CSB 944/1982

JGM/JCB

SUPPLEMENTARY BENEFITS ACT 1976

APPLICATION FOR LEAVE TO APPEAL AND APPEAL FROM DECISION OF SUPPLEMENTARY BENEFIT APPEAL TRIBUNAL ON A QUESTION OF LAW

DECISION OF SOCIAL SECURITY COMMISSIONER

Resources – capital in another house, value ?

Name: Barbara Winifred Woollacott (Mrs)

Supplementary Benefit Appeal Tribunal: Exeter

Case No: S/224

/ORAL HEARING/

1. I grant to the claimant leave to appeal and, both the claimant and the benefit officer through his representative at the hearing before me having given their consent to my taking this course, I am proceeding to determine the question arising on the application for leave as if it were the question arising on the appeal. I allow the appeal and decide that the decision of the supplementary benefit appeal tribunal dated 21 June 1982 was erroneous in point of law and set it aside. The matter must go before another tribunal.

2. The claimant is a married woman separated from her husband. It appears that before the separation they lived in a house which was sold; the proceeds of sale together with other monies of the claimant were applied in purchasing a house in which the claimant lives with her two children and another house in which the claimant's husband lives but of which the claimant is the co-owner with her husband. Her husband has a heart condition which has forced him to give up work as a maker of surgical instruments and he is now employed as a clerical assistant. Before the separation he was in receipt of Family Income Supplement.

3. After the separation the claimant claimed a supplementary allowance from a date in March/April 1982. But the claim was rejected on the ground that her capital resources exceeded the maximum of £2,000 (now from 22 November 1982 increased to £2,500) laid down in regulation 7 of the Supplementary Benefit (Resources) Regulations 1981 (the Resources Regulations). This was because the benefit officer put the value of the claimant's interest in the house in which the husband lives at more than £2,000. This decision was confirmed on appeal by the appeal tribunal from which decision the claimant now seeks leave to appeal. She was represented at the oral hearing before me by Mr J Douglas a solicitor with the Child Poverty Action Group while the benefit officer was represented by Mr E O F Stocker instructed by the Solicitor's Office of the Department of Health and Social Security.

4. On the question whether leave to appeal should be granted Mr Stocker drew my attention to the fact that not very long after the beginning of the period in issue the claimant had written to the Department to say that her husband was paying her £25 per week, which would at least materially affect the amount of any weekly supplementary allowance, and he suggested that in these circumstances the appeal was about a relatively trifling amount of money payable for a short period only and that it was perhaps inappropriate that leave to appeal should be granted. Mr Douglas was not prepared to concede that the amount in issue or the time for which it would be in issue was insignificant and indicated that he would need an adjournment to go into the matter before he could meet the point in full. In the end I think that Mr Stocker accepted that the point made by Mr Douglas was valid. I consider that the subject matter of the case is of sufficient importance to warrant the grant of leave to appeal and I grant leave accordingly.

5. The appeal tribunal gave their reasons for their decision in the following terms:-

> "The Regulations do not require any capital resource to be available or realisable. The husband could not be considered as incapacitated so as to bring him within Regulation 6. The appellant has capital in excess of £2,000 and she is excluded from receiving benefit under Regulation 7 of the Resources Regulations."

6. The reference to regulation 6 is a reference to regulation 6(1)(a)(iv) of the Resources Regulations which provides for disregarding premises occupied by an aged or incapacitated relative of any member of the assessment unit. The tribunal found that the claimant's husband was not incapacitated in terms of this provision and this conclusion has not been challenged. The complaint is about the first sentence of the decision to the effect that the regulations do not require an asset to be available or realisable whereas in fact regulation 5 provides how they are to be valued.

7. The evidence on which the tribunal found the claimant to have assets in excess of £2,000 was contained in a letter from the claimant's solicitor that was produced to the tribunal. In the fourth paragraph of the letter the solicitor wrote " ... your interest in it must be more than £2,000"; whereas in the final paragraph he wrote "If that is the case, your capital resources are less than £2,000". The two statements can only be reconciled on the assumption that the solicitor was adopting different criteria for valuation in the two places. I think that in the first sentence he was saying in substance that if the house were sold and the proceeds of sale were divided between the claimant and her husband in accordance with their shares in it the claimant would get more than £2,000; whereas in the second sentence he was saying that owing to her husband's interest in the house she would not be able to sell it at all so that the value of her interests was nothing. The tribunal as I would interpret their decision took the view that the first basis of valuation was the relevant one for present purposes and disallowed the appeal.

