LEGAL ARGUMENTS

SUIT E.74 OF 1979

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN EQUITY

BETWEEN	OSMOND REID	PLAINTIFF
AND	GRESFORD JONES AND HUGH WILLIAMS, AND JOYCE NELSON AND GWENDOLYN PETERS EXECUTORS AND BENEFICIARIES UNDER ESTATE OF MIRIAM REID DECEASED	DEFENDANT

On 30th July, 1979.

Mr. Burnham Scott Q.C. for the Plaintiff applicant Mr. James Kirlew Q.C. for the Executor and beneficiares, Estate Miriam Reid. Mr. S. Shelton, instructed by Messrs. Myers, Fletcher and Gordon for the Defendant Gresford Jones.

Mr. Scott: The matter is a comparatively simple one. The summons before Court is issued pursuant to an Order of Mr. Justice Malcolm calling upon Mr. Hugh Williams and others to show cause why certain moneys paid into Court by Mr. Gresford Jones an Attorney-at-Law should not be made in favour of the Plaintiff Osmond Reid.

The facts are that the Plaintiff is the widower of the late Miriam Reid who died on 19th February 1979. The Plaintiff applied for Letters of Administration in the Estate of his wife Miriam Reid. Mr. Gresford Jones in his capacity as Attorney-at-Law issued a Caveat against the grant of Letters of Administration on the ground that there was a Will left by the deceased. The claims of Mr. Hugh Williams and the other beneficiaries arise under the Will. Additionally the Plaintiff Reid took out an origination Summons against the Defendant Jones requesting the Court, among other things, that the sum of $15,350.00 U.S. is the property of the Plaintiff Reid in the possession of the

Defendant Jones and requesting him to return the money to the Plaintiff who is an American Citizen. The Defendant Jones is not making any claim to the money himself but states that while the money was in his possession he received a letter from an Attorney-at-Law, one Mr. Ainsworth Campbell that Hugh Williams and others were claiming the moneys in his hands. Consequently he converted the money into Jamaican Dollars and paid it into Court.

Up to the present time, Mr. Jones is the Attorney-at-Law representing the purported Executors of Miriam Reid who is seeking to prove the paper writing as being her Last Will and Testament. It is also relevant that on the Affidavit of Mr. Jones the money came into his possession in the following manner:- firstly he says that he is not or has never been the Attorney-at-Law of the Plaintiff Osmond Reid, but arising out of the production of a duplicate Will of the Deceased Miriam Reid, he had occasion to come in contact with Miriam Reid and Mr. Reid enquired from him if "he was a person whoever went to Florida?" He said "Yes". Mr. Reid then asked him "if he would go to Florida and withdraw some money from a bank in Florida" - Mr. Shelton at this stage - the Defendant Mr. Jones was previously brought before the Court, that is before Mr. Justice Malcolm - the matters now raised were already canvassed before him. The Defendant Jones is not interested in whom the money is paid to. Mr. Justice Malcolm had started to hear the matter and that aspect of the matter was part-heard before him. Mr. Kirlew also adopting Mr. Shelton's arguments. Leave was granted to issue a summons inter parties to Hugh Williams, Joyce Nelson and Gwendolyn Peters for them to show cause why an order for payment of the money paid into Court by the Defendant ought not to be paid to the Plaintiff. There are Affidavits from each of these persons that resort will be made out.

Mr. Shelton - there are a lot of resolved issues in the last matter only unresolved issue left in the matter is the part-heard originating summons. Mr. Scott - in respect to the money the Defendant has no interest in the money or who gets it. The order before Mr. Justice Malcolm was a consent order. There is no question of fact to be determined by the Court. The only questions are one of Law. The record will show that the Defendant withdrew the money from the Plaintiff's account on the Plaintiff's instructions and the record shows the authority which the Plaintiff gave to the Defendant. Refers to Letter to the Bank in Florida exhibited in file. In so far as the Bank is concerned there can be no issue as to whom the money belongs to. It is admitted throughout that the money was in a Joint Account held by the Plaintiff and his late wife, Miriam Reid, accordingly the only matter to be resolved is whether the ordinary and general Law applicable to Joint Accounts is to be applied in this case or whether Williams, Peters and Nelson can come before this Court and produce some facts which sets aside the ordinary Law. He is prepared to agree to the entire facts deponed to by these persons and prepared to make submissions on those facts. Submitting that this money would not form part of Miriam Reid's Estate.

