
CANADA / JUDGMENT

Devins v. Devins

2020 BCSC 2009

COURT

Supreme Court of British Columbia

DECIDED

17 December 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 2009 Devins v. Devins

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Devins v. Devins,

2020 BCSC 2009

Date: 20201217

Docket: 18289

Registry: Smithers

Between:

Robyn Anne Devins

Plaintiff

And

Vernon Blaine Devins and Elizabeth Helen Devins

Defendants

Before: The Honourable Mr. Justice Punnett

Reasons for Judgment

Counsel for the Plaintiff

(by teleconference):

R. D. Lyons

Counsel for the Defendants

(by teleconference):

J. L. Perry

Place and Date of Hearing:

Victoria, B.C.

November 24, 2020

Place and Date of Judgment:

Smithers, B.C.

December 17, 2020

Introduction

- [1] The plaintiff claims against her parents alleging that they hold real property transferred by her maternal grandfather to them in trust for her and her sister. The defendants counterclaim against their daughter for an order that she vacate the property.
- [2] This a summary trial proceeding. The parties are of the view it is suitable for summary resolution. I agree. The facts necessary can be determined for its adjudication.

Background

- [3] Alexander Bruce, the maternal grandfather of the plaintiff, owned property legally described as the Southwest 1/4 of Section 26, Township 4, Range 5, Coast District, PID 015-758-380 (the "Property") from 1943 to 1971. His wife, Annie Isabella Bruce, was never on title.
- [4] On November 26, 1971, he transferred the Property to his daughter Elizabeth Helen Devins ("Elizabeth") and her spouse, his son-in-law Vernon Blaine Devins ("Blaine") for consideration of \$1.00. Alexander Bruce died in 1984. His wife Annie died in 2008. Elizabeth and Blaine continue to be the registered owners of the Property. They are now 81 and 85 years of age respectively.
- [5] In 1993, their daughter, the plaintiff Robyn Anne Devins, moved a trailer onto the Property with her then husband, Ed Clausen, and took up residence. The defendant Blaine assisted with the move including, at his expense, building a road, a culvert, installation of the septic system and clearing access for power to the Property.
- [6] The plaintiff and her husband separated in 1998 and she has remained resident on the Property. She has resided there with several partners, one of whom, Ed Clausen, claimed an interest in the Property when he left. The defendants incurred legal fees to defend their property ownership at that time.

- [7] In 2012, the defendants sold their home and commenced residing on the Property in their 5th wheel during the summer months. After 2016 however, the plaintiff had a falling out with them and the last summer they parked their 5th wheel on the Property was in 2017. They allege they left because of bullying and threatening behavior of the plaintiff. As a result, they now incur costs of \$900.00 a month to park their 5th wheel in an RV Park.
- [8] Throughout their years of ownership of the Property, Blaine has managed the lands and worked with a neighbouring farmer to preserve its farm status. In the 1970's and 1980's, he raised and ranched cattle on it. He has improved the land, maintained fences, operated a large vegetable garden and harvested the hay. He and his wife have paid the land taxes and liability insurance.
- [9] The plaintiff has paid no rent, nor has she contributed to taxes or liability insurance costs. She claims the Property has always been held by the defendants in trust for her and her sister Patricia Elizabeth Hinrichs.
- [10] The defendants, who have limited incomes, desire to have the Property logged or sold. This action, filed June 12, 2019, and the Certificate of Pending Litigation filed on the Property prevent that.

Evidence of Alleged Trust

Plaintiff's Evidence

- [11] The plaintiff relies on the evidence of several individuals in support of her claim that the Property is held in trust for her and her sister.
- [12] Betty Bruce is the sister-in-law of the defendant Elizabeth. She deposes that in 1971 or 1972 her husband wanted to know why Blaine and Elizabeth got the Property. She deposes Alexander Bruce stated the Property was not for Blaine, but was for the plaintiff and her sister. She does not make any mention of the Property being in trust.
- [13] Keith Goddard deposes meeting Annie Bruce, the grandmother of the plaintiff, in 1988 and that she confirmed that she and her husband had given the Property to Blaine and Elizabeth around 1970. He states that Annie told him when Robyn and her spouse broke up "at least he couldn't get any of the property because it had not yet been signed over to Robyn."
- [14] Alexander Fraser Murray, Annie's brother, deposes that the plaintiff prepared a letter on his instructions which he attaches to his affidavit and confirms is true. In 2017 he stated:

Sometime in the 1970's, while visiting my sister, Annie Isabella Bruce, wife of Alexander Bruce, who are the parents of Elizabeth Helen Devins. In her presence she told me about a parcel of land that is part of their farm. She said this parcel of land was given to her son in law, Vernon Blaine Devins and daughter Elizabeth Helen Devins to be given to their daughters Robyn Anne Devins and Patricia Elizabeth Devins (Hinrichs). Because at the time, the children were not old enough, they put the parents names on the land. It was to my understanding that when the

children became adults, the land was to be signed over into their names.

