

CANADA / JUDGMENT

Andreychuk Estate

2020 BCSC 1945

COURT

Supreme Court of British Columbia

DECIDED

11 March 2020

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2020 BCSC 1945 Andreychuk Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Andreychuk Estate,

2020 BCSC 1945

Date: 20200311

Docket: P1956213

Registry: Prince George

In the Matter of the Estate of Marilyn Joyce Andreychuk, Deceased

Before: The Honourable Mr. Justice Edelmann

(via teleconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Applicants, Kathryn Borthwick and Sheila Andreychuk, appearing in person
February 26, 2020 and via teleconference March 11, 2020:

P. Harrison

Counsel for the Respondent, Lawrie MacDougall:

D.M. Smith

Place and Date of Hearing:

Prince George, B.C.

February 26, 2020

Place and Date of Judgment:

Prince George, B.C.

March 11, 2020

- [1] THE COURT: I am prepared to give a decision in this matter this morning. The reasons may be edited for clarity, should a written version be requested.
- [2] The deceased, Marilyn Andreychuk, died on the 5th of May, 2019, in her home in Sooke, B.C. She is survived by her three children, Kathryn Borthwick ("Kathryn"); Sheila Andreychuk ("Sheila") (together, the "Applicants"); and Stephen Andreychuk ("Stephen"). In this judgment, I will refer to each of the children by their first names for clarity, but I mean no disrespect by doing so.
- [3] The deceased left a will. An application for estate grant was made but has not been granted. A notice of dispute was filed by Kathryn and Sheila. The will names the younger sister of the deceased, Lawrie Margaret MacDougall ("Ms. MacDougall") as executor; Stephen and Kathryn as alternate executors; and Sheila as the further alternate executor. The parties are in agreement that Ms. MacDougall is not a beneficiary of the estate and that the proceeds of the estate are to be divided evenly between the three children.
- [4] This is an application by Kathryn and Sheila for the passing over of their aunt, Ms. MacDougall, as the executor.

Legal basis

- [5] I have been referred to authority for this Court to order the passing over of an executor in the Supreme Court Civil Rules, the Trustee Act, R.S.B.C. 1996, c. 464, the Wills, Estates and Succession Act, S.B.C. 2009, c.13, as well as this court's inherent jurisdiction to remove or pass over an executor: *Gechman v. Gechman*, 2017 BCSC 416 at para. 23.
- [6] The parties are in agreement that the general statement of the law for removing an executor may be found in *Conroy v. Stokes*, [1952] 4 D.L.R. 124 (B.C.C.A.) at paras. 126-127, where Justice Bird adopted the words of Lord Blackburn in *Letterstedt v. Broers* (1884), 9 App. Cas. 371:

[7]

"in cases of positive misconduct Courts of Equity have no difficulty in interposing to remove trustees who have abused their trust; it is not indeed every mistake or neglect of duty, or inaccuracy of conduct of trustees, which will induce Courts of Equity to adopt such a course. But the acts or omissions must be such as to endanger the trust property or to show a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity."

- [8] "In exercising so delicate a jurisdiction as that of removing trustees, their Lordships do not venture to lay down any general rule beyond the very broad principle above enunciated, that their main guide must be the welfare of the beneficiaries."
- [9] "It is quite true that friction or hostility between trustees and the immediate possessor of the trust estate is not of itself a reason for the removal of the trustees. But where the hostility is grounded on the mode in which the trust has been administered, where it has been caused wholly or partially by substantial overcharges against the trust estate, it is certainly not to be disregarded."

Analysis

- [7] In the materials filed with the court in an argument before me, it is clear there is a history of friction or hostility between Ms. MacDougall and the Applicants that goes back a number of years. I do not intend to review that history in detail here.
- [8] The Applicants make a number of allegations and raise a number of issues with Ms. MacDougall acting as executor of their mother's estate. Paragraph 49 of the Applicant's written argument largely summarizes the allegations against Ms. MacDougall by the applicants:

Ms. MacDougall has done or is responsible for the following acts against the applicants' interests:

