
CANADA / JUDGMENT

Wilson v. Wysoski

2014 BCSC 675

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 675 Wilson v. Wysoski

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wilson v. Wysoski,

2014 BCSC 675

Date: 20140424

Docket: 12-1877

Registry: Victoria

Between:

Hugh Blair Wilson, Executor of the Estate of

Paul Andrew Wilson, Deceased

Plaintiff

And:

Jeanne Marie Wysoski, and D.A. Townley & Associates Ltd.

and The Board of Trustees of P.P.W.C. Mackenzie Wood

Products Pension Plan

Defendants

Before: The Honourable Mr. Justice Bracken

Reasons for Judgment

Counsel for the Plaintiff:

P. B. Newman

Counsel for the Defendant Jeanne Wysoski:

K. Repstock

Place and Date of Trial/Hearing:

Victoria, B.C.

March 12, 2014

Place and Date of Judgment:

Victoria, B.C.

April 24, 2014

- [1] The executor of the estate of Paul Andrew Wilson ("the estate") seeks a declaration that the defendant Jeanne Wysoski has been unjustly enriched by the proceeds of a lump sum pension benefit paid to her by the Pulp and Paper Workers Union of Canada upon the death of Paul Andrew Wilson ("the deceased"). The estate also seeks a declaration that the defendant holds the proceeds of the pension benefit in trust for the estate. The matter proceeded by way of a summary trial.
- [2] The estate discontinued its action against the defendants D.A. Townley & Associates Ltd. and the Pulp and Paper Workers of Canada Mackenzie Wood Products Pension Plan. The executor of the estate, Hugh Blair Wilson, is the deceased's brother and he is the sole beneficiary under the deceased's last will and testament. The deceased committed suicide on July 6, 2011, only a few days after settling a family law action that had been brought against him by the defendant.
- [3] The deceased and the defendant lived together in a marriage-like relationship from 1995 until the end of May of 2010. At that time, the defendant ended their relationship and returned to a previous relationship.
- [4] In December of 2010, the defendant filed a notice of family claim pursuant to the Family Relations Act, R.S.B.C. 1996, c. 128 in which she claimed an interest in all real and personal property owned by the deceased including his:

entitlements under his occupational pension plan through the Pulp and Paper Workers of Canada ("PPWC") union.

- [5] She also claimed entitlement to all registered retirement savings plans, registered educational savings plans, and all non-registered investments held by the deceased as at the date of the parties' separation as well as his interest in the mobile home they occupied. There is no dispute that the PPWC pension was in effect as at May 31, 2010, the date of separation.

- [6] On June 28, 2011, the deceased and the defendant together with their respective counsel attended a judicial settlement conference and settled all matters arising out of the defendant's family law action. The settlement was documented by the terms of a final order that was filed in Action No. 1038371 of the Prince George Registry on June 29, 2011. The terms of the final order provide:
1. Forthwith after the entry of this Order the Respondent shall transfer the sum of \$100,000.00 from the Respondent's CIBC Wood Gundy RRSP Account 562-51405 to a registered retirement savings plan or plans in the Claimant's name, by means of the applicable Canada Revenue Agency Form T2220 E - Transfer from an RRSP or a RRIF to Another RRSP or RRIF on Breakdown of Marriage or Common-Law Partnership, for the Claimant's own use absolutely, free from all claims of the Respondent. By Consent.
 2. Forthwith after the entry of this Order the Respondent shall transfer to the Claimant all his right, title and interest in and to that certain 1980 Meadowbrook Manufactured Home, MHR Registration Number 45148, presently situated at #9 - Morfee Trailer Park, 1000 Mackenzie Boulevard, in the District of Mackenzie, in the Province of British Columbia, for the Claimant's own use absolutely, free from all claims of the Respondent. By Consent.
 3. All claims between the parties in this proceeding, except as provided in this Order, are dismissed. By Consent.
- [7] Thus, by the terms of the final order, the defendant's claim to any pension or pension benefits aside from the RRSP described in the order were dismissed by consent. As a result, the estate claims the defendant has no right or entitlement to the PPWC pension benefits.
- [8] The deceased met the defendant in 1991 at Mackenzie, British Columbia. The deceased was employed at the Canfor Mill in Mackenzie and had worked there steadily since the mid-1970's. The parties began residing together at a mobile home that was owned by the deceased and they continued living there until the date of their separation. By the terms of the settlement of the family law action, the defendant received the mobile home free of any claims by the deceased.
- [9] At some point during the latter years of their relationship, the deceased developed some serious health problems. The defendant said that she was very supportive of him and assisted him in obtaining the medical care that he required.
- [10] It appears that after their relationship ended the deceased felt somewhat bitter and angry towards the defendant. In his affidavit, Hugh Wilson said the deceased was upset following the end of the relationship and became somewhat despondent. Following the settlement of the defendant's family law action, Hugh Wilson said that the deceased claimed that the defendant had taken all of his money and that he felt he had lost everything. He said that the deceased believed that because of his health problems and his age, he would not be able to rebuild his savings.

