

CANADA / JUDGMENT

Winstanley v. Winstanley

2016 BCSC 885

COURT

Supreme Court of British Columbia

DECIDED

18 May 2016

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

2016 BCSC 885 Winstanley v. Winstanley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Winstanley v. Winstanley,

2016 BCSC 885

Date: 20160518

Docket: 36748

Registry: Penticton

Between:

Andrew Harold Winstanley, on his own behalf and

as executor of the Estate of Jessie Jean Winstanley, Deceased, and the Estate of Jessie Jean Winstanley

Plaintiff

And

Carl Douglas Winstanley, on his own behalf and

as Executor of the Estate of Jessie Jean Winstanley, Deceased

Defendant

Before: The Honourable Mr. Justice Affleck

Reasons for Judgment

Counsel for the Plaintiff:

R. Covell

Counsel for the Defendant:

M. Welsh

Place and Date of Trial:

Penticton, B.C.

August 25-27, 2015

Written Submissions of the Plaintiff:

December 4, 2015

February 19, 2016

Written Submissions of the Defendant:

February 2, 2016

Place and Date of Judgment:

Penticton, B.C.

May 18, 2016

Background

- [1] The plaintiff and the defendant are the adult sons of Harold Winstanley ("Mr. Winstanley") and Jessie Jean Winstanley ("Mrs. Winstanley").
- [2] Mr. Winstanley made a will dated March 13, 2008, leaving his entire estate to Mrs. Winstanley. Mr. Winstanley died on June 13, 2011. His will was not proven.
- [3] Mrs. Winstanley also made a will on March 13, 2008, naming her sons as co-executors and trustees. That will has not been proven. Mrs. Winstanley died on October 8, 2011 leaving the entire residence of her estate to the defendant.
- [4] Mr. and Mrs. Winstanley were school teachers. They lived for many years at 502 Haven Hill Road in Penticton. They, apparently, had high educational expectations for their sons, which were only partly realized. The plaintiff became a chartered accountant, practising in eastern Canada and in the United States for many years before relocating to British Columbia. He is now 54 years old. The defendant left university without completing a degree as he had apparently found the pressures of university intolerable. He then moved into the Haven Hill Road home and has lived there ever since. He is now 51 years old and is employed as a glazier.
- [5] Mr. and Mrs. Winstanley were married in 1961, but began to live separately in 1993. They entered into a formal separation agreement in 1996. They were not financially dependent on each other.

- [6] The separation agreement provided, in part, that Mr. Winstanley would transfer his undivided half interest in the Haven Hill Road home to Mrs. Winstanley and to the defendant on payment by them of \$50,000 to Mr. Winstanley. Thereafter, Mrs. Winstanley and the defendant resided in the home and owned it jointly. Although the separation agreement provided that the \$50,000 was to be paid by both Mrs. Winstanley and by the defendant, it was paid from a line of credit secured against the home, against which the defendant borrowed the \$50,000.
- [7] These arrangements were not known to the plaintiff. He never spoke to either parent about these matters. He acknowledges his parents kept him "out of the loop" about various family financial transactions. The plaintiff apparently had infrequent contact with his parents as he pursued his profession in eastern Canada and the U.S. When Mr. Winstanley died, the plaintiff first learned from his mother and brother that Mr. Winstanley expressed a wish that there be no form of commemoration of his life. It appears the plaintiff never spoke of these matters with his father. This is partly explained by the geographical distance between them, but also perhaps because the plaintiff and his parents became less emotionally close over the years.
- [8] In 1996, after the defendant and Mrs. Winstanley became co-owners of the Haven Hill Road home, they opened a joint bank account, to which they both made deposits and from which they paid household bills related to the home.
- [9] In 2001, the defendant married. His wife, Barbara, moved from Port Coquitlam to Penticton and lived, along with the defendant, in a basement suite of the Haven Hill Road home. Mrs. Winstanley lived on the main floor upstairs.
- [10] Later, Barbara purchased a quilting shop in Penticton. The purchase was financed in part against the line of credit secured against the Haven Hill Road home. Mrs. Winstanley, the defendant and Barbara became jointly obligated on the line of credit.
- [11] Mrs. Winstanley's will of March 13, 2008 provided not only that the defendant was to inherit the residence of her estate, but also expressed the following:

I wish to acknowledge that various of my assets are held either as Joint Tenants with right of survivorship or jointly with one of my sons and I direct that any such assets shall be delivered to such son of mine who is named along with me, as the owner of the asset for his own use absolutely and that no trust be imposed in favour of any other person.

