

COURT OF APPEAL FOR ONTARIO

CITATION: Gorecki Estate v. Gorecki, 2015 ONCA 845

DATE: 20151203

DOCKET: C60310

Sharpe, Cronk and Miller JJ.A.

BETWEEN

Estate of Barbara Gorecki  
By her Estate Trustee Edith Anna Gorecki

Applicant  
(Appellant in Appeal)

and

Janusz Gorecki aslo known as Janusz Glinkowski

Respondent  
(Respondent in Appeal)

Angela Assuras, for the appellant

Jonathan Marler, for the respondent

Heard and released orally: November 30, 2015

On appeal from the judgment of Justice Thomas A. Bielby of the Superior Court of Justice, dated March 17, 2015.

ENDORSEMENT

[1] While we are sympathetic to the appellant's position given the respondent's conduct, we are of the view that this appeal must be dismissed.

[2] The application judge applied the correct legal test set out in *Hansen Estate v. Hansen*, [2012] ONCA 112, at para. 34: “Was there a course of dealing sufficient to intimate that the interests of all were mutually treated as constituting a tenancy in common.” This was described as an “intensely fact specific inquiry” and accordingly attracts deference on appeal.

[3] We do not agree that the application judge ignored or disregarded relevant evidence. He recognized that while the relationship between the parties was falling apart, it had not reached a point at which they had formed a mutual intention to treat their interests in the matrimonial home as a tenancy in common. There were no matrimonial proceedings and there had been no discussion of division of property. It was clearly open to the application judge to make the finding on the evidence before him that the appellant had failed to demonstrate a mutual intention by her parents to sever their joint tenancy.

[4] The appellant moves to introduce fresh evidence. We are not persuaded that it materially changes the picture that was presented to the application judge in relation to the crucial issue, namely, was there evidence of the mutual intention to sever the joint tenancy.

[5] Accordingly, the motion to admit fresh evidence is dismissed and the appeal is dismissed.

[6] Costs to the respondent fixed in the amount of \$6000, inclusive of disbursements and applicable taxes.

“Robert J. Sharpe J.A.”

“E.A. Cronk J.A.”

“B.W. Miller J.A.”