ROYAL COURT
(Samedi Division)

20.

6th February, 1997

Before: F.C. Hamon, Esq., Deputy Bailiff, and
Jurats Herbert and Quérée

In the matter of the Estate of Nils Carl Christer Lundquist, Deceased.

Representation of Valerie Josephine Lundquist (née Grant-Convey), widow of the Deceased.

Lena Wegerstal, daughter of the Deceased, convened.

Application for an Order that:

(a) the Deceased's original last Will and Testament be admitted to Probate in the Royal Court of Jersey;

(b) the Royal Court declare that the Deceased died domiciled in England and Wales; and

(c) the Representor, under the laws of England and Wales is the person entitled to administer the Deceased's Estate.

Advocate R.J. Michel for the Representor
and for the convened party.

JUDGMENT

THE DEPUTY BAILIFF: Nils Carl Christer Lundquist died on 25th March, 1988, in Helsinki, Finland. He was born in Sweden, his parents were Swedish, living in Sweden. His domicile of origin was Sweden. He was married in Sweden and had one child, a daughter. The parties were divorced.

Mr. Lundquist came to England in January, 1971, aged 35. He was granted permanent residence status in England on 6th October, 1981, having lived with Valerie Josephine Grant-Convey for thirteen years. He married her at the Swedish Protestant Church in Westminster, London, on 21st December, 1984.

On 3rd January, 1985, he made a will. We have an affidavit made by an English Solicitor, Peter Derek Martin, a partner in the firm of Osmond Gaunt and Rose and a specialist in matters of Anglo/Swedish

family law and inheritance. The will was made in Sweden but signed in England. It follows, as far as we can see, a provision of Swedish law where the deceased leaves all his property to his wife with the exception of direct heirs statutory share of inheritance. By his affidavit Mr. Martin confirms that the will is valid under English law and as there is no statutory share in England as expressed in the will, the widow of the estate would receive the full estate under English law if it were to apply.

Mr. Martin made certain statements of facts from his knowledge of the case:

1. The deceased made clear statements to his accountant, to his brother-in-law, as well as to his widow, that he intended to remain permanently in England.

2. The deceased's brother-in-law, Mr. Kjell Öhman, is a Swedish lawyer based in Stockholm. The deceased apparently told Mr. Öhman that he intended to return to live in England to retire there to paint.

3. The deceased took up employment in Sweden in January, 1985, by necessity rather than choice. He further stated that he wished to return to England as soon as he possibly could.

4. He made it clear to his family in Sweden that in the event of his death in Sweden his body should be returned to England. In fact, we heard from Mr. Martin, that he was cremated in Sweden and his ashes were scattered in England.

5. He sold his property in England when he went to work in Sweden and placed the proceeds of the sale in Midland Bank Trust Company (Jersey) Limited.

6. Mr. Martin deposed that the deceased's accountant informed him that it was the deceased's intention to purchase a cottage in the joint names of the deceased and his wife on their return to live in England from Sweden at the end of his period of employment.

7. We have an affidavit sworn by Lena Wegerstal his only child and his daughter by his first marriage. She lives in Sweden and she waives any claim that she might have in the estate by confirming that it would be dealt with upon the basis of English law.

Mr. Martin gave evidence before us and he clarified certain matters that were troubling us. The fact that real property had been dealt with in Sweden was explained by the fact that a local Swedish lawyer in Lund had not fully understood the scenario. It was not in any event necessary to swear a document as to domicile in Sweden where the property is divided in the two stages described to us.

The will was made in English in a Swedish form and brought to England. Mr. Martin told us that that was not unusual in his experience and we accept that statement.

Mr. Michel helpfully guided us through the law on this matter. In the case of In re Flynn, deceased Flynn -v- Flynn [1968] 1 WLR 103, Megarry J (as he then was) summarised the law nicely and we agree that

we can safely follow Dicey & Morris on "The Conflict of Laws" (12th Ed'n, 1993) pp.132-146 on what is now Rule 13 which states:

> *"(1) A person abandons a domicile of choice in a country by ceasing to reside there and by ceasing to intend to reside there permanently or indefinitely, and not otherwise.*
>
> *(2) When a domicile of choice is abandoned, either*
> *(i) a new domicile of choice is acquired; or*
> *(ii) the domicile of origin revives".*

The Comment is extremely useful to us, it states:

> *"A domicile of choice is lost when both the residence and the intention which must exist for its acquisition are given up. It is not lost merely by giving up the residence nor merely by giving up the intention. It is not necessary to prove a positive intention not to return: it is sufficient to prove merely the absence of an intention to continue to reside. The intention is not considered to have been given up merely because the propositus is dissatisfied with the country of the domicile of choice. In order to show that the intention has been given up, it may be desirable to prove the formation of an intention to reside in another country, but such proof is not essential as a matter of law. Although it has been suggested that residence is given up by "leaving this country or, perhaps more accurately, arriving in another" it is submitted that residence can simply be given up. The view that residence in one country can only be given up by arriving in another seems to be a relic of the discarded doctrine that a domicile of choice cannot be lost by mere abandonment".*

We have made a decision despite certain gaps which might, in our opinion, have been filled. We do not know what the deceased's employment was, nor, strangely, do we know how long his employment in Sweden was likely to be. But despite that we are fully satisfied on the facts that the deceased abandoned his domicile of origin in Sweden and acquired a domicile of choice in England and never lost it. In those circumstances, realising that it will not be necessary to take out a grant of probate in England because there is no estate there, we are quite satisfied that Mr. Michel can proceed and we give him the request that he makes in the prayer of his Representation.

Authorities

Dicey & Morris on "The Conflict of Laws" (12th Ed'n, 1993): pp.132-146.

4 Halsbury 8(1): pp.515-525.

Tee -v- Tee [1974] 1 WLR 213.

In re Flynn, deceased Flynn -v- Flynn [1968] 1 WLR 103.

Thiele -v- Thiele [1920] 150 LTJ 387.