- [12] On the same day as she made her will, Mrs. Winstanley executed a power of attorney appointing the defendant as her attorney. The power of attorney was executed before Preston S. Mott, a Penticton solicitor. The defendant did not sign as attorney until September 2011, when he obtained the document from Mr. Mott, who took the defendant's declaration on September 28, 2011.

- [13] For a number of years prior to her death in October 2011, Mrs. Winstanley had suffered from a debilitating blood disease. She needed frequent transfusions. Nevertheless, Mrs. Winstanley remained independent until close to her death, even continuing to drive her own car until the last seven months of her life. The defendant occasionally drove his mother to her doctor and to the hospital.
- [14] In late 2008, Mrs. Winstanley moved from the Haven Hill Road home to an apartment, and in mid-2011, after Mr. Winstanley's death in June, moved to an assisted-living home.
- [15] Mrs. Winstanley inherited Mr. Winstanley's estate and the proceeds of a life insurance policy of about \$68,000.
- [16] The defendant informed the plaintiff that their mother was the sole beneficiary of their late father's estate and of his life insurance. The defendant had heard the plaintiff had gone through serious financial difficulties, including bankruptcy, and had asked the plaintiff if he needed money. The plaintiff told the defendant that he did not need the money at that time. The plaintiff's response was to the effect that money should not be sent to him then because, at that time, he did not know if he was entitled to receive any money.
- [17] In July 2011, Mrs. Winstanley deposited the proceeds of her late husband's life insurance policy in the joint account she held with the defendant. Later in July 2011, the defendant deposited a cheque from Mr. Winstanley's estate in the sum of about \$10,000 into the same joint account. The cheque was payable to Mrs. Winstanley and endorsed by her for deposit. In August 2011, the defendant deposited a bank draft for about \$161,000 to the joint account. On October 14, 2011, following their mother's death, the plaintiff and the defendant together obtained a bank draft drawn on the joint account payable to the plaintiff for U.S. \$200,000.
- [18] A further \$40,000 was taken from the joint account to pay down the line of credit that had been obtained several years earlier by Mrs. Winstanley and by the defendant, and to which Barbara eventually also became a signatory.
- [19] The plaintiff agreed to the payment on the line of credit on the basis that he also would receive \$40,000. It was the defendant's intention, eventually, to draw on the line of credit for that purpose, but the bank reduced the credit limit making that payment impossible.
- [20] The plaintiff's position seems to be that all money in the joint account owned by the defendant and his late mother was impressed with a trust in favour of Mrs. Winstanley's estate, of which he is the residuary beneficiary, and, further, that the estate of Mr. Winstanley, although inherited by Mrs. Winstanley, should have remained largely intact so that it would eventually form part of the residue of Mrs. Winstanley's estate on her death and thus be available to the plaintiff.
- [21] The plaintiff relies heavily on the ratio in *Pecore v. Pecore*, 2007 SCC 17 to argue that when Mrs. Winstanley deposited money to the joint account with the defendant, the law does not presume she thereby advanced that money to her son. On the contrary, the plaintiff submits the law presumes the money was impressed with a trust in favour of the estate of Mrs.

Winstanley. The plaintiff submits the burden is on the defendant to demonstrate he is entitled to right of survivorship to the money in the trust account. I agree that burden is on the defendant.

