*In Re Camsell Estate,* 2016 NWTSC 62

Date: 2016 10 21

Docket: S-1-ES-2015 000037

**IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES**

**IN THE MATTER** of the Estate of Donald Clyde Camsell, late of the Town of Behchoko, in the Northwest Territories, deceased

**AND IN THE MATTER**of an Application under the *Dependants Relief Act,* RSNWT 1988, c D-4

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| Heard at Yellowknife, NT, on May 17, 2016.Reasons filed: October 21, 2016 |

REASONS FOR JUDGMENT OF THE

HONOURABLE JUSTICE K. SHANER

Counsel for the Public Trustee: Brian Asmundson

Counsel for Agnes Beaulieu: J.M. Alain Chiasson

Donna Camsell Self-represented

Danielle Beaulieu Self-represented

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**REASONS FOR JUDGMENT**

1. This is an application under the *Dependants Relief Act,* RSNWT 1988, c D-4. It is brought by the Public Trustee. There is also an application for costs brought by Agnes Beaulieu.

**BACKGROUND**

1. Donald Camsell died on August 22, 2014. He did not have a will. Mr. Camsell left six surviving children. Three are adults (Ryan, aged 32, Donna, aged 29 and Danielle, aged 24) and three are minors (T.M.B., aged 17, J.C.C., aged 14 and D.M., aged 8). Agnes Beaulieu is the mother of Danielle, T.M.B. and J.C.C.. Mary Rose Mantla is the mother of the youngest child, D.M.
2. Mr. Camsell had a life insurance policy. He named four of his children as beneficiaries and directed the proceeds be distributed unequally. The proceeds, and interest, were paid out a few months after he died, as follows:

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| --- | --- | --- | --- |
| **Child** | **Percentage**  | **Amount** | **Date Paid** |
| J.C.C. | 40% | $64,417.46 | Nov 19, 2014 |
| T.M.B. | 20% | $34,708.73 | Nov 19, 2014 |
| Donna Camsell (adult) | 20% | $34,691.10 | Nov 3, 2014 |
| Danielle Beaulieu (adult) | 20% | $34,691.10 | Nov 3, 2014 |

1. Mr. Camsell designated Sherri Zoe as trustee for J.C.C. and T.M.B. and the proceeds for these two children were paid to her. She spent a small amount of the money attending to the children’s needs, specifically $3,500.00 for each of J.C.C. and T.M.B. for clothing and $780.00 for J.C.C. for a cellular telephone. The remainder, in the amount of $96,476.49 was paid to the Public Trustee in trust pending the outcome of this application. Although Sherri Zoe was named as the trustee, she had not been appointed the guardian of their estate by the Court at the time the money was paid to her.
2. Notice of these proceedings was served on Ryan Michel, Donna Camsell, Danielle Beaulieu and Mr. Camsell’s employer, the Dominion Diamond Corporation. Neither the employer, nor Ryan Michel, appeared.
3. Donna and Danielle both attended the hearing, but they were without legal representation. Both confirmed they had received insurance proceeds, but they no longer possess them, although this was not by way of sworn or affirmed testimony. Danielle’s mother, Ms. Beaulieu, deposes it is her belief Danielle has spent the proceeds, but there is no evidence about what actually became of the money or upon what she bases that belief.
4. The youngest child, D.M., was excluded from the policy. Mr. Camsell, up until he died, paid $822.00 per month in child support for him. Ms. Mantla now receives $234.87 per month as a child benefit under the Canada Pension Plan. She works as a school janitor. Her income over the last few years has been very modest, between $20,000.00 and $26,000.00 per year.
5. Agnes Beaulieu has an income in the same range as Ms. Mantla. She was receiving support in the amount of $1,588.00 per month for her two children prior to Mr. Camsell’s death. There is no evidence about whether she has applied for, or is receiving, any benefits for J.C.C. and T.M.B. under the Canada Pension Plan or other program.
6. The Public Trustee became the estate administrator on October 5, 2015, almost a year after the insurance proceeds were paid out. The estate itself has no assets.

