

Probate District: BW
Probate Court File No. 13703

IN THE COURT OF PROBATE
Cite as: Barkhouse Estate (Re), 2011 NSPB 1

IN THE MATTER OF: The Estate of Rodney St. Clair Barkhouse, deceased

DECISION

Decision: July 20, 2011

Counsel: J. Patrick Morris for Applicant Ellen Marie Fancy
Linda Marie Barkhouse (Self-Represented)

Background and Findings:

On August 23, 2006 a Grant of Administration was issued to Linda Marie Barkhouse. An application for a grant of administration was presented to the court advising that Rodney St. Clair Barkhouse had died on May 10, 2005 and the value for the purposes of opening the estate were solely real property \$104,000.00. The application shows that Linda Marie Barkhouse, daughter to the deceased was the sole heir. Rodney St. Clair Barkhouse had been predeceased by his wife, Shirley Anne Louise Barkhouse and his son, Eric William Barkhouse. The court was requested to dispense with security as Linda Marie Barkhouse was the sole heir.

On September 20, 2006 an amended application for a grant of administration was filed. This listed the heirs as Linda Marie Barkhouse, daughter and three grandchildren, namely Denise Calamari, Ellen Fancy (the applicant) and Aaron Barkhouse, children of Eric William Barkhouse. Security was filed with Nellie Collicutt as the surety.

Notice re filing the Inventory was forwarded to Linda Barkhouse and a copy to Kent Noseworthy on November 22, 2006 and an Order re filing Inventory was forwarded to Linda Barkhouse and a copy to Kent Noseworthy on January 3, 2007. The Inventory was filed on January 22, 2007.

On May 7, 2007 the Court received a copy of correspondence inquiring if Elizabeth (Betty) Barkhouse was named as an heir of the estate. On October 25, 2007 the Court received a copy of correspondence to Kent Noseworthy requesting an amended application for a grant of administration be filed adding Elizabeth (Betty) Barkhouse as an heir. To date an amended application including Elizabeth (Betty) Barkhouse has not been filed.

It is unknown if Notice to Beneficiaries (Intestacy) or Notice of Statutory Rights have been served as no Affidavit of Service has been filed with the Court. There have not been any claims filed against the estate.

On June 24, 2011 an application was made to the Court for the discharge and removal of Linda Barkhouse as Administratrix of the Estate of Rodney St. Clair Barkhouse by Ellen Marie Fancy. Ms. Fancy's Affidavit advises the Court that Linda Marie Barkhouse had verbally agreed with Ms. Fancy to surrender the Grant of Administration and support her Application to be appointed as Administratrix of the

unadministered property. This agreement was conditional upon Ms. Fancy lending money to the estate to pay the outstanding taxes and saving the real property from a tax sale. Ms. Fancy paid the taxes in good faith and Linda Marie Barkhouse now refuses to relinquish her administration of the estate.

Issue:

An application was issued by Ellen Fancy directed to Linda Marie Barkhouse to show cause why (1) Linda Marie Barkhouse should not be removed as administrator of the estate of Rodney St. Clair Barkhouse and (2) why Ellen Marie Fancy should not be appointed in her stead.

Decision:

I will deal with the first issue of removing Linda Marie Barkhouse as Personal Representative of the estate. In both applications for a grant of administration Ms. Barkhouse swore to pay the just debts of the deceased and all taxes payable in respect of the estate of the deceased, file with the court a full and true inventory of all assets of the deceased in Form 29 within 3 months after the date of the grant, etc.

Ms Fancy's affidavit and by Ms. Barkhouse's own testimony the taxes relating to the real property had not been paid and the real property was put up for tax sale by the Municipality of Chester. Ms. Fancy paid the taxes to save the property from tax sale. It is also clear from the estate file that the Inventory was not filed in a timely manner.

Ms. Barkhouse has been the Personal Representative for nearly five years and to date has not disposed of the assets of the estate. The main asset of the estate is the real property situate at Martin's Point and has not been sold. One of the duties of a Personal Representative is to, within a reasonable time, sell the assets which require to be sold at the best possible price. Section 69(1) of the Probate Act states:

"A personal representative shall give the court an accounting of the administration of the estate within eighteen months from the date of the grant or such longer period as the court, on the application of the personal representative, may allow."

Ms. Barkhouse has not made an application to the Court to settle the estate nor ask for an extension for a longer period of time.

Section 61(1) of the Probate Act states:

“On the application of any person, the court may remove a personal representative where the court is satisfied that removal of the personal representative would be in the best interests of those persons interested in the estate and, without limiting the generality of the foregoing, if the court is satisfied that

- (a) the personal representative has not complied with an order of the court;*
- (b) the personal representative*
 - (i) is neglecting to administer or settle the estate,*
 - (ii) is wasting the estate,.....”*

The term “wasting the estate” usually arises in the context of real property.

The duties of the Personal Representative are:

- a) the care and responsibility of the estate,
- b) the time occupied, skill and ability in handling the estate; and
- c) the success in administration of the estate.

Since this estate has been opened for over five years, Ms. Barkhouse has wasted the estate in that she has not sold the main asset of the estate and almost lost this asset to tax sale and therefore the heirs would not have received any inheritance. Correspondence has been placed in the file from the Municipality of the district of Chester which indicates that the building located on the property has continued to deteriorate and is in an unsafe condition for entry and should be demolished.

Linda Marie Barkhouse is hereby discharged as Personal Representative of the Estate of Rodney St. Clair Barkhouse and is to provide the Court with an accounting of her activities during the administration of the Estate of Rodney St. Clair Barkhouse by August 22, 2011.

The second issue is why Ellen Marie Fancy should not be appointed in Ms. Barkhouse’s stead.

When the real property was up for tax sale by the Municipality of the District of Chester she stepped forth and paid the taxes. In her Affidavit she advises the court that she negotiated with Ms. Barkhouse that if she removed herself as Personal Representative she would apply to the Court to be appointed the Personal

Representative and continue with the administration of the estate. The brother and sister of Ms. Fancy have renounced their right to administration of the estate and have nominated her to be appointed as the Personal Representative.

Ellen Marie Fancy be appointed the Administrator of the unadministered assets remaining in the estate.

Dated July 21, 2011

Claire J. Feener
Registrar of Probate