- [11] Hugh Wilson also said that following the separation the deceased told him that he dreaded seeing the defendant, but because they both lived in Mackenzie, they did encounter each other from time to time.
- [12] The defendant says that she learned she was named as a beneficiary under the PPWC pension on or about July 19, 2011. She immediately advised her lawyer and he wrote to D.A. Townley & Associates Ltd. to assert her claim to the benefits. She knew the deceased had named her as his beneficiary under the pension, but thought he had removed her from the plan.
- [13] She also said that she had advised the deceased on three separate occasions that he should change the beneficiary card to remove her as a beneficiary, because by the terms of the settlement, he was entitled to the full benefits of the PPWC pension.
- [14] She said that the first occasion was in early July of 2010, not long after their separation, when she encountered him on the street in Mackenzie. She said she advised him that she had made a change to her beneficiary card and asked if he had done the same thing. She said that he told her he had not done so, but would attend to it.
- [15] She said the second occasion was between Christmas and New Years of 2010 when she encountered him at the post office in Mackenzie. She again asked him if he had changed the beneficiary and he replied that he was working on it. She said that she told him at that time that it was just a simple matter of stopping in at the Mill office and filling out a new card.
- [16] She said the third occasion was in early June of 2011, just prior to the consent order. She said that the deceased had come to the mobile home to remove a shed. While he was there, she asked him again about changing his beneficiary. On that occasion, he said words to the effect "It's all done, I'm happy with it". She said that as he said those words, he put his hands up with the palms toward her as an indication that he did not want to discuss it further.
- [17] The evidence indicates that on June 28, 2010, the deceased did attend at the Canfor Mill office and he signed a "Benefit Application and Change" form. That form was effective to change the named beneficiary related to the benefits available to him from his employer. He named Hugh Wilson as a replacement for the defendant. However, that change was not effective to remove the defendant as the beneficiary of the PPWC union pension which is the source of benefits at issue here.
- [18] Counsel for the estate argues that the deceased's failure to make the change to the PPWC pension was an oversight given that the deceased had changed his will and the employer-paid benefits he was entitled to by reason of his long employment at the Mill. The estate submits that as the parties had settled all claims made by the defendant in her family law action including claims to the PPWC pension benefits, the defendant is not entitled to receive or retain any of the proceeds of the deceased's PPWC pension.

[19] The defendant argues that the failure of the deceased to change the beneficiary at the PPWC pension reflected his intention that the defendant should remain entitled to those benefits, perhaps in recognition of her assistance to him respecting his health problems during the relationship.

