

Leslie Joan Rice (applicant) v. The Estate of Earl Victor Rice (respondent) and R.R.R. and
A.R.R. by Their Litigation Guardian, Earl Rice Jr. (respondent/added party)
(FDSJ-175-11; 2012 NBQB 65; 2012 NBBR 65)

Indexed As: Rice v. Rice Estate

New Brunswick Court of Queen's Bench
Family Division
Judicial District of Saint John
Walsh, J.
February 28, 2012.

Summary:

A husband died leaving a will in which he bequeathed his wife a contingent life interest in the marital home. The wife applied under s. 4(1) of the Marital Property Act for an order vesting her husband's interest in the marital home in her, the surviving spouse.

The New Brunswick Court of Queen's Bench, Family Division, dismissed the application.

Family Law - Topic 630

Husband and wife - Marital property - Matrimonial home - General - [See **Family Law - Topic 633**].

Family Law - Topic 633

Husband and wife - Marital property - Matrimonial home - Right of wife to interest in - A husband died and by will bequeathed his wife only a contingent life interest in the marital home which he had purchased in his name in 1989 prior to their marriage in 1990 - The wife applied for an order vesting her husband's interest in the marital home in her, the surviving spouse (Marital Property Act (MPA), s. 4(1)) - The New Brunswick Court of Queen's Bench, Family Division, dismissed the application - Although the rights of a spouse arising under the MPA superseded a bequest or devise contained in a will (MPA, s. 4(4)), the court "regrettably" concluded that the existence of a valid domestic contract dated July 22, 1987 defeated the wife's claim - Under that agreement, the parties agreed that all after acquired property which was not held in both names, would belong exclusively to the party in whose name the property was held, free from any claim by the other - Upon a proper interpretation of the domestic contract, the parties intended that it would apply upon the death of one spouse.

Family Law - Topic 865

Husband and wife - Marital property - Distribution orders - Matrimonial home - [See **Family Law - Topic 633**].

Family Law - Topic 885

Husband and wife - Marital property - Considerations in making distribution orders - Death of spouse - [See **Family Law - Topic 633**].

Family Law - Topic 3354

Separation agreements, domestic contracts and marriage contracts - Effect of agreement - In matrimonial property application - [See **Family Law - Topic 633**].

Droit de la famille - Cote 630

Mari et femme - Biens matrimoniaux - Foyer matrimonial - Généralités - [Voir **Family Law - Topic 630**].

Droit de la famille - Cote 633

Mari et femme - Biens matrimoniaux - Droit de l'épouse à un intérêt dans le foyer matrimonial - [Voir **Family Law - Topic 633**].

Droit de la famille - Cote 865

Mari et femme - Biens matrimoniaux - Ordonnances de répartition - Foyer matrimonial - [Voir **Family Law - Topic 865**].

Droit de la famille - Cote 885

Mari et femme - Biens matrimoniaux - Considérations lors du prononcé de l'ordonnance de répartition - Mort du conjoint - [Voir **Family Law - Topic 885**].

Droit de la famille - Cote 3354

Ententes de séparation, contrats domestiques et contrats de mariage - Effet de l'entente - Requêtes en matière de biens matrimoniaux - [Voir **Family Law - Topic 3354**].

Cases Noticed:

Payne v. Payne Estate et al. (1998), 199 N.B.R.(2d) 360; 510 A.P.R. 360 (C.A.), refd to. [para. 1].

Johnson v. Johnson (2009), 350 N.B.R.(2d) 264; 903 A.P.R. 264; 2009 NBQB 208 (F.D.), refd to. [para. 12].

Yorke v. Yorke (2011), 378 N.B.R.(2d) 141; 973 A.P.R. 141; 2011 NBCA 79, refd to. [para. 12].

McKinnon v. McKinnon (2011), 373 N.B.R.(2d) 378; 964 A.P.R. 378; 2011 NBCA 49, refd to. [para. 14].

Rademaker v. Rademaker (2002), 251 N.B.R.(2d) 177; 654 A.P.R. 177; 2002 NBCA 47, refd to. [para. 14].

Kay v. Kay (1999), 215 N.B.R.(2d) 291; 551 A.P.R. 291 (C.A.), refd to. [para. 14].

BG Checo International Ltd. v. British Columbia Hydro and Power Authority, [1993] 1 S.C.R. 12; 147 N.R. 81; 20 B.C.A.C. 241; 35 W.A.C. 241, refd to. [para. 18].

Strand Music Hall Co., Re (1865), 55 E.R. 853, refd to. [para. 19].

Catholic Children's Aid Society of Metropolitan Toronto v. C.M., [1994] 2 S.C.R. 165; 165 N.R. 161; 71 O.A.C. 81, refd to. [para. 23].