**LEGAL FRAMEWORK**

1. Several statutory provisions and legal principles are at play in this case.
2. The *Intestate Succession Act,* RSNWT 1988, c I-10 sets out how an estate is to be distributed where a person dies without a will. Where, as here, there is no surviving spouse but there are “issue” (ie. adult and minor children), the estate is to be divided equally amongst them.
3. The law recognizes that there are times where distribution under a will or in accordance with the *Intestate Succession Act,* as the case may be, does not adequately provide for surviving dependants. In those cases, dependants can apply to the Court to override the provisions of a will or the *Intestate Succession Act*, under s. 2(1) of the *Dependant’s Relief Act*:

2. (1) Where a person

[…]

(b) dies intestate as to all or part of his or her estate and the share under the *Intestate Succession Act* of his or her dependants or any of them in the estate is inadequate for their proper maintenance and support,

a judge, on application by or on behalf of the dependants or any of them, may, notwithstanding the provisions of the will or the *Intestate Succession Act*, order that the provision that the judge considers adequate be made out of the estate of the deceased for the proper maintenance and support of the dependants or any of them.

1. Judges have wide discretion in determining what is “adequate” for the proper maintenance and support of dependants. There is no specific list of factors set out in the *Dependants Relief Act* which must be considered; however, the judge who hears the application may, among other things*,* “inquire into and consider all matters that the judge considers should be fairly taken into account in deciding on the application” (*Dependants Relief Act,* s. 4(1)(a)).
2. Guidance as to what should be taken into account in determining what is “adequate” and how the Court should exercise its discretion isfound in the leading case of *Tataryn v Tataryn Estate,* 1994 CarswellBC 283, [1994] 2 SCR 807, as well as in later jurisprudence from the Northwest Territories and cases which have considered similar legislation in other jurisdictions (see *Re Alainga Estate,* 1995 CarswellNWT 4,[1995] NWTR 392 (SC); *Re Lee Estate,* 2006 NWTSC 13,2006 CarswellNWT 16; *Cummings v Cummings,* 2004 CarswellOnt 99, 5 ETR (3d) 97; *Petrowski v Petrowski Estate,* 2009 ABQB 196, 2009 CarswellAlta 465; *Welsh v McKee-Daly,* 2014 NSSC 356, 2014 CarswellNS 710).

1. In determining whether there is adequate provision for dependants by operation of the will or, as here, the *Intestate Succession Act,* the Court must examine, first, the legal obligations owed by the deceased to his or her dependants and second, the moral obligations arising between the deceased and his or her dependants, having regard to society’s expectations of a judicious person in the circumstances. *Tataryn v Tataryn Estate, supra,* paras 30-33; pp 821-824.
2. Unless the estate is the beneficiary, proceeds from a life insurance policy do not form part of an estate. Recognizing that an estate may not have adequate assets for the care and maintenance of surviving dependants, however, section 19(1)(f) of the *Dependant’s Relief Act* allows money from a life insurance policy to be treated as a testamentary disposition. Group life insurance policies, like that held by Mr. Camsell, fall under this provision. *Re Alainga Estate, supra*, at paras 23-27; *Moores v Hughes,* 1981CarswellOnt 493,(1981) 11 ETR 213 (OHCJ).

**ISSUES**

1. That the minor children are dependants within the meaning of the *Dependants Relief Act,* is clear, as is the fact that Mr. Camsell did not make any provisions for the youngest, D.M. The issues which remain to be determined are as follows:
	1. Should all of the insurance proceeds, including what was paid to the adult beneficiaries, be made available for redistribution?
	2. How should the proceeds be distributed?
	3. Should Agnes Beaulieu have her costs paid out of the proceeds?

**ANALYSIS**

1. ***Should all of the insurance proceeds, including what was paid to the adult beneficiaries, be made available for redistribution?***
2. Both counsel for Agnes Beaulieu and the Public Trustee ask the Court to consider including the proceeds paid to Donna and Danielle as part of the total amount available for care and maintenance of the youngest child. This would require the Court to order Donna and Danielle to repay all or part of the money they received.
3. There are cases where restitution has been ordered because beneficiaries have been paid money by mistake. These are founded upon unjust enrichment. One such case is *Re Gareau Estate,* [1995] OJ No. 2117,1995 CarswellOnt 821. There, a number of beneficiaries were paid bequests in excess of their entitlement, while others had received no payment at all. The overpayment was due to a mistake by the executrices in determining the class of beneficiaries. The overpaid beneficiaries in *Gareau Estate* ultimately had to repay portions of what they had received. This was secured through a variety of charging orders over assets.

