereof.
- [24] The defence also led evidence from Mr. Rupert Hughes. He is a 72 year old who was a friend of Mr. Hodge. He states that he knew Mr. Hodge from the time he was about 7 or 8 years old. After they became good friends he would visit Mr. Hodge's house daily. According to Mr. Hughes, Mr. Hodge resided in the old family house for some time along with his sister, Daisy Hodge. Daisy had passed away before Mr. Hodge. Mr. Hughes also recalls that Mr. Hodge's brother Garfield came to live in the family home when he returned from Curacao with his family. Garfield lived there until his own house was complete and then moved into his home. During the time that Garfield lived in the old family house, Mr. Hodge would sleep elsewhere.
- [25] Mr. Hughes remembers that Mr. Hodge reared animals. He owned cows which he later sold and used the proceeds to build his house. His cows were not reared entirely on the land. Mr. Hughes also remembered that Garfield also reared animals and engaged in other forms of agriculture on

the land. Mr. Hughes remembered when Mr. Hodge built his home. He states that Mr. Hodge never returned to use the old house after that. He states that there was no need to use the kitchen of the old house because Mr. Hodge had his own kitchen. In fact, he states that even before moving out of the old house Mr. Hodge had already acquired a stove. He therefore was not using the old rock wall stove which had been used before. The only thing he did was to fry fish on coal pots. Whilst Mr. Hodge was well known for making an Anguillan delicacy called Corkeenyas, Mr. Hughes states that Mr. Hodge had stopped making cockeenyas long before he moved out of the old house. He did so because he could no longer take the heat as he grew older.

[26] Mr. Hughes remembers Mr. Pickering living with Mr. Hodge at some point. He remembers one occasion when he met Mr. Pickering while visiting the house. He also remembers, Mr. Pickering's mother, Miriam who he says he only met at Mr. Hodge's residence once.

[27] The Land Surveyor, Mr. Cecil Niles, also appeared at trial and gave evidence of his involvement in the matter. He stated that he was instructed by Ms. Richardson to subdivide the property. The property was approximately half an acre in total. Based on the instructions he received, Parcel 301 was subdivided into four (4) lots, one of which is an access road to lots 2 and 3. Lot 1 is the lot which contains Mr. Hodge's house and what is considered to be the curtilage in relation to it. Based on the instructions received, he included the cistern as part of the land based on its usage being incidental to the house. According to Mr. Niles, he was able to demarcate in excess of 7000 square feet of land in order to give effect to the disposition made to Mr. Pickering. With the remaining 2 lots it was important to make provision for an access road. That was done and reflected in lot 4. Lots 2 and 3 are therefore quite smaller lots and are in fact the bare minimum amount of land required to be necessary for a subdivision in keeping with planning and surveying regulations in Anguilla. Mr. Niles indicated that in his experience as a surveyor and professional dealings, his understanding of curtilage means the immediate area around the structure which was used by the owner.

[28] Mr. Pickering filed a number of affidavits in response in this case. In his affidavit of 21st October, 2021, he contends that Ms. Richardson has limited what is considered to be the "curtilage" of the house and only assert the interests of her brother, Euston Richardson and son, Yannick Richardson. Given that they have also benefited from 3.9 acres of land by virtue of other provisions of the will, there is a conflict of interest which they have not disclosed. However, I do note that

these other lands were in fact bequeathed to those persons by Mr. Hodge himself in his will. These do not form part of those lands which can be considered as part of the curtilage of Mr. Hodge's house.

[29] Mr. Pickering, in his response also noted that the entire Parcel 301 was only used by Mr. Hodge and was not shared and/or used by any other family members. However, I must say that I do not find this to be true. Even his own evidence indicates that the entire family utilized this land, albeit prior to the subdivision. Parcel 301 contains the old family home which was shared by all and was not devised to Mr. Hodge exclusively in his father's will. Mr. Pickering also accepted that Garfield Hodge occupied this home for a time and also reared animals and grew crops on that land. It cannot be said that this land was used exclusively by Mr. Hodge.