Mr. Kirlew - The modern view on the general Law is now different. It is this that unless a contrary intention can be shown that the deceased Miriam Reid owned property in Jamaica and she sold this property and got permission from Bank of Jamaica and remitted abroad the equivalent of $10,000 Jamaican and also other moneys, and this money was deposited in the City National Bank of Landerhill, Florida, United States of America. She also obtained some social security moneys which she also deposited in this Bank. She was a person of fairly substantial means and her husband was not

so. The house in Jamaica was in her name and the moneys in the bank washers. Refers to Creightneys Family Law 1974 Edition pages 163 - 164 under heading of Joint Accounts - Reads from work - Refers to Re Figgis deceased, reported at 1969 Chancery Division Reports at page 123. Also refers to Haseltine vs Haseltine 1971 Vol. UME 1 All England Law Reports at page 952. Mr. Scott - replies - refers to Pagets Law of Banking 7th Edition at page 148 - A Joint Deposit Account is a Joint debt. The Defendant was holding money for the Plaintiff and he received a claim stating that the money belonged to some other persons. Applicants must now show that the right of survivorship ought not to apply. Exception only applies where the wife survives husband. There is no obligation or onus on the Plaintiff to show anything. They - the beneficiaries must show that the ordinary rule which ought to be applied ought not to apply - the contrary intention as expressed by Attorney for the beneficiaries stated.

Mr. Kirlew by Leave - According to Modern decisions the survivor does not always take the entire fund. The testator had several accounts, and all were joint accounts. Application has been filed by the Plaintiff for Letters of Administration and by the Executors for Probate. It is possible that the money is disposed of at this time, one or other of the parties might find themselves embarrassed depending upon whether or not the Rule of survivorship applies. The Plaintiff is a beneficiary under the Will and is given a Life Interest in the whole Estate. Refers also to Common Law Suit number 124/79, summons taken out on 20th July 1979 and returnable on 16th October 1979. What the Affidavit in Support shows is that there are questions of fact to be decided concerning the moneys in the Bank Accounts of the deceased and the Plaintiff. There is strong evidence on the file to show that the moneys in the Florida Accounts was exclusively

the property of Miriam Reid. Affidavit evidence is all that Court can go by in these matters.

Court - Having regard to fact that file was only received after hearing started wishes some further time to peruse file and look up law in the matter.

Adjournment taken for a date to be fixed by Registrar. Court draws attention of Attorneys to the local case of Reid vs Grant and Reid reported at Volume 23 part 1 of The West Indian Reports at page 91, a decision of the Jamaican Court of Appeal.

On 9th October, 1979

Mr. B.J. Scott Q.C. for Plaintiff.

Mr. Horace Edwards Q.C. now appears for Hugh Williams. Joyce Nelson and Gwendolyn Peters.

Mr. Edwards was told by Mr. Hugh Williams that Mr. Justice Malcolm made an order for him and others to show cause and on the strength of that he wrote to the Registrar Supreme Court for a copy of the Notes of Evidence taken. Clause in Will of testator Miriam Reid which applies to Joint Account in this matter. Executors have a duty to the Estate to get in the Assests of the Estate. As long as there is an issue there is one way out that issue and that is that issue must be tried. Executors can then present all the evidence to the Court. In keeping with their duty the matter will be brought before Court to hear evidence on both sides. The Affidavits from the Executors and beneficiaries all show that the testator expressed that her nieces were to get moneys in bank and financial institutions. Affidavits show that there are conflicting claims. Issue is whether the beneficiaries are the ones to get the amounts in these bank accounts or not. Refers to Affidavit of Mr. Gresford Jones, when he was faced with the conflicting claims of Mr. Reid and the Executors, he paid the money into Court - similar to

an Interpleader by a Bailiff. (Sheriff). All cause the Executor/ beneficiaries need to show is that they might have a legal right to the money and they are saying that :-

1. There is a valid Will and they are Executors and the others are beneficiaries.
2. That under the Will there is a bequest that might apply - that seems to apply to this money.
3. That under the Will Joyce Nelson and Gwendolyn Peters are legatees to this money.
4. They wish to produce evidence that there is a contrary intention to show that she, Miriam Reid never intended the husband to benefit. Once there is an issue that the Defendants must be allowed to present it. This is an issue that involves evidence. That is all that someone who is asked to show cause need do. Wishes further opportunity to produce Authorities.

Mr. Scott - Let us assume that the Will is a Valid Will and that Hugh Williams is the Executor, it is his submission that both on the Authorities of Reid vs Grant and Reid and Re Figgis, deceased, even if there were a disposition in the Will of this sum of money, and the Will has no such disposition, that disposition could not dispose of the money to any beneficiary under the Will. The Mandate held by the Bank and given to it by the two Joint Account Owners, in the absence of any direct instructions to the contrary, is the authority that governs how the money or by whom the money can be disposed of. There is an irresistible inference of the fact that the Bank paid out the money to Gresford Jones on the purported authority given by Mr. Reid to Mr. Jones and that Mr. Reid is the person entitled to the money. Refers to "A" attached to his affidavit dated 29th August, 1979 - Mr. Edwards objecting to this bit of evidence as in the manner in which it is exhibited it has no evidential value. Court agrees.

