

CANADA / JUDGMENT

Anderson v. Vranich

2021 BCSC 1821

COURT

Supreme Court of British Columbia

DECIDED

27 July 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 1821 Anderson v. Vranich

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Anderson v. Vranich,

2021 BCSC 1821

Date: 20210727

Docket: S00564

Registry: Abbotsford

Between:

Geraldine Julia Anderson

Petitioner

And

Maria Vranich, also known as Mary Vranich

Respondent

- and -

Docket: S00635

Registry: Abbotsford

AND IN THE MATTER OF THE PATIENTS PROPERTY ACT R.S.B.C. 1996 C. 349

RE: THE APPOINTMENT OF A COMMITTEE FOR MARIA VRANICH

Before: The Honourable Madam Justice Francis

Oral Reasons for Judgment

In Chambers

Counsel for the Petitioner Anderson:

M. Sandhu

Counsel for Petitioner Daoust:

M. Carter

Place and Date of Trial/Hearing:

Abbotsford, B.C.

July 27, 2021

Place and Date of Judgment:

Abbotsford, B.C.

July 27, 2021

- [1] THE COURT: Before the court are two petitions under the Patient's Property Act, R.S.B.C. 1996, c. 349 [the Act], for the appointment of a committee of the person and the estate of Maria Vranich.
- [2] There is no controversy between the parties with respect to the court declaring Ms. Vranich incapable. Two doctors have sworn affidavits opining that Ms. Vranich is incapable of managing herself or her financial affairs.
- [3] The Public Guardian and Trustee ("PGT") has been duly served with the petitions. She has filed a response taking no position on the relief sought. The PGT recommends, in lieu of a bond, that certain terms be included in the order to provide security for the assets of the patient. I understand that the parties are agreeable to those terms.
- [4] The primary issue before the court is which of the two petitioners, Ms. Anderson or Ms. Daoust, should be appointed committee of person and estate of Ms. Vranich.

Background

- [5] Ms. Vranich is 93 years old. She has three adult children: Geraldine Anderson, Terry Chursky and Karen Wares. Ms. Anderson, the petitioner in the petition filed under Abbotsford Registry S00564, is Ms. Vranich's eldest child. Ms. Daoust, the petitioner in the petition filed under Abbotsford Registry No. S00635, is Karen Wares' daughter and Ms. Vranich's granddaughter.

- [6] In April 2020, Ms. Vranich was admitted to the hospital. At the hospital, she was assessed, and it was determined that she needed to go into long-term care. Since that time, she has lived in two different facilities. It appears unlikely that she will, at any point in the future, be able to return to live in her home.
- [7] Ms. Vranich owns a condominium in White Rock with an assessed value of \$439,600. Her other financial assets are worth approximately \$250,000. Her income is restricted to old age security and CPP, and her expenses for the most part exceed her income.
- [8] Ms. Anderson is a retired preschool teacher and a certified nursing assistant support worker. She has considerable experience caring for the elderly and disabled, including people suffering from dementia. Ms. Anderson resides in Abbotsford. She is the only family member who resides in close proximity to the patient.
- [9] Ms. Daoust is a pharmacist and has some medical knowledge as a result of her profession. She deposed that, while she lives far away, she visits her grandmother one to two times a year, and they have always been close. Ms. Vranich listed Ms. Daoust, along with Ms. Wares, as an emergency contact in forms she completed for the strata management company. Ms. Daoust has provided practical healthcare and financial management assistance to her grandmother over the years. In 2010, Ms. Vranich made a will that appointed Ms. Daoust as her executor and trustee.

Analysis

- [10] On the basis of the unanimous medical evidence, I am prepared to make the declaration of incapacity sought by both petitioners.
- [11] With respect to choice of committee, both counsel referred to the decision in *Stewart (Re)*, 2014 BCSC 2321 at para. 29 in which Justice Masuhara set out a number of factors that are relevant to the matter of a suitable committee for an incapable adult:
- [29] As has been observed in other cases, the Act does not prescribe criteria for the selection of an appropriate committee. However, cases have identified various considerations; see for example: *Vranic (Re)*, 2007 BCSC 1949; *Bowman (Re)*, 2009 BCSC 523; *Palamarek (Re)*, 2011 BCSC 563; *Re Matthews*, 2013 BCSC 1045; and *Sangha (Re)*, 2013 BCSC 1965. They include:
- (a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
 - (b) whether immediate family members are in agreement with the appointment;
 - (c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;

- (d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
- (e) the level of understanding of the proposed committee with the patient's current situation, and will that person be able to cope with future changes of the patient;
- (f) whether the proposed committee will provide love and support to the patient;
- (g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;
- (h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
- (i) who is best to advocate for the patient's medical needs;
- (j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
- (k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve the best interests of the patient, or would such a division be less than optimal for the patient.