[30] At paragraph 15 of his affidavit in reply, Mr. Pickering states that any previous reference to the family in his affidavits relate solely to himself and Mr. Hodge as constituting that family. He specifically states that he was only aware of Mr. Hodge being the sole occupier of the land in question. I wish however to repeat at this stage that I do not accept this as being the truth. Even Mr. Pickering's earlier affidavit makes it clear that this was Mr. Hodge's family's land. His father, John Charles Hodge, was explicit in his will that the house was to be enjoyed by all the family. According to Mr. Hughes, Mr. Hodge's sister, Daisy, lived there for a time until she passed. His brother Garfield also made use of the land and lived in the old family house when he returned from Curacao. I accept that as being the truth. Whatever Mr. Hodge's intention in referencing the curtilage of the house in his will, it seems apparent to me, that he did not solely and exclusively occupy this land as Mr. Pickering would wish for the court to accept. He may very well have been the member of the family who resided there the longest, enough for the land to have become more associated with him over time. However, I do not find that it was used entirely and solely for his own purposes.

[31] Mr. Pickering insists that Mr. Hodge's new house did not have all the modern amenities and that he continued to use the old house, the outdoor kitchen and hot rock stove after he moved into his new home. He used the surrounding lands to hang his clothes and to do laundry. He also insists that Mr. Hodge's use of the land to do animal husbandry was incidental to his use of the house.

- [32] Mr. Pickering also led evidence from his mother, Ms. Miriam Fleming. She largely seeks to corroborate what Mr. Pickering has said. She states that she is in her 70s and has always known even the old wooden home to be occupied by Mr. Hodge. She states that she was not aware that the wooden house belonged to the family and always known it as Mr. Hodge's house. Despite this, she admits that when his brother, Garfield, returned from Curacao he lived at the house for a time with Mr. Hodge. She also states that even after he built his home, Mr. Hodge did not have all the amenities he wished and still used the old house.
- [33] Ms. Fleming recalls that Mr. Hodge continued to use the cistern together with the stone/rock wall kitchen to cook and the area behind the wooden house to farm and rear animals. He continued to use the guinep tree behind the house to grind corn. She insists that Mr. Hodge would often use the steps of the wooden house as the area for making corkeenyas. Ms. Fleming insisted that Mr. Hodge lived off the land now known as Parcel 301 and used various areas of it for his enjoyment.
- [34] Mr. Pickering also led evidence from his sister, Kimberly Fleming, who largely attempted to corroborate what her mother had to say. The slight challenge with this evidence however, is that Ms. Fleming was very young when most of the facts relevant to this case would have taken place. She states for example that she always knew Mr. Hodge to live alone in a wooden house on the land in question and that the house and land was being used exclusively by him. However, Ms. Fleming indicated in cross examination that she was born in 1974. When Mr. Pickering moved to live with Mr. Hodge, Ms. Fleming would have only been a year old. Even around the time of the building of the concrete house in or about 1980, Ms. Fleming would have been extremely young. She states that after 1983 when Mr. Pickering left she did not visit Mr. Hodge's home regularly. Given the evidence led by other witnesses in this case, I am prepared to find that the land was not exclusively occupied by Mr. Hodge as Ms. Fleming has stated in her affidavit.

The Law

- [35] In light of the facts presented in this case, there are two main issues of law to consider. The first is the issue of the term "curtilage" as used in Mr. Hodge's will. However, the court must also consider the law in general as it relates to the interpretation of the clauses of the will so as to determine Mr. Hodge's intention in its drafting. Ancillary to those two issues would be some general observations

regarding the duties of an administrator in an estate and the general rights and expectations of a beneficiary such as Mr. Pickering.