- [22] In *Pecore*, the Supreme Court of Canada considered whether the presumption that money deposited by a parent into an account with an adult independent child should be presumed to have been advanced to the adult child. After discussing other authorities, Rothstein J. concluded that the presumption of advancement was rooted in the parental obligation to support a dependent child, but it had no such application in respect of an independent adult child.
- [23] However, *Pecore* did not decide that in all cases where a parent deposits money to a joint account owned by an adult child there is a presumption the child holds the money in trust for the parent. In *Pecore*, an elderly father deposited money to two joint accounts with his adult daughter. The father alone made the deposits. Rothstein J. observed that:
- [4] The question is whether the father intended to make a gift of the beneficial interest in the accounts upon his death to his daughter alone or whether he intended that his daughter hold the assets in the accounts in trust for the benefit of his estate to be distributed according to his will
- [24] An immediate distinction is apparent between some of the facts in *Pecore* and the facts before me. In *Pecore*, only the father made the deposits, a fact alluded to repeatedly by Rothstein J. in the opening paragraphs. That distinction is one of substance, and it is important, in my view, in assisting the court in determining the intention of the father on his death. If the money on deposit had come from him alone, as it did in that case, that is one indication that it remained his money and formed part of his estate on his death.
- [25] The facts before me are unlike those discussed in *Pecore*. When the defendant purchased his father's interest in the Haven Hill Road home in 1996, the defendant became a joint tenant with his mother Mrs. Winstanley. They continued to live in the jointly owned home for about a dozen years and each met its expenses by making deposits to a joint account. It was a truly joint account which both owned legally and beneficially. Further, I do not look on the defendant as an "independent adult child", at least in the terms discussed in *Pecore*. The defendant's experience while at university had been unsatisfactory. His health failed and he moved back into the parental home. His parents clearly took the view that some means needed to be found by them to allow him to obtain an interest in the home. The solution was for the father to sell his half interest to his son. This was arranged by a line of credit secured against the home and on which Mrs. Winstanley was an obligee. The defendant, in my view, was not "independent" in the sense referred to in *Pecore*.
- [26] There was a relationship of mutual dependence between the defendant and his mother, and this was enhanced when the defendant married Barbara in 2001. Barbara became an obligee on the line of credit along with Mrs. Winstanley and the defendant, and Barbara lived, along with her husband, in the basement suite of the Haven Hill Road home. The finances of Mrs.

Winstanley, the defendant and Barbara became co-mingled. Their living arrangements at the Haven Hill Road home were, in a sense, a joint enterprise. I am further persuaded that the language employed by Mrs. Winstanley in her will, referred to in paragraph 11 of these reasons, indicates a strong intention that her jointly held property was to be inherited by the defendant by right of survivorship.

- [27] The plaintiff has a number of other complaints about payments made by Mrs. Winstanley for Barbara's benefit. He also complains about the transfer of a Subaru motor vehicle to Barbara. The evidence persuades me that Mrs. Winstanley intended these payments to be made as she was entitled to do. There is no suggestion Mrs. Winstanley was subjected to undue influence or that she lacked capacity, and it is apparent that her trust in the defendant was such that she executed a power of attorney in his favour.
- [28] I will add that it is unrealistic for the plaintiff to believe that his late father's estate, which was inherited entirely by his mother, would eventually form part of the residue of Mrs. Winstanley's estate and be inherited by the plaintiff. Mrs. Winstanley inherited the entirety of her husband's estate and she was entitled to use it as she saw fit. If she had decided, for example, to donate it to a charity of her choice, there could be no legitimate complaint, even if the effect was that the residue of her estate to be inherited by the plaintiff was much reduced or eliminated.
- [29] In my view, the plaintiff's action is misconceived. He is entitled, however, to the payment of \$40,000 as the defendant earlier agreed to make and which is referred to in these reasons.
- [30] Apart from that consideration, the plaintiff's action is dismissed with costs.

"Affleck J."

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/16/08/2016BCSC0885.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/winstanley-v-winstanley-2016>

Prepared on 27 October 2026 · Esheria