1. An important difference between the case at bar and *Gareau Estate* is that there was no mistake with respect to payments made to Danielle and Donna. They were not unjustly enriched. There was, rather, a juristic reason the insurance proceeds were paid to them. They were named beneficiaries and, absent a court order enjoining it from doing so, the insurer was required by law to pay them. Having received those proceeds, and without any instrument or order charging them, or notice of a possible application under the *Dependants Relief Act,* Danielle and Donna were entitled to spend the money they received. These circumstances are inadequate to order restitution.
2. The Public Trustee drew the Court’s attention to *Moores v Hughes, supra,* wherein Robins, J., held (under similar legislation in Ontario) that funds which have already been distributed under an insurance policy could nevertheless be available for redistribution in an action brought by dependants:

26      It is argued that neither the insurance nor the pension plan proceeds can be included under s. 72 because of their distribution prior to these proceedings. The argument centres on the word "payable" in ss. (*f*) and (*g*) of s. 72(1). With deference, I can see no merit in that argument. It is evident that as a practical matter payments will be made (as they were here) shortly after, if not immediately as in the case of joint bank accounts, the death of the deceased. The insurance company, the trustees of a pension fund, a bank, or anyone paying or transferring funds or property covered by s. 72 is not prohibited from doing so and is freed of any liability unless there has been service made of a suspensory order enjoining such payment or transfer as provided for in s. 59 of the Act. The fact that no suspensory order was obtained, hardly an unlikely situation, does not render the proceeds unavailable. In short, the word "payable" includes "paid" for the purposes of this legislation.

27      Furthermore, the combined effect of s. 72 and s. 63(2)(*f*), together with s. 78(2) and s. 66, manifest the Legislature's intention to ensure the availability of such funds of property. I interpret these sections and the general scheme of the statute to enable the Court to trace funds or property included in s. 72 if necessary to persons to whom they may have been paid or transferred. If such authority is not present the aim of the Act can be frustrated simply because payment was made, as here, before the proceedings could conceivably have been instituted. No prejudice results from the payment because whether the funds are held by the insurance company or trustee or beneficiary, the result is the same. In each case it is available for inclusion in the net estate under s. 72.

1. Based on the reasoning in *Moores v Hughes,* I agree that as a general proposition, funds already paid out under an insurance policy *may* be included in what is available for distribution in an application under the *Dependants Relief Act.* But, this does not mean it is appropriate to force recipients to repay such proceeds in every case. The specific question of repayment was not addressed in *Moores v Hughes*, but rather, the availability of funds for inclusion post payment. Moreover, it appears the insurance proceeds and other assets had not been dissipated by the time the application was commenced, making it unnecessary to dig deeper into the issue of when it is appropriate to order repayment or charge other assets.
2. In my view, the question of whether repayment should be ordered is not black and white. It must be addressed on a case-by-case basis, having regard to the circumstances of the recipients, the circumstances surrounding payment and overall fairness. Danielle and Donna are young adults. No evidence was presented about their means, but, as noted, both indicated they spent the money they received. This is not surprising, given how long ago they received the funds. They were paid in November of 2014, almost a year before the Public Trustee became the administrator of Mr. Camsell’s estate. Then, more than a year elapsed before either was served with notice of these proceedings and it was seventeen months before the first appearance. Parenthetically, I in no way suggest there was any delay by the Public Trustee in bringing this forward once he became aware of it. The point is, a significant period of time went by before Danielle and Donna were aware of the application under the *Dependants Relief Act, supra,* and the implications of that. In the meantime, they dissipated the funds, which they rightfully received without notice of any potential for claw back.
3. In all of the circumstances, it would be unjust and inequitable to ask Donna and Danielle to repay the money.The proceeds paid to them will not be included in the funds available for distribution amongst the three dependants.
4. ***How should the insurance proceeds be distributed?***
5. It is unnecessary to embark on an extensive analysis of Mr. Camsell’s legal and moral obligations towards each of his minor children. He was legally required to support all of them.
6. The Public Trustee put forth two options for the Court to consider in determining how the insurance proceeds should be allocated. In support of an unequal distribution, with a greater share going to D.M., the Public Trustee noted D.M. would require support for a longer period of time than his older siblings. He also noted, however, that this could cause hardship to the older two who, while closer to adulthood, remain dependants.
7. The other option identified by the Public Trustee is an equal distribution amongst the three dependants. Practically, this would come from J.C.C.’s share, as he was named as a beneficiary to twice the amount as T.M.B. In my view, this is the fairest and most practical option. The three children appear to live in similar economic circumstances, with their mothers having similar incomes. There is no evidence that J.C.C. has needs which require him to have a greater share of the proceeds for adequate support. Further, while the two older dependants may require support for a shorter period of time, there is no evidence that the aggregate costs of meeting their day to day needs are or will be significantly higher or lower than those of D.M.
8. Accordingly, the total sum of insurance proceeds paid to Sherri Zoe in trust for T.M.B. and J.C.C., plus accumulated interest, will be divided three ways for the benefit of each, as follows:
	1. D.M. will be entitled to 1/3 of the total sum paid by the insurer to Sherri Zoe in the first instance, including a proportionate share of accumulated interest;
	2. T.M.B. and J.C.C. will share equally the remainder; and
	3. T.M.B.’s and J.C.C.’s respective shares will be subject to adjustments to account for money advanced by Sherri Zoe on behalf of each, prior to when she paid the remainder to the Public Trustee.
9. The funds shall be held by the Public Trustee in trust for the benefit of each of T.M.B., J.C.C. and D.M. Those funds constituting D.M.’s share will be held separately. Funds may be dispersed for the benefit of each of these children or transferred to another trustee as the Public Trustee deems appropriate.
10. **Should Agnes Beaulieu have her Costs Paid out of the Proceeds?**
11. Ms. Beaulieu asks that her costs be paid on a solicitor and client basis from the shares of all three children. She argues she was required to appear to protect J.C.C.’s and T.M.B.’s interests.
12. Costs are frequently awarded in estate litigation, including that based on dependants relief legislation. The policy basis is that where the litigation arises because of something the deceased did or omitted to do, it is the estate which should bear the costs of resolving it. (see *McDougald Estate v. Gooderham,* [2005] OJ No. 2432, 2005 CarswellOnt 2407; *Scott v Seier Estate,* 2016 SKCA 76, 2016 CarswellSask 380).
13. Costs will not be borne by the estate automatically, however. The interests and circumstances of the applicants, respondents and other beneficiaries must be balanced and the size of the estate considered. The nature and foundation of the litigation are also factored into the mix. This was articulated by Caldwell, J. in *Scott v Seier Estate, supra:*