[15] William Palmer deposes his Aunt Annie stated that the granddaughters would inherit the Property:

My father had issues with his brothers, Alex Bruce had issues with his son Sandy. Alex felt Annie favoured Betty and to keep the peace he would bypass his children and forward a piece of land to Roby and Patty who spent a considerable amount of time at the farm, and that would keep Annie content.

[16] Hans Bredow deposes he spoke to Annie in 1987 and she mentioned she had another property down the road and that she would not sell it as she was going to give it to her granddaughters.

[17] The plaintiff deposes that her parents never "owned" the Property, and that it was known in the general community that it was going to be owned by her and her sister. She says she has "improved" the property but provides no evidence of any improvements, only mentioning she is "responsible for caring for the fences" with no evidence she has done so or to what extent. She states she and her sister have repeatedly told their parents that they would pay the taxes but their "parents have always voluntarily paid them before [they] could get them any money." The plaintiff states that in 2013, after the death of her grandmother, her father brought up the subject of logging the Property. She alleges that in 1993 she discussed with her parents keeping the Property in their name in case her marriage to Ed Clausen did not work out. She alleges a clear agreement to that effect, but provides no factual evidence of the terms of the "clear agreement" other than stating there was one.

[18] She asserts that since she was nine years of age her grandparents and her parents have told her the Property was hers and her sister's.

Defendants' Evidence

[19] The defendants each filed affidavits along with that of their daughter, Patricia Hinrichs.

[20] The defendant Blaine deposes that his father-in-law Alexander Bruce told him in 1971 he wished to transfer the Property into Blaine's name and that of his wife Elizabeth. He deposes there was no mention of any trust by his father-in-law or by his wife. He states his father-in-law never indicated he wished to bypass his children when he transferred the land to them, nor made any reference to the plaintiff or Patricia receiving the land either then or at any later time. He denies ever promising his daughters he would transfer the lands to them. His position has always been that it was the property of him and his wife and if they owned it at their death their daughters would inherit it but, in the meantime, they were free to do with it as they pleased.

[21] When he advised the plaintiff he wished to harvest the mature timber on the Property she objected.

[22] Patricia Hinrichs states she was born on September 12, 1966, that she was very close to her grandparents and spent every weekend with them until she was 18 years old. She states her grandfather died when she was 18 and that neither he nor his wife, her grandmother, had ever mentioned any trust. She deposes that she was not surprised her grandfather left the Property to her father as he helped her grandfather out on the Property every weekend and they had a relationship like father and son. She denies any trust exists relating to the Property in her or her sister's favour. She states that if her parents wish to sell the Property she would respect and agree with their decision.

Position of the Plaintiff

[23] The plaintiff claims the Property was to be held by her parents in trust for her and her sister. However she does not depose that her grandfather ever informed her that the Property was in trust for her. She supports her claim with affidavits from family members, friends and neighbours. The plaintiff submits that evidence is credible while the evidence of the defendants is not.

Position of the Defendants

[24] The defendants deny the existence of the alleged trust. They submit they are the registered owners both legally and beneficially. They are supported in that position by their daughter Patricia, the alleged other beneficial owner. As noted, she denies having any beneficial interest in the Property.

Discussion

[25] The plaintiff raises issues of credibility, the application of the presumption of indefeasible title under s. 23 of the Land Title Act, RSBC 1996, c. 250, the establishment of a trust and a claim of unjust enrichment.

[26] Section 23(2) of the Land Title Act states:

An indefeasible title, as long as it remains in force and uncanceled, is conclusive evidence at law and in equity, as against the Crown and all other persons, that the person named in the title as registered owner is indefeasibly entitled to an estate in fee simple to the land described in the indefeasible title

[27] In *Mac v. Mak*, 2016 BCSC 1140, *Maisonville J.* stated:

[107] The starting point is the presumption of indefeasible title, as set out in s. 23(2) of the Land Title Act, R.S.B.C. 1990, c. 250. The presumption is that the registered title accurately reflects the party's actual ownership interest.