Curtilage

- [36] As far back as 1891, Black's Law dictionary defined the term curtilage of a dwelling house as comprising:

"The enclosed space of ground and buildings immediately surrounding a dwelling-house. In its most comprehensive and proper legal signification, it includes all that space of ground and buildings thereon which is usually enclosed within the general fence immediately surrounding a principal messuage and outbuildings, and yard closely adjoining to a dwelling-house, but it may be large enough for cattle to be levant and couchant therein."

- [37] The Oxford English Dictionary also seeks to define the term curtilage as ***"[a] small court, yard, garth or piece of ground attached to a dwelling-house, and forming one enclosure with it, or so regarded by the law; the area attached to and containing a dwelling-house and its out-buildings."***

- [38] Notwithstanding this attempt at defining the term, it has remained somewhat difficult to adequately describe what the term curtilage means; as its extent and nature in any given case would rest on the peculiar circumstances of that case. In the case of ***Blackbushe Airport Ltd v Hampshire County Council and others***², the Court of Appeal of England and Wales noted that ***"[t]here are some words or expressions which are like an elephant; its essence is difficult to put into words, but you know it when you see it. "Curtilage" is a word of that nature."*** There the court also endorsed the sentiment that ***"[i]t is not possible to give a comprehensive definition of a curtilage. Indeed it would be most inadvisable. One can only describe a curtilage when one sees it and decides whether it was a curtilage, or not....."***³

² [2021] EWCA Civ 398

³ This was expressed by Sir David Croom-Johnson in the case of *Barwick & Barwick v Kent County Council* (1992) 24 HLR 341

[39] Perhaps it can be said that the term in and of itself is somewhat ambiguous. In an assessment of the authorities which I could find on the matter, the cases and circumstances under which the courts have come to consider the term have all varied. What constitutes the curtilage of a dwelling house may be different from that of a commercial building or an airport. On the other hand, what constitutes curtilage for planning purposes may be different from the use of the term in a conveyance. The size of the curtilage of a house in the countryside may differ from a town house with shared common grounds. It all depends on the circumstances of the case. In my view Nugee LJ's contribution in the case of **Blackbushe Airport Ltd** best sums up the various cases when he stated as follows:

“Fortunately the extensive array of authorities cited to us on this appeal enables us to do this. We find for example that in the case of modest houses, the curtilage would not on the face of it extend to the whole of 10 acres of pasture land let with a cottage (Trim v Sturminster RDC [1938] 2 KB 508); that a field used for keeping cows was not part of a house (Pulling v London, Chatham and Dover Railway Co (1864) 3 De G J & S 661); and that paddocks have been held not to be part of the curtilage of houses in both Methuen-Campbell and Burford v Secretary of State for Communities and Local Government [2017] EWHC 1493 (Admin). On the other hand the curtilage does include a wall enclosing a recently expanded part of the garden (Sumption v Greenwich LBC [2007] EWHC 2776 (Admin)).”

[40] It would seem therefore, that the closest the courts have come to establish an actual legal test for what constitutes the curtilage of a building is the statement of Buckley LJ in the case of **Methuen-Campbell v Walters**⁴ where he states that “... *for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.*” In **Blackbushe Airport Ltd** the court of appeal noted that “... *this is as good an expression of the concept of curtilage as one is likely to find.*”

⁴ [1979] 2 QB 525

[41] In the ***Blackbushe Airport Ltd.*** case, the court came to consider the meaning of the term curtilage in light of the provisions of Paragraph 6, Schedule 2 of the **Commons Act 2006**. The Schedule states that:

“(1) If a commons registration authority is satisfied that any land registered as common land is land to which this paragraph applies, the authority shall, subject to this paragraph, remove that land from its register of common land.

(2) This paragraph applies to land where –

- a) the land was provisionally registered as common land under section 4 of the 1965 Act;
- b) on the date of the provisional registration the land was covered by a building or was within the curtilage of a building;
- c) the provisional registration became final; and
- d) since the date of the provisional registration the land has at all times been, and still is, covered by a building or within the curtilage of a building.”

