

**IN THE SUPREME COURT OF BELIZE A.D. 2004**

**ACTION NO. 575 OF 2004.**

IN THE MATTER OF THE ESTATE OF MARY JANE  
BLONDELL, also known as Mary Jane Walport (deceased)

AND

IN THE MATTER OF THE ADMINISTRATION OF  
ESTATES ACT, Cap. 197.

Mr. Glenn Godfrey S.C, and  
Ms. Celest Mohammad, for the applicants.  
Mr. Dean Lindo , S.C., for the respondent.

AWICH J.

8.3.2005.

**JUDGMENT**

1. *Notes:- Administration of deceased estate, interested persons who may apply resident outside the jurisdiction, application for grant of administration to a special administrator otherwise not a person interested in the estate, on the grounds of special circumstances, under S; 15(b) of the Administration of Estates Act, Cap 197, on application by some of the persons interested in the estate. An application to pass over, that is, for order denying grant of administration to one of the persons interested in the estate - a daughter of the deceased, on the grounds of dishonesty being unstable and inability to act objectively.*
2. Three brothers and a sister who live in the USA have applied, for an order that: *“this Honourable Court [may] exercise its power under S: 15(b) of the*

*Administration of Estates Act, Cap. 197, Laws of Belize, to issue a grant of administration of the estate of ... Mary Jane Blondell, to Allen Ruckert of 26, miles, Hummingbird Highway, either solely or in conjunction with such other person or persons and subject to such terms and conditions as the Court deems fit*". The brothers are Anthony Paul Philley, Kim Patrick Philley and Kevin Francis Philley. Their sister who joined them is, Bobbie Jane Barber. They have a sister, Mary Kathryn Cariddi who lives on Loma Luz Bulevard, Cayo, in Belize. Their mother was the deceased, Mary Jane Blondell, also known as Mary Jane Walport. She died intestate on 25.7.2004, at Mile 27 Hummingbird Highway, Stann Creek District, Belize. She has left substantial estate in Belize and apparently in the USA as well. According to Mary Kathryn, administration of the estate in the USA has been granted to one of the brothers, Kevin F. Philley.

3. In their joint affidavit to support the application, the applicants stated that they would like Michael Allan Ruckert granted administration of the estate of their mother. For their reason, the applicants stated : *"Michael Allen Ruckert is a neighbour and a long time close friend of the deceased for over ten years. We desire that the estate of the deceased be administered solely by the said Michael Allan Ruckert as he is resident in Belize and is familiar with the assets in our mother's estate and in the time that we have known him he has been trustworthy."* They added that Mr. Ruckert was willing to be the administrator of the estate. Regarding their sister Mary Kathryn, they stated: *"We are strongly opposed to Mary Kathryn being a co-administrator of our mother's estate as we find her to be dishonest, untrustworthy, unstable and incapable of acting objectively in the best interest of all the*

*beneficiaries of the estate*". Mr. Ruckert swore an affidavit for the applicants. He declared his willingness to be an administrator of the estate. He attached to the affidavit, a list of assets that he said made up the estate of the deceased.

4. There is ambiguity as to whether the applicant would want Mr. Ruckert granted administration alone or jointly with other persons beside Mary Kathryn. In the application they asked for grant to Mr. Ruckert "alone or jointly with other persons", whereas in their affidavit they asked that the estate "be administered solely by the said Michael Allan Ruckert".
  
5. Mary Kathryn has filed an affidavit in response. She was represented in Court by a learned senior counsel, Mr. Dean Lindo. She took an accommodating stance. She did not oppose grant of administration to Mr. Ruckert, but she would like the grant to be made jointly to Mr. Ruckert and her as joint administrators. She stated that Mr. Ruckert was not familiar with the assets that the deceased had in Cayo. She made a long list of the assets in Cayo which assets Mr. Ruckert had not included on his list. Mary Kathryn also revealed that administration of the estate of the deceased in the USA had been granted to Kevin Francis Filley, and that US \$77,000.00 had been withdrawn from the account of the deceased at "Washington Mutual" in the USA. She pointed out that the applicants should have disclosed these informations to Court. She was right. Of course, it is left to her to take whatever action she considers appropriate in regard to the estate in the USA. Mary Kathryn took strong exception to the conducts attributed to her by her brothers and sister.

6. *Determination.*

Although she gave as justification for granting administration of the estate to her and Mr. Ruckert jointly, the fact that Mr. Ruckert was not familiar with assets in Cayo, which assets were part of the estate, Mary Kathryn did not need to give justification in as far as her entitlement to apply for grant of administration is concerned. She is entitled as an interested person, a daughter of the deceased, to be considered, if she applies for grant of administration of the estate of her deceased mother. It is a birth right, one might say. She can only be passed over by an order of court on application based on good grounds.

7. *The Question of Special Circumstances.*

Mr. Glenn Godfrey S.C., learned counsel for the applicants, recognised that a friend is not legally a person interested in the estate of a deceased friend. He submitted that the application to have Mr. Ruckert, a friend and a person not interested in the estate, appointed administrator was made under S: 15(b) of the Administration of Estates Act. The applicants live outside the jurisdiction, they do not trust their resident sister, Mary Kathryn, but they have confidence in Mr. Ruckert. Those reasons, Mr. Godfrey submitted, constituted, “*any other special circumstances, under S; 15(b),*” permitting appointment of a person other than a person who otherwise would be entitled to grant of administration. Counsel pointed out that the matter was within the discretion of the Court.

