

EASTERN CARIBBEAN SUPREME COURT
FEDERATION OF ST. CHRISTOPHER AND NEVIS
NEVIS CIRCUIT

IN THE HIGH COURT OF JUSTICE
(CIVIL)

SUIT NO: NEVHCV2013/0105

BETWEEN:

VIOLET JEFFERS

and

Claimant

MARILYN MAYNARD

Defendant

Appearances:

Mr. Jeffery Nisbett with Ms. Mickia Mills for the Claimant.

Mrs. Dahlia Joseph Rowe with Mr. Adrian Daniel for the Defendant.

2015: January 22, 23
2015: March 18

JUDGMENT

[1] **WILLIAMS, J.:** The Claimant Violet Jeffers claims against the Defendant for the following;

- 1) A Declaration that the transfer of the Claimant's property located at Prospect Estate to the Defendant is deemed to have been procured by undue influence and ought to be set aside and cancelled;
- 2) An order that the costs required for retransfer of the said property to the Claimant be borne by the Defendant.
- 3) Costs

4) Such further or other relief as the Court deems just.

[2] **The Background**

- a) Mrs. Marilyn Maynard is the niece of Violet Jeffers since Marilyn Maynard's father is the brother of Ms. Jeffers.
- b) Ms. Jeffers owned property in Prospect Estate, St. John's Parish, Nevis.
- c) On the 23rd November 2012, Ms. Jeffers executed a Memorandum of Transfer in favour of Mrs. Maynard and herself as Joint tenants of her property at Prospect Estate registered in Book 51, Folio 24 in the Register of Titles and valued at \$750,000.00.

[3] The Claimant now claims that the transfer of her property which is registered in Book 51 Folio 24 in the names of the Claimant and the Defendant was procured as a result of the undue influence of the Defendant, and seeks a Declaration from the Court that the Claimant's property situated at Prospect Estate, St. John's, Nevis, was so procured and should be set aside and cancelled.

The Evidence

[4] In the witness statement of Ms. Jeffers dated 11th September 2014, she states that she is 81 years old, and a retired teacher, who once headed the Department of Social Services in St. Kitts. She also worked for Howard University in Washington D.C, U.S.A and taught at Howard University and other Hospitals in the area of Social Services.

[5] Ms. Jeffers stated further that after she retired from Howard University she returned to Nevis and built a house which she now resides in at Prospect Estate, St. John's Parish, with her savings and a loan from the National Bank. Her house is a two storey dwelling standing on 21760 square feet of land and valued at \$750,000.00.

- [6] The Claimant also stated in her witness statement that she never married and did not have children of her own, but she formed a close bond with her niece, Marilyn Maynard. A bond which was one of deep trust and affection because Marilyn's father who was her brother, and herself shared a very adoring relationship.
- [7] Ms. Jeffers stated that Marilyn took care of her and she depended on her. When she had eye surgery in 2012, she became increasingly dependent on her as she could no longer drive, and Marilyn Maynard then did her grocery shopping and prepared her meals.
- [8] Ms. Jeffers claimed that since Marilyn Maynard served as her caretaker, she made her a signatory to her Bank accounts at National Bank and Bank of Nevis, and lodged the Bank books with her for safekeeping. Ms. Jeffers stated that she also placed the keys to her house and safety deposit box at National Bank with Ms. Jeffers.
- [9] Ms. Jeffers also states that on the 22nd November 2012 when she visited the offices of Theodore Hobson Q.C, she transferred her property located at Prospect to Marilyn Maynard and herself to hold as Joint tenants. She did not speak to another lawyer about the transfer of her property, since Mr. Hobson prepared the transfer documents for the Title to be registered in both names.
- [10] She claims that subsequent to her surgery she discovered that Marilyn Maynard had withdrawn several sums from her Bank accounts of which she had no knowledge. She cited an example of a withdrawal from her account at the Bank of Nevis in January 2013 for the sum of \$755.85 for a plane ticket for Wayne Maynard, Marilyn Maynard's son which she did not authorise.
- [11] Ms. Jeffers states that in June 2013 her nephew Rumelo Jeffers visited her and during that time she discovered that she could not locate her Certificate of Title to her property at Prospect. She went to visit Mr. Theodore Hobson Q.C, to ask for her Certificate of Title,

but he refused to give it to her saying that he had received instructions from Marilyn Maynard and herself to keep the Certificate of Title

- [12] As a result of these eventualities Ms. Jeffers states that she no longer trusted the Defendant Mrs. Maynard and realized that Mrs. Maynard had arranged for her, to transfer her property to her in a way in which she Marilyn Jeffers stands to get the entire property. Ms. Jeffers also stated that she requested of Mrs. Maynard that she retransfer the property to her in her sole name, even though she requested her to do so by her lawyer.
- [13] The Claimant also stated that she did not wish to hold the property with Marilyn Maynard as Joint tenants; and she did not intend for Mrs. Maynard to get everything. She had told Mrs. Maynard of the plans she had for her property and these plans did not include a plan for Mr. Maynard to get all of her property, since she had other nieces and nephews who she intended to give a share of the property.
- [14] Ms. Jeffers reiterated that Ms. Maynard took advantage of their close relationship and dependence on her, and in these circumstances, she is asking the Court to order Ms. Maynard to retransfer her property to her.
- [15] Under cross-examination by Mrs. Dahlia Joseph-Rowe, Ms. Jeffers stated that she was an independent person and continued to be an independent person. She took the bus when she needed to come to town, and she did her grocery shopping and took care of herself.
- [16] Ms. Jeffers continued under cross-examination to state that she did not remember calling Mrs. Maynard in August 2012 and although it was possible, she did not remember. Ms. Jeffers did not recall if she had asked Mrs. Maynard to assist with her affairs, but she had put Mrs. Maynard on her Bank book at National Bank and the Bank of Nevis. Ms. Jeffers also stated that she did not remember if Mrs. Maynard or her husband came every day to bring lunch to her, but she said that they brought lunch to her sometimes.

[17] Still under cross-examination Ms. Jeffers stated that she did not remember the date of her eye surgery, did not really know when she had sold her vehicle, could not tell when she built her home but it was her wish that her home should remain in her family as she had no intention for her home to be in the hands of a stranger.

