

CANADA / JUDGMENT

Denoni v. Denoni

2000 BCSC 641**COURT**

Supreme Court of British Columbia

DECIDED

14 April 2000

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Source record**2000 BCSC 641****Citation: Denoni v. Denoni 2000 BCSC 641**

Date: 20000414
Docket No.: S043724
Registry: NEW WESTMINSTER
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN: LANA MARIE DE NONI ALSO KNOWN AS
LANA MARIE DENONI
PLAINTIFF

AND: JEAN DENONI, JEAN DENONI as Administratrix
of the Estate of Cesare Denoni deceased,
RITA GENSOW, VIOLET GENSOW,
MITZI LOU MELNYK and RUBY SNOW
DEFENDANTS

REASONS FOR JUDGMENT**OF THE****HONOURABLE MR. JUSTICE LOWRY**

Counsel for the Plaintiff: J.L. MacMillan

Counsel for the Defendant

Jean Denoni: A. Rees-Thomas

Date and Place of Trial: April 11 and 12, 2000

New Westminster, B.C.

- [1] Cesare Denoni died intestate in August 1994 leaving a modest estate containing little more than his half interest in the matrimonial home which he and his second wife, Jean Denoni, owned as tenants in common. Lana Denoni is Mr. Denoni's daughter by his first marriage. Although she had no contact with her father for more than 25 years before he died, she maintains that she is entitled to a greater share of his estate than Ms. Denoni considers she should have. They accept that the distribution of the estate must be as prescribed by statute, with the first \$65,000 going to Ms. Denoni and the balance being divided between them equally, but they are at odds over the value of the estate and hence how much there is to divide. It is accepted that Ms. Denoni's children by a former marriage who are named as defendants have no share in the estate.
- [2] Three questions arise that if answered should enable the parties to agree on a form of judgment in favour of Lana Denoni.
- [3] The first is whether the sum of \$28,567 is a debt which the estate owes to Ms. Denoni. She says it is because it represents one half of an amount paid out of an inheritance she received from her mother to discharge the mortgage on the home a few months before Mr. Denoni died. She says that, when the payment was made, she believed, albeit wrongly, that her husband had made a valid will of which she was the sole beneficiary. The will had been made before they were married and, unknown to her when the mortgage was discharged, it is by statute void. It is contended for Ms. Denoni that a constructive trust arose in her favour because, if Lana Denoni is entitled to share in the enhanced value of the equity in the home that resulted from the discharge of the mortgage, she will be unjustly enriched by \$14,283. Reliance is placed on the decision of this court in *Guzzo v. Scarcelli* (1986), 23 E.T.R. 186, *aff'd* (1989), 33 E.T.R. 163 (C.A.).
- [4] I do not consider the position taken by Ms. Denoni to be sound. This is not a case like *Guzzo* and others like it where the court has recognized an unjust enrichment deserving of redress in favour of a person who, without receiving anything in return, has voluntarily cared or provided for a relative, over a long period of time, with the expectation of receiving a compensating share of the relative's estate which has not been forthcoming. In cases of that kind it is said that the deceased relative has been enriched and that there has been a corresponding deprivation in the absence of any juridical reason.
- [5] Here it is not suggested, nor could it be, that Mr. Denoni was unjustly enriched by the decision that was taken to use Ms. Denoni's inheritance to discharge the mortgage. The two had always pooled all their resources to meet the financial obligations of running their home and raising Ms. Denoni's four children, whether it was the income Mr. Denoni earned or Ms. Denoni's gambling winnings. The inheritance was no different. It was used to retire debt and to pay for a trip the two of them took to Italy. If it cannot be said that Mr. Denoni was unjustly enriched by the mortgage having been discharged when it was, I can see no basis on which it can be said that his heir, Lana Denoni, will be unjustly enriched if she receives what the statute that governs intestacy prescribes. The juridical reason for her being enriched is that she is by law entitled to an inheritance from her father's estate.

- [6] When the mortgage was discharged, Ms. Denoni intended that she and her husband share in the benefits of being relieved of the financial obligation the two of them bore, although she never anticipated that if Mr. Denoni were to die there would be an intestacy and his daughter, Lana Denoni, would share in the enhanced equity. But that was because Ms. Denoni was acting on a mistake of law. She and her husband did derive the benefit of the mortgage being retired, and there is now in my view, no basis on which it can be said the value of his estate is to be reduced because of Ms. Denoni's mistaken belief about the validity of his will. The estate is not indebted to Ms. Denoni in respect of the discharge of the mortgage.
- [7] The second question to be addressed is whether any part of the sum of \$8,000 Mr. Denoni had with him when he died forms part of his estate. Lana Denoni contends that, although the funds were part of Ms. Denoni's inheritance and were apparently drawn from a joint bank account which she and her husband held, they were not being jointly held when Mr. Denoni died. Perhaps somewhat strangely, she does not contend that all of the money belonged to her father, but rather that only half of it did. She says that \$4,000 forms part of his estate. I disagree. The obvious use to which it was intended that the money be put was to fund Mr. and Ms. Denoni's trip to Italy. The whole of the funds belonged to the two of them. After Mr. Denoni died, the \$8,000 belonged to Ms. Denoni.
- [8] The third question is whether the sum of \$875 received from the union to which Mr. Denoni belonged forms part of his estate. Lana Denoni says it was a death benefit paid specifically for funeral and burial expenses. But it was paid to Ms. Denoni under provisions of the union's articles that provide for such to be paid to any person that submits an itemized account of expenses paid by that person for the burial of the union member. Ms. Denoni submitted the account and is entitled to the payment received. It is not part of the estate.
- [9] I conclude then that Ms. Denoni is not owed the sum of \$28,567 by the estate, and that the sums of \$8,000 and \$875 are not part of the estate. Lana Denoni is entitled a share of her father's estate calculated on that basis.
- [10] Counsel are asked to settle an appropriate form of order for the disposition of the assets of Mr. Denoni's estate, and the parties may speak to any terms that cannot now be agreed.

"P.D. Lowry, J."

The Honourable Mr. Justice P.D. Lowry

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