8. ***Section 15 of the Administration of Estates Act***, cited by counsel restricts granting administration of an intestate estate. The restriction came from the Common Law. Courts were reluctant to grant administration to persons who were not next of kin or creditors of the intestate deceased. Such persons were usually referred to as “*strangers*”. They were legally regarded as “*persons not interested*” in the intestate estate because they had no beneficial interest in the estate. Of course, there was no reluctance in granting probate of a will to strangers in testate estate. The wish of the deceased as to who he wanted to be the executor of his estate, be he a next of kin or stranger, was respected. The Common Law was later included in ***the Judicature Act, 1925 (England) at S: 162***, and subsequently ***S: 9 of the Administration of Justice Act 1928 (England)***. Belize has adopted S: 9 into its ***Administration of Estates Act at S: 15*** which provides 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 trustee of the settlement, and any such administration may be limited in any way the court thinks fit.*

*Provided that:*

- (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 application for the purpose, and as regards land 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*

*(b) if, by reason of the insolvency of the estate of the deceased or any other special circumstances, it appears to the court to be necessary or expedient to appoint as administrator some person other than the person who, but for this provision, would by law have been entitled to grant of administration, the court may in its discretion, notwithstanding anything in this Act, appoint as administrator such person as it thinks expedient, and any administration granted under this provision may be limited in any way the court thinks fit.”*

9. The expression; “*persons who are interested in the residuary estate of the deceased*”, simply means, next of kin, who are entitled to inherit the net estate after deduction of debts owed by the deceased, other liabilities and taxes, if any. Sometimes creditors are also referred to as persons who are interested.
10. First to rank among persons interested in the estate and entitled to make the application would be the surviving spouse, - see; *In the Goods of Frost [1905] P140* and *Re Paine (1916) 115 L.T. 935*. After the spouse rank the

children next. A creditor will be entitled if it is necessary for him to apply to protect his interest. It would appear Mary Jane Blondell was not survived by a husband. The children are next entitled. Four of them live in the USA and one in Belize. They all rank *sui generis*. To pass over any of the five interested children and make grant of administration to a person not interested in the estate, there must be special circumstances, a requirement set out in *S: 15(b)*. The absence of the applicants from the jurisdiction and their distrust of their resident sister have been put forward as the special circumstances permitting appointment of Mr. Ruckert, a person not interested in the estate, administrator. Can the court accept that?

11.

*Section 21 at subsections (1) and (4) of the Act*, discourages administration of estate from outside the jurisdiction. Under *subsection (1)*, if a person to whom grant has been made remains out of the jurisdiction for over 12 months from the death of the deceased, the court may, on application by a creditor or a person interested, grant administration to him. *Subsection (4)* provides that court may appoint a special administrator with the will annexed or an *administrator de bonis non*, if an executor to whom probate has been or may be granted, or an administrator to whom administration has been or may be granted departs from the jurisdiction and remains absent for a period of one year, without having appointed an attorney to act for him. Given the intention in *S: 21*, to discourage grant of administration to a person not resident within the jurisdiction, I accept that the fact that the four persons interested in the estate live outside the jurisdiction and that they have reservation about their resident sister, may be regarded as special circumstances under *S: 15(b)* for the purpose of granting administration to

someone like Mr. Ruckert, otherwise not, interested in the estate.

12. A similar case in England was, *W.A. Morgans (deceased) (1931) 145 L.T. 392*. Counsel may wish to read it. In the case, the deceased drafted a will, but died before executing it, that is, before signing, so he died intestate. In the draft will he named the applicants, his two good friends, as executors. He was survived by a brother, sister and children of a deceased brother. They could not agree as to one or some of them acting as administrators. To facilitate administration, they renounced their right to apply for administration and nominated the two friends of the deceased. The friends desired approval by court. It was really a requirement of S: 9 of the Administration of Justice Act (England) that an order be obtained for appointing a person not interested in the estate. The grounds put forward as special circumstances were: (1) the next of kin could not agree; (2) the applicants lived where the assets in the estate were concentrated; (3) the next of kin showed confidence in the friends; and (4) litigation, expenses and delay would be avoided. The judge held that there were special circumstances. He said: “ *We must not extend the discretion too far, but I think that the special circumstances in this case justify an order...*” *In Re Taylor [1950] 2 ALL ER 446*, the court rejected as a special circumstance the allegation that the respondent aged 21, the sole beneficiary under the will was too immature, because of slow development due to childhood ill-health, to manage such a large estate without assistance. The judge commented obiter: “*I am much attracted to the contention that proviso (b) of S: 162 of the Act of 1925... referring to special circumstances related only to special circumstances in connection with the estate itself or the administration of the estate*”.



Personally, I think that view would unnecessarily restrict the discretionary nature of the power given to court. Let all the circumstances be presented to court for it to exercise a just discretion.