She had given a lot of thought to who should inherit her home and since most of her nieces and nephews lived abroad, she had put Mrs. Maynard on her Bank account. She went on to state that she was confident that Mrs. Maynard could take care of her affairs as she was the closest relative here as all the others lived abroad.

[18] Under continued questioning from Mrs. Dahlia Joseph Rowe, Counsel for the Defendant, Ms. Jeffers responded that she could not remember all the discussions she had with Mrs. Maynard and she could not remember telling her that she wanted to inherit her home. Ms. Jeffers claimed that Mrs. Maynard's father was her brother and when he died, Mrs. Maynard inherited his house, so it would not be fair for her to give Mrs. Maynard her house and not the others who were dear to her.

[19] In relation to her relationship with Mr. Theodore Hobson Q.C, Ms. Jeffers stated that when she bought the land in Prospect, Mr. Hobson could have been her lawyer. She recalled going to his office and he came to her house to address a problem that was developing with Mr. and Mrs. Maynard, but she could not recall going to his office to make a Will. Ms. Jeffers stated further that she did not remember telling Mr. Hobson that she wanted to give all her property to Mrs. Maynard and she did not remember Mr. Hobson telling her to make a Will instead of a transfer of all her property. Under that Will she gave all of her property to Mrs. Maynard, but she changed her mind as something went wrong, she did not want Mrs. Maynard to have everything and she wanted her to share what she had with the others.

[20] Ms. Jeffers continued her evidence as follows:

"I gave Mrs. Maynard my property to share with the others; I changed my mind because something serious happened to make me change my mind. I do not remember Mr. Hobson telling me to make Mrs. Maynard a Joint tenant of the property; if I made such a decision something happened to make me change my mind.

Mrs. Maynard did not ask me for anything; I trusted her, she did not force me to do anything, but she overstepped her boundaries taking out money and taking over everything. Nobody forced me to do anything. I made that decision."

[21] The 2nd witness for the Claimant Rumelo Jeffers, the nephew of Ms. Jeffers who lives in the U.S.A, stated that he lived with Ms. Jeffers when he visited Nevis.

When he visited in February 2013, he had stayed with Ms. Jeffers and had gone to the Court building to get the Deed of her property. They then visited Mr. Hobson Q.C's office, and as a result of what they were told, they saw and spoke to Mr. Hobson and he said that he was not going to give them the Deed since both parties had requested that he hold the Deed in his office.

[22] Under cross-examination Mr. Jeffers admitted that Mrs. Maynard took care of Ms. Jeffers between August 2012 and December 2012, but he did not know the extent of that care. He also admitted that both ladies had a good relationship, but did not know the extent of it; and that he was not present in Nevis in August 2012 in Mr. Hobson Q.C's office and he was not present when Ms. Jeffers gave instructions to Mr. Hobson Q.C to prepare a Memo of Transfer of her property to Mrs. Maynard. He denied that he was the influence behind his Aunt's decision to bring this claim.

[23] The Defendant Mrs. Maynard in her Witness Statement stated that she received a call on the 23rd August 2012 from her Aunt Violet Jeffers, the Claimant and she requested a

meeting with her husband and herself at the home at Prospect Estate; she was surprised at the call and invitation, as it had never occurred before.

- [24] Mrs. Maynard also states that at the said meeting, Ms. Jeffers told her and her husband that she wanted her to have all her property and everything she owned, and that she wanted her to pass on the property to Mrs. Maynard's children when she died.

Mrs. Maynard claims that this statement coming from Ms. Jeffers came as a shock to her as she and her Aunt had only a cordial relationship at this point. She further stated that she asked her Aunt about her other nieces and she had stated that these nieces lived in the U.S.A and would sell her property. Mrs. Maynard stated that Ms. Jeffers was emphatic that because she Mrs. Maynard lived on the Island and had children, and her father who was her eldest brother had assisted with her education, that she should have her property.

- [25] Mrs. Maynard states that she was aware that Ms. Jeffers visited an Attorney-at-law in August 2012 and made her Last Will and Testament naming her as sole beneficiary to her Estate, as she gave her a copy of the Last Will and Testament dated 25th August 2012. (Exhibit MM1). At Ms. Jeffers request Mrs. Maynard stated that she visited the St. Kitts and Nevis National Bank and The Bank of Nevis where Ms. Jeffers added her name as joint account holder to her accounts.

- [26] Mrs. Maynard states in her witness statement at paragraph 11 that on the 23rd November 2012, Ms. Jeffers signed a Memorandum of Transfer to make her a joint tenant of her property. She paid for the Transaction to be done and exhibited a copy of the receipt (Exhibit MM3).

- [27] Mrs. Maynard further states that on the 14th February 2013, Ms. Jeffers called her and requested that she deliver her Bank and cheque books, and any documents that she held for her which she did. Ms. Jeffers also told her that she did not need her anymore.

[28] Mrs. Maynard claims she found Ms. Jeffers' behaviour very strange, but since February 2013, she did not have any further communication with her, and received no explanation about the change in relationship.

Subsequently she received a letter from Ms. Jeffers' Attorney dated 2nd July 2013 indicating that Ms. Jeffers wanted her property retransferred in her sole name.

[29] In commenting on the evidence of Ms. Jeffers, Mrs. Maynard stated that she and her husband had decided to pay for the transaction which transferred the property to her as she thought it would be fair to pay that money if they were going to be beneficiaries to Ms. Jeffers' property.

[30] Mrs. Maynard also stated that Ms. Jeffers was not totally dependent on her and could do most things for herself.

The monies that were taken from her Aunt's account were taken by her for Ms. Jeffers Land and House tax and for the Insurance of the property. Mrs. Maynard also admitted that she had to withdraw monies from the Bank of Nevis for an Airline ticket for her son Wayne Maynard. She further stated that Ms. Jeffers had authorised her to withdraw monies from the accounts that belonged to both of them.

[31] Under cross-examination by Mr. Jeffrey Nisbett, Counsel for the Claimant Mrs. Maynard admitted that she never made any deposits to the accounts at the National Bank and Bank of Nevis, but stated that when Ms. Jeffers put her name on the Accounts, she was saying "the money is yours".

