

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Cawley Estate (Re)*, 2004 YKSC 52

Date: 20040720
S.C. No.: 04-P0030
Registry: Whitehorse

IN THE MATTER OF THE ESTATE

OF

SAMUEL LESLIE CAWLEY

OF THE CITY OF WHITEHORSE, IN THE YUKON TERRITORY

DECEASED

Before: Mr. Justice R.S. Veale

Appearances:
Stacy K. Hennings

For the Applicant

REASONS FOR JUDGMENT

INTRODUCTION

[1] The Executor appointed in the will of Samuel Leslie Cawley applies for probate of the estate. The question to be determined is whether notice of the application must be given to all beneficiaries named in the will including contingent beneficiaries.

FACTS

[2] The will of Mr. Cawley names a son as beneficiary of specific items and grants the residuary estate to his wife, who is also his executor, on the condition that she survives

him for a period of thirty days. It also makes grants to his son and three daughters as alternative beneficiaries in the event that his wife did not survive him.

[3] The thirty-day period has expired and the wife is entitled to take her benefit under the will. The son's gift was not contingent upon an event occurring.

[4] The executor proposes to give notice of her application only to her son as she does not require notice of her own application. This would result in the three daughters receiving no notice of the application for probate.

ANALYSIS

[5] Section 108(1) of the *Estate Administration Act*, R.S.Y. 2002, c. 77 (the "Act"), states as follows:

Notice of application for probate or administration

108(1) The court must not grant or reseal probate or letters of administration unless the applicant or the applicant's solicitor certifies that they have

- (a) mailed or delivered a notice to each person other than the applicant who, to the best of their knowledge, is
 - (i) a beneficiary under the will,
 - (ii) entitled on an intestacy or partial intestacy,
 - (iii) a common law spouse,
 - (iv) a person entitled to claim against the estate under the *Dependants Relief Act*, or
 - (v) a surviving spouse who has been separated from a deceased spouse for

not less than one year immediately
before the death of the deceased; and

- (b) if there is a will, attached a copy of it to the notice.

...

[6] The Act does not have a definition of beneficiary.

[7] Counsel for the executor submits that the alternate beneficiaries will not receive any benefit from the estate and are thus not entitled to notice under section 108. She states that section 108(1)(a)(i) does not apply to potential beneficiaries.

[8] *The British Columbia Probate and Estate Administration Practice Manual*, is a publication of the Law Society of British Columbia. Its focus is on practice and procedure and it is not intended to be a statement of the current law. It was first published in 1990 and has been updated to June 2004. It is of interest in this case because section 108 of the Act is identical to section 112 of the *Estate Administration Act (B.C.)*.

[9] Under the Entitlement to Notice section [§4.10], it states that notice must be given to beneficiaries under the will “including residual and contingent beneficiaries”.

[10] However, under §4.12 of the *Practice Manual* it sets out an alternative practice. If the applicant intends to apply for probate before the end of the contingency period, then notice must be given to all beneficiaries who would take if the event occurred or did not occur. Alternatively, the applicant may wait until the expiry of the period and give notice only to the beneficiaries then entitled.

[11] The starting point for statutory interpretation is the ordinary meaning rule found in Sullivan and Driedger on *The Construction of Statutes*, Butterworths, 2002, page 20:

1. It is presumed that the ordinary meaning of a legislative text is the meaning intended by the legislature. In the absence of a reason to reject it, the ordinary meaning prevails.
2. Even if the ordinary meaning is plain, courts must consider the purpose and scheme of the legislation, and relevant legal norms. They must consider the entire context.
3. In light of these considerations, the court may adopt an interpretation that modifies or departs from the ordinary meaning, provided the interpretation adopted is plausible and the reasons for adopting it are sufficient to justify the departure from ordinary meaning.

[12] The *Interpretation Act*, R.S.Y. 2002, c. 125 provides at section 10:

Every enactment and every provision thereof shall be deemed remedial and shall be given the fair, large, and liberal interpretation that best insures the attainment of its objects.

[13] The practice in this jurisdiction has been to require the proposed executor to give notice to all persons named in a will including residual and contingent beneficiaries. The rationale for this practice is based upon the fact that the Act uses the words “beneficiary under the will” and did not place any limitation or qualification on the word “beneficiary”. Presumably, the legislators intended that all beneficiaries under a will should have the right to have a copy of the will and notice that there is an application for probate. In my view, section 108(1) of the Act intended that all beneficiaries under a will are entitled to know the intentions of the deceased and the executor. To rule otherwise, may leave

some beneficiaries in the dark about their status under a will. A narrow interpretation of “beneficiary” is neither required nor helpful in the administration of estates.

[14] The general purpose of the Act, although unstated, is to ensure the orderly and fair administration of estates. Section 108 also expands the persons entitled to notice to include common law spouses, surviving spouses and person entitled to claims against the estate under the *Dependants Relief Act*, R.S.Y. 2002, c. 56. Thus, persons who may have an interest or a possible claim are included in those entitled to notice. In my view, those persons named by the testator as beneficiaries in the will should not be excluded from the notice requirement without good reason.

[15] I do not find anything in the context of the Act or any other reason to reject the ordinary meaning of the word “beneficiary”.

[16] I order that the executor mail or deliver a copy of the required notice and the will to the alternative beneficiaries.

VEALE J.