



**IN THE COURT OF APPEAL
OF NEWFOUNDLAND AND LABRADOR**

Citation: *Pye v. Chatman*, 2022 NLCA 18

Date: March 16, 2022

Docket Number: 202001H0080

BETWEEN:

SUEANN PYE

FIRST APPELLANT

AND:

DIANE PYE

SECOND APPELLANT

AND:

DAVID CHATMAN

RESPONDENT

Coram: Hoegg, Goodridge and Butler JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 202006G0030
(2020 NLSC 139)

Appeal Heard: December 9, 2021

Judgment Rendered: March 16, 2022

Reasons for Judgment by: Hoegg J.A.

Concurred in by: Goodridge and Butler JJ.A.

Counsel for the First and Second Appellants: Self-Represented

Counsel for the Respondent: Philip C.W. Whalen

Authorities Cited:

CASES CITED: *Mugford v. Mugford* (1992), 103 Nfld. & P.E.I.R. 136 (Nfld. C.A.); *Power Estate v. Hayward*, 2021 NLCA 58; *R. v. G.F.*, 2021 SCC 20; *R. v. Mehari*, 2020 SCC 40; *Re Dyer Estate*, 2011 NLCA 81, 317 Nfld. & P.E.I.R. 45.

STATUTES CONSIDERED: *Quieting of Titles Act*, RSNL 1990, c. Q-3, section 26.

Hoegg J.A.:

INTRODUCTION

[1] This appeal concerns whether a trial judge erred in granting a certificate of title for a parcel of land in the municipality of Brooklyn, Newfoundland and Labrador to David Chatman.

[2] Mr. Chatman petitioned the Supreme Court of Newfoundland and Labrador for title to the land under the provisions of the *Quieting of Titles Act*, RSNL 1990, c. Q-3 (the “Act”), claiming ownership of it through both a Deed of Grant and possession. In addition to the required filings, he provided specific notice of his claim to 18 known relatives. The notice included instructions respecting how to file an adverse claim, and advice that if they did not respond to the notice correspondence, they would be deemed to consent to Mr. Chatman’s application. Thirteen of the eighteen relatives filed consent forms in support of Mr. Chatman’s claim. Three relatives did not respond, and two relatives, Sueann Pye and Diane Pye (the “Cousins”) filed adverse claims.

[3] The Judge granted Mr. Chatman’s application. The Cousins appeal the Judge’s decision.

BACKGROUND

[4] The parties agree that the land is within a Crown grant to Thomas Pye dated May 11, 1878, and that it was used by him until it came into the possession and ownership of his grandson Thomas Harold Pye. Thomas Harold Pye had eight children, of whom Annie, Lewis and Boyd were three. Mr. Chatman is the grandson of Annie, Ms. Sueann Pye is the daughter of Lewis, and Ms. Diane Pye is the daughter of Boyd.

[5] Mr. Chatman claimed at trial that his grandmother Annie received the land in question from Thomas Harold Pye's estate when it was divided among his children after he died. Mr. Chatman also claimed that it was well known within the family and the community that the land belonged to Annie.

[6] In 2014, Annie deeded the land to Mr. Chatman by way of a Deed of Grant, which deed was supported by affidavit evidence from Theodora Bowen and Betty Holloway, two well-known senior members of the Brooklyn community. The Deed of Grant was registered at the Registry of Deeds.

[7] Mr. Chatman also claimed that he, along with his grandmother Annie until her death, and then he alone, openly, exclusively, notoriously and continuously possessed the land.

[8] At trial, the Cousins claimed that Mr. Chatman's possessory claim did not meet the open, notorious, exclusive and continuous test for quieting. Their position was that Annie did not become the sole owner of the land after Thomas Harold Pye's death, that all of Thomas Harold Pye's children had an ownership interest in it, and that they had an ownership interest in it by virtue of being the daughters of Thomas Harold Pye's sons, Lewis and Boyd.

The Judge's Decision

[9] The Judge found that Mr. Chatman and his grandmother possessed the subject land openly, notoriously, exclusively, and continuously since at least 2007, and that there had been no one who had attempted to assert ownership or possession of the land adversely to them. She accepted that Annie had received the land from her father Thomas Harold Pye's unadministered estate when his property was divided upon his death, reasoning that there was evidence that other siblings of Annie received pieces of Thomas Harold Pye's land after he died, and that Pearl, the only living child of Thomas Harold Pye and sibling of Annie, had filed a consent to Mr. Chatman's application. The Judge also accepted Mr. Chatman's mother's evidence that she had spent most weekends on the land as a child with her family and always understood that her mother owned the land.

