

CANADA / JUDGMENT

Baylis Estate

2025 BCSC 410

COURT

Supreme Court of British Columbia

DECIDED

11 March 2025

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2025 BCSC 410 Baylis Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Baylis Estate,

2025 BCSC 410

Date: 20250311

Docket: V53308

Registry: Vernon

In the Matter of the Estate of Carole Ann Baylis, Deceased

Corrected Judgment: The text of the judgment was corrected

at para. [35] on April 29, 2025

Before: The Honourable Justice G.P. Weatherill

Reasons for Judgment

Counsel for the Applicant,

Julien John Baylis and

the Estate of Carole Baylis:

C. Kidd

Counsel for Claire Marcotte:

D. Draht

Place and Date of Hearing:

Vernon, B.C.

April 22, 2024

February 19, 2025

Place and Date of Judgment:

Vernon, B.C.

March 11, 2025

Introduction

- [1] Carole Ann Baylis ("Deceased") died on March 11, 2022, at the age of 78 following surgery complications. Her husband John Baylis ("John") predeceased her on January 26, 2020, with the Deceased being the beneficiary of his estate. The couple have three adult children, Julien Baylis ("Julien"), Jeremy Baylis ("Jeremy") and Claire Marcotte ("Claire"). The children are estranged from each other.
- [2] Julien, as the person appointed by the Deceased's August 31, 2021, will ("Will"), applies summarily to have it proven in solemn form. The Will gives the lion's share of the Deceased's estate to Julien, a smaller portion to Jeremy and gives nothing to Claire. Julien also seeks a declaration pursuant to s. 59(c) of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 ("WESA") that the Will be rectified to correct what he says was an error in the disposition of one of the Deceased's main assets (together the "Application").
- [3] Claire opposes the Application on the basis that Julien subjected the Deceased to undue influence prior to the Will being made and that, in any event, the Deceased lacked testamentary capacity to make a will. Pursuant to Rules 22-1(7) and 25-14(8)(e), she seeks to have the matter of undue influence and the Deceased's testamentary capacity referred to the trial list.

Summary of Decision

- [4] For the following reasons, Julien's application to prove the Will in solemn form and for rectification of the Will is referred to the trial list.

Background Respecting the Preparation of the Will

- [5] In late 2019, John was diagnosed with terminal cancer and arranged with the Deceased to meet with an estate lawyer, Mr. Brett Squair, to prepare their wills. According to Mr. Squair, the Deceased and John could not agree on what to do with their property: John wanted their children to share in it equally, and the Deceased did not want Claire receiving any portion of their estate because she considered that Claire was sufficiently well-off.

- [6] Mr. Squair prepared John's will giving his residual estate to the Deceased if she survived him and to all three children equally if she did not. The Deceased did not prepare a will at that time apparently wanting to consider her options.
- [7] Subsequent efforts by Mr. Squair's office to have the Deceased return to prepare a will resulted in cancelled appointments.
- [8] On August 18, 2021, the Deceased returned to Mr. Squair's office to make her will. She was planning on travelling with Julien to Mexico for an extended vacation and wanted it completed before she left. Julien was present with the Deceased in Mr. Squair's boardroom during the process of gathering estate information including family names, bank accounts and details of other assets. At that time, Julien explained his beliefs as to why the children were estranged. When it came time for Mr. Squair to obtain the Deceased's instructions about her will, including the division of her estate, Julien left the room.
- [9] According to Mr. Squair, the Deceased stated that she did not want to leave anything to Claire because she was sufficiently well off. He also says she told him that her estate included an apartment in Calgary ("Apartment") that she wanted left to Jeremy.
- [10] During the meeting, Mr. Squair completed a fill-in-the-blanks checklist ("Checklist") that stated, among other things, that:
- a) He had no concerns about the Deceased's capacity but that a son "has some influence";
 - b) The Deceased's estate was to be distributed:
 - i. With her home in Vernon ("Manufactured Home") going to Julien;
 - ii. With her car going to Julien;
 - iii. With the Apartment going to Jeremy;
 - iv. With "bank accounts" going to Jeremy; and
 - v. With the residue divided equally between Julien and Jeremy.
- [11] No provision is made in the Checklist for anything to go to Claire and other than the Checklist, Mr. Squair made no other notes.
- [12] On August 31, 2021, the Deceased and Julien returned to Mr. Squair's office and the Will was executed in accordance with the WESA requirements. The Deceased told Mr. Squair that she and Julien were leaving for Mexico the following day. According to Mr. Squair, Julien was not invited into the room where the Deceased signed the Will. He says the Deceased's instructions remained the same as they were on August 18, 2021, and he found her to be clear headed and excited to finally have the Will finalized.

[13] Contrary to the Deceased's instructions and the Checklist, the Will provided that the Apartment was to pass to Julien, not Jeremy. Upon review, Mr. Squair says he made a drafting mistake and the Will should have stated the Apartment was to pass to Jeremy.

[14] Also contrary to the Checklist, there is no mention in the Will of the bank accounts passing to Jeremy. Nor is there any reference to Claire in the Will.