[28] The defendants are the registered owners on title. The presumption of indefeasible title applies to them. The onus is on the plaintiff to rebut the presumption. It can be rebutted as summarized by *Maisonville J.* in *Mac*:

- [109] The presumption of indefeasible title can be rebutted by the presumption of resulting trust: *Chuang v. Wong*, 2012 BCSC 233 at para. 9; *Schouten Estate v. Swagerman-Schouten*, 2014 BCSC 2320 at para 2. It can also be rebutted by the presumption of advancement or the enforcement of an agreement between the parties in order to prevent an unjust enrichment if the face of a title is upheld: *Skender v. Skender*, 2005 BCSC 418 at para. 13. The onus is on the party seeking to displace the statutory presumption of indefeasible title.
- [29] The defendants submit the statutory presumption of indefeasible title applies and the plaintiff bears the onus of displacing it. They further argue the presumption of advancement does not apply and there is no evidence of any agreement. Finally, if there was a resulting trust that would only cause the Property to revert to the deceased grandfather whose will left everything to his wife Annie, who then gave everything to the defendant Elizabeth.
- [30] The plaintiff submits the evidence she provided is credible as it is consistent with the probabilities as a whole because much of it is from individuals with no personal interest in the outcome. She submits the defendants' evidence consists of their evidence only and that of their daughter Patricia. Given their personal interest in the outcome, she argues their evidence lacks credibility. The plaintiff submits the defendants have a motive to lie because they have money problems and it would benefit them if they had clear title to the Property.
- [31] While the evidence of Patricia Hinrichs is consistent with the defendants' evidence, the plaintiff submits it is not consistent with the evidence of Ken Barger. He deposes that about three years ago Patricia told him "the land was for her and Robyn and to be passed on to her daughters". There is no inconsistency in that as the statement is consistent with inheriting the Property but makes no reference to a trust.
- [32] The defendants submit that, while there is no doubt that a person who owns title to land will be interested in the outcome of a claim aimed at taking the land from them, this does not make their affidavits unreliable or that anything they say is a lie.
- [33] Resolution of this litigation does not hinge on issues of credibility. Much of the evidence relied on by the plaintiff arises from conversations the defendants were not present for, hence they cannot dispute what was said. They can however provide their evidence of what they know and, given the nature of the plaintiff's evidence, do so without raising issues of credibility. It is clear the transfer of the Property was a gift and that there is no evidence of the transferor Alexander Bruce imposing a trust. In fact, the evidence is he never referred to a trust.
- [34] The affidavit evidence of the plaintiff and that filed on her behalf falls far short of establishing the defendants hold the Property in trust. At best it evidences the wish of Annie, who was never on title, that it would be passed down through the family. The evidence of Patricia is that her father also expected that would occur if they still owned the land at their deaths. However, in the meantime their parents had title and as owners could dispose of it if they wished.

- [35] The only evidence of the grandfather discussing the transfer to the defendants is that of Blaine and their discussion that his father-in-law wished to transfer the land to them. There was no mention of a trust.
- [36] In addition, the evidence of the other deponents for the most part only evidences the possible inheritance of the Property by the plaintiff and Patricia. The only reference to a trust is found in the affidavits of Alexander Fraser Murray and William Palmer.
- [37] The affidavit of Alexander Fraser Murray relies on what Annie Bruce told him in the 1970s. He deposes she told him that the Property was not registered in the children's names as they were not old enough and he understood that when they became of age the land was to be transferred to them. Annie did not own the Property and there is no evidence she was involved in the transfer by her husband of the land to the defendants.
- [38] The deponent William Palmer refers to hearing from Annie Bruce and Elizabeth that the plaintiff and her sister would inherit the Property. He refers to a conversation between Alexander Bruce and his brother that he would avoid family conflict by bypassing his children and forwarding a piece of land to the grandchildren to keep Annie content. He does not depose when the conversation occurred, nor any information that Alexander Bruce took such a step.
- [39] The evidence of the alleged trust is after the fact commentary and is contrary to what direct evidence there is of the intentions of Alexander Bruce. That evidence is uncontradicted. There is no evidence from any deponent stating they heard Alexander Bruce intended a trust when he transferred the Property to the defendants.
- [40] There is no evidence from the notary who prepared the documents transferring the Property as he is deceased.
- [41] The evidence in favour of the defendants' ownership of the land in fee simple is contrary to any trust claim. The Property has been owned by the defendants for over 49 years. During this time they have held the Property in fee simple, have paid the taxes and insurance, have maintained the Property and generally dealt with it as owners. There is no evidence the alleged beneficiaries of the trust ever sought to have the Property transferred to them. In fact, they appear to have accepted it was their parents' property, with the plaintiff only challenging that when she had a falling out with her parents and became concerned her inheritance would be jeopardized by it being logged or sold.
- [42] Neither the plaintiff nor Patricia assumed responsibility for the Property or pursued the plaintiff's alleged effort to try to pay the taxes or to pay the liability insurance. Such conduct by them is consistent with the Property being that of their parents and not subject to a trust.
- [43] At best the evidence is that, if the defendants owned the Property when they died, it was intended their children would inherit it.

