

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

ANTIGUA AND BARBUDA

CLAIM NO. ANUHCV2020/0076

BETWEEN:

Wayne Carlton Otto

CLAIMANT

and

Paul Andrew

DEFENDANT

Appearances:

Mr. Loy Weste appearing with Ms. Lisa John-Weste for the Claimant
Mr. Charlesworth Tabor for the Defendant

2020: December 10th
2021: June 8th

JUDGMENT

[1] The claimant as administrator of his mother, the Estate of Ruthlyn Ericilla Annabella Francis also known as Ursula Francis also known as Ericilla Francis initiated these proceeding against the defendant seeking orders that:

- a. There be a declaration that the monies placed into the joint account of the defendant and the deceased, being approximately EC\$79,575.51, were or are deemed to have been procured by the defendant's undue influence over the claimant's deceased mother. The sum therefore ought to be set aside and paid to the estate of the claimant's deceased mother.
- b. Damages and recovery to the claimant as Personal Representative of the estate of the claimant's deceased mother ["the estate"] against the defendant in the sum of EC\$79,575.51 held by the defendant to the benefit of the estate under an implied, resulting and/or constructive trust;
- c. An account of what is due to the estate from the defendant in accordance with the above declaration;
- d. Repayment of the sum of EC\$79,575.51 to the estate together with interest thereon;
- e. Damages to the claimant

- f. Interest pursuant to section 27 of the Eastern Caribbean Supreme Court Act at a rate of 5% before judgment
- g. Interest pursuant to section 7 of the Judgments Act section 7.

The Evidence

- [2] The claimant and the defendant gave evidence in these proceedings.
- [3] The claimant is the son of Ruthlyn Francis. The evidence of the claimant is that the defendant was a cousin or the nephew of the claimant's deceased mother and a pastor of Christian Assembly Ministries Church. During the life of the claimant's mother, in or around May 2014, the defendant began to act as guardian, caretaker, religious and spiritual adviser to the claimant's mother. The defendant also performed all the banking transactions for the claimant's deceased mother during the day when the claimant was away at work. At the time when the defendant began to perform these duties the claimant's mother was 75 years of age, was in poor health and suffered from arthritis, diabetes, obesity, hypertension and heart disease. The claimant contends that his mother was very dependent on the defendant to provide her transportation and other needs. The evidence of the claimant is that, at the material time he was employed as a steel bender and that his job required that he leave his home at 6:30 in the morning and that he returned home in the evening. The claimant also indicated that he could provide assistance since he did not drive, and he resided in the 'country'. In those circumstances he was not able to assist with his mother with her transportation as well as other requirements.
- [4] The evidence of the claimant is that in or around May 2015 the deceased transferred her life's savings in the sum of EC\$79,575.51 from her saving account at the Bank of Nova Scotia into a joint account in the names of the mother of the claimant and of the defendant. The claimant's mother departed this life on 5th June 2015. After the departure the claimant gave the defendant a bag containing money and other documents which previously belonged to the claimant's mother. The other documents in the bag given to the defendant were land certificate, bank account information including the bank book of the claimant's mother. The claimant contends that after the bag was given to the defendant the defendant refused to return the bag with its contents. The documents were returned by the defendant in November 2019. The defendant disputes that the documents were kept by him to the exclusion of the claimant. The defendant's evidence is that he communicated with the claimant on numerous occasions to make arrangements for the documents to be given to the claimant.
- [5] The claimant also contends that the defendant, by reason of his position as religious adviser, nephew, guardian and caretaker of the deceased and by virtue of his special relationship with his mother, acquired dominion over the mind of his mother and procured the transfer of all his mother's savings into a joint bank account in the name of his mother and the defendant. The claimant submits that transfer resulted in losses to his deceased mother's estate. Thus, the claimant contends that the defendant holds the funds as a trustee on a resulting trust and is obligated to return the funds to the beneficial owners of the funds, the estate.

