

PROVINCE OF NOVA SCOTIA
COUNTY OF LUNENBURG SS

IN THE COURT OF PROBATE

IN THE MATTER OF THE ESTATE OF CURTIS ENOS MYRA
Cite as: Myra Estate (Re), 2002 NSPB 3

Executrix: Deanna Veno
Proctor: Timothy Reid
Lawyer representing Mrs. Pearl Corkum: Jodi Mailman

DECISION

A closing of the above noted estate was scheduled for October 17, 2001 at 10:00 in the forenoon. A number of issues were raised at that time and the closing was adjourned to November 20th, 2001, again to December 4th, 2001 and then to December 12th, 2001 at 2:00 in the afternoon.

Present at the closing were Deanna Veno, Executrix, Timothy Reid, Proctor for the Estate and Jodi Mailman representing Pearl Corkum, one of the residuary beneficiaries.

Mr. Curtis Enos Myra died October 23, 1998 naming Evelyn P. Richards as Executrix. Ms. Richards renounced her right to probate and the alternate Executrix, Deanna Veno petitioned for Probate of said Will. Mr. Myra left all of his estate to the Trustee in trust, giving Ms. Richards all personal and household articles; direction to pay debts; call in the assets of the estate, and sell at Trustee's discretion. The Will leaves the homestead property to Evelyn P. Richards and the residue to be divided equally between Deanna Veno and the Testator's sister, Pearl Corkum. Probate was granted on December 1, 1998 and an Inventory was filed on November 18th, 1999. The Court was petitioned to set a date for a closing on August 23, 2001.

There were a number of issues which remained unresolved from the first closing.

The first issue was concerning an amount of \$1145.65 which was shown on the original final account as "Cash on hand overstated in the Inventory." When Ms. Mailman questioned Mr. Reid and the Executrix there was no immediate explanation for this amount and where the figure had come from. After lengthy discussion, it was proposed that this amount could have been from three cheques, GST of \$76.00, CPP of \$333.60 and OAS of \$736.05 which totaled the \$1145.65. Mr. Reid could not confirm that this was where the amount had come from but quite likely could be. In a letter from Mr. Reid to Mrs. Corkum's solicitor it was stated:

"that the cash on hand at home was \$8,690.00. Additional income after his death was a death benefit of \$2,001.84, a GST cheque received prior to his death, \$76.00; a Canada Pension Plan last cheque \$333.60; Old Age Pension last cheque \$736.05. This additional income totalled \$3,147.49 and was

deposited on December 16, to the CIBC estate account.”

When we reconvened, Mr. Reid advised upon checking his notes he had \$8690.00 as cash on hand and somehow included these three figures in the cash on hand and inserted \$9835.65 in the Inventory, the difference being \$1145.65. On the final account there is shown an addition of \$3,147.49 as a deposit. I am of the opinion that a miscalculation was made and the \$1145.65 was entered in the Inventory as cash on hand and then entered in the Final Account as an Addition and therefore agree that the \$1145.65 was an overstatement on the Final Account.

The second issue concerns the value placed on the real property at the time of death and recorded on the Inventory. The estate has a 4/5 interest in the homestead and woodland located at Feltzen South, Lunenburg County. Mrs. Pearl Corkum had a 1/5 interest in the said lands. At the closing, it was agreed by the Executrix, Deanna Veno, Proctor for the estate, Timothy Reid and Solicitor for Mrs. Corkum, Jodi Mailman that the value of the real property would be reduced by Mrs. Corkum's 1/5 interest.

Within the first year, after the death of the Testator, two appraisals were completed by John Powers of AA Walters Realty and Hilda Higney of Lighthouse Real Estate Limited and arrived at a value of \$150,000.00. The argument placed before the Court by Ms. Mailman, solicitor for Mrs. Corkum was that the assessed value of \$90,500.00 of the real property in 1998, being the year of the death of the testator, is the value to use.

It is the decision of this Court that the values of \$150,000.00 less Mrs. Corkum's 1/5 interest resulting in an amount of \$130,000.00 be the value of the real property in the estate.

The third issue concerns the expense of house insurance. The facts of this issue are that Mr. Myra apparently did not have house insurance prior to his death. Under paragraph III(4) of Mr. Myra's Will states:

“HOME STEAD PROPERTY

My Trustee shall transfer all my interest in the homestead property to EVELYN P. RICHARDS, if she survives me, for her own use absolutely.”

Ms. Evelyn Richards resided in the house from the death of Mr. Myra in October 1998 to June 2000 at which time she suffered a stroke and was no longer able to live there. To date the property has never been transferred to Ms. Evelyn Richards and therefore is still an asset of the estate. On March 9th, 1999, Mr. Reid wrote to Mr. Baker, solicitor for Mrs. Pearl Corkum, advising that they had obtained a quote for fire insurance on the property. Mr. Reid did not receive a response to his letter. On May 17th, 1999, Mr. Reid, again, wrote to Mr. Baker inquiring as to whether Mrs. Corkum is agreeable to placing insurance on said property. Again, no response was received by Mr. Reid.

In October of 1999, Ms. Veno, the Executrix, did place insurance on the homestead property. Mr. Reid then wrote to Jodi Mailman, a solicitor who replaced Mr. Baker, advising the property was now insured. Mr. Reid did not receive a response to this letter.

The cost for this insurance was \$1,500.00 which was quite high. It was explained to me that the cost

was high due to the fact the property was quite rustic. In 2000, another account of \$80.00 was paid. Mrs. Corkum's solicitor argued that Mrs. Corkum had not been consulted about the fire insurance being placed on the property and as her name was not on the policy, she should not be responsible for these payments.

I disagree in that there were several attempts made by Mr. Reid regarding the insurance issue; however, Mrs. Corkum, through her solicitor, and in her own right, chose not to respond to Mr. Reid.

My concern is that Mrs. Veno should have insured the property once she assumed her duties as Executrix and should not have waited for more than a year. She should also have continued to insure the property until the property had been transferred to Ms. Richards.

The cost of insuring the property is allowed as an expense of the estate, less 1/5 of the amount which should be borne by Mrs. Corkum.

The last issue is concerning the estate expense for survey costs. Mr. Reid advises that the Executrix was unsure where some of the parcels of land were located on the ground and that the descriptions in the existing deed were very vague. Therefore she wanted to have a surveyor involved. The field work was done in early 1999 and a plan drawn in December 1999. During this time Mr. Reid wrote to Mrs. Corkum's solicitor advising of the survey and there was no response. In July 1999 he did a following up letter to Mrs. Corkum's solicitor concerning the survey and again no response. Ms. Mailman advises that the letter in July references to a telephone conversation with Mrs. Corkum's solicitor advising that the survey was not, in their opinion a proper estate expense. Mrs. Corkum had never agreed to the survey. Ms. Mailman does acknowledge that Mrs. Corkum does benefit from the survey, as well as Ms. Veno and Ms. Richards, especially Ms. Richards as she does not benefit in the residue. Since the real property has not been transferred and Ms. Veno has to prepare Trustee's Deeds for the transfer of the homestead to Ms. Richards and transfer of the remaining woodland to herself and Mrs. Corkum, I am allowing this as an estate expense.

Dated this 4th day of January, A.D., 2002.

Registrar of Probate