- [44] The fact that it was assumed by the plaintiff and others that, as a family farm, it would be passed on to the plaintiff and her sister does not create a trust.
- [45] The plaintiff has failed to establish on a balance of probabilities that the Property was impressed with a trust. There is no evidence that the fee simple interest was encumbered by a trust before or at the time it was transferred in 1971. The evidence advanced by the plaintiff is inconsistent, vague, hearsay, lacking factual detail, conclusory and contradicted by the evidence as a whole. I am satisfied the Property was a gift in fee simple from Alexander Bruce to his daughter and son-in-law.
- [46] The plaintiff has failed to rebut the presumption of indefeasible title.
- [47] Turning to the other issues raised by the plaintiff it is not disputed that the presumption of advancement does not apply as the transfer was from a father to an adult child. In *Pecore v. Pecore*, [2007] 1 S.C.R. 795, Rothstein J., for the majority stated:

36 I am inclined to agree. First, given that a principal justification for the presumption of advancement is parental obligation to support their dependent children, it seems to me that the presumption should not apply in respect of independent adult children.

- [48] To rebut the presumption, the plaintiff must therefore rely on a presumption of resulting trust or the enforcement of an agreement between the parties.

- [49] In *Kerr v. Baranow*, 2011 SCC 10, the Court stated:

18 The Court's most recent decision in relation to resulting trusts is consistent with the view that, in these gratuitous transfer situations, the actual intention of the grantor is the governing consideration: *Pecore v. Pecore*, 2007 SCC 17, [2007] 1 S.C.R. 795, at paras. 43-44. As Rothstein J. noted at para. 44 of *Pecore*, where a gratuitous transfer is being challenged, "[t]he trial judge will commence his or her inquiry with applicable presumption and will weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention".

[Emphasis in original.]

- [50] As noted, here the transfer of the Property from the grandfather to his daughter and son in law was a gratuitous transfer as the only consideration was \$1.00. In *Kerr* the Court stated:

19 As noted by Rothstein J. in this passage, presumptions may come into play when dealing with gratuitous transfers. The law generally presumes that the grantor intended to create a trust, rather than to make a gift, and so the presumption of resulting trust will often operate. As Rothstein J. explained, a presumption of a resulting trust is the general rule that applies to gratuitous transfers. When such a transfer is made, the onus will be on the person receiving the transfer to demonstrate that a gift was intended. Otherwise, the transferee holds that property in trust for the transferor. This presumption rests on the principle that equity presumes bargains and not gifts (*Pecore*, at para. 24).

[51] The plaintiff submits that since the transfer was gratuitous, the onus shifts to the defendants to prove that the transfer was a gift. The plaintiff submits the defendants have provided no evidence a gift was intended.

[52] In *Suen v. Suen*, 2013 BCCA 313 the court noted:

37 The imposition of a resulting trust does not require proof of intention, but rather it is a legal doctrine that is imposed, "to return property to the person who gave it and is entitled to it beneficially, from someone else who has title to it. Thus, the beneficial interest 'results' (jumps back) to the true owner": Oosterhoff, [Oosterhoff on Trusts: Text, Commentary and Materials, 7th ed. (Toronto, Carswell, 2009)] at p. 25" (Kerr at para. 16). It may also arise where a claimant seeks, "the recognition of his or her proportionate interest in the asset which the other has acquired with [his or her] property" (para. 25).