[20] In his will, made December 1, 2010, the deceased included this provision:

I hereby declare that I am the common-law husband of JEANNE MARIE WYSOSKI and that I am aware of the provisions of the Wills Variation Act R.S.B.C. 1960, Chapter 435, as amended. I declare that prior to making my Last Will and Testament, I have given careful consideration to the provisions of the said Act and in making this my Last Will and Testament, I have deliberately omitted JEANNE MARIE WYSOSKI as we have been separated since June, 2010 and do not intend to reconcile. If I should die after a separation agreement has been reached, I DIRECT my Executor to carry out the terms and conditions of the said agreement. If I should die before a separation agreement has been reached, I AUTHORIZE AND DIRECT my Executor to conclude negotiations for the severance of assets from the common-law relationship.

[21] Therefore, by the end of December 2010, the deceased had removed the defendant as the beneficiary with respect to any employer benefits to which he was entitled and he had changed his will to specifically exclude the defendant from any benefit from his estate.

[22] To establish an unjust enrichment, the estate must prove a) an enrichment to the defendant, b) a corresponding deprivation of the estate, and c) the absence of a juristic reason for the enrichment: *Kerr v. Baranow*, 2011 SCC 10.

[23] The estate submits that the defendant has clearly been enriched by the payment of the PPWC pension benefits that the estate would have received in the absence of a designated beneficiary. Thus, it argues that there is both an enrichment to the defendant and a corresponding deprivation of the estate. The estate also submits that there was no juristic reason for the enrichment upon the facts of this case.

[24] The defendant submits that there is a juristic reason for the enrichment as she was designated as the beneficiary of the PPWC pension benefits. She says that the deceased could have removed her as the beneficiary, but he did not do so. As a result, she claims that she is entitled to receive the benefits payable by the PPWC pension plan.

[25] In *Kerr*, the court discussed the third element of an unjust enrichment claim, the requirement that the enrichment must have occurred without a juristic reason, explaining that it restricts recovery to cases where "there is no reason in law or justice for the defendant's retention of the benefit conferred by the plaintiff" (para. 41).

- [26] As set out in *Garland v. Consumers' Gas Co.*, 2004 SCC 25 at paras. 44-46, and affirmed in *Kerr*, there are two stages in the juristic reason analysis. First, the "plaintiff must show that no juristic reason from an established category exists to deny recovery" (*Garland*, para. 44). The established categories include contract, disposition of law, donative intent, or other valid common law, equitable or statutory obligations.
- [27] If the plaintiff can show that there is no juristic reason from the established categories that applies, then the plaintiff has made out a *prima facie* case of unjust enrichment. If there is a juristic reason from an established category, then the analysis ends there, as the enrichment is not "unjust".
- [28] At the second stage, the defendant may rebut the *prima facie* case by showing that there is another reason to deny recovery. The burden at this stage is on the defendant, who may make arguments about "the reasonable expectations of the parties, and public policy considerations". See *Garland* at para. 46.
- [29] The defendant argues that the deceased's declaration on his union member card naming her as a beneficiary amounts to a legal entitlement to the funds. In other words, she says that the funds came to her by disposition of law, and that as such, there is a juristic reason for the enrichment.
- [30] Under the Pension Benefit Standards Act, R.S.B.C. 1996, c. 352, s. 34, a pre-retirement survivor benefit (the type of benefit claimed in this case) must be paid to a surviving spouse, or, where there is no surviving spouse, by way of lump sum payment to the designated beneficiary (see s. 34(1)(b)(i)). Where there is no valid designation of beneficiary, the benefit goes into the estate. If Ms. Wysoski is a validly designated beneficiary, then by operation of the statute, the enrichment was required by law and thus qualifies as disposition of law: *Garland*, para. 49.
- [31] There are a number of recent appellate decisions in Canada that have affirmed that where the defendant is the designated beneficiary for benefits flowing on death, that designation is a juristic reason denying the plaintiff recovery: see *Chanowski v. Bauer*, 2010 MBCA 96 at para. 47; *Love v. Love*, 2013 SKCA 31 at para. 42; and *Richardson Estate v. Mew*, 2009 ONCA 403 at para. 61. In *Love*, Richards J.A. (as he then was) said at para. 47:

Although it used the notion of "good conscience" as an umbrella way of describing the potential reach of constructive trusts, the Supreme Court was also careful to avoid inviting judges to impose such trusts whenever and wherever they believe justice requires.