Mrs. Maynard also agreed that she did not contribute to the expenses of the maintenance of the House because she made other contributions not necessarily monetary.

- [32] Mrs. Maynard was adamant that she had not taken advantage of her Aunt, she had not spent her money as if it belonged to her, and that she was looking after her Aunt's affairs as she had put her in charge.
- [33] In relation to Mr. Hobson Q.C's statement, Mrs. Maynard claimed that she only became aware of the transfer of Ms. Jeffers property to her when she went to Mr. Hobson's office. She never spoke to Mr. Hobson nor did she hear Mr. Hobson say that instead of transferring the property, to her, he would do the transfer as Joint tenants.
- [34] Mrs. Maynard continued in her evidence and stated that she did not dissuade Ms. Jeffers from giving her the property which she knew was valued at \$750,000.00. She also admitted that she did not tell Ms. Jeffers to keep the property to be able to look after herself.
- [35] Mrs. Maynard stated that she knew stamp duty had to be paid on the transaction by Ms. Jeffers, but she decided to take care of the Stamp Duty as it was a large sum of money, and it was unfair for Ms. Jeffers to pay such a large sum.
- [36] Still under cross-examination Mrs. Maynard disagreed that Mr. Hobson had kept the Certificate of Title so that Ms. Jeffers' memory would not be jogged if she saw the Certificate of Title. She was adamant that Ms. Jeffers wanted her to have the property and had made a Will to that effect. She was also adamant that Mr. Hobson was never her Lawyer and never acted for her in her life.
- [37] Mr. Theodore Hobson Q.C, in his witness statement stated that Ms. Jeffers was his client and that he knew her since he was a child.
- In 2012, Ms. Jeffers had visited his Chambers and consulted him about her decision to transfer her property located at Prospect Estate, St. John's Parish, Nevis to her niece, Marilyn Maynard. Mr. Hobson further stated that he dissuaded Ms. Jeffers and advised her

- to make a Last Will and Testament. On his advice Ms. Jeffers instructed him on the contents of her Last Will and Testament (Exhibit TH1).
- [38] Mr. Hobson Q.C, stated further that Ms. Jeffers again returned to his Chamber's with Mrs. Maynard and her husband and instructed him again to transfer the property to Mrs. Maynard on the basis that Mrs. Maynard was her favourite niece and Mrs. Maynard's father had helped her when she needed assistance. Further Mrs. Maynard had children who were expected to go to University.
- [39] Mr. Hobson Q.C, claimed that in the presence of Mrs. Maynard, he strongly suggested that instead of transferring the property to Mrs. Maynard, she could have the property transferred to them as Joint tenants. Ms. Jeffers agreed with his advice and he effected the transfer of the property to Ms. Jeffers and Mrs. Maynard as Joint tenants.
- [40] Mr. Hobson Q.C further stated that Ms. Jeffers and Mrs. Maynard agreed that Mrs. Maynard would be responsible for all fees associated with the transaction.
- [41] Mr. Hobson continued in his witness statement and stated that Ms. Jeffers had visited his office in June 2013 and demanded the return of her Certificate of Title to her property and to stop the process of Transfer of the property. He had also received a letter from Mr. Jeffrey Nisbett who indicated that he was acting on behalf of Ms. Jeffers and requested that he deliver the original Certificate of Title to her. Mr. Hobson was adamant that Ms. Jeffers was at all material times his client.
- [42] Under cross-examination from Counsel for the Claimant, Mr. Hobson Q.C, stated that he never acted for Mrs. Maynard and was asked by Mrs. Maynard's solicitors to give a witness statement.

He had never taken the position that he may be required to divulge what Ms. Jeffers may have told him. He stated further that when Ms. Jeffers and Mrs. Maynard were at his Chambers he did not know the value of her property and was not concerned about the other properties she had.

Mr. Hobson Q.C, admitted that no alarm bells were set off after he made the Last Will and Testament and then shortly afterwards, Ms. Jeffers wanted a Transfer of her property to Mrs. Maynard.

Mr. Hobson further admitted that he did not tell Ms. Jeffers that she should get Independent advice and it never occurred to him that there was a conflict of interest in the matter.

Mr. Hobson also admitted that he did not explain to Ms. Jeffers that Mrs. Maynard could move into the house as a Joint tenant, he also did not advise Ms. Jeffers that Mrs. Maynard could deal with her half of the property, and he did not tell her that Mrs. Maynard could apply to the Court to have her half share partitioned. He had also not advised her to get another lawyer to independently advise her.

When presented with entries from the Registry's Presentation Book which appeared to state that he was acting for the Vendor and the Purchaser in the transaction involving the transfer of the property of Ms. Jeffers to Marilyn Maynard,

Mr. Hobson was adamant that he had acted solely for Ms. Jeffers in the matter, and that his Associate had made the entries in the Presentation book in error.

He also stated that he had not breached Section 62 of the **Stamps Act**, and the "passing on" of the liability to Mrs. Maynard to pay the stamp duty was out of love and affection for Ms. Jeffers. He claimed that it was not a criminal offence which had occurred.

The Law

[43] Counsel for the Claimant submitted that support for the Claimant's position was well illustrated in the House of Lords case of Royal Bank of Scotland vs. Etridge No. 2.¹ where the Law Lords held that:

“A transaction that is not readily explicable by the relationship of the parties remains one of the two elements necessary to give rise to a rebuttable evidential presumption of undue influence, shifting the evidential burden of proof from the party who is alleging undue influence to the party who is denying it.”

Lord Nicholls of Birkenhead in the said case explained very succinctly the concept of **“Undue Influence”** as follows;

“Undue Influence is one of the grounds of relief developed by the Courts of Equity as a Court of conscience. The objective is to ensure that the influence of one person over another is not abused. In everyday life, people constantly seek to persuade those with whom they are dealing to enter into transactions whether great or small. The Law has set limits to the means properly employable for this purpose. The Law will investigate the manner in which the intention to enter into the transaction was secured; how the intention was produced, and if the intention was produced by unacceptable means, the Law will not permit the transaction to stand.

The means used is regarded as an “undue” influence and hence unacceptable; whenever the consent thus procured ought not fairly to be treated as the expression of a person's free will, it is impossible to be more precise or definitive.