38 The onus of proof is on the party seeking to rebut the presumption of resulting trust, i.e., the transferee. In *Pecore*, the Supreme Court of Canada confirmed that when a transfer is challenged (as having been made for no consideration), "the onus is placed on the transferee to demonstrate that a gift was intended: see *Waters, Gillen and Smith*, *Waters' Law of Trusts* at p. 375, [Waters] and E.E. Gillese and M. Milczynski, *The Law of Trusts* (2nd ed. 2005), at p. 110. This is so because equity presumes bargains, not gifts" (para 24).

[53] If a resulting trust existed it would cause the Property to revert back to the now deceased grandfather Alexander, who passed all of his assets to his wife Annie, who then left all of her assets to the defendant Elizabeth. Hence, the plaintiff does not seek such a finding.

[54] Instead, the plaintiff argues that such application of the resulting trust analysis would be deficient and that the Court should couple the principles of unjust enrichment with the possible remedy of a constructive trust. She relies on Kerr:

28 Finally, as the development of the law since *Pettkus* has shown, the principles of unjust enrichment, coupled with the possible remedy of a constructive trust, provide a much less artificial, more comprehensive and more principled basis to address the wide variety of circumstances that lead to claims arising out of domestic partnerships. There is no need for any artificial inquiry into common intent. Claims for compensation as well as for property interests may be addressed. Contributions of all kinds and made at all times may be justly considered. The equities of the particular case are considered transparently and according to principle, rather than masquerading behind often artificial attempts to find common intent to support what the court thinks for unstated reasons is a just result.

[55] In this case, however, it is not a transfer between spouses but rather between a parent and adult child. The plaintiff submits unjust enrichment principles apply to the latter, relying on *Suen* at para. 48:

In Kerr, the application of unjust enrichment principles was considered in the context of a domestic claim between common law spouses. However, the Court observed that, 'the test for juristic reason is flexible, and the relevant factors to consider will depend on the situation before the court (Peter [Peter v. Beblow, [1993] 1 S.C.R. 980], at p. 990)" (para. 44).

- [56] The plaintiff argues that the defendants have been unjustly enriched. Unjust enrichment requires three elements be satisfied; firstly, that there is an enrichment, second there must be a corresponding deprivation and finally, the absence of a juristic reason. The plaintiff provides no evidence the defendants have been enriched by having the plaintiff stay on their property without compensation. Hence, the claim fails at the first step. In addition, the plaintiff residing on the land for 27 years free of charge is not a deprivation. The fact the defendants used the Property as their own does not, as alleged, qualify as a deprivation to the plaintiff. The plaintiff has been enriched not deprived. In addition, there is no absence of a juristic reason as s. 23 establishes the plaintiffs have a juristic and statutory reason for being treated as fee simple owners of the Property.
- [57] Given my findings discussed earlier, it is clear the transfer of the Property from father to daughter and son-in-law was a gift. There is no evidence of an express trust, nor that a binding agreement was entered into. No conditions were imposed. No trust was created. Over the past 49 years the defendants have dealt with the Property as its owners in fee simple. They have cared for it, resided on it part-time, run the farm, maintained the Property and paid the taxes and the insurance. Neither the plaintiff or her sister have raised the issue of transferring the Property to them under the alleged trust until the Plaintiff and the defendants had their falling out and the defendants sought to log the Property. At best there was a likelihood that the defendants would, on their death, pass the Property on to their children. There was no legal obligation they do so. Over the years, intentions may change.
- [58] The claim of the plaintiff is dismissed. I order:
- a) The Certificate of Pending Litigation filed on June 12, 2019 under number CA75556468 is cancelled;
 - b) The plaintiff Robyn Anne Devins shall vacate the Property and remove her possessions no later than April 30, 2021;
 - c) In default of Robyn Anne Devins vacating the land, a Writ of Possession be issued and the Sheriff or his delegate enter the Lands (the Property) and remove Robyn Anne Devins, her dogs, trailer and chattels.
- [59] The defendants as the successful parties are entitled to their costs but they are not seeking them. The parties shall bear their own costs.

"The Honourable Mr. Justice Punnett"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/20/2020BCSC2009.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/devins-v-devins-2020>

Prepared on 26 October 2026 · Esheria