

COURT OF APPEAL FOR ONTARIO

CITATION: Nichols v. Closs Jr., 2018 ONCA 295

DATE: 20180323

DOCKET: C64544

MacFarland, Huscroft and Nordheimer JJ.A.

BETWEEN

Sonya Nichols

Applicant (Respondent)

and

Allan Closs Jr.

Respondent (Appellant)

Ralph Lee, for the appellant

David Heeley, for the respondent

Heard and released orally: March 21, 2018

On appeal from the judgment of Justice John Johnston of the Superior Court of Justice, dated August 19, 2016 with reasons reported at 2016 ONSC 5232.

REASONS FOR DECISION

[1] Allan Closs Jr. appeals from the order by the application judge that the deceased did not create a life interest in the family home in favour of the appellant.

[2] The applicant/respondent is the Estate Trustee of Allan Closs Sr. She is also a sister of the appellant, who is the only son of Allan Closs Sr.

[3] In the deceased's will, Mr. Closs Sr. expressed the wish that his son use the family home as his home "for as long as he wishes". However, the deceased also provided in his Will that the family home was to be transferred to his three children jointly.

[4] The appellant has lived in the home since his father's death. However, he did not maintain the home and, as a consequence, it fell into disrepair. There were arrears of taxes that, at one point, almost led to the home being the subject of a tax sale.

[5] The application judge reviewed the history of the matter and concluded that the deceased did not intend to create a life interest in the home in favour of the appellant. Given that the appellant is apparently unable to maintain the home, the application judge ordered that the home be sold, along with other related relief.

[6] Absent a palpable and overriding error, there is no basis for this court to interfere with the application judge's decision. The facts clearly support his conclusion, as does the law as reviewed by the application judge.

### Conclusion

[7] The appeal is dismissed. Costs of the appeal are awarded to the respondent on a partial indemnity basis fixed in the amount of \$10,000 inclusive of disbursements and HST. The costs of the application below, if the parties are

unable to agree, will have to be determined by the application judge. This court does not have jurisdiction to fix those costs.

“J. MacFarland J.A.”

“Grant Huscroft J.A.”

“I.V.B. Nordheimer J.A.”