[10] The Judge accepted Mr. Chatman's evidence. He testified that before his grandmother died, she was anxious for him to have the land and to build a house on it. He said he began to clear the land in 2007 to build the house, and that while he was clearing the land, two of his uncles from the Pye side of his family, Jack and Lewis, were aware of his clearing the land and did not object. He

recalled that Lewis was on the land with him and talked with him regularly about the property and his plans to build on it. Mr. Chatman also testified that there was widespread acceptance within the extended Pye family that Annie had owned the land and that she had transferred her interest in it to him as shown by the Deed of Grant.

[11] The Judge found that Mr. Chatman's clearing of large trees and ground cover from the land, and pegging the foundation for a house, were strong acts of possession, and that he monitored the property regularly, kept it free of garbage, had a friend monitor it from time to time, and otherwise visited it regularly.

[12] The Judge addressed the Cousins' ownership claim by explaining that the Court's task was to determine Mr. Chatman's application for title, and that their submissions could not result in a determination that they had an ownership interest in the land. She explained that while their ownership claims might serve to defeat Mr. Chatman's claim, they did not in this case because they were not legally recognizable claims.

ISSUE

[13] The central issue is whether the Judge erred in granting Mr. Chatman a Certificate of Title under section 26 of the *Act*.

The Appeal

[14] The Cousins argue that the Judge erred by failing to apply the principles of law respecting possessory title to Mr. Chatman's application. They maintain that Annie did not acquire ownership of the land from the estate of Harold Thomas Pye after he died, saying that Annie's siblings did not relinquish their claim to the land in Harold Thomas Pye's unadministered estate and that Annie never received a Deed of Conveyance respecting the land. The Cousins argue that the Judge erred in failing to find that their asserted ownership interest in the land defeated Mr. Chatman's claims, saying that the granting of title to him deprives them of their interest in the property.

[15] The Cousins also argue that the Judge erred by accepting the affidavit evidence of Ms. Bowen and Ms. Holloway which had supported the Deed of Grant. The Cousins say that erroneous statements in their affidavits taint their evidence such that the Judge ought not to have relied on it. The Cousins also argue that the Judge erred by assuming that a significant percentage of the population of Brooklyn are Pyes, and that she evaluated their evidence on a

stricter standard than the standard on which she evaluated Mr. Chatman's evidence.

ANALYSIS

[16] The Cousins' argument that they, as next-of-kin to Harold Thomas Pye, have an ownership interest in the land must be rejected. Neither the Cousins nor anyone else has an ownership interest in the land that was in Thomas Harold Pye's estate by virtue of being his next-of-kin.

[17] Thomas Harold Pye's estate was not administered. Next-of-kin do not have an ownership interest in the property of an unadministered estate. This was explained by Goodridge C.J.N.L. in *Mugford v. Mugford* (1992), 103 Nfld. & P.E.I.R. 136 (Nfld. C.A.), and more recently by this Court in *Power Estate v. Hayward*, 2021 NLCA 58.

[18] In *Mugford*, the Court determined that the next-of-kin of a person whose estate is unadministered (persons in the same position as the Cousins in relation to the estate of Thomas Harold Pye) have no legal or equitable interest in the property of the unadministered estate. What next-of-kin do have, is an interest in the unadministered estate, described as a chose in action, which is the "right to have the estate administered according to law and to receive a distributive portion of the estate when the debts of the estate and the administrative and other costs have been discharged" (*Mugford*, at para. 58). This principle of law was confirmed recently in *Power Estate*, wherein the Court reasoned that a party can establish its right to a certificate of title to property in an unadministered estate by way of possession (at paras. 18 and 39). In her concurring opinion, Butler J.A. further explained that the interest which next-of-kin have in an unadministered estate is a beneficial interest to have the estate administered and not an ownership interest in the property within the estate (at paras. 35-38).

[19] In the result, the Cousins' contention that they, or indeed any of Thomas Harold Pye's children or descendants have an ownership interest in the land by virtue of being next-of-kin is simply not so. Accordingly, the Judge did not err by finding that the Cousins' claims were not legally viable and could not form a basis to defeat Mr. Chatman's claim.