Equity identified broadly two forms of “unacceptable”; The first comprises overt acts of improper pressure or coercion such as unlawful threats. The second form arises out of a

¹ [2001] UKHL 44

relationship between two persons where one has acquired over another, a measure of influence or ascendancy of which the ascendant then takes unfair advantage. In cases of this latter nature, the influence one person has over another provides scope for Misuse without any specific overt acts of persuasion.”

See Also: **National Commercial Bank (Jamaica) Ltd. vs. Hew and others.** ²

[44] The learned Law Lord Nicholls in the said case explains further;

“Whether a transaction was brought about by the exercise of “Undue Influence” is a question of fact; the general principle is that he who asserts a wrong has been committed must prove it; the burden of proving an allegation of undue influence rests upon the person who claims to have been wronged; the evidence required to discharge the burden of proof depends **on the nature of the alleged undue influence, the personality of the parties, their relationship, the extent to which the Transaction cannot readily be accounted for by the ordinary motives of ordinary persons in that relationship, and all the circumstances of the case. (My emphasis)**

The proof that the Complainant placed Trust and confidence in the other party in relation to the management of the complainant’s financial affairs, coupled with a transaction which calls for explanation will normally be sufficient, fairly satisfactory evidence to the contrary, to discharge the burden of proof. On proof of these two matters the stage is set for the Court to infer that in the absence of a satisfactory explanation, the transaction can only have been procured by Undue Influence. In other words, proof of these two facts is prima facie evidence that the Defendant abused the influence he acquired in the parties relationship. He preferred his own interests, He did not behave fairly to the other. So the

² [2003] UKPC 51

evidential burden then shifts to him. It is for him to produce evidence to counter the inference which otherwise should be drawn.”

[45] Also in the case Hart et al vs. Burdbidge et al; Samways et al vs. Burbidge et al³

Sir William Blackburne adumbrated the principles applicable to “Undue Influence” which he stated are well established; He stated as follows

“The influence in question led to the making of the impugned transaction and that it was undue in the sense that the transaction was not the result of the free exercise of an independent will on the part of the person at whose expense the transaction was made.

In the case of actual undue influence, it is for the person complaining of the influence to prove affirmatively that the transaction in question was caused by the influence alleged.

In the case of presumed undue influence the Court’s willingness to intervene to reverse the effect of the influence is triggered by proof on a balance of probabilities of essentially two matters, the burden of proof lying on the person complaining of the undue influence.

The first is that the person at whose expense the impugned transaction was made reposed trust and confidence in the recipient of the benefit conferred by the transaction, or that the latter acquired ascendancy or control over the former. The second is that the transaction was the result of the free exercise by the transferor of an Independent will.”

[46] In Daniel vs. Daniel ⁴ Ward L.J said this-

“In the broadest possible way the difference between the two classes is that the case of actual undue influence, something has to be done to twist the mind of the donor whereas

³ [2013] EWHC 1628

⁴ [2005] EWCACIV 507 ibid

in cases of presumed undue influence, it is more a case of what has not been done, namely ensuring that Independent advice is available to the donor.”

[47] Again to extract from the speech of Lord Nicholls in **Etridge (No.2)**

“The principle is not confined to cases of abuse of trust and confidence. It also includes cases where a vulnerable person has been exploited. Indeed there is no single touchstone for determining whether the principle is applicable. Several expressions have been used in an endeavour to encapsulate the essence, trust, confidence, reliance, dependence or vulnerability on the one hand, and the ascendancy, domination or control on the other. None of these descriptions is perfect. None is all embracing. Each has its proper place.”

[48] As already noted, there are two prerequisites to the evidential shift in the burden of proof from the complainant to the other party. First that the complainant reposed trust and confidence in the other party, or the other party acquired ascendancy over the complainant. Second that the transaction is not readily explicable by the relationship of the parties.

[49] In the leading authority of **Allcard vs Skinner** ⁵ Lindley L.J stated;

“That where the donor parted with almost all of her property, and the gift is so large as not to be reasonably accounted for on the ground of friendship, relationship, charity or other ordinary mean act, the burden is upon the donee to support the gift.”

[50] The second prerequisite as expressed by Lindley L.J in the said case is that of Good Sense; which he states is a necessary limitation upon the width of the first prerequisite.

⁵ 36 ChD 145

“It would be absurd for the Law to presume that every gift by a child to a parent, or every transaction between a client and his solicitor, or between Doctor and patient was brought about by undue influence unless the contrary is affirmatively proved; such a presumption would be too far reaching. The Law would be out of touch with everyday life if the presumption were to apply to every Christmas or Birthday Gift.....

The Law would be rightly open to ridicule, for transactions such as these are unexceptionable they do not suggest that something may be amiss. So something is needed before the Law reverses the burden of proof, something which calls for an explanation; when that something is present, the greater the disadvantage to the vulnerable person, the more cogent must be the explanation before the presumption will be regarded as rebuffed.”

[51] In **Turkey vs. Awadh**⁶ Buxton L.J explained that the transaction must not simply be one that calls for an explanation but one where the explanation is not forthcoming, only then does the burden shift.

[52] Buxton L.J states further that “once the burden of proof shifts to the person seeking to uphold the transaction and was shown to be a result of the free exercise by the transferor of an independent will, the extent of the task which lies on that person is likely to depend on the strength of the matters which have caused the shift in the burden of proof.”

[53] Lord Hailsham LC in the Privy Council case of **Inche Noriah vs. Shaik Allie Bin Omar**⁷ stated;

“It is necessary for the donee to prove that the gift was the result of a free exercise of Independent will. The most obvious way to prove this is by establishing that the gift was

⁶ [2005] EWCA CIV 382

⁷ [1929] 98LJPC 1

made after the nature and effect of the transaction had been fully explained to the Donor by some independent and qualified person so completely, as to satisfy the Court that the Donor was acting independently of any influence from the Donee and with the full appreciation of what he was doing, and in cases where there are no other circumstances, this may be the only means by which the Donee can rebut the presumption.”

[54] In **Niersmans vs Pesticcio**⁸ Mummery LJ made the following point;

“Although undue influence is sometimes described as an Equitable wrong or even as a species of Equitable fraud, the basis of the Court’s intervention is not the commission of a dishonest or wrongful act by the Defendant, but that as a matter of public policy, the presumed influence arising from the relationship of trust and confidence should not operate to the disadvantage of the victim.