[42] In order to adequately interpret the meaning of this section it was important to consider the term “**within the curtilage of a building.**” The Court of Appeal there embarked on a comprehensive assessment of the case law in this area and concluded that the test as established by Buckley LJ in ***Methuen-Campbell*** remains the applicable test, notwithstanding the broad range of circumstances under which the term may fall to be considered. There, Parliament did not seek to assign any specific meaning to the term curtilage. The court then went on to state that:

“The conclusion to be drawn from the authorities is that they all illustrate different applications of the same test to the facts and circumstances of the specific cases. They demonstrate that the curtilage in a given case is a question of fact and degree. ... the approach of Buckley LJ in Methuen-Campbell has been adopted and followed in

all the different statutory contexts in which the concept of “curtilage” has been considered,”

- [43] In coming to its conclusion the Court of Appeal determined that *“[t]he correct question is whether the land falls within the curtilage of the building, and not whether the land together with the building fall within, or comprise, a unit devoted to the same or equivalent function or purpose, nor whether the building forms part and parcel of some unit which includes that land.”* In doing so the court of appeal approved the following passage from the decision of Buckley LJ in *Methuen-Campbell*:

“What then is meant by the curtilage of the property? In my judgment it is not sufficient to constitute two pieces of land parts of one and the same curtilage that they should have been conveyed or demised together, for a single conveyance or lease can comprise more than one parcel of land, neither of which need be in any sense an appurtenance of the other or within the curtilage of the other. Nor is it sufficient that they have been occupied together. Nor is the test whether the enjoyment of one is advantageous or convenient or necessary for the full enjoyment of the other. A piece of land may fall clearly within the curtilage of a parcel conveyed without its contributing in any significant way to the convenience or value of the rest of the parcel. On the other hand it may be very advantageous or convenient to the owner of one parcel of land also to own an adjoining parcel, although it may be clear from the facts that the two parcels are entirely distinct pieces of property. In my judgment, for one corporeal hereditament to fall within the curtilage of another, the former must be so intimately associated with the latter as to lead to the conclusion that the former in truth forms part and parcel of the latter.

There can be very few houses indeed that do not have associated with them at least some few square yards of land, constituting a yard or a basement area or passageway or something of the kind, owned and enjoyed with the house, which on a reasonable view could only be regarded as part of the messuage, and such small pieces of land would be held to fall within the curtilage of the messuage. This may extend to

ancillary buildings, structures or areas such as outhouses, garage, driveway, garden and so forth. How far it is appropriate to regard this identity as parts of one messuage or parcel of land as extending must depend on the character and the circumstances of the items under consideration. To the extent that it is reasonable to regard them as constituting one messuage or parcel of land, they will be properly regarded as all falling within one curtilage; they constitute an integral whole.”

- [44] In the circumstances of the case before me, a similar approach ought to be taken. Although this is to be considered in the context of a last will and testament, the test is as laid down in ***Methuen-Campbell***, in that the court must consider whether the property which Mr. Pickering insists should be transferred to him is so intimately connected to Mr. Hodge’s house, that it must lead to the conclusion that it forms part and parcel of it.
- [45] It is therefore important to point out that simple reference to the occupation and/or use of various parcels or portions of land does not necessarily mean that these lands in general fall within the curtilage of a house. Although such facts may be helpful in making a decision, they are not determinative of the issue. As I indicated earlier, Mr. Pickering has fixated on Mr. Hodge’s use of lands going back to his grandfather’s estate in order to support his argument that these lands must fall within the curtilage of the house which had been left to him in Mr. Hodge’s will. Here we see Buckley LJ pointing out that it is not sufficient that lands have been occupied together. Nor is the test whether the enjoyment of one portion of land is advantageous or convenient or necessary for the full enjoyment of the other in order for one to fall within the curtilage of the building constructed on the other. In his assessment of the authorities Nugee LJ also point to cases where even the rearing of cattle on one parcel of land does not necessarily mean that the lands fall within the curtilage of a building. In like manner, Mr. Hodge’s rearing of animals and engagement in agriculture on what was at the time vast amounts of family land does not necessarily mean that the land must, of necessity, fall to be considered as part of the curtilage of his house which was built on that land.