- a) told Kathryn that she will do all she can to delay the administration of the estate if Sheila or Kathryn do anything to contest the estate administration;
- b) sought the return of a ring given to Sheila 44 years ago by her mother;
- c) made a false allegation of theft;
- d) reported the theft only so that she could tell the applicants she had done so;
- e) told Kathryn (before the death of the deceased) that she would make the estate pay for clean up of the deceased's property so that Kathryn and Sheila would have to pay 2/3 of the cost;
- f) did not declare a GIC of \$27,540 in the Affidavit of Assets and Liabilities;
- g) did not declare an account payable of \$17, 665 to a nursing company and paid the account, even though Kathryn and Sheila dispute the contract and the amount owing;
- h) the day after Marilyn's death sent a text to Kathryn stating, "Also tell your sister that the investigation she initiated with the public trustee has been CLOSED and the file is being sent to me. She has lost again!"

- [9] It is unclear from the materials or in argument before me precisely how the Applicants' interest as beneficiaries of the estate were going to be affected, but the issues appear to be twofold. One concern appears to be that Stephen will be favoured by Ms. MacDougall because of the friction with the Applicants. The second concern is that Ms. MacDougall will act against the interests of all three beneficiaries collectively.
- [10] The only direct allegation of favouritism towards Stephen is set out in point e) in relation to suggesting the estate would pay to clean up the deceased's property. According to Stephen's affidavit, sworn on January 29, 2020, he and Ms. MacDougall spent several days cleaning the deceased's property in September 2019 at no cost to the estate. That assertion is not contested in the subsequent affidavits filed by the Applicants.
- [11] While point h) involves Stephen, insofar as I understand, the investigation initiated with the Public Trustee was in relation to Stephen's actions during his mother's lifetime. I would frame it more as an illustration of the friction and hostility described earlier than an allegation of misconduct in the role of executor.
- [12] There are a number of issues relating to items with sentimental value that were raised in the application. In particular, there were concerns referencing points c) and d) about a box of photographs that went missing the day of the deceased's funeral on June 1, 2019. The ensuing communications resulted in several calls to various police agencies in relation to the disappearance of the photos, but no officers attended at the house. There were also concerns raised about the handling of an address book, a Chinese silk print, and various pieces of jewellery. It would appear from the photographs attached to the affidavit of Ms. MacDougall that, with the exception of the box of photographs, all of the other items are in her possession as executor of the deceased's estate.
- [13] There was some time spent on the failure of Ms. MacDougall to list various assets on the Form P10 Affidavit of Assets and Liabilities. I have reviewed the materials presented, including the letter of Stephen Wing, counsel who assisted Ms. MacDougall in preparing the Form P10, and while some information appears to be missing, in the overall context, I am not satisfied that the form was prepared with an intention by Ms. MacDougall to mislead or hide assets.
- [14] I have reviewed the evidence in relation to Ms. MacDougall's conduct in her role as executor. The deceased clearly wanted her sister to act as executor and, in my view, she has acted overall in a manner consistent with a prudent executor and taken her responsibility seriously.
- [15] Paragraphs 22 to 29 of Ms. MacDougall's affidavit describe how she arranged for the cremation of the deceased and for a portion of the ashes to be given to the Applicants at their request. She dealt with banking, insurance, utilities, and government agencies on behalf of the deceased. She cleaned up the house and later assisted in cleaning the property and sought to secure it, ultimately hiring a security company. She retained a lawyer to assist with obtaining an estate grant and has sought to proceed with necessary processes following

the advice she had been given. None of this appears to be contested by the Applicants. While some of the communications with the Applicants could have been more diplomatic, in these circumstances, I find Ms. MacDougall's actions speak louder than her words.

- [16] There are mechanisms for addressing whether specific actions of the executor, such as paying the nursing company, were appropriate. I am not making findings about the justification for those decisions. However, I see no indication that the decisions made by Ms. MacDougall, in the words of Lord Blackburn, "show a want of honesty, or a want of proper capacity to execute the duties, or a want of reasonable fidelity". To the contrary, it appears to me that Ms. MacDougall has attempted to diligently pursue her sister's wishes for her estate, despite whatever personal issues she might have with the Applicants.

Conclusion

- [17] The application is, therefore, dismissed.

"Edelmann J."

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Prepared on 28 October 2026 · Esheria