

IN THE PROBATE COURT OF NOVA SCOTIA
Cite as: Horne Estate (Re), 2003 NSPB 1

Date: 20031203
Estate No: 48209
Registry: Halifax

Estate of Marjorie Jean Horne

Registrar: Sharron Atton

Decision: December 12, 2003

Estate of Marjorie Jean Horne
Estate No. 48209
December 3, 2003

This Court has been tasked with determining if certain legal fees should be paid by the estate, in particular:

1. Legal Fees of Boyne, Clarke - Oct. 16/2000 - \$1,445.70
- Dec. 31/2000 - \$1,013.23
- Feb. 27/2001 - \$ 912.75
- Mar. 28, 2001 - \$1,004.78

Mr. Graham's time on a pre-bill dated October 1, 2003 which includes time from July 24, 2001 up to August 19, 2002 in the amount of \$4,275.00; hst of \$641.25; disbursements of \$16.95 and hst on disbursements of \$2.54 for a total of \$4,935.74.

2. Fees incurred with Blois, Nickerson & Bryson for a total of \$29,492.49.
3. Amount of costs and disbursements ordered paid by the plaintiffs to Stephen Horne in the Order after Trial without a Jury for a total of \$10,415.21.

I have reviewed the correspondence between Mr. Niedermeyer and Ms. Clarke, which is included in the brief provided by Mr. Niedermeyer and both counsel have agreed that the essence of the case before Justice Moir was the enforcement of the agreement among the five beneficiaries of the Horne estate. I have reviewed the decision of Justice Moir dated January 13, 2003 and note at paragraph 34 of his decision wherein he states "on an objective assessment of the circumstances in this case, parties did not reach a consensus"

Should the estate be responsible for the legal accounts set out above:

I refer to the article "Costs and Estate Litigation" 18 E.T.R. (2d) 218, Ian Hull sets forth some considerations favourable to an award of costs out of an estate:

- where the litigation arises out of the acts or fault of the deceased;
- where the order sought is for the protection of the trustee, such as an interpretation problem or where other directions or advice of the court are sought;
- where there are reasonable grounds for the litigation such as proof in

- solemn form;
- where suspicious circumstances are demonstrated;
- where the court's scrutiny or supervision is warranted.

After reading the decision of Justice Moir, I do not believe that the litigation arose as a result of any act or fault of the deceased. I do not find that the order sought was for the protection of the trustee such as an interpretation problem or where other directions or advice of the court are sought. Nor was the matter before Justice Moir as a result of an application for proof in solemn form of the Will.

Basically, the issue was to determine whether an agreement (as such) had been formulated to the satisfaction of the five beneficiaries.

As far as any suspicious circumstances are demonstrated - with regard to the Will, there is no evidence before me to indicate any type of suspicious circumstances surrounding the Will.

With regard to the administration of the estate requiring the court's scrutiny or supervision, this is not an issue before the court.

I am of the opinion that the matter before me today is an action that does not fall within the principles that dictate that the costs should not follow the event - the event being the application commenced in Supreme Court to determine if an agreement had been formulated to the satisfaction of the five beneficiaries and as I have already noted, Justice Moir decided that a consensus of an agreement had not been reached.

In reaching my conclusion, I refer you to Civil Procedure Rule 63.03(1) "Unless the court otherwise orders, the costs of a proceeding, or of any issue or fact or law therein, shall follow the event"

Therefore, I find the estate of Marjorie Jean Horne is not responsible for the payment of the following legal accounts:

Legal Fees of Boyne, Clarke - Oct. 16/2000 -	\$1,445.70
- Dec. 31/2000 -	\$1,013.23
- Feb. 27/2001 -	\$ 912.75
- Mar. 28, 2001 -	\$1,004.78

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from July 24, 2001 up to August 19, 2002 in the amount of \$4,275.00; hst of \$641.25; disbursements of \$16.95 and hst on disbursements of \$2.54 for a total of \$4,935.74.

Also, the estate is not responsible for the payment of the legal account of Blois, Nickerson & Bryson in the amount of \$29,492.49. The responsibility for payment of this account lies with Margot Hargrave, Leslie Arsenault, Ian Horne and David Horne as the legal fees incurred by these individuals was in respect to the matter heard and disposed of by Justice Moir.

As these costs arose at the conclusion of the matter before Justice Moir, I find the estate is not responsible to cover the costs and disbursements ordered paid by the Plaintiffs to Stephen Horne in the Order After Trial Without a Jury in the amount of \$ 10, 415.21. This amount has already been paid by Mrs. Hargrave. It is up to Mrs. Hargrave to seek reimbursement from the remaining 3 plaintiffs.

Registrar