[46] In light of this, counsel for Ms. Richardson refers the court to the case of **Dyer v. Dorset County Council**⁵ where the following was noted:

“While making every allowance for the fact that the size of the curtilage may vary somewhat with the size of the house or building, I am in no doubt that the 100 acre park on the edge of which Mr. Dyer’s House now stands cannot possibly be said to form part and parcel of Kingston Maurward House, far less of any of the other college buildings. Indeed, a park of this size is altogether in excess of anything which could properly be described as the curtilage of a mansion house, an area which no conveyancer would extend beyond that occupied by the house...”

[47] On the one hand, it cannot be said that the curtilage of a house must be limited to a small amount of land surrounding the house. It may be that the curtilage can be very vast, depending on its intimate connection to the house and the other buildings constructed thereon; such as a garage or a number of outhouses. However, as was pointed out in **Dyer v. Dorset County Council**, a vast field on which on a house or building is erected does not necessarily fall within the curtilage of that house. In the **Blackbushe Airport Ltd.** case it was also determined that the full extent of the land occupied by an airport authority does not mean that all those lands form part of the curtilage of a particular building on the airport.

[48] It is therefore important to point out, that the intimate connection which the court seeks to determine is not necessarily that which exists between the owner or occupier of the house and the land in question. It is the intimate connection between the building and the land which falls to be considered. The mere fact that the owner or occupier of the house may have also used surrounding lands for his or her own convenience, does not mean that the land forms part and parcel of the curtilage of the house. The central focus is the building and not necessarily the people who occupy it. In the circumstances of this case for example, it is clear that Mr. Hodge himself has had some intimate connection with all of those lands in much the same way all of his siblings did. He grew up there along with his siblings. He reared his animals and engaged in other forms of agriculture. He entertained his friends and family there. In the end it appears that even after some of his siblings

⁵ [1989] QB 346

had moved out of the old family home, he remained in occupation for much longer than anyone else and for what appears to be a more consistent period of time.

[49] However, there was nothing in the evidence which suggests to me that these were ever anything other than family lands which were also enjoyed by Mr. Hodge's siblings at various points. In fact, Mr. Hodge was never vested full ownership of this property. The house was left by his father for the enjoyment of his wife all his children. Mr. Hodge himself never sought to stake a claim to any specific portions of those lands during his lifetime; despite the fact that he was one of the executors of his father's will. Yet, Mr. Pickering comes to court and insists that the full extent of Parcel 56, some of which has now been vested in Mr. Hodge's siblings, should revert to his estate and then vested in him, Mr. Pickering; or at least some of it. These are vast expanses of land which were never anything other than family land. There is no proper basis in law or the facts which have been presented to me to even consider such an approach. The question would be, as has been pleaded, whether the entirety of Parcel 301 can be considered as the curtilage of the house.

[50] Is it therefore important to consider the terms of the various clauses of Mr. Hodge's will in order to give consideration to his actual intention. One must also consider the definition of the term curtilage within the context of the last will and testament. As counsel for Ms. Richardson has pointed out, the test for determining the intention of the maker of a will is to consider the actual words used in the will whilst also taking into account the clauses of the will in general. For that, counsel refers to the following passage from *Williams on Wills*⁶:

"...the first principle of construction is to give effect to the intention of the testator as expressed in the words of the will. The intention is collected from the whole will with such evidence as the rules already stated allow and the meaning of the will and every part of it is determined according to that intention."