The Court scrutinises the circumstances in which the transaction, under which benefits were conferred on the recipient took place and the nature of the continuing relationship between the parties, rather than any specific act or conduct on the part of the recipient. A transaction may be set aside by the Court, even though the actions and conduct of the person who benefits from it could not be criticised as wrongful.”

Court’s analysis

[55] All of the witnesses who gave evidence impressed me as persons who were attempting to speak truthfully about the facts and events as they recalled them.

However in the case of Ms. Jeffers, she appeared to have difficulty in recalling the events and occasions which surround this matter. While she claimed to have a great attachment

⁸ [2004] EWCA CW 372

to her niece, she also admitted she had other nieces and nephews and could not remember telling Mrs. Maynard that she wanted her to inherit her home. Her evidence is; “I would not give Mrs. Maynard all I have as my other nieces and nephews are dear to me. I don’t remember telling Mr. Hobson that I wanted to give all my property to Ms. Maynard. I don’t remember Mr. Hobson telling me to make a will instead of a Transfer of all of my property. I changed my mind, something went wrong.”

[56] Ms. Jeffers is quite elderly and frail, but I did not get any obvious indication that her intellect was in anyway impaired when she gave her testimony. She seemed quite capable of understanding questions and documents which were put to her.

But although her recollection of events was wholly unreliable, she refused to accept that she could have ever wished to benefit Ms. Maynard. When evidence of her Last Will and Testament dated 29th August 2012 was presented to her, her constant refrain was that she had no recollection of the matters in question.

[57] I have made allowance for the age of Ms. Jeffers and for her recollection of events and although I will approach her evidence with great care, I will not hold her evidence as untruthful.

[58] Ms. Jeffers did not give specific evidence from which it would be right to conclude or justify a finding of actual undue influence on the part of Mrs. Maynard. To have reached such a finding, I would have needed much more specific evidence. In affect I am being asked to shortcut the careful process by which the Court evaluates the evidence with a view to reaching a finding of actual Undue Influence.

[59] The extent to which Ms. Jeffers relied and depended on Mrs. Maynard is evident from her own evidence.

In her witness statement at paragraphs 4-8, Ms. Jeffers states;

“The bond between Marilyn and I was one of deep trust and affection. Marilyn took care of me, I depended on her. In the latter part of 2012, I underwent eye surgery; during that time I became increasingly dependent on Marilyn for many things.

As Marilyn was my caretaker, I made her signatory on my Bank accounts held at the Bank of Nevis and the National Bank. Marilyn was authorised to make withdrawals from my account and to handle my other business on my behalf. I also placed in her possession the keys to my house and to the safe deposit box at National Bank.”

[60] Mrs. Maynard herself made a point of the extent to which her Aunt Ms. Jeffers trusted her. At paragraphs 8-10 of her witness statement she stated;

“I fulfilled all the requests made by Aunt Violet and I paid all utility bills from the joint account held by myself and Aunt Violet; I paid for the various services with funds from the joint accounts I held with Aunt Violet. When accessing the joint Bank accounts Aunt Violet usually accompanied me to the Bank to transfer monies from the saving to the checking account. On many of these occasions, Aunt Violet asked me to withdraw cash for her personal use.”

[61] Over and above these explicit statements there was the evidence that Mrs. Maynard accompanied Ms. Jeffers when she went to see Mr. Hobson Q.C.

The very fact that it was Mrs. Maynard who gave her full attention to Ms. Jeffers serves to emphasise the close, trusting and dependent relationship that existed between Ms. Jeffers and Mrs. Maynard. She looked to Mrs. Maynard for whatever assistance she needed.

While I have no doubt that Ms. Jeffers was capable of understanding her affairs, and was able to deal with her household. I was left with the unmistakeable impression that Ms.

Jeffers needed assistance with larger and more complex matters when she would rely on Mrs. Maynard to help her. In my opinion, it has been amply demonstrated that Ms. Jeffers

shared a relationship with Mrs. Maynard which was described by Lord Nicholls in the **Etridge No. 2** case.

Lord Nicholls had referred to a relationship of “Trust and confidence, reliance, dependence or vulnerability” on the one hand, “ascendancy, domination or control” on the other.

- [62] On the 29th August 2012, Ms. Jeffers executed her Last Will and Testament wherein she bequeathed to her niece Marilyn Maynard in the following manner,
- “My Land with dwelling house thereon registered at Register Book 36, Folio 58 in the Register of Titles of the Nevis Circuit and situated at Prospect Estate, in the Island of Nevis to my said niece Marilyn Enora Maynard of Ramsbury Estate, Nevis absolutely
- I give and bequeath all my money at the St. Kitts-Nevis-Anguilla National Bank to my said niece, Marilyn Enora Maynard of the aforementioned address absolutely.
- I give and bequeath the residue of my Estate, whether Real or personal wherever situated in the Island of Nevis to my said niece Marilyn Enora Maynard of the aforesaid address.”
- (Exhibit CDH2)

- [63] On the 23rd of November 2012, Ms. Jeffers signed a Memorandum of Transfer whereby she transferred to herself and Marilyn Maynard as Joint tenants the property situated at Prospect Estate. (Exhibit CDH3)
- [64] The transfer to Ms. Maynard by Ms. Jeffers of her property as a joint tenant appears to me from the evidence to have occurred without Ms. Jeffers receiving the advice of an Independent Attorney-at-Law. She was 79 years old at the time this happened.
- [65] In these circumstances, it is clear to me that an explanation is called for.
- These transactions were entered into by Ms. Jeffers at a time when she reposed trust and confidence in Mrs. Maynard in respect of her financial affairs and was increasingly dependent on Mrs. Maynard for assistance in dealing with these affairs. The consequence

of this is that the burden shifts to Mrs. Maynard to rebut the presumption of undue influence thereby arising.

[66] To rebut the presumption, Mrs. Maynard has to show that in acting as she did Ms. Jeffers was exercising, a full, free and independent will and was informed about what she was doing.