Watt v. Watt Estate (1996), 181 N.B.R.(2d) 291; 460 A.P.R. 291 (Q.B.F.D.), refd to. [para. 24].

Statutes Noticed:

Marital Property Act, S.N.B. 1980, c. M-1.1, sect. 4(1) [para. 11].

Authors and Works Noticed:

Driedger, Elmer A., Construction of Statutes (2nd Ed. 1983), p. 87 [para. 23].
McCamus, J.D., Essentials of Canadian Law: The Law of Contracts (2005), pp. 713-715
[para. 20]; 719 [para. 19].

Counsel:

Peter J.C. White, for the applicant;
Michael L. McCluskey, for the respondent;
Donald Cullinan, for the respondent (added party).

This application was heard in Saint John, New Brunswick, on February 21, 2012, before Walsh, J., of the New Brunswick Court of Queen's Bench, Family Division, who delivered the following decision on February 28, 2012.

Application dismissed.

Editor: Elizabeth M.A. Turgeon

Family Law - Topic 630

Husband and wife - Marital property - Matrimonial home - General - A husband died and by will bequeathed his wife a contingent life interest in the marital home which he had purchased in his name in 1989 prior to their marriage in 1990 - The wife applied for an order vesting her husband's interest in the marital home in her, the surviving spouse (Marital Property Act (MPA), s. 4(1)) - The New Brunswick Court of Queen's Bench, Family Division, dismissed the application - Although the rights of a spouse arising under the MPA superseded a bequest or devise contained in a will (MPA, s. 4(4)), the court "regrettably" concluded that the existence of a valid domestic contract dated July 22, 1987 defeated the wife's claim - Under that agreement, the parties agreed that all after acquired property which was not held in both names, would belong exclusively to the party in whose name the property was held, free from any claim by the other - Upon a proper interpretation of the domestic contract, the parties intended that it would apply upon the death of one spouse.

Family Law - Topic 865

Husband and wife - Marital property - Distribution orders - Matrimonial home - A husband died and by will bequeathed his wife a contingent life interest in the marital home which he had purchased in his name in 1989 prior to their marriage in 1990 - The wife applied for an order vesting her husband's interest in the marital home in her, the surviving spouse (Marital Property Act (MPA), s. 4(1)) - The New Brunswick Court of Queen's Bench, Family Division, dismissed the application - Although the rights of a spouse arising under the MPA superseded a bequest or devise contained in a will (MPA, s. 4(4)), the court "regrettably" concluded that the existence of a valid domestic contract dated July 22, 1987 defeated the wife's claim - Under that agreement, the parties agreed that all after acquired property which was not held in both names, would belong

exclusively to the party in whose name the property was held, free from any claim by the other - Upon a proper interpretation of the domestic contract, the parties intended that it would apply upon the death of one spouse.

Family Law - Topic 885

Husband and wife - Marital property - Considerations in making distribution orders - Death of spouse - A husband died and by will bequeathed his wife a contingent life interest in the marital home which he had purchased in his name in 1989 prior to their marriage in 1990 - The wife applied for an order vesting her husband's interest in the marital home in her, the surviving spouse (Marital Property Act (MPA), s. 4(1)) - The New Brunswick Court of Queen's Bench, Family Division, dismissed the application - Although the rights of a spouse arising under the MPA superseded a bequest or devise contained in a will (MPA, s. 4(4)), the court "regrettably" concluded that the existence of a valid domestic contract dated July 22, 1987 defeated the wife's claim - Under that agreement, the parties agreed that all after acquired property which was not held in both names, would belong exclusively to the party in whose name the property was held, free from any claim by the other - Upon a proper interpretation of the domestic contract, the parties intended that it would apply upon the death of one spouse.

Family Law - Topic 3354

Separation agreements, domestic contracts and marriage contracts - Effect of agreement - In matrimonial property application - A husband died and by will bequeathed his wife a contingent life interest in the marital home which he had purchased in his name in 1989 prior to their marriage in 1990 - The wife applied for an order vesting her husband's interest in the marital home in her, the surviving spouse (Marital Property Act (MPA), s. 4(1)) - The New Brunswick Court of Queen's Bench, Family Division, dismissed the application - Although the rights of a spouse arising under the MPA superseded a bequest or devise contained in a will (MPA, s. 4(4)), the court "regrettably" concluded that the existence of a valid domestic contract dated July 22, 1987 defeated the wife's claim - Under that agreement, the parties agreed that all after acquired property which was not held in both names, would belong exclusively to the party in whose name the property was held, free from any claim by the other - Upon a proper interpretation of the domestic contract, the parties intended that it would apply upon the death of one spouse.