

COMMONWEALTH OF THE BAHAMAS

IN THE SUPREME COURT

Common Law and Equity Division

FILE NO. CLE/gen/00035/17

B E T W E E N

PHILIP GORDON BUTLER

Plaintiff

AND

WENDELL PRATT

Defendant

Before: **The Hon. Madam Justice Donna D. Newton**

Appearances: Mrs. Cheryl Bazard for Plaintiff

Mr. Arthur Minns for Defendant

Hearing Date: 28th February, 2018

Dated: 26th April, 2019

RULING

NEWTON, J

1. The Plaintiff by his Originating Summons filed 8th June 2017 is requesting a Declaration that upon the true construction of the Will of Miriam Olive Pratt, deceased, Lot Number 41 in Canterbury Park Subdivision belongs to him and also an Injunction restraining the Defendant from entering or using the said property. Additionally he is seeking an order for Delivery of Possession of the said property, Damages for trespass, interest and costs.
2. The Plaintiff is the beneficiary of the Estate of Miriam Olive Pratt who died on 21st December 2012 by virtue of her Will which was proved by a Grant of Probate on 29th November 2013
3. By her said Will, Mrs Pratt appointed her sons the Plaintiff and Peter Alexander Butler as Executors of her estate respectively. Concerning the property the subject of this dispute she made the following devise:

“I GIVE DEVISE and BEQUEATH my house and property together with the furniture and appliances therein situate in Canterbury Park subdivision in the Eastern District of the said Island of New Providence to my husband the said WENDELL PRATT for life or until he remarries (emphasis mine) thereafter I GIVE and BEQUEATH my said property to my son the said PHILLIP GORDON BUTLER absolutely and in fee simple.”

4. The Defendant subsequently remarried on 17th December 2016 but remains in possession of the said property.
5. The Plaintiff by his Affidavit filed 28th June 2017 stated that he was advised by Counsel for the Defendant that he and his brother (the other Executor) had no right or permission to enter the said property thus he commenced this action for delivery up of possession of the said premises, in addition to claiming the amount of \$1,500 representing loss and damages he suffered as a result of the deprivation of the use and enjoyment of the said land.
6. The Defendant by his affidavit filed 23rd February 2018 stated that he resided with the deceased on the said premises and that since 1981 he made substantial contributions to the mortgage payments and the upkeep of the said home. As a result of this he said he was advised and he believes that he has acquired an equitable interest in the property.

7. He further explained that his ex wife was ill and that Doctor's Hospital continues to pursue him for an outstanding balance owed for her medical treatment. He noted that the Executors and Trustees of her estate, which include the Plaintiff, have ignored their responsibilities under the said Will, to pay her debts.
8. At the hearing of the Originating Summons Counsel for the Defendant requested the court to treat the matter as if begun by Writ and adjourn for a Case Management hearing. He submitted that his request is on the basis that there are factual disputes, such as whether the Defendant contributed to the mortgage and made improvements to the home; whether he ought to be reimbursed for funeral expenses; and whether he ought to be pursued for his ex-wife medical bills.
9. This application was denied on the grounds that Order 5 Rule 4(1)(2) of the Rules of the Supreme Court empowers the plaintiff to determine whether to bring his action by writ or originating summons if the principal question is "*construction of a.....will*". The Originating Summons in this action sought a declaration of a statement contained in a Will and therefore the Plaintiff was within his rights to bring the action in the form which he did.
10. The Plaintiff in this matter, though one of two executors of the Estate, is bringing this action in his personal capacity as a beneficiary under the said Will and therefore does not require the permission of the other Executor to commence this action as submitted by the Defendant.
11. The Defendant by his affidavit filed 23 February 2018 claims to have made substantial contribution to the mortgage and upkeep of the subject home which he referred to as the "*marital home.*" Additionally he claimed that he paid the entire funeral expenses of his wife. He further claimed that he is the sole person Doctor's Hospital is pursuing to satisfy the outstanding medical bills of his wife (Miriam Pratt). These claims, he stated, entitled him to an equitable interest in his deceased wife's estate.
12. While this may be so, his claim is not against this beneficiary, it is against the Executors of the estate, of Miriam Pratt.
13. Therefore, the claims of contribution, his entitlement to an equitable interest, ought to have been made against the estate and not as against a beneficiary. It is in no way an Answer to the Plaintiff's claim in this matter. The time for making such claims would have been prior to the sealing of the grant by way of a Caveat, a right that the Defendant neglected to exercise.

14. Counsel for the Plaintiff correctly submitted that the testator, Miriam Pratt had an absolute tenure, a legal interest, which is superior to the Defendant's alleged equitable interest. Accordingly, Mrs Pratt devised her legal interest to her son, the Plaintiff, which interest vested on the remarriage of the Defendant.
15. The authorities submitted by the Defendant ***Garlon Rolle vs. Anna Rolle Fam/div/52 of 2013*** does not advance the Defendant's matter as this case is centered on the distribution of the matrimonial property on the dissolution of a marriage. The court found that based on the Respondent's proven contributions he obtained a share in the matrimonial home. The instant case originates from a Will, further the Defendant has provided no proof to substantiate his claims of contribution.
16. Considering the above, a declaration is granted that upon the construction of the Will of Miriam Olive Pratt the Defendant acquired an interest in the deceased property. However the said interest expired on the remarriage of the Defendant which occurred on the 17th December 2016.
17. The Plaintiff is therefore entitled to possession of all that piece parcel or lot of land being Lot number 41, Canterbury Park Subdivision together with the dwelling home thereon. The Defendant is to deliver up possession of the said property within 45 days of this order.
18. The Plaintiff's claim of \$1,500 per month as his deprivation of the use and enjoyment has not been proven.
19. Costs to the Plaintiff to be taxed if not agreed.

DONNA D. NEWTON

JUSTICE