[67] In her evidence, Mrs. Maynard stated that she had received a surprise call from Ms. Jeffers in August 2012 requesting a meeting with herself and her husband. At that meeting Ms. Jeffers proceeded to tell her that she wanted her to have her property and everything she owned. Mrs. Maynard claimed that this came as a shock to her as she and Ms. Jeffers had only shared a cordial relationship before that time.

Mrs. Maynard further stated that when she asked about her other brothers and sisters Ms. Jeffers had said that they all lived abroad and would sell her property which is not what she wanted. On that said day Ms. Jeffers made an appointment with a lawyer.

On the 29th August 2012, Ms. Jeffers made her Last Will and Testament and named her as sole beneficiary to her Estate.

[68] At paragraph 11 of her witness statement Mrs. Maynard states that on the 23rd November 2012, Ms. Jeffers executed a Memorandum of Transfer thereby making herself and Mrs. Maynard, Joint tenants of Ms. Jeffers' property situated at Prospect Estate.

There is no evidence that Ms. Jeffers was advised how her interests might best be safeguarded or what changes could be made to her Last Will and Testament dated 29th August 2012.

[69] Ms. Maynard had stated under cross examination that when Ms. Jeffers had put her name on the Joint account, she was saying the money on the account was hers although she had not made any deposits to the Accounts. She however claimed that she did not spend

her Aunt's money as if it belonged to her. She was put in charge because her Aunt trusted her and she had conducted her Banking and other affairs.

[70] In Ms. Maynard's evidence, there was no coherent explanation as to why Ms. Jeffers did not want her other brothers and sisters name on the property. She stated that her Aunt's reason was that "they live in the U.S.A and may sell my property which is not what I want."

[71] If this was what Ms. Jeffers had indeed said to Mrs. Maynard that should have been sufficient reason to put doubt in the mind of Mrs. Maynard whether Ms. Jeffers fully understood what she was doing.

[72] In the circumstances, I am left with a real concern as to whether Ms. Jeffers really understood what rights she should have or considered having to secure her interests in the property and funds she was allowing Ms. Maynard to have access to.

[73] However even if Ms. Jeffers fully understood what she was doing and fully intended to act as she did, the question is still hanging as to whether what she did, was as a result of the relationship of trust and confidence, reliance and dependence that existed between them,

[74] In relation to the evidence of Mr. Theodore Hobson Q.C under cross-examination, he took the view that upon his advice he had been given instructions by Ms. Jeffers to arrange for the transfer of a half share in her property to Mrs. Maynard. He did not think that he was being asked to give any advice as to the merits or implications of such a transfer, and he saw no reason to speak to Ms. Jeffers privately about the proposed transfer in order to make sure it was what she really intended.

In Mr. Hobson Q.C's view he had clear instructions to prepare the relevant documents for the purpose of a Transfer of property into joint names and this is what he did.

Legal Advice

- [75] The importance of Legal advice in rebutting the presumption of undue influence which might otherwise arise in a case, has received attention in a multiplicity of cases.

The classic modern exposition of the Law is to be found in the Judgment of Lord Nicholls of Birkenhead in **Royal Bank of Scotland vs. Etridge No. 2**⁹ which I have already cited and I will not lengthen this Judgment by quoting extensively from it again.

- [76] In **Inche Noriah vs. Omar** the Privy Council stated as follows;

“The decision in each of these cases seems to their Lordships to be entirely consistent with the principle Law as laid down in **Allcard vs. Skinner**.

But their Lordships are not prepared to accept the views that Independent legal advice is the only way in which the presumption can be rebutted, nor are they prepared to affirm that independent legal advice when given, does not rebut the presumption, unless it was shown that the advice was taken. It is necessary for the Donee to prove that the gift was made after the nature and effect of a transaction had been fully explained to the Donor by some independent and qualified person, so as to satisfy the Court that the Donor was acting independently of any influence from the Donee, and with full appreciation of what he was doing, and in cases where there are no other circumstances, this may be the only means by which the Donee can rebut the presumption....

Nor are their Lordships prepared to lay down what advice must be received in order to satisfy the rule in cases where independent legal advice is relied upon; it must be given with a knowledge of all the relevant circumstances, and must be such as a competent and honest adviser would give if acting solely in the interests of the Donor.

⁹ ibid

[77] Therefore what must be shown is that the gift was made after full, free and informed thought.

See **Bonaggi Clarke vs John Clarke and Cheddi Thomas** ¹⁰

[78] In the Judgment of Mummery L.J in **Niersman vs Pesticcio**, he stated;

“The transfer of a house is a substantial transaction. A House is the most valuable asset that most people own. If a transfer is made by one person on the dependent side of a relationship of trust and confidence to a person in whom trust has been placed. It must be shown by the trusted party that the disposition was made in the independent exercise of free will, after full and informed consideration. The Court may grant relief to the Transferor, even though the transfer was not made as a result of any specific, reprehensible conduct on the part of the trusted transferee.”

[79] In the present case, it is submitted that the August 2012 transfer of property should be set aside, on the ground of Undue Influence. The real question is whether the evidential presumption arises in this case, and if so, whether sufficient evidence has been adduced to rebut it.

[80] While I have made some observations on the inferences which may be drawn from the nature of the transaction itself. I need to consider the question as to whether there was a relationship of “Trust and confidence, reliance and dependence or vulnerability”, to adopt the words of Lord Nicholls in **Royal Bank of Scotland PLC cs. Etridge (No.2)** while being mindful of his cautionary observation, that there is no single touchstone for determining whether the principle is applicable.

[81] I am of the opinion that the relationship between Ms. Jeffers and Mrs. Maynard was obviously a close one; and not as Mrs. Maynard described, that is was only a cordial

¹⁰ Civil Suit No. 35/1994 Nevis Circuit

relationship, and it was marked by feelings of generosity on the part of Ms. Jeffers towards Mrs. Maynard which went well beyond the norm. I am of the further opinion that these generous impulses were motivated by her expectation or hope that Mrs. Maynard could provide support and company in her old age.

In my respectful opinion, that relationship was potentially susceptible to Abuse, and therefore the first of the two ingredients which Lord Nicholls considered, might normally raise an evidential presumption of undue influence is made out.

