

CANADA / JUDGMENT

Adams v. Cox

1999 BCCA 673

COURT

British Columbia Court of Appeal

DECIDED

15 November 1999

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COURT OF APPEAL FOR BRITISH COLUMBIA

ORAL REASONS FOR JUDGMENT

Before:

The Honourable Madam Justice Rowles November 15, 1999

The Honourable Madam Justice Prowse

The Honourable Mr. Justice Braidwood

Vancouver, B.C.

BETWEEN:

STELLA MAY ADAMS

PLAINTIFF

(RESPONDENT)

AND:

DONALD JAMES COX

DEFENDANT

(APPELLANT)

S. Moir appearing for the Appellant

K.L. Moss appearing for the Respondent

- [1] PROWSE, J.A.: Mr. Cox is appealing from a decision of Madam Justice Martinson, pronounced November 19, 1998 finding that he had wrongfully converted monies belonging to his mother to his own use, and ordering him to pay her \$138,802.38. This sum included punitive damages in the amount of \$15,000.
- [2] Mr. Cox submits that Madam Justice Martinson erred in her apprehension of the facts, in the standard of proof she applied, in allowing new evidence in on re-examination of one of the witnesses, and in concluding it was appropriate to deal with this action under Rule 18A of the Rules of Court.
- [3] The background giving rise to this action is somewhat unusual. Mrs. Adams, who was then 77 years of age, went to live with Mr. Cox in a rental suite in his premises in February 1997. At the end of February, she received an award of \$137,913.85 from the Worker's Compensation Board relating to the death of her former husband in 1955. Mr. Cox assisted her with the paperwork in obtaining this award. He attended with her when she went to receive the award which she asked for in cash in denominations of \$1,000. Thereafter, Mrs. Adams gave Mr. Cox a gift of \$10,000 and she gave two of her daughters gifts of \$5,000 each. Mrs. Adams hid the balance of the funds in a cedar chest in her suite.
- [4] At the time of these events, Mrs. Adams was scheduled to undergo open-heart surgery on March 3, 1997. She was in the hospital until March 16, and then went to live with one of her daughters while she recuperated from the surgery. Mr. Cox visited her on a couple of occasions and brought her money. On March 28 Mr. Cox went for a trip to Mexico. Efforts by his family to reach him when Mrs. Adams suffered relapses were unsuccessful. At some point during the week of April 4, Mrs. Adams discovered that her money was missing. When Mr. Cox returned from his trip, various members of his family accused him of taking the money. He denied it.
- [5] The trial judge accepted evidence, however, that Mr. Cox told various members of his family different stories about what had happened to the money. The evidence of those explanations is recounted at paragraph 14 of the reasons for judgment:

The next area of disagreement was whether or not Donald Cox admitted to any of his family members that he had taken the money. The plaintiff said several admissions were made. The first was at the Kellogg residence on April 5th, where he is said to have told those present that the money was in a safety deposit box. The second was at Tim Horton's, where he is said to have told Patricia Mechler that the money was gone. The third was during phone conversations with Robert Cox, where he is said to have told his brother that he spent the money. The fourth was during the phone conversation with Annetha Spagnut, where he is said to have told her that he invested the money and Mrs. Adams would get \$900 a month. The fifth was at the Mechler residence early in the morning on April 28th, where he is said to have told them that he invested

the money. Mr. Cox adamantly denied making any admissions. He in fact denied going to the Mechler residence at all.

- [6] Madam Justice Martinson concluded on the whole of the evidence before her that she was able to find the facts necessary to decide the case under Rule 18A and that it would not be unjust to do so. In coming to that conclusion, she referred to the decision of this Court in *Inspiration Management Limited v. McDermott St. Lawrence Limited* (1989), 36 B.C.L.R. (2d) 202 (B.C.C.A.). She noted that there was conflicting affidavit evidence before her which raised credibility issues. She also noted, however, that she had the opportunity of hearing extensive cross-examination on the affidavits over four days. Thus, she had the opportunity to see and hear the witnesses, an advantage not usually associated with a summary trial under Rule 18A.
- [7] In the result, Madam Justice Martinson rejected the evidence of Mr. Cox that he had not taken the money. In so doing, she expressly stated that in applying the civil standard of proof on a balance of probabilities, cogent evidence was necessary, since allegations of dishonesty were at stake.
- [8] Madam Justice Martinson carefully set forth her reasons for concluding that Mr. Cox took the money. Her principle grounds for coming to this conclusion are contained in the following passages at paragraphs 24 to 26 of her reasons:

I have reached that conclusion for the following reasons. I took into account the undisputed evidence outlined above. I accept the evidence of Mrs. Adams that it was Donald Cox who encouraged her to take the money in cash. His evidence on this point is not believable in the circumstances. He did not ensure that the money was in the safe or secure the safe. He had access to the cedar chest where the money was hidden and in fact went in the chest. I also accept Mrs. Adams' evidence that he told her not to tell his brother and sisters how much money she received. I also accept the evidence called on behalf of Mrs. Adams that Donald Cox told family members he was going to Calgary. [when in fact he went to Mexico]

It is true that other members of the family had the opportunity to take the money and did not insist that the money be put in the bank. Without more, I would find the circumstances suspicious but would not be satisfied of his liability. I, however, am satisfied that in addition to these factors, he admitted taking the money, both to his sister, Annetha Spagnut, and his brother, Robert Cox.

I was particularly impressed by Mrs. Spagnut. She was removed from the situation as it unfolded. In my view, she was not confused about what her brother said to her. He said he invested the money and their mother would get \$900 a month. I reject the evidence of Mr. Cox to the contrary. It is beyond belief in the circumstances that the call was focused on historical family matters.

- [9] Madam Justice Martinson places particular weight on the evidence of Mrs. Spagnut and Mr. Robert Cox referred to in paragraph 14 of her reasons and quoted above. She rejected the evidence of Mr. Cox that the evidence against him had been manufactured. The assessment of the weight to be given to the evidence is, of course, a matter particularly within the domain of the trial judge.
- [10] This is a case which turned substantially on the credibility of the witnesses. Although the trial was conducted under Rule 18A, Madam Justice Martinson had the opportunity to assess the credibility of the witnesses, based not only on the affidavit material, but also on the rigorous cross-examination of the witnesses on their affidavits. I am not persuaded that she either misapprehended the evidence, or that she erred in finding that it was appropriate to dispose of the action under Rule 18A. It is also apparent that she was aware that, within the civil standard of proof, there were varying degrees of probability, and that more cogent evidence was required where allegations of dishonesty were involved.
- [11] Finally, although Madam Justice Martinson allowed new evidence to be given in re-examination of one of the witnesses, relating to viva voce evidence given by a prior witness, she gave counsel for Mr. Cox the opportunity to further examine the witness concerning this evidence.
- [12] In all of the circumstances, I am not persuaded that the nature of the evidence, or the circumstances of its admission, were such as to prejudice Mr. Cox.
- [13] In the result, I would dismiss the appeal.
- [14] ROWLES, J.A. I agree.
- [15] BRAIDWOOD, J.A. I agree.
- [16] ROWLES, J.A. The appeal is dismissed.

"The Honourable Madam Justice Prowse"

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Prepared on 26 October 2026 · Esheria