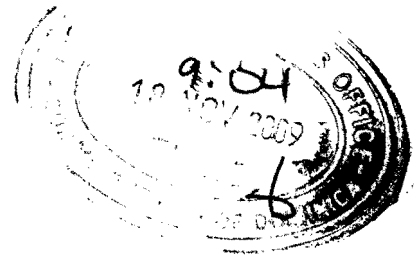


**EASTERN CARIBBEAN SUPREME COURT
IN THE HIGH COURT OF JUSTICE
(CIVIL)**



**COMMONWEALTH OF DOMINICA
DOMHCV2006/0381
BETWEEN:**

VICTORIA GREENAWAY

Claimant

and

MAGDALENE AUGUSTINE

Defendants

Before: The Hon. Justice Brian Cottle

Appearances:

Mrs. Zena Dyer for Claimant

Mr. Bernard McDonald Christopher for Defendant

[2009: 16th October
18th November]

JUDGMENT

- [1] **COTTLE, J:** Victoria Greenaway is an elderly lady. Unfortunately, in addition to the usual infirmities which attend old age, Ms Greenaway also suffers from schizophrenia and dementia. She has been so afflicted for a long time. In fact, as early as November 2nd 2004, Dr. Benjamin, the Consultant Psychiatrist at the Princess Margaret Hospital, wrote to the manager of the Royal Bank of Canada. He advised that Ms. Roma Harney was co-signatory to Ms. Greenaway account and that Ms. Greenaway was mentally incompetent to administer the account.
- [2] Alas, no regard seems to have been paid to that letter by the bank. Mr. Roma Harney has been acting as principal caregiver to Ms. Greenaway. As it emerged from the evidence that care-giving has been less than adequate.
- [3] Sometime in 2006 Ms. Harney as is her wont, went abroad for a protracted period. Victoria was left to fend for herself or at best – in the care of another sister of Ms. Harney – a sister who was also a chronic long term mental patient. Not surprisingly the condition of Victoria deteriorated drastically. She wandered the streets of Wesley, the small village where she lived, unattended. She was unable to attend to her own personal hygiene.
- [4] The defendant is a shopkeeper in the village. Victoria would frequent the shop to purchase meals – usually canned corned beef and bread. The defendant took Victoria into her home and cared for her.
- [5] After a period of several weeks Victoria and the defendant went into Roseau. They visited the bank. Victoria was seen by a bank employee. Despite the letter referred to earlier from Dr Benjamin to the bank, the joint account that Victoria had hitherto held with Roma Harney was closed. The funds were transferred to a joint account in the names of Victoria and the defendant. A portion of the funds was also transferred to an account which the defendant holds with another person.
- [6] Almost two weeks after these bank transactions Ms. Harney returned to Dominica and had Victoria removed from the home of the defendant.
- [7] Ms. Harney now brings this action on behalf of Victoria seeking the return of any funds transferred out of Victoria's accounts on the basis that Victoria was

subjected to undue influence by the defendant to cause her to place her money at the disposal of the defendant.

[8] The court had the benefit of the evidence of Dr. Griffin Benjamin. I have no hesitation in accepting the expert opinion of the doctor that Victoria lacked the mental capacity to operate her account and that at the time of the visit to the Royal Bank of Canada she lacked that capacity.

[9] Section 18 of the Mental Health Act Chap 40:62 of the Laws of the Commonwealth of Dominica empowers this court, with respect to the property and affairs of a patient, to do or secure the doing of all such things as appear to be necessary or expedient for the maintenance or other benefit of the patient.

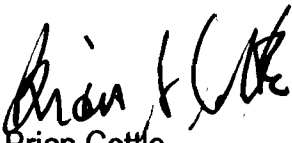
[10] With the benefit of the patient Victoria as my paramount concern I make the following orders

1. The defendant is ordered to have her name removed as joint holder with Victoria Greenaway to the account now standing in their joint names at the Royal Bank of Canada.
2. The defendant is also ordered to repay to Victoria Greenaway all sums received as a gift from Victoria Greenaway.

[11] I note that Roma Henry has been appointed receiver for Victoria Greenaway. This is an office which must be taken seriously. It cannot be discharged by leaving the patient, Victoria, to fend for herself for long periods as has happened before. In order that there should be some supervision, I order that Roma Harney file an account of her stewardship of Victoria Greenaway's affairs as well as a report on Victoria's condition by May 31st 2010 and at six months intervals thereafter. The court will fix hearing dates to receive and consider such reports and will make such further order as may then appear to be needed.

[12] I will make no order as to costs in this matter. This is not to be taken as condoning the actions of the defendant who I find knew of the condition of the patient Victoria and took advantage of that knowledge, but the negligence of Roma Harney in permitting such a situation to develop, persuades me that it is just to make no order as to costs. It is for that same reason that I do not

order that the defendant or indeed Roma Harney account for the funds which they may have used from the account of Victoria Greenaway thus far.


Brian Cottle

High Court Judge

