

CANADA / JUDGMENT

Glasspool v. Everett

1999 BCCA 30

COURT

British Columbia Court of Appeal

DECIDED

19 January 1999

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Citation: Glasspool v. Everett et al. Date: 19990119 1999 BCCA 0030 Docket: CA024500 Registry: Vancouver COURT OF APPEAL FOR BRITISH COLUMBIA ORAL REASONS FOR JUDGMENT: Before: THE HONOURABLE MR. JUSTICE LAMBERT January 19, 1999 THE HONOURABLE MR. JUSTICE ESSON THE HONOURABLE MR. JUSTICE BRAIDWOOD Vancouver, B.C. BETWEEN: JOHN STEWART GLASSPOOL PLAINTIFF (RESPONDENT) AND: PANSY EVERETT DEFENDANT (APPELLANT) AND: JOHN W. MOTIUK, Executor of the Estate of Lawrence William Glasspool, otherwise known as Lawrence Glasspool DEFENDANT R.T. Todd appearing for the Appellant A.K. Wooster appearing for the Respondent

- [1] LAMBERT, J.A.: The "matriarch" of the family in which this dispute has arisen was Ethel McKillop. She had children: John Glasspool and Lawrence Glasspool. John Glasspool had children: Ken Glasspool and June Glasspool. Lawrence Glasspool had a child: John Stewart Glasspool. John Stewart Glasspool, the son of Lawrence Glasspool, is the plaintiff in these proceedings.
- [2] The other person whose interests are at stake in these proceedings is Pansy Everett, the defendant in the proceedings, who was the friend and companion of Lawrence Glasspool for the eight or so years preceding his death.
- [3] Ethel McKillop was entitled to an interest in some mineral claims in Saskatchewan. There were royalty payments arising from those claims. She had had a will - but we do not know when it was made - in which she left the entirety of her estate to her grandson, John Stewart Glasspool, whom she had looked after for some periods of his childhood. She changed her will before her death. She discussed the will with her two children, John Glasspool and Lawrence Glasspool, at a meeting of all three of them. A conversation took place at that time, and I will come to the evidence that was given by John Glasspool about that conversation.

- [4] Following the conversation, Ethel McKillop changed her will. She bequeathed, in her new will, one quarter of the proceeds of the mineral claims to her son John Glasspool, one quarter to her grandson Ken Glasspool, one quarter to her granddaughter June Glasspool, and one quarter to her son Lawrence Glasspool. She bequeathed \$500, as I understand it, to her grandson John Stewart Glasspool. She died, and the mineral rights were allocated in accordance with her will.
- [5] Lawrence Glasspool received his one quarter interest. When he died, by his will he bequeathed his estate to Pansy Everett.
- [6] Apparently, after the death of Lawrence Glasspool, John Stewart Glasspool heard of the conversation between Ethel McKillop and her two children, and brought these proceedings on the basis that, in the course of that conversation, a secret trust had been created in his favour of the one quarter interest in the mineral claims that had gone to Lawrence Glasspool to be passed on to John Stewart Glasspool following the death of Lawrence Glasspool. That was the basis of the claim that was put forward.
- [7] Ethel McKillop and Lawrence Glasspool, two of the three participants in the important conversation, were dead by the time this action was brought. The evidence in relation to the conversation was the evidence of John Glasspool, who was called as a witness. It is important to understand that John Glasspool Sr. had not had any meeting with John Stewart Glasspool, the plaintiff, for some 25 or 30 years, and for that reason, and perhaps for other reasons, the trial judge regarded him as a disinterested witness. The trial judge also said that John Glasspool Sr. gave his evidence with no indication of preference in any way, but merely as an objective narrator of the relevant events.
- [8] The conversation, as John Glasspool Sr. recalled it, is contained in these few questions and answers from his testimony: Q Is that -- yes. did [sic] you have -- Did you and Larry, your brother, Larry, and you, the deceased, Larry, you, and your mother have a conversation about a will? A Yes, we did. Q Yes, what was that conversation? A She wanted Larry to leave his share of the oil rights to his son. Q That would be the plaintiff? A Yes. Q Now, what did Larry say to that? A He agreed.
- [9] The trial judge, Madam Justice Satanove, considered the law in relation to secret trusts. She set out the essential elements of that law in her reasons. She talked about the cases where the secret trust is indicated to exist in the will. She mentioned the cases where the words did not indicate the positive creation of a trust, but were merely "precatory"; that is, expressing a wish or a confident wish that a certain state of events should be brought about following the death. And she indicated that the key question was whether the words used and the intent were such that a secret express trust was created, or whether the words used and the intent behind them were such as merely to give rise to an expression of hope or wish that a certain event be brought about. That was the very difficult question facing the trial judge in this case on the basis of the evidence that I have set out.

- [10] Where there are relevant words in the will, the cases say that it is not simply a question of parsing the words in their sentence structure; it is a question of deriving the true intent of the testator. In the present case, where the secret trust, if there was one, was not created under a will, in my opinion, again, it is essential to grasp for the intention of the person creating the trust. The understanding of the person who is going to be trustee is very important too; and in that respect, the final answer of the passage that I have read states that Lawrence agreed in this case.
- [11] It is argued on behalf of the appellant that the evidence of John Glasspool was uncorroborated, and that corroboration is particularly helpful in this kind of case. This is most notably so where the person claiming the benefit of the trust is the only person giving any testimony. But corroboration is not an essential ingredient, and the evidence of John Glasspool was treated as being disinterested evidence, and itself being corroborative of the claim that was being put forward by the plaintiff.
- [12] It is also argued that in one of the answers, John Glasspool said, "She wanted Larry to have his share of the oil rights to his son." The appellant's counsel says that the word "wanted" is a word that is usually treated as a precatory word; but as I have said, what the trial judge had to do was reach a conclusion about whether the intention was present to create a secret trust. She concluded, on the basis of the evidence to which I have referred, the circumstances that I have described, and an analysis of the law that is not said to be incorrect, that there was, in this case, a secret trust of the one quarter interest in the oil rights or mineral rights. It is my opinion, having regard to the precepts that must guide this Court on a question of fact such as this, that there is no basis on which we could interfere with her conclusion.
- [13] In those circumstances, I would dismiss the appeal.
- [14] ESSON, J.A.: I agree.
- [15] BRAIDWOOD, J.A.: I agree.
- [16] LAMBERT, J.A.: The appeal is dismissed. Costs will follow the event of the appeal. The cross-appeal is abandoned. "The Honourable Mr. Justice Lambert"

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Prepared on 27 October 2026 · Esheria