

1992

C.K. No. 11,947

IN THE COUNTY COURT FOR DISTRICT NUMBER FOUR

IN THE MATTER OF: Section 8 of the Social Assistance Act

- and -

IN THE MATTER OF: An Application On Behalf of Mrs.
Henrietta Zahringer

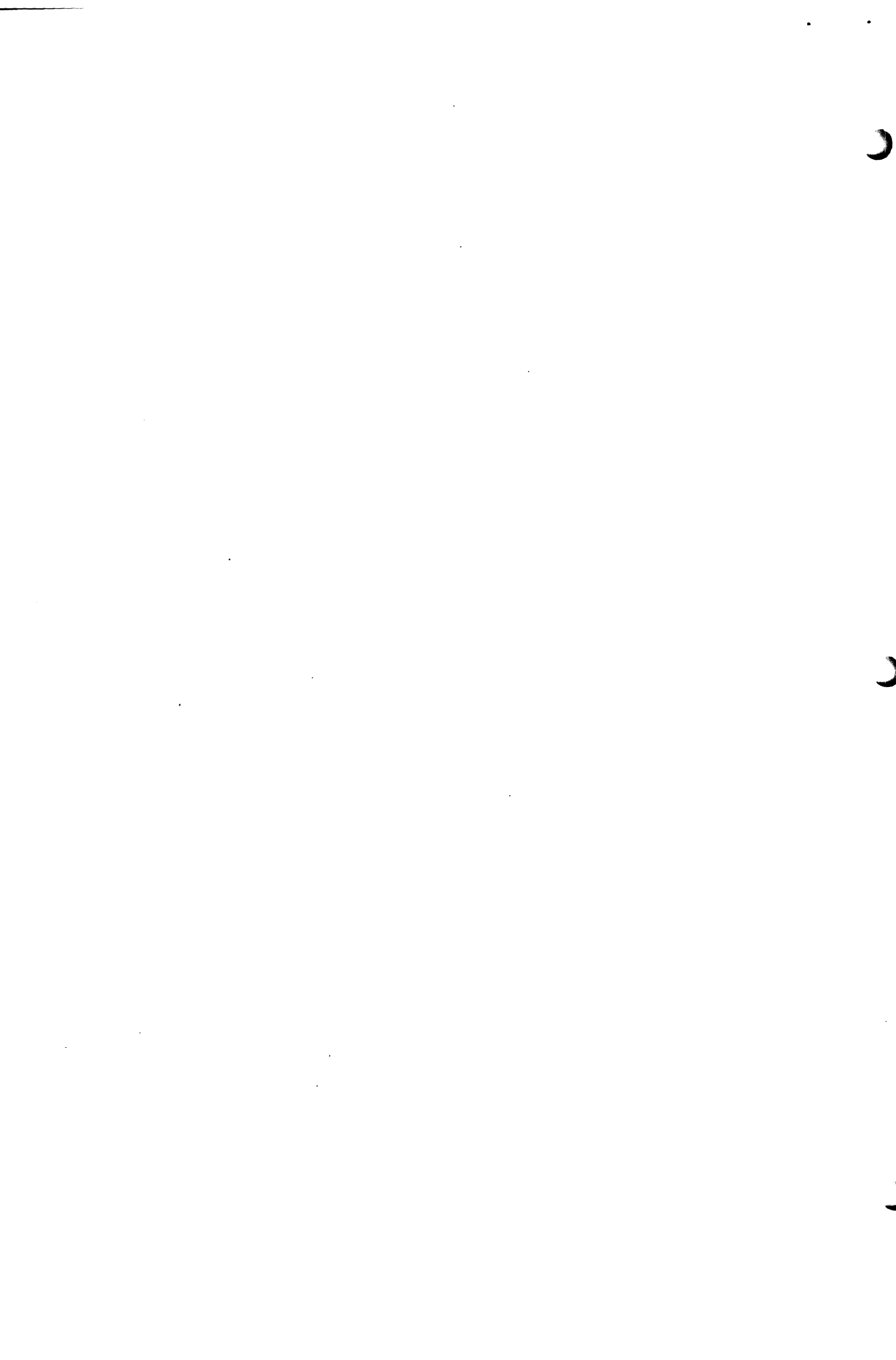
HEARD: At Kentville, Nova Scotia on the 3rd day
of March and the 17th day of March, 1992.

BEFORE: The Honourable Judge Donald M. Hall, J.C.C.

DECISION: July 28, 1992.

COUNSEL: Heather Hill,
Counsel for the Applicant.

