

THE EASTERN CARIBBEAN SUPREME COURT

IN THE HIGH COURT OF JUSTICE

SAINT VINCENT AND THE GRENADINES

HIGH COURT CIVIL CLAIM NO. 214 of 2007

BETWEEN:

**BERESFORD WILLIAMS (by his next friend and
Administrator of the Estate of Neil Williams Dec'd
FELIX LEWIS AND RICHARD LEWIS)**

**JOSH WILLIAMS (by his next friend and
Administrator of the Estate of Neil Williams Dec'd
FELIX LEWIS AND RICHARD LEWIS)**

Claimants

v

ELDRETA WILLIAMS

1st Defendant

MICHAEL WILLIAMS

2nd Defendant

Appearances: Mr. Stephen Huggins for the Claimants
Mr. Moet Malcolm for the Defendants

2008: April 22;
September 16.

JUDGMENT

[1] **THOM, J:** Neil Williams (deceased) was the son of Eldreta Williams and brother of Michael Williams. He is named as the father on the Birth Certificate of Beresford Williams and Josh Williams. Eldreta Williams worked as a nurse in the United Kingdom for several years and she retired in 1998. Neil Williams lived with her in the United Kingdom and he was a professional cricketer. He retired from professional cricket in 1996 and a benefit year was held for him and the proceeds amounted to approximately One Hundred Thousand British Pounds. In 1998 he purchased a parcel of land at Harmony Hall in Saint

Vincent and the Grenadines and built a house thereon. Neil Williams died intestate on the 27th day of March 2006. He was a bachelor. Since his death Eldreta Williams and Michael Williams moved into the house at Harmony Hall. Eldreta Williams also took possession of other assets of Neil Williams including his car.

[2] Beresford Williams and Josh Williams claim that as the sons of Neil Williams they are the sole beneficiaries of the estate of Neil Williams.

[3] Eldreta and Michael Williams alleged that Beresford and Josh Williams are not the sons of Neil Williams. Further, there was a family agreement between Neil Williams and Eldreta Williams for Eldreta Williams to contribute funds towards the construction of the house at Harmony Hall and one part of the house would be her retirement home. Pursuant to this agreement, Eldreta Williams gave Neil Williams in excess of One Hundred Thousand British Pounds. A constructive Trust was created and Eldreta Williams is therefore entitled to the property at Harmony Hall.

ISSUES:

- [4] 1. Whether Beresford Williams and Josh Williams are entitled to the assets of the estate of Neil Williams.
2. Whether there was a constructive trust in favour of Eldreta Williams in relation to the property at Harmony Hall.

PATERNITY:

[5] It is not disputed that if Beresford and Josh Williams are the sons of Neil Williams then they would be the beneficiaries of his estate pursuant to the Administration of Estates Act Chapter 377 of the Laws of Saint Vincent and the Grenadines.

[6] It is also not disputed that Neil Williams' name appears as the father on the Birth Certificates of Beresford and Josh Williams.

- [7] Learned Counsel for Eldreta Williams and Michael Williams submitted that the placing of one's name as father on a Birth Certificate is a rebuttable presumption; a mistake of fact is a defence and can be corrected. Learned Counsel urged the Court to order that DNA tests be conducted to determine the paternity of Beresford and Josh Williams.
- [8] Eldreta Williams in her witness statement stated at paragraph 60 as follows:
- “That the deceased was born with one testicle and I know that he was medically advised that he cannot have children.”
- [9] No medical certificate or medical testimony was produced to show that Neil Williams could not father children. The uncontradicted evidence of Valdene Parris and Camille Shallow, the mother of the children, is that Neil Williams was the father of Beresford and Josh Williams. He signed as their father on their birth certificates. Neil Williams treated them as his children, he took care of them and they both lived with him for some time at his house at Harmony Hall. While Camille Shallow the mother of Josh Williams testified that she is willing to have a DNA test done, I find that there is no basis for the Court to make an order for a paternity test to be done.

CONSTRUCTIVE TRUST:

- [10] Learned Counsel for Eldreta Williams submitted that based on the evidence of Eldreta Williams and Michael Williams and the evidence of the Claimants' witnesses Felix Lewis and Camille Shallow the Court should find that Eldreta Williams contributed approximately One Hundred Thousand British Pounds to the construction of the dwelling house at Harmony Hall. As a result Neil Williams held the house in trust for her. Learned Counsel referred the Court to several cases including the cases of **Grant v Edwards and Another** [1986] 2 AER p. 426; **Hussey v Palmer** [1972] 3 AER p. 744 and **Gonin v Garmeson and Another** [1977] 2 AER p. 720.
- [11] Learned Counsel for Beresford and Josh Williams agreed that if indeed Eldreta Williams contributed One Hundred Thousand Pounds to the construction of the house then there

would be a constructive trust but submitted that the evidence does not support such a finding.