[51] In support of his own case, Mr. Pickering argues that Mr. Hodge was unable to specifically will any identifiable property to him because he was not the owner in title at the time. I take Mr. Pickering's submissions to mean that there was an intention on the part of Mr. Hodge to devise more property to him than Ms. Richardson had earmarked for him. The difficulty with this argument is that when

⁶ 7th edition, Volume 1, 1995

one examines the will as a whole, Mr. Hodge did not seem to have a difficulty in specifically identifying those persons whom he wished to have his share of the Hodge and Richardson land devised to. Those were his great nephews as was identified in Clauses 5 and 8 of the will. To my mind, taken as a whole, it is difficult to interpret this will as entitling Mr. Pickering to the entirety of Parcel 301 in general. It is important therefore to interpret this will by taking into account that in general he left his inherited lands to persons other than Mr. Pickering, save and except that the curtilage of the house and its contents itself was to be devised to him.

[52] Insofar as it relates to some of the issues raised by Mr. Pickering, it is also important to make some general observations regarding the duties of an executor in an estate. Mr. Pickering complains that the house which has been left to him is in poor condition. On the record of the court is a complaint that the executor had not preserved the value of this asset. He also states that the subdivision of the property took place with no consultation with him. It appears that at one point Mr. Pickering even went to the lengths of appearing on the property with a bulldozer in order to clear the lands. He states that he was only seeking to clear the square footage which had already been earmarked for him. This has caused some tension to the extent that there was intervention by the police at one point.

[53] In the case of ***Commissioner of Stamp Duties v. Livingston***⁷ it was determined that an executrix finds herself in the position of a trustee of estate property. In that case Lord Radcliffe noted the following:

“...whatever property came to the executor virtute officii came to him in full ownership, without distinction between legal and equitable interests. The whole property was his. He held it for the purpose of carrying out the functions and duties of administration, not for his own benefit; and these duties would be enforced on him by the Court of Chancery, if application had to be made for that purpose by a creditor or beneficiary interested in the estate. Certainly, therefore, he was in a fiduciary position with regard to the assets that came to him in the right of his office, and for certain purposes and in some aspects he was treated by the court as a trustee.”

⁷ [1964] 2 All ER 692

[54] In order to ensure that this fiduciary duty is fulfilled, the case law also outlined some general duties of an executrix. These include the duty to as much as possible preserve the assets of the estate for the interest of the beneficiaries as a whole. Her duty is not to any one individual beneficiary per se, but to the estate. If there are debts and expenses to be met, she must first meet those expenses before any distribution of the assets. In the case of **Clifton St. Hill v. Augustine St. Hill**⁸ Mitchell J, acknowledged that the executor even has the authority to unilaterally dispose of an asset in the estate. It is generally the executor's duty to administer the will and not the beneficiaries. However, Mitchell J went on to note the following:

“An Administrator of an intestate’s estate is a trustee. It is always the duty of an Administrator to satisfy the beneficiaries that he is properly administering the estate. He is required to act at a higher level even than he would in protecting his own interests. He must report and account. More than that, he is well advised to seek consensus and approval. If he tries and fails to secure the approval and consent of a particular beneficiary, he is opening himself up to a law suit. He is not well advised if he then relies on the statutory powers given to him by the Act and acts unilaterally. He is expected in such a case to apply to the court for directions on the administration of the estate. He is not safe in acting unilaterally. Only the shield of directions of the court will protect him absolutely from a law-suit being brought by a discontented beneficiary... For these reasons, among others, an Administrator should never proceed to act unilaterally in administering the estate. He should always consult with the beneficiaries and attempt to secure their consent to what he is proposing.”

