

## SUPREME COURT OF RHODE ISLAND

### Shirley Butler v. Kari Gavek et al.

2019-124-Appeal (PC 18-5522) · No. 2019-124-Appeal (PC 18-5522) · Decided February 25, 2021

#### SUMMARY

The Rhode Island Supreme Court held that Rhode Island General Laws § 34-15-12 abrogates the common-law right of survivorship in a joint tenancy when an action for partition is pending. The court concluded that the partition action did not abate upon the plaintiff's death and that the estate could appeal the dismissal. The court vacated the Providence County Superior Court's judgment dismissing the action.

#### CASE DETAILS

|                       |                                                                                                                                                                                                                                                                                                                                                                                                                          |
|-----------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| COURT                 | Supreme Court of Rhode Island                                                                                                                                                                                                                                                                                                                                                                                            |
| WRITING FOR THE COURT | Chief Justice Paul A. Suttell; Chief Justice Suttell; Justice Goldberg; Justice Flaherty; Justice Robinson                                                                                                                                                                                                                                                                                                               |
| JURISDICTION          | Rhode Island                                                                                                                                                                                                                                                                                                                                                                                                             |
| DECIDED               | February 25, 2021                                                                                                                                                                                                                                                                                                                                                                                                        |
| DOCKET                | 2019-124-Appeal (PC 18-5522)                                                                                                                                                                                                                                                                                                                                                                                             |
| DISPOSITION           | vacated                                                                                                                                                                                                                                                                                                                                                                                                                  |
| PROCEDURAL POSTURE    | The Estate of Shirley Butler appealed from the Superior Court's dismissal under Rule 12(b)(6) of a pending partition action after the plaintiff died while holding the property in joint tenancy.                                                                                                                                                                                                                        |
| STANDARD OF REVIEW    | Questions of statutory interpretation are reviewed de novo. A Rule 12(b)(6) dismissal is reviewed under the same standard as the hearing justice; the allegations are assumed true and viewed in the light most favorable to the plaintiff, and dismissal is proper only when it is clear beyond a reasonable doubt that the plaintiff would not be entitled to relief under any facts provable in support of the claim. |
| PRECEDENTIAL VALUE    | Published Rhode Island Supreme Court opinion                                                                                                                                                                                                                                                                                                                                                                             |
| PARTIES               | Estate of Shirley Butler v. Kari Gavek, Clarence Butler                                                                                                                                                                                                                                                                                                                                                                  |

#### TOPICS

[partition](#)[statutory interpretation](#)[motions to dismiss](#)[appellate procedure](#)[real estate](#)

## PRACTICE AREAS

Real estate

Probate

Civil procedure

Appellate procedure

Statutory interpretation

## QUESTIONS PRESENTED

1. Whether a partition action survives the death of a joint tenant under G.L. 1956 § 34-15-12.
2. Whether the Estate of Shirley Butler could appeal the dismissal even though it had not been formally substituted as a party in the underlying action.
3. Whether the Superior Court erred by dismissing the partition action without applying § 34-15-12 and before the estate's representative could be substituted.

## HOLDINGS

1. Under G.L. 1956 § 34-15-12, a partition action is not abated by the death of a plaintiff or defendant while the action is pending. The statute abrogates the common-law right of survivorship in a joint tenancy for that circumstance and requires the action to continue toward judgment with the decedent's heirs or devisees treated as parties after notice.
2. The estate was entitled to appeal because § 34-15-12 treats the decedent's heirs and devisees, as represented by the estate, as parties to the pending partition action, and the estate was aggrieved by the dismissal.

## KEY QUOTATIONS

*“Section 34-15-12 is unambiguous and clearly states that an action for partition is not abated by the death of a plaintiff.” (-8)*

*“Accordingly, we are satisfied that the common law right of survivorship in a joint tenancy is abrogated when an action for partition is pending.” (-9)*

*“We believe this language signals an intent by the Legislature to treat heirs and devisees, as represented by a decedent's estate, as parties in the action.” (-11)*

## FACTUAL BACKGROUND

Shirley Butler filed a partition action concerning property she owned in joint tenancy with Clarence Butler and Kari Gavek. She died in December 2018 while the action was pending. Before the estate's executrix was appointed, the Superior Court granted the defendants' motion to dismiss based on the common-law right of survivorship. The estate later obtained appointment of an executrix, moved to substitute parties, and appealed the dismissal.

## PROCEDURAL HISTORY

Shirley Butler filed a partition action on August 1, 2018, and the defendants answered and asserted counterclaims. Butler died while the action was pending, after which the defendants moved to dismiss on the ground that her joint-tenancy interest had passed to the surviving joint tenants. The Superior Court granted the motion before the estate's executrix was appointed and before the estate's motion to substitute parties was heard.

The Supreme Court remanded the matter for entry of final judgment under Rule 54(b), determined that the estate's appeal was properly before it, and vacated the dismissal.

## DISPOSITION

vacated

## REMAND INSTRUCTIONS

The record was to be returned to the Superior Court. The dismissal judgment was vacated so the pending partition action could proceed consistently with § 34-15-12.

## CASES CITED

- Chariho Regional School District v. State, 207 A.3d 1007 (R.I. 2019)
- Pontarelli v. Rhode Island Department of Elementary and Secondary Education, 176 A.3d 472 (R.I. 2018)
- Ferreira v. Child and Family Services, 222 A.3d 69 (R.I. 2019)
- Sullivan v. Coventry Municipal Employees' Retirement Plan, 203 A.3d 483 (R.I. 2019)
- Arnold Road Realty Associates, LLC v. Tiogue Fire District, 873 A.2d 119 (R.I. 2005)
- Mello v. Killeavy, 205 A.3d 454 (R.I. 2019)
- State v. Hazard, 68 A.3d 479 (R.I. 2013)
- Bayview Loan Servicing, LLC v. Providence Business Loan Fund, Inc., 200 A.3d 153 (R.I. 2019)
- Rein v. ESS Group, Inc., 184 A.3d 695 (R.I. 2018)
- Ruffel v. Ruffel, 900 A.2d 1178 (R.I. 2006)
- Lucchetti v. Lucchetti, 85 R.I. 105, 127 A.2d 244 (1956)
- Knibb v. Security Insurance Company of New Haven, 121 R.I. 406, 399 A.2d 1214 (1979)
- Fournier v. Miriam Hospital, 93 R.I. 299, 175 A.2d 298 (1961)
- Powers v. Warwick Public Schools, 204 A.3d 1078 (R.I. 2019)
- Whittemore v. Thompson, 139 A.3d 530 (R.I. 2016)
- Hopp v. C.H.B. Development Corp., 669 A.2d 1152 (R.I. 1996)
- LesCarbeau v. Rodrigues, 109 R.I. 407, 286 A.2d 246 (1972)
- Lombardi v. City of Providence, 69 A.3d 846 (R.I. 2013)
- Adams v. United Developers, Inc., 121 R.I. 177, 397 A.2d 503 (1979)