8. I consider that this approach was wrong. The claimant had an interest in the house as one of two co-owners. Her resource was the share in the house, and she could realise that asset. Under regulation 5 of the Resources Regulations it has to be taken into account at its current market value less in the case of land 10 per cent. The question for the tribunal was thus how much she could sell her interest for. I do not doubt that in a case where without having to call for the co-operation of another and without litigation a person can achieve the sale of the whole and take his share of the sale price of the whole then his share of the sale price of the whole would be the market value. In the present case it is far from certain that she could procure the sale of the whole. Decisions such as Re Evers [1980] 1 WLR 1327 show that it is far from certain that the claimant could procure such a sale, even if the circumstances are not such that the husband has secured a right to occupy the house (c.f. Bannister v Bannister [1948] 2 All ER 133). If she cannot without the co-operation of another or litigation procure the sale of the whole she will have nothing to sell but her own share in the property (c.f. Decision R(SB) 21/83).

9. The value of that share is something of a speculation; but the starting point of any valuation must be the ascertainment of the value of the house (there was no evidence of this before the tribunal) and the size of the claimant's interest in it. English law recognises more than one class of co-ownership, the best known being joint tenancy and tenancy in common. Furthermore we are here concerned with the claimant's beneficial interest in the property rather than the bare legal title.

10. Joint-tenancy imports that the interests of all the joint tenants are equal and on the death of any one the whole accrues to the survivor or survivors. The bare legal title of co-owners is always a joint tenancy, the joint-tenants in the case of land holding on trust for sale. But though no doubt there is a presumption that the beneficial title follows the bare legal title, that is a presumption that is easily displaced. In the present case the house in question is I believe vested in the joint names of the claimant and her husband but it is far from certain that their beneficial interests in it are joint. Interests in common may be but are not necessarily equal, and they do not on the death of one accrue to the survivor. Further a person who has a beneficial joint interest can convert it into an interest in common (in that case an equal one) by notice to the other joint owners under the proviso to section 36(2) of the Law of Property Act 1925. Accordingly the value of a joint interest in property is not less than that of a commensurate interest in common. In general if two persons acquire property in their joint names their beneficial interest will, in the absence of agreement to the contrary, be proportionate to their contributions to the cost of acquisition, save that where husband and wife are concerned the wife's share will not be less (in the absence of a contrary intention) than that indicated by her bare legal title.

11. The new tribunal will therefore have to determine the value of the house and the size of the claimant's share; and then determine what they consider a purchaser would pay for that share. The purchaser unless it were the husband himself would be a speculator who would assess his chances of procuring a sale or buying out the husband's

rights and would pitch his price accordingly. The tribunal might be assisted by the opinion of an estate agent with experience of selling property with a sitting tenant or by a person with experience in the sale of reversionary interests.

12. The price so arrived at will in my judgment be subject to a deduction of 10 per cent under regulation 5(a)(i) of the Resources Regulations on the footing that the relevant resource is land. I appreciate that under the equitable doctrine of conversion first established in the eighteenth century an interest in the proceeds of sale of land (which a joint tenancy or tenancy in common is) is personalty; but in my judgment this nice doctrine of equity was never intended to be imported into the law of supplementary benefit, and with respect I disagree with the suggestion in Decision R(SB) 21/83 at paragraph 8 so far as the contrary view is suggested. There are in fact a number of cases in which for one reason or another the strict consequences of the equitable doctrine of conversion have been treated as unacceptable (e.g. Cooper v Critchley [1955] Ch 431 and Elias v Mitchell [1972]Ch 652) and the present is to my mind plainly another such case. I note that in the Decision to be reported R(SB) 25/83 where the claimant resided in a home by virtue of her having a life interest in the proceeds of sale thereof it was assumed by a Tribunal of Commissioners that the claimant's interest in the home could be disregarded under regulation 6(1)(a)(i) although on the strict application of the doctrine of conversion the interest would have been in the notional proceeds of sale thereof even before it was sold.

13. If the tribunal arrive at a value in excess of £2,000, when added to any other non-disregarded assets, they will disallow the claim for any period to 21 November 1982 and if they arrive at a figure in excess of £2,500 when so added, they will disallow the claim for any period from that date. If however they arrive at a lower figure than the above they will not be in a position to disallow the claim by reference to regulation 5 of the Resources Regulations. They may still have a discretion to disallow it by reference to regulation 4 of the Regulations (relating notional assets) I do not however think that I can usefully give any guidance on that regulation without knowing what might be submitted as relevant thereto by the parties. The tribunal should remember that they have a discretion in the application of regulation 4 and they should not apply regulation 4 so as to include the same assets twice, once under regulation 4 and a second time under regulation 5.

14. The appeal is allowed.

(Signed) J G Monroe
Commissioner

Date: 10 August 1983

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