That line of reasoning appears to apply to this case. Thus, there appears to be a juristic reason for Ms. Wysoski's enrichment: she was the designated beneficiary.

- [32] However, the plaintiff says that "disposition of law" does not apply in this case. According to the plaintiff, because the Member Record Card names the defendant as the deceased's spouse, when the defendant signed the consent order resolving the family law claim, she ceased to be a spouse and the disposition of the pension benefit became void.
- [33] I note that in the Notice of Civil Claim the plaintiff concedes that the defendant is the designated beneficiary. Her entitlement to the pension benefits arose, not because she was the deceased's spouse at the date of his death, but because she remained the named beneficiary. A similar situation arose in *Britton v. Klippenstein Estate*, 2004 SKQB 165, aff'd 2005 SKCA. There, Mr. Klippenstein had designated his common-law spouse as his beneficiary, as required by legislation. They then separated, but he never changed the designation of beneficiary. When Mr. Klippenstein died the estate argued that the ex-wife was no long a beneficiary because she was no longer the deceased's spouse. The trial court disagreed, stating that Ms. Britton was entitled to the pension death benefits:
- [40] Here the deceased either chose to leave Ms. Britton as his designated beneficiary after their separation, or he neglected to make any change to his designation. In either event she remained his validly designated beneficiary at the time of his death ...
- [34] The Court of Appeal agreed, noting that the designation was valid when made and could only be invalidated by the deceased taking steps to change it.
- [35] The court also noted that the fact that a former spouse signed a release of claims in a settlement agreement was not waiver of entitlement to the pension benefits, stating that "[g]eneral expressions or clauses in settlement agreements ought not to be construed as depriving an beneficiary under a will or insurance policy" (para. 39, citing *Vodden v. Vodden Estate* (1983), 3 C.C.L.I. 252 (B.C.S.C.)). In *Richardson* the Ontario Court of Appeal expressed the same sentiment, at para. 55, saying a former spouse is entitled to take benefits on death, despite any agreement or order releasing claims against property, where they remain the designated beneficiary: para. 55. (See also: *Hall Estate v. Hall* (1985), 59 A.R. 272 (C.A.); *Re Cochlan Estate* (1969), 68 W.W.R. 287 and *McLean v. Guillet*, 22 O.R. (2d) 175.)
- [36] There is a decision of the British Columbia Court of Appeal that appears to support the plaintiff's position regarding the effect of the consent order. In *Roberts v. Martindale* (1998), 162 D.L.R. (4th) 475 (B.C.C.A.), the court imposed a constructive trust over life insurance proceeds which had been paid out to the deceased's ex-spouse. In that case, the defendant had signed a separation agreement relinquishing all interest in the deceased's property. The deceased intended to change the beneficiary on her life insurance policy and in fact believed she had done so; however, the actions she had taken were insufficient to make the change and Mr. Martindale, the ex-spouse, remained the designated beneficiary. At trial, the court held that a constructive trust was not appropriate as the beneficiary designation constituted a juristic reason for the enrichment, but found a resulting trust based on the deceased's mistaken belief she had changed the named beneficiary to the plaintiff.

