THE SUPREME COURT OF APPEAL OF SOUTH AFRICA

MEDIA SUMMARY OF JUDGMENT DELIVERED IN THE SUPREME COURT OF APPEAL

From: The Registrar, Supreme Court of Appeal

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Status: Immediate

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Scholtz & Another v De Kock NO & Others (312/2023) [2024] ZASCA 132 (02 October 2024)

Today the Supreme Court of Appeal (SCA) handed down judgment upholding an appeal against an order of the Full Court of the Western Cape Division of the High Court. The Full Court had ordered the appellant, Ms Scholtz, to account to a deceased estate of her late identical twin sister, Mrs De Kock, for a sum of R5 600 000 which the deceased had received from the Road Accident Fund (the RAF) as an award for injuries sustained in a motor vehicle accident. The money was received four years before her passing. It was paid into the appellant's trust account as an attorney and was transferred four days later into an investment account managed by Ms Scholtz.

The respondent, Mr De Kock, and the deceased were married to each other until the latter's death in September 2018. Two minor children were born of the marriage. After the deceased's death, Mr De Kock brought an application in his nominal capacity as the guardian of his two minor children who are joint heirs of the estate of the deceased, seeking an order compelling Ms Scholtz to render an account for the R5 600 000 and for the debatement of that account, as well as payment to the estate whatever amount found to be due.

Ms Scholtz gave the following explanation of how the R5 600 000 was expended. She and the deceased were involved in the same motor vehicle accident which gave rise to the deceased's RAF award. Her injuries were minor compared to those sustained by the deceased. A mistake occurred during the processing of her claim by the RAF which resulted in her injuries being attributed to the deceased. Her claim was, as a result, subsumed into that of the deceased. As a result, an agreement was reached between the deceased, herself and their parents that the deceased's award be distributed as follows: (a) R500 000 to their father as compensation for his professional services in prosecuting the claim against the RAF; and (b) the rest to be shared equally between the twin sisters. The result was that twin sisters received R2 550 000 each. The deceased put her portion of the R2 550 000 into an investment account which she, Ms Scholtz, managed at the request of the deceased. For the period December 2014 to September 2018, the investment account earned R1 287 515 as interest. Over a period of four years, she paid the deceased a total of R3 606 735, and R537 515 to various people nominated by, or on the instructions of, the deceased. These are debits of R4 144 250 as against the credit entries of R3 837 515, leaving a debit balance of R306 735 as at the time of the deceased's passing, which, ordinarily, would be a debt in the deceased's estate. These transactions were borne out by the relevant bank statements.

About the payment of the money into Ms Scholtz' attorney's trust account, the SCA held that there is no general fiduciary duty on an attorney to account to her or his client merely because of payment into an attorney's trust account. Such a duty arises where there is an agreement of mandate, and its bounds are determined with reference to the terms of the mandate itself. In the present case, there was no suggestion that there was such an agreement between the deceased and Ms Scholtz. The Court also noted that the money was in Ms Scholtz's trust account for only four days. Even if there was a duty to account for it, Ms Scholtz had done so, by demonstrating that the full amount was paid from the trust account into the investment account. The appellant's mandate as an attorney, and any ancillary fiduciary relationship that might have existed, was terminated at the time the money was transferred into the investment account.

About how the agreement in terms of which the deceased's award would be distributed, the SCA accepted Ms Scholtz's explanation about the family agreement referred to above. The Court found that there was nothing far-fetched or clearly untenable about the explanation which justified its rejection merely on the papers, especially given the close and warm relationship between the identical twin sisters. The Court held that to the extent Ms Scholtz was obliged to account to the deceased for the disbursement of the money in the investment account, she had done so during the deceased's lifetime. She therefore owed no duty of accounting to the deceased's minor children. The Court noted that up to July 2018, two months before her passing, the deceased had not given any indication of her dissatisfaction with how Ms Scholtz had managed the funds. There was also no evidence that at the time of the deceased's passing, she considered that there was any money outstanding or due to her. The deceased's children, in whose interests Mr De Kock was purporting to act, had no right at law to question the financial decisions the deceased made during her lifetime. For these reasons, the Supreme Court of Appeal upheld the appeal with costs, including the costs of two counsel.

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