Allan Tufts, Esq.,
Counsel for the Respondent.



HALL, D.M., J.C.C.:

This is an application for an order pursuant to section 8 of the Social Assistance Act confirming that a designation of a residence under section 8 of the Act is valid.

The principal issue before the Court is whether a person may designate a "residence" pursuant to section 8 where title to the property is held by other persons.

The applicant is now 89 years of age and suffers from alzheimers disease. She is presently residing in and being cared for at the home of her daughter and only child, Winnifred Pearl and her husband, Harold Pearl, at 63 Carmen Drive, Kentville, Nova Scotia. This application was made by Mr. Pearl on behalf of Mrs. Zahringer pursuant to a general Power of Attorney dated April 1, 1986, whereby Mrs. Zahringer appointed Mr. Pearl her attorney for all purposes.

Mrs. Zahringer was a long time resident of the Town of Kentville and owned a property at Main Street, Kentville, where she resided until December, 1988. At that time as a result of her deteriorating health she went to live with her daughter and son-in-law in their new home at 63 Carmen Drive in the Town of Kentville. Although there was no agreement in writing, it apparently had been an understanding for many years that when Mrs. Zahringer was unable to care for herself her daughter and son-in-law would care for her in their home. It also

appears that since the death of Mrs. Zahringer's husband in 1952 that Mr. Pearl had looked after Mrs. Zahringer's financial affairs..

Under date of February 1st, 1988, a Power of Attorney was executed by Mrs. Zahringer appointing Mr. Pearl as her attorney to sell her real estate referred to above. In March of 1989 this property was sold for approximately \$65,000.00. Of the net proceeds of sale \$47,797.75 was applied to a bank loan that Mr. and Mrs. Pearl had outstanding with respect to the cost of constructing their home on Carmen Drive in 1986 and 1987, which totalled \$235,000.00 including land. When the home was constructed it included additional space for the eventuality that Mrs. Zahringer may reside with the Pearls. It was acknowledged by the respondent, the Town of Kentville, that the space occupied by her and to which she had access would have resulted in the cost as determined by Mr. Pearl. It was also acknowledged by the respondent that this is the amount in contention and that the balance of the proceeds of sale of Mrs. Zahringer's home has been satisfactorily accounted for.

In September of 1989, Mr. Pearl, on behalf of Mrs. Zahringer, made application to the Town of Kentville to have her placed in a home for special care due to the fact that she was suffering from alzheimers disease and that the Pearls were no longer able to care for her in their home. Medical opinion was to the effect that she

was "in need of heavy care". The application for financial assistance was rejected by the Town of Kentville.

A second such application was made in July, 1990, but it again was refused.

A third application for placement and assistance was made in January, 1991, but again the application was denied. This decision was appealed to the Social Assistance Appeal Board and the appeal was dismissed by a decision of the Board dated September 19, 1991. The Board ruled that the Town was not obliged to provide financial assistance in view of the fact that, in their opinion, Mrs. Zahringer owned an asset of \$47,797.75, the amount that had been invested in the Pearls' residence.

On December 19, 1991, the following designation was made with respect to the Pearls' residence by Mr. Pearl on behalf of Mrs. Zahringer:

Description of land designated by Harold L. Pearl, Power of Attorney for Mrs. Henrietta M. Zahringer, pursuant to section 8 of the Social Assistance Act, Chapter 432 of the Statutes of Nova Scotia, 1989.

"In-law suite" of 207 square feet, located adjacent to family room of house at 63 Carmen Drive, Kentville, Nova Scotia. Also included is Mrs. Zahringer's share (1/4) of common area found on main floor totalling 413.75 square feet. Total number of designated square feet equals 620.75. The property is in the joint names of Winnifred and Harold L. Pearl.

Despite the foregoing the Town of Kentville still refused to provide the requested assistance.

This application followed. It first came before the Court on March 3, 1992, when representations were

made by counsel representing Mrs. Zahringer and the Town of Kentville. Following representations by counsel, further hearing of the application was adjourned to March 17, 1992, to, in part, enable Mr. Pearl to decide whether he wished to make some changes in the designation or to take some further or other steps respecting the claimed interest in the property. In accordance with the foregoing an amended designation was filed wherein the entire Pearl property was included in the designation, however, no interest in the property was conveyed to Mrs. Zahringer.