[55] As was noted by Ellis J., as she then was, in the case of **Estelle Wheatley v. Darwin Blyden et al**⁹, ***“the only duty prescribed by Mitchell J was a duty to satisfy the beneficiaries that the executor is properly administering the estate. In the Court’s judgment, the recommendation which followed is just that and no more. It prescribes “best practice” guidance which should be followed by personal representatives if they wish to avoid litigation.”*** The duty to consult the beneficiaries is therefore not a legal obligation. However, it is guidance which highlights best

⁸ CIVIL SUIT NO. 402 OF 1996

⁹ BVIHCV 2012/302

practice so as to avoid unnecessary litigation. Where there is a discretion, it would be more than helpful for the beneficiaries to first be consulted.

- [56] Insofar as it relates to the rights of the beneficiaries, it must also be observed that a beneficiary does not have legal title or ownership rights over estate property until such time as it has been vested in him or her. In **Williams, Mortimer and Sunnucks, Executors, Administrators and Probate**¹⁰. The following was noted:

*“Until assent or conveyance a person interested under the will or intestacy has an inchoate right transmissible to his own representatives. He cannot, however, without the authority of the representatives take possession of the property, even though the testator expressly directs that he shall do so... Should he go into possession the representatives may sue him in ejectment, trespass or trover, according to the circumstances. Thus, although he is actually in possession of property specifically bequeathed, and the assets are fully adequate to the payment of debts, he has no right to retain it in opposition to the representatives, by whom, in such a case, an action will lie to recover it.”*¹¹

- [57] The beneficiary therefore cannot demand occupation rights over the property, neither can he unilaterally decide to take any steps akin to legal or even equitable ownership until the property is vested in him. He certainly does not have the right, as Mr. Pickering attempted to do, to bulldoze anything on the property. He does however have a right to demand an account from the Administratrix and to ensure that the estate is being properly administered.

Conclusions

- [58] Having outlined the law and facts in this case I wish to make a few observations regarding some of Mr. Pickering's complaints. Before even addressing the actual meaning of the term curtilage, I note Mr. Pickering's complaints regarding the condition of the house which was devised to him. He

¹⁰ 17th Edition at page 1050 and Williams on Wills

¹¹ 17th Edition at page 1050 and Williams on Wills

complains that the value had not been preserved because it is now in a dilapidated state. At one point he also complained that Ms. Richardson had become the Administratrix since 2004. I note that an attempt to give effect to this will did not take place until fairly recently.

[59] However, it is important to place these complaints into context. The main challenge with the administration of this estate is that Mr. Hodge himself had been the co-executor of his father's will and took no steps to administer this estate in his lifetime. By the time of his death the property was still in the name of an estate which was three (3) generations old and un-administered. It therefore took quite some time to address those issues and Parcel 56 which was earmarked for Mr. Hodge's father's estate was not vested until 2015. Ms. Richardson was not the one with full authority to address issues relating to Mr. Thomas Hodge and Mr. John Charles Hodge's estates and can therefore not be personally faulted for the length of time it took to address those issues. The vesting as it relates to Mr. Hodge's estate did not take place until 2018 at the earliest. That was when the property came into her own authority.

[60] As it relates to the house itself, there is very little evidence here about the condition of the house back in 2004. At that time, Mr. Hodge had been deceased for eight (8) years and the house was approximately twenty-four (24) years old. As to exactly what Ms. Richardson could have done to preserve this house cannot be determined without more facts as to whether there were even any resources available to do so. Mr. Pickering exhibited a letter from his solicitors stating that the house could probably be rented so as to maintain value and even generate income. However, the obvious challenge with issues of this nature is the state of the affairs of Mr. Hodge at the time of his death. It is not uncommon in the Caribbean context for families of the past to simply occupy family lands in this way. Houses are built and land is occupied without an actual administration of the estates of the generation prior. In the end no one has actual title to the property to assist even in seeking financing to help with such issues. However, the difficulty with this is that as the time moves on it becomes difficult for future generations to properly address such issues.