Post Will Events

[15] Julien, who is single, had been living with his parents in their home since before John died. He continued to live with the Deceased after John's passing.

[16] It is apparent that Julien liked to travel between Vernon, the Philippines and Mexico. As noted, he took the Deceased with him to Mexico from September 1, 2021, through the end of February 2022.

[17] At some point while in Mexico, the Deceased apparently fainted, broke her hip and was hospitalized. When she returned to Canada in late February 2022, her health was poor. Instead of staying with the Deceased, Julien travelled to the Philippines and Claire assumed conduct of the Deceased's care. On March 10, 2022, the Deceased was admitted to the Vernon Jubilee Hospital in distress, underwent a laparotomy/bowel resection and died during the procedure.

The Estate Assets

[18] At the time of her passing, the Deceased owned:

- a) The clear title Manufactured Home where she resided;
- b) The Apartment with a Scotiabank mortgage registered against its title;
- c) Funds in bank accounts;
- d) A 2012 Audi Q5; and
- e) Miscellaneous furniture and personal belongings.

The Action

[19] On May 27, 2022, Claire filed a notice of dispute ("Dispute") opposing the taking of any action in relation to the Deceased's estate. That Dispute was renewed on May 16, 2023, by order of Associate Judge Schwartz.

[20] On January 24, 2024, Julien filed the Application seeking to have the Will proven in solemn form, the Dispute be struck, and the Will rectified to replace Julien with Jeremy as the beneficiary of the Apartment.

[21] Alternatively, Julien seeks an order converting the matter to an action with a trial to determine the validity of the Will, and with Julien appointed as administrator in the interim.

- [22] The Application initially came on before me on April 22, 2024. Given Claire's allegations respecting the Deceased's competence to prepare a will, and her allegations of undue influence on the Deceased by Julien in and around the time the Will was made, I ordered the production of Mr. Squair's file related to both John and the Deceased respecting the preparation of their respective wills; the production of the Deceased's Vernon Jubilee Hospital records; the production of the Deceased's medical records from her general practitioner; and the production of all emails and text messages between Julien and the Deceased.
- [23] I adjourned the Application pending production of those records and documents. To date, the only documents that have been produced are Mr. Squair's files, hospital records related to the Deceased's surgery and death, and text messages between Julien and the Deceased from Julien's "Mexico" cell phone. The parties have so far been unable to determine whom the Deceased's general practitioner was. No application to produce the Deceased's MSP records has been brought.

Section 52 of WESA

- [24] Under s. 52 of WESA, if a party attacking a will establishes the potential for dependence or domination over the will-maker, there is a rebuttable presumption that the will was executed under undue influence, and the onus is on the proponent of the will to prove that undue influence was not exercised:
52. In a proceeding, if a person claims that a will or any provision of it resulted from another person
- (a) being in a position where the potential for dependence or domination of the will-maker was present, and
 - (b) using that position to unduly influence the will-maker to make the will or the provision of it that is challenged,

and establishes that the other person was in a position where the potential for dependence or domination of the will-maker was present, the party seeking to defend the will or the provision of it that is challenged or to uphold the gift has the onus of establishing that the person in the position where the potential for dependence or domination of the will-maker was present did not exercise undue influence over the will-maker with respect to the will or the provision of it that is challenged.

Discussion

- [25] Cases involving disinherited family members seeking to set aside their parent's wills is not uncommon and have resulted in the following authoritative guidance:

- a) In an action for proof of a will in solemn form, the party propounding the will must prove on a balance of probabilities that the will was executed in compliance with the statutory formalities of WESA, that the will-maker knew and approved of the contents of the will and that the will-maker had testamentary capacity: *Leung v. Chang*, 2013 BCSC 976 at para. 26.
- b) Regarding testamentary capacity required to make a will, the will maker must only have a "baseline level of mental acuity" or a "disposing mind and memory", sufficient to appreciate and comprehend the nature and effect of the essential elements of the testamentary act. It is a highly individualized inquiry and is a question of fact to be determined in all the circumstances: *Leung* at para. 27.
- c) Where the evidence is that the will was duly executed in accordance with the requisite statutory formalities after being read over by a testator who appeared to understand, there is a rebuttable presumption that he or she possessed the requisite testamentary capacity and knew and approved its contents: *Leung* at para. 28.
- d) If suspicious circumstances are shown, then there is no presumption, and the burden of proof reverts to the propounder of the will to prove knowledge, approval and testamentary capacity and to dispel the suspicious circumstances: *Leung* at para. 30.
- e) The threshold for establishing suspicious circumstances is of "well-grounded suspicions" related to the circumstances surrounding the will's preparation, or that tend to call the will-maker's capacity into question, or that tend to show that the will-maker's free will was overborne by acts of coercion or fraud. To meet the threshold, the evidence must be such that, if accepted, would tend to negative knowledge and approval or testamentary capacity. A "general miasma of suspicion that something unsavory may have occurred" is insufficient to rebut the presumption of validity. The evidence must raise a "specific and focused suspicion": *Leung* at paras. 29, 32.
- f) Section 52 of WESA has shifted the onus of proof to the party defending a will once the party challenging it has shown that the testatrix was in a relationship of dependency with the person alleged to have exerted undue influence, or one in which the potential for domination existed: *Kerfoot v. Richter*, 2018 BCCA 238 para. 34.
- g) In determining whether a chambers matter should be converted to an action, the question is whether the party requesting the trial is bound to lose: *British Columbia (Milk Marketing Board) v. Saputo Products Canada G.P.*, 2017 BCCA 247 at para. 43 [*Saputo*].
- h) The *Saputo* test precludes a judge from weighing evidence. The test is akin to the test to be applied for summary judgment: *Kerfoot* at para. 27.
- i) Where there are disputed facts in the material, the party seeking summary determination bears the onus of showing that there are no genuine issues to be tried. In considering the evidence, the court must not weigh it but is limited to assessing whether it establishes a triable issue: *Kerfoot* at para. 29.