[12] It is a very serious thing to deprive someone of the power to make decisions about their own personal and financial affairs and to appoint another person in their place. Because of this, the law requires the court hearing an application under the Act to take a nuanced approach and consider the "best interests of the patient" test in the fact-specific context of the individual whose personal liberty is about to be relinquished. In determining an appropriate committee, I have considered the Stewart factors through this lens.

Whether the appointment reflects the patient's wishes when he or she was capable of forming such a wish

[13] There are two documents that are of assistance in attempting to discern the patient's wishes in this case: the June 12, 2020 representation agreement in which Ms. Vranich appointed Ms. Anderson as her representative, and Ms. Vranich's 2010 will, in which she named Ms. Daoust as her executor and trustee.

[14] Ms. Vranich was in the hospital when she made the June 12, 2020 representation agreement. There is very little evidence about the circumstances surrounding the making of the representation agreement that would speak to Ms. Vranich's capacity at that time. At the same time she made the representation agreement, Ms. Vranich refused to execute a power of attorney. It is significant, in my view, that in June 2020, Ms. Vranich was capable of forming the view that she wished to execute a representation agreement but not a power of attorney. She appears to have had a sufficient understanding of representation agreements and powers of attorney to know that she wanted one, but not the other, form of substitute

decision making put in place. Based on this evidence, I find that as at June 12, 2020, Ms. Vranich wished for Ms. Anderson to look after her healthcare decisions.

- [15] In 2010, Ms. Vranich named Ms. Daoust as executor of her will, which would support an inference that Ms. Vranich trusted Ms. Daoust and wished to give her control over the distribution of her assets after her death. However, the will was made ten years before Ms. Vranich was admitted to the hospital and is of little probative value in discerning her more recent wishes.
- [16] Ms. Daoust gave evidence about assistance she has provided to her grandmother with respect to financial and healthcare matters over the years, in support of the contention that Ms. Vranich would wish Ms. Daoust to continue to provide her with such assistance. However, this evidence was not grounded in any specific point in time. It is possible, based on the evidence, that none of this assistance was provided in recent years. In any case, I find that Ms. Daoust's evidence on this point lacks sufficient specificity to support an inference that Ms. Vranich would likely wish for Ms. Daoust to provide her with financial and healthcare assistance on an ongoing basis.

Whether the immediate family members are in agreement with the appointment

- [17] This factor does not support either petitioner's claim as there clearly appears to be a rift in this family and neither petition is supported by all immediate family members.

Conflict between family members and whether the proposed committee will be likely to consult with immediate family members about the appropriate care of the patient

- [18] This is a significant issue in this case. Both petitioners seek to characterize the other as non-communicative with the rest of the family.
- [19] Ms. Anderson has appended to her affidavit text messages that she has been sending to her two siblings on a family group chat with status updates about their mother.
- [20] Ms. Daoust and Ms. Wares complain that there have been no active reports on the family group chat since March 2021. This appears to be true, but I note that this matter has been in active litigation since May 2021. It is not surprising in that context that the communication has fallen off. I would expect, and indeed I am prepared to order today, that whomever is appointed committee will provide regular updates to the family about the status of the patient's care.

Level of previous involvement of the proposed committee with the patient

- [21] Since April 2020, Ms. Anderson has primarily been involved in looking after her mother's care, and she presently has the highest level of involvement with Ms. Vranich.

Level of the understanding of the proposed committee with the patient's current situation, and whether that person will be able to cope with future changes

[22] Ms. Anderson has a professional history of working with people with diminished mental capacity. The steps she has taken in the last year with respect to her mother's care support the conclusion that she understands the complex care needs of Ms. Vranich.

Whether the proposed committee will provide love and support to the patient

[23] I am satisfied that either petitioner, if appointed, would provide the necessary love and support to Ms. Vranich, who obviously is very dear to them both.

Whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit

[24] Ms. Anderson notes that she has been managing the finances of the patient for more than a year. She is aware that Ms. Vranich's expenses exceed her income and she has advised her siblings that she is of the view that it will be necessary to sell the patient's condominium in order to meet her ongoing expenses, once the cash assets of the patient are exhausted. This appears to me to be a sensible position to take in the circumstances, one that will ensure Ms. Vranich's ability to pay for her ongoing care. As a result, I am satisfied that Ms. Anderson is well situated to deal with the financial affairs of the patient. That is not to say that Ms. Daoust would not competently manage the financial affairs of the patient. However, I find that Ms. Anderson is better situated, as she has already demonstrated a prudent and patient focussed approach to managing Ms. Vranich's financial affairs.

Who is best able to advocate for the patient's medical needs?

[25] There is a dispute on the evidence about the events of April 2020 and the circumstances under which Ms. Vranich ended up in the hospital. The recollections of Ms. Wares and Ms. Anderson differ about what happened that day. I do not need to resolve these factual disputes as they are not material to the matters before me. It appears that, at the time Ms. Vranich was admitted to the hospital, each member of the family did the best they could during a very stressful medical emergency. I do not find that anyone behaved inappropriately or acted in a way that was contrary to the best interest of the patient.

[26] On the question of who is best positioned to advocate for the patient's medical needs, I do find it of significant relevance that Ms. Anderson lives in close proximity to the patient. This better situates her to advocate for the patient's medical needs and deal with medical emergencies should they arise.

Whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry them out

[27] While both petitioners have provided some evidence of a care plan, Ms. Anderson has been acting in the role of medical representative for a year. She has ensured that Ms. Vranich is in a care facility that meets her needs. She has assisted her with her financial affairs, and there is no reason to think that will not continue. I find that this factor weighs in favour of Ms. Anderson.

Whether a division of responsibilities would be appropriate

[28] I find that given the level of distrust in this case, it would not be appropriate to divide responsibilities between the two petitioners.

Conclusion

[29] On the basis of the foregoing reasons, I will make the following orders and declarations:

- a) by reason of mental infirmity arising from disease, age or otherwise, Maria Vranich is incapable of managing her affairs or her person.
- b) Ms. Anderson is appointed committee of Ms. Vranich's person and estate (the "Committee").
- c) In lieu of a bond, the Committee is restricted from disposing of or encumbering the real property described below without further order on notice to the Public Guardian and Trustee or, without the prior written consent of the Public Guardian and Trustee:

Legal Description: PID: 000-479-578, STRATA LOT 9 SECTION 10 TOWNSHIP 1 NEW WESTMINSTER DISTRICT STRATA PLAN NW2149 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1

Civic Address: 202 - 14957 Thrift Avenue, White Rock, BC (the "Property").

- d) Upon the sale of the Property, the net sale proceeds, after deduction of taxes, commissions, legal fees and other adjustments shall be transferred from the conveyancing lawyer's trust account to a financial institution where an investment has been established by the Committee in compliance with the Trustee Act. The Committee shall have no access to the capital of the investment, other than for reinvestment purposes, without the prior written consent of the Public Guardian and Trustee or further order of the court on notice to the Public Guardian and Trustee. The financial institution and any successor institutions shall be served with a copy of the Order and proof of service of the Order shall be provided to the Public Guardian and Trustee forthwith.
- e) In lieu of a bond, the Committee shall have no access to the capital of the funds held with:

Bank of Montreal

Cloverdale Branch

5711 - 176A Street

Surrey BC V3S 6S6

Primary Chequing Account No. 0706 3134-702

or any successor accounts, other than for reinvestment purposes, without the prior written permission of the Public Guardian and Trustee or further order of the court on notice to the Public Guardian and Trustee. The financial institution shall be served with a copy of the Order and proof of service of the Order shall be provided to the Public Guardian and Trustee forthwith.

- f) The Committee will provide written updates to the patient's other two children on a reasonably prompt basis with respect to any changes to the patient's health or her healthcare needs that arise.

[30] I am satisfied in this case that all parties were acting in what they believed to be the best interests of the patient and therefore I order that all reasonable costs and expenses of the parties be paid out of the estate on a full indemnity basis.

"Francis J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/18/2021BCSC1821.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/anderson-v-vranich-2021>

Prepared on 26 October 2026 · Esheria