Mr. Scott continuing - Mr. Jones states that he was

the Attorney-at-Law for the Executors and he had instructions from them. On 6th March 1979 and following that, he withdrew the money from the account in the Bank in Florida and placed it in another account in his own name.

On 11th May 1979, Mr. Reid wrote to Mr. Jones asking him for an accounting. Mr. Jones made no response and on 18th May 1979 Mr. Reid's Attorney-at-Law wrote again asking for an accounting.

On 24th May 1979 Mr. Jones replied but made no reference to the sum in question.

It is only after the originating Summons was taken out on 28th May 1979 asking for Mr. Jones to account for this sum of money that Mr. Jones makes any reference to the money at all. The claim by Mr. Ainsworth Campbell on behalf of Hugh Williams, Joyce Nelson and Gwendolyn Peters was made about one month after the originating summons was filed. Matter for Court to draw whatever inferences it wishes from this state of affairs.

Mr. Edwards - in relation to question of showing cause - asking for further time to bring evidence.

Mr. Scott - Respondents had all the time in the world to dispute matter. When the matter came before Mr. Justice Malcolm and the order was made that order was served upon Mr. Ainsworth Campbell on 19th July 1 979 and he as the representatives of the Executors and beneficiaries had ample time to gather the evidence and appear before the Court on 30th July 1979. On 30th July 1 979 Court suggested to Mr. Kirlew that steps ought to betaken to produce documentary proof to support proof of a contrary in tention to raise an issue of the rule of survivorship not applying. Matter is not one of evidence but of Law. Mr. Edwards cannot produce any authority to overrule Grant vs Grant and Reid and Re Figgis, deceased. Asking for an order in terms that money paid into Court

by Mr. Gresford Jones be paid out forthwith to Mr. Reid or his Attorney-at-Law.

Mr. Edwards - Short answer to Mr. Scott's submission is page 30 of Padgett's Law of Banking - the fact that the Bank has paid the money out has nothing to do with this case. Refers to Re Figgis, deceased. Principle here is whether the person has a strong case or not, that person is entitled to have their day in Court. Refers to Order 14, Rule 3, 1973 White Book on question of Defendants showing cause. That there is no substantial question which ought to be tried. All they need show is whether there is a fair probability that there is a good defence. As Executors asking for time to show whether the money is to go to the Estate or to the Plaintiff were there is a conflict of evidence on the Affidavits there must be a trial. The entire mandate produced. What Court should do is to order that the money should remain in the Court and give the Claimants an opportunity in time to bring matter before Court for Court to decide w hether or not the money goes directly to the husband or pass under the Will.

Court orders that money now in Court be paid to the Plaintiff Osmond Reid or his Attorney forthwith. Costs granted to Plaintiff and ordered to be paid out of the proceeds of the Estate of Miriam Reid.

Mr. Edwards - applying for Leave to Appeal, and for the usual stay of execution. Leave to Appeal granted. Stay of execution refused.

Miriam Reid were husband and wife. Prior to her death on 19th February 1979 the deceased and the Plaintiff operated a joint savings account at the City Bank of Lander-hill, Florida in the United States of America.

Both the Plaintiff and the deceased although Jamaicans by birth, were Naturalised American Citizens, but were both resident in Jamaica at the time of the deceased death.

Following his wife's death the Plaintiff by a Power of Attorney authorised Mr. Gresford Jones, an Attorney-at-Law to withdraw the balance standing to the credit of himself and his late wife in the Florida Bank account and to hold the sum on his behalf. When the Plaintiff sought through Mr. B;J. Scott and Attorney-at-Law to obtain the proceeds obtained by Mr. Jones from him, he Mr. Jones faced with completing claims to the sum in question from the Executors and the beneficiaries, and in particular Mr. Hugh Williams, Joyce Nelson and Gwendolyn Peters, paid the money into Court to await the determination of the issue as to whom is rightly entitled to the money in the said account.

The completing claim by the Executor and beneficiaries arose as a result of a clause in the pruported, last Will and Testament of the late Miriam Reid in which she bequeated "all money in financial institutions" to her two neices, Joyce Nelson and Gwendolyn Peters".

It was contended on behalf of the Executors and beneficiaries that this clause provided the contrary intention necessary to displace the rule of supervisorship which ordinarily applies as between signatories to a joint account, which contains a survivorship clause. In addition there were a number of affidavits filed by Mr. Hugh Williams, Gwendolyn Peters and Joyce Nelson all seeking to express the fact that the testator intended certain persons to benefit from the

moneys in the two Joint Bank Accounts which she had.