13. I have found that special circumstances existed for appointing a person not interested under S: 15(b) of the Act. Moreover, Mary Kathryn does not oppose the application to the extent that Mr. Ruckert may be appointed jointly with her. I exercise discretion in favour of granting the application. Mr. Michael Allan Ruckert may apply for grant of administration of the estate of Mary Jane Blondell, also known as Mary Jane Walport, notwithstanding that he is not a person interested, that is, not beneficially interested in the estate, and if he satisfies the requirements of the usual procedure, he may be granted the administration of the estate.

14. *Should Mary Kathryn be Passed Over?*

The question as to whether Mary Kathryn should be excluded from the administration of the estate was presented merely in the affidavit of the applicants. It was irregularly presented. The question raised there was whether Mary Kathryn, a daughter, and therefore a person interested in the estate, should “*be passed over*” for the reasons given by the applicants. The matter should have been presented as an application, not merely as a statement in the affidavit of the applicants. It should have been part of the wording of the application, or it should have been made the subject of a separate summons application on its own duly supported by sufficiently detailed affidavit. I would have refused to

entertain the question had Mr. Lindo, for Mary Kathryn, objected. He decided instead to argue fully against the substance of the objection to granting administration to Mary Kathryn. I decided to make a determination on the substance to avoid further proceedings and delay since no question of prejudice arose.

15. The substance was in the statement at paragraph 11 of the applicants' affidavit, in the words: "*We are strongly opposed to Mary Kathryn being a co-administrator ... we find her to be dishonest untrustworthy, unstable and incapable of acting objectively in the best interest of all the beneficiaries*". The law recognises grounds such as bad character, bankruptcy or insolvency, extreme illness and incompatible interests with those of the estate, for passing over a person interested in the estate - see : *Bell v Timmiswood (1812) 2 Phill 22*, and *Bud v Silver (1813) 2 Phill 115*. In the latter case, a grant was refused where a question was likely to arise between the administrators of the estate and a son of one of the applicants for grant of administration, on the ground that the father may not sufficiently assert the claim of the estate against his son.
16. In this case, I have to decide whether any recognised ground for passing over Mary Kathryn has been put forward, and supported by affidavit evidence.
17. A question of fact has to be decided first. The applicants made a statement on oath about the character of Mary Kathryn without giving details to support the statement. They merely asserted what they stated. On the other hand, Mary

Kathryn equally made a statement on oath denying the statement of the applicants without details. In fairness to her, she could not have provided her detailed answer to what were not disclosed. When the Court put it to Mr. Godfrey that the two statements seemed to even up and might leave the Court with no evidence of the character of Mary Kathryn one way or the other, he commendably made a balanced submission that the statement of the applicants may not be taken higher than that there was “bad blood” between the applicants and Mary Kathryn. I have to make a finding of fact that there has been no proof of the aspersions cast on her character. There is therefore no factual basis on which to consider whether Mary Kathryn may be passed over. I refuse the request to deny Mary Kathryn Cariddi the right to apply for grant of administration. I have already granted the application to have Mr. Ruckert apply for grant of administration. A grant to Mary Kathryn will be jointly with Mr. Ruckert.

18. *Application According to Usual Procedure in Non Contentious Matters.*

I have considered one other point. *Section 15(b) of the Act*, authorises that the Court may “*appoint*” as administrator, some person other than the person who, but for this provision would by law have been entitled to the grant of administration. I do not think the section requires that the Court must dispense with the usual requirements such as providing bond and with the usual procedure to apply for grant of administration in non contentious matters which procedure protects the interests of creditors and beneficiaries. The deceased seemed to have been doing business, there may well be creditors or persons

who had business connection with her; it is desirable that they know what steps are being taken about the estate. The appropriate orders I make are as follows:

1. The application, dated 15.11.2004, filed on 16.11.2004, is granted to the extent that Mr. Michael Allan Ruckert is authorised to apply in accordance with the usual rules and practice of making application in non contentious probate and administration matters, for grant of administration of the estate of Mary Jane Blondell, also known as Mary Jane Walport, who died on 25.7.2004, at Mile 27 Hummingbird Highway, Stann Creek District, Belize, notwithstanding that the said Mr. Ruckert is not a person interested in the estate. A copy of this judgment or of the order is to be submitted with his application.
2. Mary Kathryn Cariddi may apply as a person interested, for grant of administration of the estate of her late mother, Mary Jane Blondell, also known as Mary Jane Walport; who died on 25.7.2004, at Mile 27 Hummingbird Highway, Stann Creek District, Belize, according to the non contentious probate and administration rules of application, free from the objections raised against her by the applicants in their affidavit sworn on the 8<sup>th</sup> day of November 2004.
3. The consequence of the above orders is that on their applications,

Michael Allan Ruckert and Mary Kathryn Cariddi may be granted administration of the estate as joint administrators.

4. Costs of the application and costs incurred by Mary Kathryn Cariddi will be costs in the administration of the estate.

19. Pronounced this Monday the 8<sup>th</sup> day of March 2005

At the Supreme Court

Belize City.

Sam Lungole Awich

Judge

Supreme Court