- [6] The defendant, a pastor of Christian Assembly Ministries Church, indicated that during a period of the life of the claimant's mother, his aunt, he assisted her and acted as a guardian and caretaker to her and to her son Paget Smith. Her son, Paget Smith, was mentally unstable and is now deceased. The claimant's mother predeceased Paget Smith. The defendant indicates that the caring for his aunt commenced long before her 75th birthday and initially consisted of the provision of food, water and transportation for his aunt and Paget Smith. The assistance continued until the claimant's mother and Paget Smith departed this life.
- [7] The defendant contends that although the claimant lived in the house with his mother and her son, Paget Smith, the claimant had nothing to do with the care and assistance of his mother and her son. The defendant recounts that the claimant's mother often complained to the defendant about the manner in which she was treated by the claimant and the fact that, at times, the claimant would engage in abusive and threatening behaviour towards her. The defendant also contends that as a result of the claimant's abusive behaviour towards the claimant's mother, she gave notice to the claimant to leave the house where she resided.
- [8] The defendant is adamant that up to the time when the claimant's mother (his aunt) departed this life she was of sound mind and it was she who indicated to him (the defendant) that she wanted him to be responsible for her affairs since he was the only person she trusted to take care of her and of her son. This, he contends, was the reason that his aunt took the decision to set up a joint account.
- [9] The defendant indicated that the funds in the account were used to make arrangements for the funeral expenses of his aunt and later used to take care of the Paget Smith who, as a result of an existing mental incapacity was unable to care for himself. Paget Smith departed this life in 2019 at the age of 65 or 66. The defendant cared for Paget Smith after the claimant's mother departed this life, that is from 2015 to 2019.

The Issue.

- [10] The Issues to be decided by the court is whether at the material time the relationship between the claimant's mother and the defendant raises the legal presumption of undue influence such that the monies in the joint account in the sum of EC\$79,575.51 should be deemed to be held on trust for and made payable to the estate of the deceased;

The Law and Analysis

- [11] On the matter of the doctrine of undue influence the Court of Appeal in the case of **Joseph Fenton et al. v. William Keith Thomas (Executor of the Estate of Peter William Molyneaux, Deceased)**¹ noted at paragraph 15 that:

"In *Murray v Deubery and Another*, the Court examined the doctrine of undue influence. In *Murray*, Sir Vincent Floissac stated:-

"The doctrine of undue influence comes into play whenever a party (the dominant party) to a transaction actually exerted or is legally presumed to have exerted influence over another

¹ MNIHCV AP2018/0004, COA Judgment delivered June 25, 2020, Price Findlay JA.

party (the complainant) to enter into the transaction. According to the doctrine, if the transaction is the product of undue influence and was not the voluntary and spontaneous act of the complainant exercising his own independent will and judgment with full appreciation of the nature and effect of the transaction, the transaction is voidable at the option of the complainant. This means that the complainant may elect to have the transaction rescinded if he has not in the meantime lost his right of rescission.

The modern tendency is to classify undue influence under two heads, namely class 1 (actual undue influence) and class 2 (presumed undue influence). Class 2 is further classified under two sub-heads. The first sub-head is class 2(A) which is descriptive of the legal presumption which arises from legally accredited relationships such as those existing between solicitor and client, medical adviser and patient, parent and child, and clergyman (or religious adviser) and parishioner (or disciple). The second sub-head is class 2(B) which is descriptive of the legal presumption which arises from a relationship whereunder the complainant generally reposed trust and confidence in the dominant party".

[12] The Court of Appeal continued at paragraph 20 of the judgment to note that:

*"In **Clement Lawrence and Cleopatra Ballantyne v First St. Vincent Bank Limited** at paragraph 37, Webster JA [Ag.] stated:*

Essentially, the law is that in a case of class 2B presumed undue influence the complainant will succeed in setting aside the impugned transaction by proof that the complainant reposed trust and confidence in the wrongdoer without having to prove that the wrongdoer exerted actual undue influence or otherwise abused such trust and confidence in relation to the transaction impugned. The authorities suggest that the presumption of undue influence may be rebutted by proving that the complainant had the benefit of independent legal advice before the transaction. In **Hilda Stoutt**, Mitchell JA [Ag.] stated at paragraph 36 that:

'As between the wrongdoer and the complainant, the existence of independent legal advice may go some way to rebut the presumption of undue influence. The presumption is not rebutted by showing that the complainant understood what (he or) she was doing and intended to do it. The wrongdoer can rebut the presumption only by showing that the complainant was either free from any undue influence on his part or had been placed, by receipt of independent (legal) advice, in an equivalent position. This involves showing that (he or) she was advised as to the propriety of the transaction by an adviser fully informed of all the material facts."

[13] In this matter it is not disputed that a joint account was established and that the funds previously held by the mother of the deceased were placed into this joint account. The account was in the name of the defendant and the mother of the claimant. It is also not disputed that the defendant assisted the claimant and gave support in the form of the provisions of water, transportation to obtain food, to collect medical benefits, to get medical attention and to attend the bank. The defendant also provided spiritual support to the mother of the claimant. It is clear from the evidence that the claimant did not assist his mother to the extent that his mother required. The explanation of the claimant for his lack of support is that his working hours limited the level of his assistance. The evidence of the defendant

is that the claimant was neglectful and abusive to his mother and to his brother and the claimant and his mother had a very bad relationship.