50      While the cost of litigation ought not to be a barrier to dependants' relief applications, the estate ought not to be frittered away on unfounded litigation. It is a bit of a fiction to say the estate is paying the costs when an award is made payable out of the estate; the reality is: where awards are paid out of the estate, the beneficiaries of the residue are funding both sides of the litigation. But then, it is also a reality that the estate itself serves as an additional, potential source of funds to pay an award of costs. Moreover, the beneficiaries of the residue are only entitled to receive their bequest after all costs and expenses of the estate have been paid. For these reasons, the interests of dependants and the interests of the beneficiaries must be balanced in the pursuit of fairness in the circumstances. In this vein, it is also relevant that the value of the residue of the estate in this case is not insignificant and that Ms. Scott is not impecunious.

1. The amount of funds which will be held in trust for each child is not large when considered in relation to their ages and need to support each of them while they remain dependants. Thus, any encroachment should be approached conservatively. Given Ms. Beaulieu’s limited means, however, it is unrealistic to expect she would be able to bear the legal costs associated with her role in this litigation. Moreover, this is not the type of case which lends itself readily to litigation without qualified legal representation. Dependants relief applications are often complex.
2. J.C.C. and T.M.B. each had a legitimate stake in the outcome of this application. Ms. Beaulieu’s involvement on their behalf was necessary to ensure those interests were articulated. The positions her counsel put forward, though not accepted, were nevertheless reasonable. At the same time, however, Ms. Beaulieu was involved in this case to protect the interests of J.C.C. and T.M.B. She was not there to protect D.M.’s interests, which were advanced by the Public Trustee and which were inconsistent with those of J.C.C. and T.M.B.
3. In the circumstances, it is appropriate for Ms. Beaulieu to have her reasonable solicitor and client costs and disbursements; however, it is not appropriate that D.M. bear any of this burden. Accordingly, Ms. Beaulieu’s costs can be advanced from funds held in trust for J.C.C. and T.M.B.
4. I have not been provided with information respecting Ms. Beaulieu’s costs. Should the Public Trustee and Ms. Beaulieu’s solicitor be unable to agree on what reasonable solicitor and client costs are, they may bring this matter back before me for that determination.

*Order accordingly*

K. M. Shaner

 JSC

Dated in Yellowknife, NT this

21st day of October, 2016

Counsel for the Public Trustee: Brian Asmundson

Counsel for Agnes Beaulieu: J.M. Alain Chiasson

Donna Camsell Self-represented

Danielle Beaulieu Self-represented

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