

IN THE COURT OF PROBATE
ESTATE OF CORINNE MABEL HOPGOOD - #58689

Cite as: Hopgood Estate (Re), 2016 NSPB 1

DECISION

Date: April 20th, 2016

Registrar Cora Jacquemin

Counsel: Jessica L. Lyle, TEP – Proctor for the Estate

A.Lawrence Graham, Q.C. – on behalf of The Salvation Army

William Mahody on behalf of Cox and Palmer

BACKGROUND:

An application to pass the account with a hearing was held before me as Registrar of Probate on February 2nd and 3rd, 2016. There were objections filed by 3 of the 5 residual legatees named in the Last Will and Testament of Corinne Hopgood. Each legatee indicated the same 11 points of objection.

The Last Will and Testament for Corinne Mabel Hopgood was prepared by Mr. Paul W. Goldberg of Cox & Palmer. The Will is dated August 22, 2010 and appoints the nephew of Ms. Hopgood's late husband, Mr. Christopher Hogood and her niece Ms. Nancy Unser, as co-executors and trustees. Ms. Corinne Hopgood died on December 5th, 2010. On December 16th, 2010, Ms. Unser, who resides in Florida, renounced her right to act as co-executor and trustee. Probate was granted to Christopher Hopgood on January 14th, 2011.

An application to advance Proof in Solemn Form of the will, filed by Nancy Unser and heard before Justice Allan P. Boudreau on December 1st, 2015 was denied and costs were ordered to be paid forthwith by Ms. Unser in the amount of \$2,500.

ISSUES:

Notices of Objection were filed by The Salvation Army; Bide Awhile Animal Shelter Society and Community Care Network Society – also known as Parker Street Food and Furniture Bank.

Each legatee noted the same objections.

1. The absence of documentation, such as invoices or receipts, to support expenditures listed in the accounts and/or cheques written on the estate bank account
2. The payment of amounts totaling \$768,000 to Christopher Hopgood, David Hopgood, Nancy Unser and Charlie Unser classified in the executor's accounts pre-death financial obligations.
3. The payment to one or more of the Unser family of \$50,000, which is in excess of the total specific bequests to the Unser family
4. The consultation fee paid to Nancy Unser of \$32,400 on the sale of 1956 Woodlawn Terrace
5. The payment of \$975 to Nancy Unser for reimbursement of expenses
6. The payments of amounts totaling \$30,478 to Nancy Unser in excess of fees chargeable for clean out and distribution of items from 1956 Woodlawn Terrace.
7. The payment of \$30,000 to Nancy Unser per cheque #9
8. The payment of proctor's fees for services to the estate in excess of fees charitable for advice and assistance in the timely filing of an application for probate and the timely compliance with all provisions of the Probate Act and Regulations; in particular, all fees paid for the benefit of Christopher Hopgood, Nancy Unser, and Jane Hopgood in his or her personal capacity as heir or claimant.
9. The payment to Jane Hopgood of \$20,000 and \$841.91 for consulting and implementation fees and expenses related to bequests to charitable organizations
10. The payment of fees to Michael Whynot to prepare executor's accounting and other matters as duplication of fees chargeable by the accountants, Hunte Tellier Belgrave Adamson LLP
11. The payment of income taxes in excess of the amount due after properly utilizing the offsets available from gifts made to registered charities.

Further objection to the solicitor's bill of costs to the extent that its amount includes personal services for Christopher Hopgood, Nancy Unser and Jane Hopgood, and services to address or rectify Christopher Hopgood's mismanagement of the estate.

The issue of the taxation of solicitor's accounts and the accountant's invoices will not be dealt with in this decision. Rather, all the accounts will be taxed separately after the hearing.

Corinne Hopgood was hospitalized in the latter part of 2010. However, on November 26th, 2010 after suitable home care was arranged she was able to return home. On December 3rd, she slipped into a coma. Unfortunately, she passed away on December 5th.

Prior to her hospitalization, and after her return home, Christopher Hopgood testified that he regularly visited his aunt on Sunday afternoons. They would review household bills that needed to be paid, and Christopher Hopgood would prepare the cheques.

During her hospitalization in November, she was visited by Mr. Maurice MacGillivray, solicitor with Landry McGillivray, to discuss preparing a power of attorney. This was arranged by Christopher Hopgood. Mr. McGillivray confirmed to Mr. Hopgood that Corinne Hopgood had indicated she had a power of attorney prepared and Christopher Hopgood and Barry Parks were named. Mr. Hopgood testified that Mr. Parks never really assumed his role as co-Power of Attorney. He also stated that he didn't see the Power of Attorney until Nancy Unser found it in the house after Corinne's death.

In her Last Will and Testament, Corinne Hopgood made nineteen specific bequests to various members of her family. The residue of the estate was divided between five charities. The fifth charity – Symphony Nova Scotia – was written in by hand after being executed. This addition was accepted and a release of interest signed by the four other charities named in the will. This is the only alternation in the will.

Mr. Hopgood testified that his aunt was private, independent and strong willed. She was also untrusting due to past incidents with members of her family. Christopher Hopgood testified that Corinne Hopgood stated several times she was unhappy with her 'business' which he took to mean her will. The only alteration she made in her Will was to include Symphony Nova Scotia as a residual legatee. She never made any indication of what she was specifically unhappy with in regards to her will to Christopher Hopgood. Christopher Hopgood stated that you could push a subject only so far with his aunt, but no further and that he knew when not to push too much. When he would suggest that the monies held in her chequing account be transferred to her investment account to earn a greater return, she refused.