The pertinent sections of the Social Assistance Act are the following:

DESIGNATION OF RESIDENCE

"residence" defined

8 (1) In this Section, "residence" of a person means a housing unit in the Province that was ordinarily inhabited by that person for at least two years, and includes land on which the housing unit is situate that may reasonably be regarded as contributing to the use and enjoyment of the housing unit as a residence or such land that the person establishes in accordance with the regulations is necessary to such use and enjoyment.

Successive housing units

(2) A housing unit is deemed to have been inhabited for at least two years where that housing unit was purchased solely with the proceeds from the sale of another housing unit and the two housing units were inhabited for a total period of at least two years.

Designation

(3) A person in need may, before or after any assistance is given to that person, designate

that person's residence as a residence for the purpose of this Part.

Designation by spouse

(4) A person in need and that person's spouse may not designate different residences for the purpose of this Part.

Dispute

(5) Where there is a dispute as to whether or not particular real property constitutes a residence for the purpose of this Part, an application may be made to the county court for resolution of the dispute and the county court shall determine the matter.

GRANT OF ASSISTANCE

Duty of committee to assist person in need

9 (1) Subject to this Act and the regulations the social services committee shall furnish assistance to all persons in need, as defined by the social services committee, who reside in the municipal unit.

Designated residence

(2) Notwithstanding subsection (1), in making a determination pursuant thereto, the social services committee shall not take into consideration the ownership of or an interest in a designated residence.

Sale of land

(3) Notwithstanding subsection (1), in making a determination pursuant thereto, the social services committee shall not take into consideration the fact that land was sold for less than the maximum attainable amount where

(a) the land is sold for at least its assessed value as determined pursuant to the Assessment Act; and

(b) the land is land on which a housing unit that is a designated residence is situate and the land cannot reasonably be regarded as contributing to the use and enjoyment of the housing unit as a residence or cannot be established in

accordance with the regulations as necessary to such use and enjoyment.

The position put forth by the applicant was substantially to the effect that Mrs. Zahringer owns an interest in the Pearls' residential property by virtue of a constructive or resulting trust and that this interest in the property is subject to a designation under section 8 of the Social Assistance Act.

The respondent, on the other hand, contended that Mr. Pearl in fact had no authority to make this application on behalf of Mrs. Zahringer pursuant to the Power of Attorney, although he would be entitled to do so as a guardian ad litem. The respondent also contended that this Court has no jurisdiction to rule on the question of Mrs. Zahringer owning an interest in the property since a question of title to land was involved, which it contended was beyond the judicial competence of the County Court. The respondent also took the position that a partial interest in property is not subject to designation and in any event that the evidence does not support the conclusion that Mrs. Zahringer owns any interest in the property in question.

It appears that the respondent has abandoned its objection based on Mr. Pearl's lack of authority to make this application on behalf of Mrs. Zahringer. In any event, I am satisfied that he has such authority, either under the Power of Attorney or acting as a guardian ad litem.

As to this Court having jurisdiction to entertain the application or to determine the issues raised on the hearing of the application, I am satisfied that the Court has jurisdiction. Under section 8 it is obliged to consider and determine any matters that are necessary to resolve a dispute as to whether a property constitutes a "residence". It seems apparent to me that most such disputes would likely involve a question of title to land. I am satisfied, therefore, that the Legislature intended that the County Court would have jurisdiction to make such determinations in fulfilling its function under sub-section 8(5).

It seems to me that a partial interest in a property that has served as the residence of a person applying for assistance may come within the meaning of "residence" under the terms of section 8. Standing alone I am of the view that a reading of section 8 would not bear such an interpretation, however, section 8 must be read in conjunction with section 9. In sub-section (2) of section 9 there is a reference to "the ownership of or an interest in a designated residence". In view of this latter reference it seems to me that the Legislature intended that a partial interest in a residential property may be the subject of a designation under section 8.

In this case, however, I am unable to conclude that Mrs. Zahringer owns any interest in the Pearls' residence. The resulting trust argument was put forth

by Mr. Pearl contending that Mrs. Zahringer has such an interest in the property. Reference to such legal concepts or doctrines or devices, however, would be entirely unnecessary if the Pearls were to execute a document conveying to Mrs. Zahringer the interest in the property that is contended. Apparently they have declined to do so. This failure to execute such a conveyance, to my mind, gives credence to Mr. Tuft's contention that the position put forward by Mr. Pearl is self-serving of his own interest and that the purpose of this application is to benefit the Pearls and not Mrs. Zahringer. In these circumstances I am unable to find that Mrs. Zahringer owns an interest in the property referred to in the intended designation.

The application is therefore dismissed.



Donald M. Hall
Judge of the County Court
of District Number Four