- [26] In short, before an application to prove a will in solemn form will be referred to the trial list, there must be a bona fide triable issue that cannot be determined by reference to affidavits and documents and would affect the outcome of the proceeding. A bona fide triable issue arises where, on the evidence, there is a dispute as to facts or law which raises a reasonable doubt or suggests there is an issue that deserves to be tried. Factors to consider include the undesirability of unnecessary costs and delay, witness credibility assessments being required, the need for the Court to have a full grasp of all the evidence and whether the interest of justice requires a trial to resolve the dispute: *Konkin v. Harris*, 2022 BCSC 1067 at paras. 72-79; *Saputo* at paras. 44-45.
- [27] Accordingly, Claire, who has the onus of establishing that there are triable issues, cannot rely on mere allegations but must establish the existence of material issues. Matters cannot be referred to the trial list based on mere assertions: *Kerfoot* at para. 31.
- [28] The issue of whether Julien unduly influence the deceased into preparing the Will in the manner she did is supported by both direct and circumstantial evidence that raise sufficient circumstances that in my view are sufficient to support the raising of the presumption of undue influence under s. 52 of WESA.
- [29] This evidence includes pre-Will text messages between Julien and the Deceased that suggest possible tension between them over the Deceased's estate, the timing of the Deceased preparing her will and the fact that Mr. Squair noted in the Checklist that "son (presumably Julien) has some influence". Undue influence can be established through circumstantial evidence: *Kerfoot* at para. 35.
- [30] In her affidavit, Claire raises factual issues from which inferences of undue influence, lack of testamentary capacity and/or lack of understanding of the contents of the Will, could be drawn. These issues include:
- a) The Will, as written, provided Julien with 93% of the Deceased's estate;
 - b) Julien took steps to isolate Claire from the Deceased prior to the Will being drafted and executed;
 - c) Julien took active steps to find Mr. Squair and attended with her to Mr. Squair's office when instructions were given and when the Will was executed;
 - d) The Deceased executed the Will despite it stating that the Apartment was to go to Julien instead of Jeremy as was noted to be the case in the Checklist;
 - e) Text messages between the Deceased and Julien suggesting possible pressure being applied to the Deceased regarding the preparation of the Will, including one where the Deceased characterized Julien's treatment of her as abusive;
 - f) The lack of explanation for why Julien was receiving the lion's share of the estate, with Jeremy receiving much less and Claire receiving nothing;

- g) The Will being substantially different from the will's Checklist prepared by Mr. Squair in December 2019, wherein it is apparent the estate was to be split equally among the Deceased's three children; and
 - h) The apparent undermining of her relationship with the Deceased.
- [31] I am satisfied that Julien was in a position of influence over the deceased. I am also satisfied that there is a bona fide issue to be tried on the point. Although less satisfied on the current evidence that the Deceased lacked testamentary capacity to make the Will on August 31, 2021, I remain concerned that, because of an apparent glaring error in the Will related to the Apartment, the Deceased may not have fully understood and approved of its contents.
- [32] Accordingly, Claire is not bound to lose if the entire matter is referred to the trial list. At this stage, even though Claire's evidence raises mere suspicions, it is sufficient, in my view, to meet the test set out in Kerfoot.

Disposition

- [33] In my view, the Application materials are sufficient to raise a triable issue on the issue of undue influence, testamentary capacity and whether the Deceased fully understood and approved of the contents of the Will.
- [34] Pursuant to Rule 25-14(8)(e) and Rule 22-1(7), Julien's Application to prove the Will in solemn form and for rectification is referred to the trial list.
- [35] The parties are to exchange pleadings with Julien filing a notice of civil claim and Claire filing a response. The Supreme Court Civil Rules will apply to the action, including rules related to discovery of documents and examinations for discovery.
- [36] During submissions, the parties agreed to a consent order appointing an independent third party, Heritage Trust, to act as administrator of the Deceased's estate pending the disposition of the action.

Costs

- [37] As costs were not spoken to, the parties have liberty to arrange with Supreme Court Scheduling within 30 days of the date of these reasons to make submissions on costs. If no arrangements are made, both parties will be entitled to special costs of the Application payable by the Deceased's estate.

"G.P. Weatherill J."

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