[12] Eldreta Williams in her witness statement testified that in 1998 she retired as a nurse. She intended to build her retirement home at Hopewell in Saint Vincent and the Grenadines. Neil Williams persuaded her to join with him in building a dwelling home at Harmony Hall on his land since most of her friends no longer lived at Harmony Hall. Neil Williams represented to her that the house would consist of three floors and she would have the middle floor. She agreed to join with Neil Williams to build the house. She gave him money whenever he asked. She also bought the kitchen fittings for the house and three beds, curtains and linen for her floor. The money she gave to Neil Williams amounted to over One Hundred Thousand pounds. It included her gratuity. Neil Williams sent the money to Saint Vincent.

[13] Under cross-examination Ms. Williams testified that she gave Neil Williams all the money in cash. She could not recall how many times she gave him money for the house but she recalled it was on several occasions. She recalled two specific occasions; the first was the sum of £68,000 cash which she had at her house. This was given when he was about to commence the house; the second being, in 1999 when she gave him her gratuity of £33,000. Michael Williams' testimony did not advance the Defendants' case any further.

[14] Having seen and heard Ms. Eldreta Williams I did not find her to be a credible witness. I do not believe her testimony that she gave Neil Williams £68,000 and £33,000 in cash between 1998 and 1999. This sum would have amounted to more than the estimate for the house. The house was estimated to cost E.C.\$365,000.

[15] The evidence of the architect Ms. Deidre Myers was not contradicted. Ms. Myers testified that she drew the plans for the house. The plan was for a single family house with two floors. The bedrooms on the upper floor and the living space on the lower floor. After the excavation was done the plan was adjusted to put the house further from the road and the upper floor was eliminated. All of the accommodations were placed on one level. She

agreed the completed house is not the same as the plan since there are two apartments on the ground level.

[16] As stated earlier Ms. Myers' evidence was not contradicted. According to Ms. Myers' testimony the plans never included more than one separate living space. The house was completed in 2001 without the separate floor for Eldreta Williams. There is no evidence of any complaint or any action taken by Eldreta William. On the other hand the evidence on behalf of Beresford and Josh Williams show that Neil Williams retired from being a professional cricketer, he had a benefit year in the United Kingdom, he purchased the land and commenced building the house. The proceeds from his benefit year amounted to approximately £100,000. He owned an apartment in London which he sold shortly before he commenced building the house. This evidence was not contradicted. The Defendants alleged that Neil Williams' half-brother Felix Lewis and his friend Lennox Bowman mismanaged his funds. There is nothing to support this bald statement of the Defendants.

[17] In view of the above I find that Eldreta Williams did not contribute in excess of £100,000 in cash or any sum towards the construction of the house. I find that there was no constructive trust in favour of Eldreta Williams.

COUNTERCLAIM:

[18] In view of my findings above the Counterclaim is dismissed. I did not find Ms. Eldreta Williams to be a credible witness. She loved her son Neil Williams. Ms. Eldreta Williams simply does not wish for the two children whose mothers are young, single women to inherit the property. She suggested they could have Neil Williams' money that was deposited at the bank.

[19] Learned Counsel for Eldreta Williams also submitted that:
"the Claimants by their Attorney on Record have no locus standi in this matter as the Administrators have not stated their locus standi in this matter."

This submission has no merit. This is not an action by the Administrators of the estate of Neil Williams.

CONCLUSION:

[20] I find that Beresford and Josh Williams have proved on a balance of probabilities that they are the sole beneficiaries of Neil Williams and they are entitled to the assets of his estate in accordance with the provisions of Part V of the Administration of Estate Act Chapter 377. I find that there is no constructive trust in favour of Eldreta Williams in relation to the property at Harmony Hall.

[21] Judgment is entered for the Claimants. It is ordered that:

- (a) The Claimants are entitled as beneficiaries of Neil Williams to the assets of the estate of Neil Williams in equal shares.
- (b) The Defendants are liable to account for all assets of the estate of Neil Williams now or previously in their possession whether acquired directly or indirectly.
- (c) The Defendants shall vacate the property at Harmony Hall within seven days and shall deliver up possession of all assets of the estate of Neil Williams which are in their possession within seven days to the Registrar of the High Court who shall keep them until Letters of Administration are issued in the estate of Neil Williams.
- (d) An injunction is hereby granted restraining the Defendants by themselves, their servants and or agents from disposing of any of the assets of the estate of Neil Williams save and except to hand over same to the Registrar of the High Court.

- (e) The Defendants shall pay the Claimants costs in the sum of E.C.\$5,000.00 pursuant to Case Management Order dated December 14, 2007.

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Gertel Thom
HIGH COURT JUDGE