[20] The Cousins also argue that the Judge erred by accepting the affidavit evidence of Ms. Bowen and Ms. Holloway, who swore in their affidavits that they were not related to Annie, when in fact, and unbeknownst and to Mr. Chatman at the time he obtained the affidavits, they were Annie's first cousins.

[21] The Judge considered the Cousins' argument that the affidavit evidence of Ms. Bowen and Ms. Holloway was tainted by the mistakes. The Judge found that their affidavit evidence respecting the history of the property and Annie's ownership of it was not tainted. She reasoned that neither affiant had an interest in the subject land, and there was no evidence which contradicted the contents of their affidavit evidence. She also noted that the Cousins chose not to cross-examine the affiants at trial.

[22] On appeal, the Cousins have not shown that the integrity of Ms. Bowen's and Ms. Holloway's affidavit evidence respecting Annie's ownership of the land is tainted or otherwise impugned. Accordingly, there is no basis to interfere with the Judge's acceptance of it. In any event, the affidavit evidence of Ms. Bowen and Ms. Holloway was just one of several reasons the Judge gave for accepting that Annie had received the land from her father's estate.

[23] The Cousins also argue that the Judge erred in presuming that a significant percentage of the people in Brooklyn are Pyes or relations of Pyes. The Judge commented, in the context of considering the affidavit evidence of Ms. Bowen and Ms. Holloway, that the ownership of the land was really a Pye family matter, and given that the population of Brooklyn was approximately 200 people, relatives of Annie like Ms. Bowen and Ms. Holloway, who had no interest in the land, would be well positioned to know the history and ownership of the land regardless of their relationship to Annie. The Judge's comment is well supported by the evidence and reflects a considered and practical approach to the matter. It cannot be said to be an error.

[24] The Cousins also argue that the Judge erred in accepting Mr. Chatman's evidence that his uncles Jack and Lewis were aware that he was clearing the land to build a house in 2007 and did not object. The Cousins say this cannot be so because Jack died in 2006, and therefore could not have been speaking with Mr. Chatman about the land in 2007.

[25] The Judge did seem to accept Mr. Chatman's evidence that he spoke with his two uncles about the land in 2007 despite evidence that Jack died in 2006. However, in her decision she focused only on Lewis's visits to the land and did not reference Jack visiting the land. To the extent that the Judge can be said to have made a palpable error regarding Jack, the error is far from overriding. It was a very minor part of the Judge's reasoning and cannot be said to have materially affected the result.

[26] The Cousins argue that the Judge assessed their evidence on a different standard than the standard she applied to the evidence Mr. Chatman adduced. Their contention seems to be based on the notion that their positions before the Court are the same as that of Mr. Chatman in that they are all descendants of Thomas Harold Pye and that they should all be treated equally. While it is far from clear that uneven assessment of evidence constitutes a stand-alone ground of appeal (see *R. v. G.F.*, 2021 SCC 20 at paras. 99-101; and *R. v. Mehari*, 2020 SCC 40 at para. 1), the Cousins' argument is nevertheless faulty, because it is based on a misunderstanding of the nature of this proceeding.

[27] Mr. Chatman filed an application to quiet the title for land he possessed for many years. As the applicant, he had the burden to provide evidence to support his position. The Cousins are in an entirely different position. As adverse claimants, their evidence could not result in a declaration of their ownership (*Re Dyer Estate*, 2011 NLCA 81, 317 Nfld. & P.E.I.R. 45 at paras. 15-17), as the Judge noted. Rather, the Cousins' evidence could only serve to defeat Mr. Chatman's claim, which the Judge correctly decided it did not do.

[28] In any event, on the record before the Court, there is no indication that the Judge assessed the evidence of the Cousins any differently than she assessed that of Mr. Chatman. Rather, she simply found that the evidence Mr. Chatman adduced established his possessory claim and that the Cousins' testimony that they had an ownership interest in the property did not defeat Mr. Chatman's claim. The Judge's findings in these regards were hers to make. Her acceptance of some evidence over other evidence does not mean that she assessed the different evidence on different standards.

[29] In the result, the Cousins have not demonstrated that the Judge assessed their evidence differently or on a different standard from the evidence tendered by Mr. Chatman.

DISPOSITION

[30] The Judge has not been shown to be in error in her granting of title to Mr. Chatman. Accordingly, I would dismiss the appeal, and order the Cousins to pay column three costs to Mr. Chatman.

L. R. Hoegg J.A.

I concur: _____
W.H. Goodridge J.A.

I concur: _____
G. D. Butler J.A.