In the case of **National Commercial Bank (Jamaica) vs Hew and others**¹¹ at paragraph 29-33 Lord Millett stated,

“However great the influence which one person may be able to wield over another, equity does not intervene unless that influence has been abused. Equity does not save people from the consequences of their own folly; it acts to save them from being victimized by other people.”

I can do no better than adopt the words of the learned Law Lord in this case, and state unequivocally that Equity must intervene in this matter to save Ms. Jeffers from being further victimized by Mrs. Maynard. It is not through her folly that she finds herself in that position but because she became the victim of presumed Undue Influence of Mrs. Maynard.

[82] The transaction itself cries out for an explanation, since it involved the transfer in effect, of a half share in Ms. Jeffers’ home. This meant that she had given up sole ownership and control of the home in which she lived, and hoped to live until the end of her days. But in return, what did she get for it? It appears from the evidence that it was nothing but an expectation that some bills would be paid to carry out some improvements to the house,

¹¹ [2003] UKPC 51

and a hope that Mrs. Maynard would provide company, support and assistance to her in her aging years.

[83] I am therefore of the view that a case has been made out which requires to be rebutted by evidence, that there was no abuse by Mrs. Maynard of the influence she had over Ms. Jeffers as a result of their relationship, and that she did not prefer her own interests over those of Ms. Jeffers.

[84] In order to discharge this evidential burden that is placed on her, Mrs. Maynard must show on the evidence as a whole, that the transfer to her was as the result of full, free and informed thought on the part of Ms. Jeffers.

[85] For that purpose, Mrs. Maynard relied primarily on the fact that Ms. Jeffers first gave her the property by Last Will and Testament at first, and then by transfer as Joint tenant. Her evidence is;

"I did not say to her (Ms. Jeffers) do not give me the property; this was her wish and I would never dissuade anyone from giving me a gift. I did not dissuade her, I knew the property is valued at \$750,000.00 for Tax purposes; the thought never occurred to me to tell Ms. Jeffers that I would have to sign if she insisted to retransfer the property."

[86] In my opinion and on the evidence, Ms. Jeffers relied on the advice she got from Mr. Hobson Q.C. However I glean from the evidence that Mr. Hobson gave very little in the way of advice.

Under cross examination by Mr. Jeffrey Nisbett, Mr. Hobson Q.C stated inter alia;

"I did not know the value of the property Ms. Jeffers was transferring, neither did I ask her, I did not think it incumbent on me to find out the value of the property...

No alarm bells were set off after I made the Last Will and shortly afterwards, she wanted a transfer of the property to Mrs. Maynard.

I did not tell her she should get Independent advice, it never occurred to me that there was a conflict of interest in this matter.

I did not advise Ms. Jeffers that Marilyn Maynard could deal with her half of the property, I did not tell her that Ms. Maynard could apply to the Court to have her half share partitioned. I did not advise her to get another lawyer.” (My emphasis)

[87] In the premises and on a review of the evidence, I do not consider that the advice given by Mr. Hobson Q.C was Independent and sufficient to enable Ms. Jeffers to give full, free and informed consideration to the proposal to give a half share in her property to Marilyn Maynard. This is not intended to be a criticism of Mr. Hobson Q.C, who seemed to have taken a certain view of his instructions, but simply a statement of fact as to the nature of the advice he gave.

[88] However unless it is shown, whether as a result of Independent legal advice or otherwise that Ms. Jeffers’ intention was the result of full, free and informed thought, it is no answer in the case at Bar to demonstrate that she intended to make the gift in question nor is it a sufficient answer that she might have gone ahead with the Transfer even if she had received full and proper advice.

[89] In my considered opinion, there was **NO** independent advice given to Ms. Jeffers about whether it was in her best interests or even sensible to transfer as joint tenant to Mrs. Maynard her entire property, and how her interests could be protected. From the evidence, it is apparent that Ms. Jeffers had no advice on what the financial consequences were of what she was embarking on or how this transfer would impact on her Last Will and Testament and what would be done to mitigate its effect. She had no advice on what Income she would be left with by adding Mrs. Maynard to her Bank accounts.

[90] I am of the view that the evidence is too slender to allow me to conclude that Ms. Jeffers knew or understood the full legal implications of what she was doing, and I have come to the conclusion that there is sufficient evidence to raise a presumption of Undue Influence on the part of Marilyn Maynard, and that there is not sufficient evidence that has been adduced to rebut that presumption. In the circumstances, I will set aside the transfer of the property of Ms. Jeffers to Marilyn Maynard as joint tenants on the ground of presumed Undue Influence by Mrs. Maynard.

[91] I also conclude that there has been no satisfactory evidence of overt acts of improper pressure or coercion on the part of Mr. Hobson Q.C. to Ms. Jeffers. My finding is that Mr. Hobson Q.C should have allowed Ms. Jeffers to have obtained Independent legal advice on the Transaction and even further he should have declined to get involved in the transaction.

[92] During the course of the Trial, the issue of Section 62 (1) of the **Stamps Act**¹² became a live issue for the determination of the Court. The said section states;
“Passing on or attempting to pass on portion of stamp duty payable by Vendor to Transferor.

1. Whosoever sells or transfers land to another person and passes on or attempts to pass his or her liability to pay that portion of the stamp duty payable by a vendor to a transferor to that person shall be guilty of an offence against this Act, and on summary conviction therefor before a Magistrate to a fine not exceeding the aggregate of one thousand five hundred dollars and an amount equal to the Stamp Duty which he or she passed on or attempted to pass on.”

¹² Chapter 20L30 of the Laws of St. Christopher and Nevis

[93] Mr. Jeffery Nisbett, Counsel for the Claimant in cross-examination of Mr. Hobson Q.C posed to him that whether he had advised Ms. Jeffers that it was a criminal offence for Mrs. Maynard to pay the Stamp Duty in relation to the transfer to their joint names. Mr. Hobson Q.C had responded that it was a Family transaction done out of love and affection and that the interpretation of Section 62 (1) of the Stamps Act was that "Transfer" refers to "sells".

According to Mr. Hobson;

"It is a criminal offence if there is no love and affection."

On re-examination Mr. Hobson Q.C stated that it was usual for the Purchaser and Vendor to enter into an arrangement in relation to the payment of stamp duty, and that it happens all the time.