The issue to be determined therefore was whether this money ought to be paid over to the Plaintiff as the husband and survivor under the survivorship clause in the Joint Account or w hether it ought to be paid over to the Executors and Personal Representatives of the deceased to be distributed under the terms of the testator's Will or to put the issue in another way, can this clause in the Will leaving "all my moneys in financial institutions to my neices Gwendolyn Peters and Joyce Nelson" displace or provide a sufficient contrary intention to defeat the rule of survivorship that applies in cases of Joint Accounts where there is a survivorship clause, set out in the mandate given to the Bank by the parties to the Account.

By Summons under an order made by Mr. Justice Malcolm on July 1979, the respondents - beneficiaries were summoned to show cause why the said amount now paid into Court by Mr. Gresford Jones ought notto be paid over to the Plaintiff, Mr. Osmond Reid. They had to show in the Affidavits filed by them that there existed on these Affidavits at least a triable issue. This in terms of the existing circumstances of this case meant that they had to produce some documentary proof to show that what Miriam Reid had by some unequivocal act cancelled the original authority or mandate given to the Bank by which Authority the signatures of her husband or herself were to be accepted as a sufficient discharge for any balance to the account or any part of such balance in the said fund.

The mere fact that the entire proceeds of this Joint Account earnings might have been furnished by the deceased could only fix her husband as trustee if the mandate to the bank so indicated, or if the Testator by her own act sought during her lifetime to exercise control over the sums in

that account to the exclusion of her husband. There is no evidence of this. Both had the power to withdraw funds from the account. The situation here was unlike that which existed in Ried vs. Grant & Reid reported at Volume 23 part 1 West Indian Report at page 91 a Judgment of the Court of Appeal of Jamaica delivered by Mr. Justice Watkins. There the testator one Ferdinand Ried operated a Joint Account in the name of his grand-daughter Greta Ried into which he lodged a sum of £6,000. The grand-daughter was a joint signatory to the account but no withdrawals could be made by her without his accompanying signature. There was, however, a surviorship clause whereby if she survived him she would be beneficially entitled to the balance remaining in the account. The grand-daughter contrary to the Testators wishes left the Island for England and he promptly cancelled the original ma ndate. It was held that this had the defeating effect of defeating the survivorship clause which applied and was sufficient to supply the contrary intention that the grand-daughter should not take the balance of the fund beneficially.

Mr. Justice Watkins in delivering the judgment at the bottom of page 94 made the following observations "upon creation of them of the Joint account the deceased as grantor not only expressly reserved for his exclusive excercise in the future the matter of withdrawls and discharges, but thevery continance itself of the Joint Account as such was reserved for termination if either party saw fit by express notice in writing. The inescapable inference was that the deceased at the time of the establishment of the Joint Account if indeed he had settled intentions at all, he was careful enough by his contemparaneous express reservations to preserve for future total freedom of action over and control of the fund".

In this case, there is not even the slightest scintilla of evidence that Miriam Ried ever at anytime during her lifetime sought to control the proceeds in the

Joint account either in Florida or in Jamaica. As the relationship of husband and wife continued uninterupted with its attendant duties and obligations there swemed to have nothing to cause the testator here to exercise any special care as that exercised by the testator Ferdinand Ried in the case referred to above. It follows that if she did not in her lifetime supply the contrary intention necessary to displace the application of the survivorship clause in the account, then no amount of expressed intentionsas set out in the affidavits filed on behalf of the respondents can supply such a contrary intention and cannot avail the respondents. Moreover such expressions being by their very substance of a testamentary nature would be caught and by the rule Shepherd vs. Cartwright reported at 1954 A.E.R. at page 649 and being subsequent declarations of the testator they would only be admissible as evidence against the party who did or made them but not in her favour. They could therefore only be interpreted in a manner favourable and benefitting the plaintiff and as a declaration against the testators interest. Will is the voluntary transmission on death of an interest which up to the moment of death belongs absolutely and indefeasibly to the deceased. This was not true of the close in action created by the opening and maintaining the joint bank account".

I respectfully adopt the reasoning as well as the conclusion of these eminent Judges and say further that at the date of the execution of the will, the testator Miriam Ried had only power to dispose of such seems financial institutions to her neices, as belonged absolutely and indefeasibly to her and did not relate to any joint account which were opened and maintained during her lifetime along with her husband Osmond Reid.

For these reasons I was of the opinion that there was no triable issue raised on the affidavits of the respondents or on the legal arguments advanced by either Mr. Kirlew or

Mr. Edwards on their behalf and I accordingly ordered that the sum of $27,304.17¢ now paid into Court in this matter be paid over for with to the Plaintiff Mr. Osmond Ried or his Attorney and that the costs of and incident to the bringing of these proceedings be borne out of the Estate of the late Miriam Ried

Leave to Appeal granted. Application, for stay of Excution refused.

Bingham. J. (Ag).