- [37] The Court of Appeal held that it was not appropriate to find a resulting trust based upon the deceased's mistaken belief she had done all she had to do to change the named beneficiary, but found that Mr. Martindale held the property on constructive trust because it would be "against good conscience for the appellants to keep this money" as Mr. Martindale, in claiming the proceeds, breached the separation agreement. That "breach is sufficient to call in the doctrine of the remedial constructive trust" (paras. 25-27).
- [38] In *Tarr v. Tarr Estate*, 2013 BCSC 1994 the court made a similar finding, but it was based on the clear words contained in the separation agreement made by the parties.
- [39] *Roberts* was decided prior to the recent Supreme Court of Canada decisions clarifying the law on unjust enrichment and constructive trust, particularly those decisions which clarified the application of the juristic reason analysis. The decision does not appear to fit with the analysis as set out in *Garland*.
- [40] It does not appear that the decision of the Supreme Court of Canada in *Soulos v. Korkontzilas*, [1997] 2 S.C.R. 217 was drawn to the court's attention in *Roberts*. In that case the court dealt with a situation where there was no enrichment of the defendant that could give rise to a constructive trust based on unjust enrichment. Nevertheless, the majority held there was a constructive trust that was founded on the "wrongful conduct" of the defendant rather than his enrichment (para. 45). There are a number of pre-conditions that must be satisfied to issue this type of trust, including that the defendant "must have been under an equitable obligation in relation to the activities giving rise to the assets in his hands" and the assets "must be shown to have resulted from deemed or actual agency activities of the defendant in breach of his equitable obligation to the plaintiff" (*ibid*).
- [41] At para. 29 of *Soulos*, McLachlin J. for the majority said that a constructive trust is the "formula through which the conscience of equity finds expression." She summarized her conclusion at paras. 43-44 where she said:
- [43] I conclude that in Canada, under the broad umbrella of good conscience, constructive trusts are recognized both for wrongful acts like fraud and breach of duty of loyalty, as well as to remedy unjust enrichment and corresponding deprivation. While cases often involve both a wrongful act and unjust enrichment, constructive trusts may be imposed on either ground: where there is a wrongful act but no unjust enrichment and corresponding deprivation; or where there is an unconscionable unjust enrichment in the absence of a wrongful act, as in *Pettikus v. Becker*, *supra*. Within these two broad categories, there is room for the law of constructive trust to develop and for greater precision to be attained, as time and experience may dictate.
- [44] The process suggested is aptly summarized by McClean, *supra*, at pp. 169-70:

The law [of constructive trust] may now be at a stage where it can distill from the specific examples a few general principles, and then, by analogy to the specific examples and within the ambit of the general principle, create new heads of liability. That, it is suggested, is not asking the courts to embark on too dangerous a task, or indeed on a novel task. In large measure it is the way that the common law has always developed.

- [42] The difficulty is that even if it could be found that the defendant here somehow breached the terms of the consent order it is not clear how that would qualify as a breach of an equitable obligation owed to the plaintiff. It is at most the breach of an order setting out the contract of settlement made between the parties. To find that the consent order operates as a revocation of the beneficiary designation under the pension plan runs contrary to the established authority that something more is required.
- [43] Further, Roberts is distinguishable on the facts. The consent order in this case does not clearly or specifically waive entitlements to the death benefits. It says only that claims "in this proceeding" (in other words, the family law proceeding) "are dismissed". There is no discussion of entitlements to benefits arising on death or any benefits that might arise outside of the family law context. As such, it is difficult to conclude that Ms. Wysoski's receipt of the death benefit is a breach of the order. The facts here are different than the facts in Tarr where Butler J. found that the separation agreement did constitute a waiver of any rights to pension and survivorship benefits.
- [44] I conclude that there is no unjust enrichment in this case. Whether or not Mr. Wilson intended to make a change to the beneficiary under his pension, he did not do so prior to his death. The defendant remained the validly designated beneficiary and thus took the benefit by disposition of law. Following the analysis as set out in Kerr, that is the end of the matter. Although perhaps an unfortunate outcome, the plaintiff has failed to prove that the enrichment is "unjust" as defined in law. Therefore, the plaintiff's claim must be dismissed.
- [45] The defendant is entitled to her costs.

"J. K. Bracken, J."

The Honourable Mr. Justice Bracken

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