[14] In the circumstances of this case the claimant has not specifically pleaded whether the allegation is one of actual undue influence or presumed undue influence. In the claimant's closing submissions, counsel for the claimant states that the circumstances of this case fall within the ambit of Class 2A and Class 2B. Counsel contends that the relationship between the defendant and the claimant's mother include that of guardian and caretaker which fell within the ambit of Class 2B. The claimant further contends that the defendant was a pastor advisor to the mother of the claimant and thereby, creating a relationship which well within the parameters of Class 2A.

[15] Counsel for the claimant submitted to the court that "the Courts have always been vigilant to offer a higher level of protection from spiritual and religious influence which results in them parting with their property". Counsel referred to the dicta of Ungood-Thomas J in **Re Craig**² where it was stated that:

"...the influence of one mind over another is very subtle, and of all the influences religious influence is the most dangerous and the most powerful, and to counteract it, courts of equity have gone very far. They have not shrunk from setting aside gifts made to persons in a position to exercise undue influence over the donors, although there has been no proof of the actual exercise of such influence.; and the courts have done this on the avowed ground of the necessity of going this length in order to protect persons from the exercise of such influence under circumstances which render proof of it impossible. The courts have required of its non-exercise, and failing that proof, have set aside gifts otherwise unimpeachable."

[16] In the case before this court it is evident that there is an interaction which is spiritual between the defendant and the mother of the claimant. Whether this relationship may be one which can properly be characterized as the defendant being a spiritual advisor (that is a relationship of spiritual mentor and disciple) is uncertain. However, the cumulative effect of the roles played by the defendant in the life of the mother of the claimant points towards a relationship for which the claimant's mother placed trust and confidence in the defendant.

[17] This court must proceed to consider whether the transaction in question, that is the creation of a joint account comprising of EC\$79,575.51 is one which calls for an explanation.

[18] In the circumstances of this case, the claimant's mother was immobile, suffered from various ailments and required assistance to attend to many personal activities. The claimant's mother also had to care for her son who had a mental incapacity and unable to care for himself. In this court's view if the joint account only contained funds that would be reasonably required to attend to the daily and foreseeable needs of the claimant's mother and her son there would be little need for further enquiry. However, in the circumstances of this case the funds which were from the claimant's mother were in excess of \$79,000.00 and in such circumstances the transaction requires or calls for an explanation. Accordingly, there is a legal presumption of undue influence has been established.

[19] In such circumstances the evidential burden has been shifted to the defendant to show that there has not been undue influence. The evidence of the defendant is that he and his aunt experienced a very close relationship which pre-dated the creation of the joint account. The creation of the joint

² [1971] Ch. D. 95.

account was at the instance of his aunt; that he took care of his aunt out of genuine love and affection; she was and continued to be mentally sound until her death; that the claimant and his mother did not have a good relationship and the claimant's mother came to rely on the defendant for the defendant to assist with her needs and the needs of her son; the creation of the joint account was done solely for the purpose to allow the defendant to better provide care; the creation of the joint account enabled the defendant to better attend to the affairs of her son Paget Smith in the event of something happening to the defendant. These matters demonstrate the reliance placed by the claimant's mother on the defendant and speaks to looking after the foreseeable needs of the claimant's mother and her son Paget Smith.

[20] This court notes that there is no evidence that the claimant's mother engaged independent consultation regarding the joint account or considered possible options which could have achieved the before mentioned objectives. The defendant has failed to rebut the presumption of undue influence on that part of the transaction which requires explanation.

[21] Accordingly, this court has determined that the defendant holds on trust for the estate of Ruthlyn Ericilla Annabella Francis also known as Ursula Francis also known as Ercilla Francis the total sum in the joint account less:

- a. The sum used or reasonably used for the care of the said Ruthlyn Ericilla Annabella Francis also known as Ursula Francis also known as Ercilla Francis and her son Paget Smith from the time of transfer to the time of death of each person.
- b. The sum used for the funeral and related funeral expenses of the said Ruthlyn Ericilla Annabella Francis also known as Ursula Francis also known as Ercilla Francis and her son Paget Smith.

[22] **It is also ordered** that the defendant to file and serve within 90 days of today's date a statement of accounts verified by affidavit. The claimant to file and serve a notice of omissions or challenges to any item in the account together with particulars and grounds for matters challenged within 21 days thereafter. Matter to be listed for the hearing on the accounts thereafter. Costs to be determined.

Marissa Robertson
High Court Judge

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Registrar