[61] Although it is the duty of the Administratrix to as much as possible preserve the assets of the estate, that duty does not extend to the use of her personal funds in order to do so. Lands tied up in family estates provide numerous challenges, unless there are also financial resources available in order to enable the proper management of the estate in this way. I can find little in the evidence

to substantiate the notion that Ms. Richardson would have failed in her duty to keep this house in good repair, given that the land itself did not come into the estate until sometime in 2018.

[62] I do however agree that Ms. Richardson would have done well to consult with Mr. Pickering prior to the sub-dividing of the premises. He lived in the house with Mr. Hodge for a time. He is also the beneficiary of the curtilage of the house. His input may very well have prevented some of the tensions which arose. However, Mr. Pickering on the other hand appears to not have always addressed the issues in a proper manner. He had no right to attempt to bulldoze portions of the premises. I find in examining his demeanour in court that he appears to have taken a rather aggressive approach to this dispute. This too was very unhelpful.

[63] However, as it relates to the question of the curtilage of the house, I do not agree with Mr. Pickering that the entirety of Parcel 301 must be conveyed to him. As I indicated earlier, I do not find that Mr. Hodge's rearing of animals and growing crops on other portions of the land is enough to constitute the curtilage of the house. It is not a matter of the use of what was family land for Mr. Hodge's own convenience, but whether those lands can be said to be so intimately connected to the house. I find that this is not the case. The old house never belonged to Mr. Hodge. His occupation of that house cannot constitute the curtilage of his own home which was subsequently built. I do not accept that Mr. Hodge continued to use the old kitchen in the old house. I also do not accept that he continued to use the old hot rock wall stove. I accept the evidence of Mr. Hughes where he states that Mr. Hodge had in fact moved on from that house when he built his own home. I therefore find that the foundation of the old house and the land on which it is constructed is not so intimately connect to Mr. Hodge's home so as to form part of its curtilage.

[64] I agree with Ms. Richardson and Mr. Niles where it is stated that the cistern was clearly an amenity which was intimately connected to the house. It was therefore reasonable to have incorporated the cistern onto the parcel of land earmarked for Mr. Pickering. Other than that I am unable to find that Parcel 301 in general forms part of that curtilage.

[65] In any event, when one examines the last will and testament, I am not of the view that the intention of Mr. Hodge was to give those lands to Mr. Pickering. The subject of Clause 6 was the house, its content and its curtilage. It was not a clause which sought to devise to Mr. Pickering the lands upon

which Mr. Hodge may have reared his animals and grew crops. The express intention of that will was to devise Mr. Hodge's inheritance to his great nephews. He gave his house to Mr. Pickering. That was the subject of the clause. The curtilage can therefore be interpreted to mean a portion of land which is sufficient to give effect to this bequest. The cistern as falling within that plot of land was a reasonable course to pursue.

[66] In light of this, and given what was expressly stated to be the order being sought from the court, I find that the allocations made in Lot number 1 in the subdivision proposed by Mr. Cecil Niles is sufficient to constitute the curtilage of the house as was devised to Mr. Pickering. His claim to the entirety of Parcel 301 is therefore unsustainable and is therefore denied.

[67] In the circumstances, it is ordered that the defendant is to immediately take all steps necessary to complete the surveying and registration of the parcel of land earmarked for Mr. Pickering. Upon the completion of that process, the property is to be immediately conveyed to Mr. Pickering without further delay. Given the nature of the tensions which have arisen in the matter, the court will retain supervision of this process and the matter is therefore adjourned to 31st March, 2023 for report on the progress made in complying with the court's order.

[68] In relation to the issue of costs, I have considered the fact that the case as pleaded raised a legitimate issue regarding the interpretation of Clause 6 of the will. The use of the term curtilage in relation to the house devised to Mr. Pickering indeed created some uncertainty. Although Mr. Pickering's approach to the litigation could be described sometimes as being somewhat overly contentious, his claim raised a legitimate issue, which I think is a matter which justifies no order being made as to costs.

Ermin Moise
High Court Judge

By the Court

Registrar