There are several cheques were written by Christopher Hopgood prior to his aunt's death, but not cashed until after she passed away. The amount of the cheques, were never specifically stated to Christopher Hopgood by his aunt. She indicated to him that she wanted to help her family. Mr. Hopgood testified that he sought the advice of Mr. Paul W. Goldberg, now deceased. I cannot make a finding of facts on any advice that Mr. Goldberg may or may not have provided to his client as it is not the purview of this court to do so. The terms of the will are very clear and straight forward. I have nothing to corroborate the testimony of Christopher Hopgood regarding the 'pre-death obligations' of Corinne Hopgood.

The cheques were written by Christopher Hopgood in his capacity as power of attorney while Corinne Hopgood was still alive. He was uncertain what he should do with them and held on to them. They were cashed well after her death. At the time they were cashed, the money in the Royal Bank was an asset of the estate and the power of attorney was no longer in effect. These are not bequests in the Will and therefore I find that they are not proper distributions.

I am ordering that the monies listed as pre death obligations for the following people be paid back into the estate forthwith:

<i>Nancy Unser for Clyde Parks and Andrew Parks</i>	<i>\$30,000</i>
<i>Christopher Hopgood</i>	<i>\$140,000</i>
<i>David Hopgood</i>	<i>\$140,000</i>
<i>Charlie Unser – USD \$140,000</i>	<i>\$138,866</i>
<i>Charlie Unser – to round up gift to \$140,000</i>	<i>\$1,134</i>
<i>Nancy Unser</i>	<i>\$187,829.15</i>
<i>Nancy Unser – to round up gift to \$190,000 Cdn</i>	<i>\$2,170.85</i>
<i>Nancy Unser – for Ken Unser to pay his mortgage</i>	<i><u>\$57,400</u></i>
Total	\$697,400

OTHER OBJECTIONS:

The inventory listed household goods at \$10,000. The will left all these articles to Nancy Unser. Paragraph 4(c) of the last will and testament reads:

“Give all my articles of personal and household use or ornament to my niece, Nancy Unser, of Orlando, Florida. I express the wish, without imposing any obligation, that Nancy distribute these articles in accordance with any lists that I may leave. To enable her to carry out this task, she and her husband Charles may occupy my home at no charge for up to three months after my death.”

I have no appraisals presented as evidence to indicate that the value of the contents of the home was worth \$50,000 and not \$10,000. The value of an asset cannot be arbitrarily increased and an equalization payment demanded by the recipient. The \$50,000.00 paid to Nancy Unser as ‘equalization payments’ for the contents of the home is not allowed and is to be paid back into the estate forthwith.

The consulting fee paid to Jane Hopgood in the amount of \$20,841.00 is not allowed and is to be paid back into the estate forthwith. This is not a proper expense of the estate. If the charities involved had wished to hire a consultant, they could have done so at their own expense.

The amount of \$10,000 paid to Christopher Hopgood for commission as power of attorney is not allowed. The expenses in the amount of \$1,786.84 are allowed pursuant to Section 76 of the Probate Act.

The amounts paid to Nancy Unser for services rendered for \$20,606.00 and \$30,478.00 are not allowed and are to be paid back into the estate forthwith. She is essentially being compensated for clearing out items from the home which belong to her and charging the estate for shipping them.

The amount of \$975 paid to Nancy Unser for out of pocket expenses is allowed.

The amount paid to Nancy Unser for commission in the amount of \$32,400 is not allowed. While she may have been familiar with the property, there is no correlating requirement that the estate pay her a professional commission on the sale of the home. However, I don't believe it unreasonable that she receive remuneration for her assistance to the estate. I am awarding the amount of \$10,250 to Ms. Nancy Unser for her assistance to the estate of her aunt in selling the home. The difference of \$22,150 is to be paid back into the estate forthwith.

There are several miscellaneous amounts paid in the final accounts that have been objected to as well:

December 1, 2010 – Christopher Hopgood - \$1,433.48 - allowed

December 4, 2010 – Christopher Hopgood - \$1,500 - allowed as an advance on bequest

December 4, 2010 – Nancy Unser - \$1,500 - allowed as an advance bequest

December 3, 2010 – bank draft to Ken Unser - \$6,564.48 – allowed as an advance on bequest

February 16, 2011 – Christopher Hopgood - \$1,023.05 – allowed as estate expense

June 27, 2011 – Christopher Hopgood for Horace Hopgood - \$190.00 – not allowed

July 5, 2011 – Christopher Hopgood - \$765.50 – the amount of \$346.77 is allowed

May 14, 2013 – Christopher Hopgood - \$300 - allowed

September 30, 2014 – Christopher Hopgood - \$246.54 – allowed

There was an issue raised regarding the sale of the investments versus transferring them to the charities. Christopher Hopgood testified that if the values of the shares dropped prior to the actual transfer that he could be held liable. Paragraph 7(a) of the will sets out the power of Mr. Hopgood:

*“Sell Property. You may sell any property, real or personal, which at any time forms part of my estate. **You will decide when to sell, the manner of sale and the terms...**”* {emphasis added}.

I do not find any fault with the shares being sold and the proceeds given to the charities vs. transferring the shares to the charities. While there was a cost to the estate for the broker who sold the shares, it is an appropriate expense of the estate and it is within the power of the personal representative to sell the shares rather than transfer them.

Once the amounts have been paid back into the estate and the accounts have been amended, we can proceed to pass the accounts and close the estate.

CNMJ