IN THE SUPREME COURT OF BELIZE A.D. 2000

ACTION NO. 467 OF 2000.

	(CHERYL DENISE DILLETT	**PLAINTIFF**
	(	
BETWEEN	**(AND**	
	(	
	(EVELYN YOUNG	**DEFENDANTS**
	(DONALD GILL	

Mr. Dons Waithe, for the applicant

AWICH J.

9. 2. 2005. **JUDGMENT.** ***Ex tempore*.**

1. Short interesting points have arisen in this application which seeks an order appointing "one other person to be named by Mr. Dons Waithe". The person to be named is to be the second administrator in the deceased estate of Mr. William Dillett. He died intestate on 29.5.1993, at Harvey, Cook County, Illinios, U.S.A. where he was resident. Mr. Dons Richard Waithe, an attorney in Belize, has been granted administration of the estate in Belize, by an order made by a judge of this Court, the Supreme Court of Belize, on 12.9.2002. The same order revoked an earlier grant of administration to Evelyn Young, the mother of the deceased, and Donald Gill, a cousin of the deceased, as joint administrators. Both were resident in Belize.

Disagreement had arisen as to the beneficial interest in the estate in Belize stated as worth $36,000.00. As the result the widow, Cheryl Denise Dillett, successfully challenged the grant of administration to the mother and cousin on the ground that the widow was entitled to grant of administration of the estate before the mother or cousin could be granted.

2. The deceased was survived by his wife, Cheryl Denise Dillett, and his children: Yvette Dillett born on 19.3.1988, William James Dillett born on 14.6.1989, and Kayla Shenay Dillett born on 17.3.1992. All the children are minors as of today, 9.2.2005. The marriage certificate of the widow and the deceased, and the birth certificates of the children were exhibited to the widow's affidavit. The widow and the children are resident in the U.S.A.

3. Because she lived in the U.S.A., the widow granted power of attorney to Mr. Waithe in the words: "*to be my lawful attorney for the purpose of obtaining [grant of] Letters of Administration in the estate of the said deceased for my use and benefit until I shall duly apply for and obtain a grant of administration of the said estate...*". Grant of administration was made to Mr. Waithe on the strength of the power of attorney. No other person obtained grant so Mr. Waithe remained sole administrator. The grant to him was not of "a special administrator *de bonis non*" under ***S: 21(4) of the Administration of Estates Act cap 197,*** when an administrator to whom grant has been made remains absent from Belize for one year without having appointed an attorney to act for or represent him or her. The grant was made to a person appointed agent of another entitled to grant of administration

and letters of administration.

4. When the grant of administration to Mr. Waithe alone, was made, S:16(1) of the Act was overlooked. The section requires that where gross value of the estate exceeds $5,000.00 and interest of a minor child is involved or a life interest arises, at least not less than two administrators should be appointed. I quote the section:

> "*16(1) Probate or administration shall not be granted to more than four persons in respect of the same property and, where the gross value of the estate exceeds five thousand dollars, administration shall, if there is a minority or if a life interest arises under the will or intestacy be granted to not less than two individuals.*
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> *Provided that the Court in granting administration may act on such prima facie evidence, furnished by the applicant or any other person, as to whether or not there is a minority or life interest, as may be prescribed by rules of court*".

5. By this application it is now sought to correct the oversight by obtaining an order granting administration to a second administrator. The application is entirely meritted on a point of law. The difficulty is that the application seeks the appointment of the second administrator by having Mr. Waithe name the person. It was couched in these words:

"... LET ALL PARTIES attend... on the hearing of an application on the part of the Plaintiff under Order 76 of the Rules of the Supreme Court for an Order that the Order made by the Court on the 12th day of September 2002 be amended and/or varied to read the Grant of Administration be issued to Mr. Dons Waithe and to one other person to be named by Mr. Dons Waithe".

6. An order authorizing grant of administration to, *"one other person to be named by Mr. Dons Waithe"*, in effect would authorise Mr. Waithe to make grant of administration of the estate to the other person by simply naming him, thus simply appointing him joint administrator. The person would no longer be required to make the usual application by submitting; a petition for administration, affidavit verifying the petition, oath of administrator, inventory of the estate, and bond, as required under ***Order 69 of Rules of the Supreme Court.*** Moreover, he will not be required to have the application advertised. Furnishing bond in particular, is a requirement of the ***Act itself at S: 14;*** it is a very important requirement. Mr. Waithe would have authority to grant administration of the estate and the discretion as to whom to grant to, which authority and discretion in law, belong to the Court under ***S: 15 of the Administration of Estates Act***.

7. Mr. Waithe suggested that the difficulty could be overcome by the power donated to him by the widow to make appointment. I do not see such a power donated in the power of attorney, dated 22.5.1996. Even if that was the case, that would not overcome the difficulty. The widow has no

authority, in law, to grant administration of the estate to herself, let alone authorize grant to someone. She could authorize someone as she did authorize Mr. Waithe to *apply* for grant of administration and letters of administration in her place, and to put forward her qualification to justify the grant. The person donated power of attorney should then make application as required under S: 15(a) and in the normal way in accordance with ***Order 69 of the Rules of the Supreme Court.*** Note that under S:15 administration shall be granted to interested persons *"if they make an application..."* The relevant parts of S:15 state as follows:

> *"15. In granting administration the court shall have regard to the rights of all persons interested in the estate of the deceased person, or the proceeds of sale thereof, and in particular, administration with the will annexed may be granted to a devisee or legatee, and in regard to land settled previously to the death of the deceased and not by his will, may be granted to the trustees of the settlement and any such administration may be limited in any way the court thinks fit:*
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> > *(a) where the deceased died wholly intestate as to his estate, administration shall be granted to some one or more persons interested in the residuary estate of the deceased if they make an application for the purpose, and as regards lands settled previously to the death of the deceased, be granted to the*

trustee, if any, of the settlement, if they are willing to act; and..."

8. It is also my view that a successful challenge to a grant of letters of administration or of probate made to another does not by that fact entitle the challenger to a grant of administration or of probate as the consequence. A successful challenger, who considers himself entitled to the grant of administration or probate, must apply in the usual way under ***S: 15 of the Administration of Estates Act,*** and in accordance with the procedure in ***O. 69 of the Rules.*** It is not expected in this case that an application by or on behalf of the widow will be met with opposition, nevertheless, the correct procedure must be followed. It protects the estate for the benefit of those who are entitled to it. Likewise, a recall of letters of administration or probate must be followed by an application of a person wishing to obtain letters or probate. It is only where a grant is to be made to the public trustee ***under S: 6 of the Public Trustee Act, Cap 199,*** that some of the requirements under O. 69 do not apply.

9. The order that I make is that the application in the form presented is refused. The widow is at liberty to donate power of attorney to a named person. The person will make his or her application for grant of letters of administration under S: 15 of the ***Administration of Estates Act***, and in accordance with the procedure in ***Order 69 of the Rules of the Supreme Court,*** on the strength of the power of attorney. If any caveat is entered, the application shall proceed in accordance with, ***Part II "Contentious Business",of O. 69***,

otherwise the usual practice to make a grant in uncontested application will apply.

10. Costs of this application shall be in the administration of the estate.

11. Pronounced this Wednesday the 9th day of February 2005.

At the Supreme Court,

Belize City.

Sam Lungole Awich

Judge

Supreme court