[94] I have considered the arguments of both Counsels in this matter and consider that the enacting words "transfers" or "sells" in the said Section 62 (1) are to be read in conjunction with the other words "Passes on" or "attempts to pass on his liability". The Dictionary meaning of "pass on" has several senses but for the present case, pass on means "transfer liability to another".

The evidence is that Mrs. Maynard offered to pay the Stamp Duty as this was her way of facilitating the transaction. She stated;

"We decided it was a large sum and it was unfair for her to pay such a large sum as we were beneficiaries under her Will."

I do not extract from the evidence any criminal intent or mind set on the parties to ground any criminal prosecution under this section of the Act.

I agree with Counsel for the Defendant Ms. Dahlia Joseph's submission that the purpose of Section 62 (1) of the Stamp Act is to deal with instances where the unlawful intent of a

vendor is to avoid his/her statutory obligation to pay Stamp Duty by passing on that liability to the purchaser. It does not address the situation where the parties agree amicably to an arrangement concerning the payment of Stamp Duty.

[95] I am not of the view that the Stamp Act criminalizes that particular kind of arrangement and I therefore reject that submission and find that Ms. Jeffers did not run afoul of the Stamps Act by her actions. I adopt the dicta of Morgan J at paragraph 51 of the case of **Project Blue Ltd vs. The Commissioner for Her Majesty's Revenue and Customs**¹³ I paraphrase his dicta as follows:

"The modern approach to statutory construction is to have regard to the purpose of a particular provision and interpret its language as far as possible in a way which best gives effect to that purpose. The essence of the approach is to give the statutory provision a purposive construction in order to determine the nature of the transaction to which it was intended to apply and then to decide whether the actual transaction (which might involve considering the overall effect of a number of elements intended to operate together) answered to the statutory description."

[96] The Court had raised the issue about whether the evidence of Mr. Hobson Q.C had contravened the bounds of Attorney/Client privilege since the evidence from Mr. Hobson was that he was Ms. Jeffers' Attorney, and he had provided a witness statement and given oral evidence for the Defendant in the matter.

[97] The Law in this area is well illustrated in the Court of Appeal case of **R vs. A**¹⁴ where the learned Justices made the following comments;

¹³ [2014] UKUT 0564

¹⁴ [2007] EWCA Crim 2870; [2007] AllER 491

“On settled law, documents might be disclosed for a limited purpose without waiving privilege. However if a document or communication was disclosed voluntarily, privilege would normally be lost generally and with it the right to withhold production of other documents or communications relating to the same subject matter or “transaction”. The principle governing the loss of privilege in the transaction generally was one of Fairness. It was contrary to the interests of Justice to allow a person to disclose a limited range of material relating to a particular matter, perhaps chosen to serve his own interests, whilst depriving the other party to the litigation of the full picture which the remainder of the material relating to that matter would disclose. However the importance of legal professional privilege to the proper administration of Justice was such that it should be jealously guarded, and it followed that Courts should not be astute to hold that a litigant had lost the right to claim privilege, save to the extent that Justice and the right to a fair trial made that necessary. It was necessary to identify the confidential communications which the person chose to disclose and to see to what extent, fairness demanded that the other documents or communications should also be disclosed.”

[98] I adopt unreservedly the dicta in **R vs A** and I am of the view that Ms. Jeffers may have impliedly waived her privilege by presenting the transactions relating to the execution of her Last Will and Testament and the Transfer of her property. Since Ms. Jeffers disclosed the documents relating to the transaction in which she claims undue influence it is in the interests of Justice and fairness to allow Mrs. Maynard an opportunity to present her side of the events to which transpired and which lead to the Transfer of property and execution of the Last Will and Testament. In the circumstances I make no finding that Mr. Hobson breached Attorney/Client privilege in the matter.

[99] Finally, I must comment on the receipts issued by Mr. Hobson Q.C's office and the Entries in the Presentation Book at the High Court Registry in Nevis.

The submissions by Counsel for the Claimant, Mr. Jeffery Nisbett is that these documents point to a situation where Hobson & Associates acted for Mrs. Maynard.

Mr. Nisbett also stated that according to Mr. Hobson's evidence the entry in the Presentation book was a mistake even though he admitted it was made by his Associate.

Also according to the evidence under cross-examination from Charmaine Daniel Hanley, Office Manager/Administrative Assistant of the Law firm of Theodore Hobson & Associates, the receipt made out to Mrs. Maynard reflecting Government Stamp Duty and Legal fees was an error as she was on vacation and she did not know why it was made out for Consultation Fees as it was Legal Fees.

Counsel Mr. Nisbett asks the Court to reject this explanation given by Mr. Hobson Q.C.

Counsel for the Defendant, Mrs. Dahlia Joseph also submits that an error in a Book or on a receipt cannot negate the plethora of evidence to show that Mr. Hobson was in fact Ms. Jeffers Attorney.

[100] On a review of this evidence, I have great difficulty in accepting Mr. Hobson's Q.C's explanation of the documents which emerged from his office and Ms. Joseph's submissions.

I am quite unsympathetic to Mr. Hobson Q.C and the avoidable errors which emerged from his office. This unusual situation has bolstered my finding that Mr. Hobson Q.C was acting for Ms. Jeffers and also appeared to be acting for Mrs. Maynard in the Transfer transaction a seriously conflicted position which Mr. Hobson Q.C should have detached himself from.

As a Senior Attorney, Mr. Hobson Q.C should have exercised better judgment in this matter.

- [101] This situation has also fortified me in my view that Ms. Jeffers did not receive Independent legal advice to allow her to make a free, full and thoughtful decision, a very important factor which tips the scales very heavily in her favour.
- [102] Therefore, while I have not found this case an easy one, I have ultimately concluded that on the totality of the evidence and the legal authorities, I will give judgment to the Claimant and set aside the Transfer made to the Defendant on the 23rd day of November 2012. The registration of the Defendant as joint proprietor of the land should be cancelled immediately.
- [103] I also order that the Costs required for the re-transfer of the said property to the Claimant be borne by the Defendant.
- [104] That costs are to be assessed if not agreed upon in accordance with CPR Part 65.
- [105] I wish to thank both Counsel for their assistance and helpful submissions to the Court.

Lorraine Williams
High Court Judge.

