

CANADA / JUDGMENT

Baylis Estate

2025 BCSC 959

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 959 Baylis Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Baylis Estate,

2025 BCSC 959

Date: 20250523

Docket: V53308

Registry: Vernon

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

Before: The Honourable Justice G.P. Weatherill

Reasons for Judgment - Costs

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 the Applicant's Submissions Received:

Vernon, B.C.

May 9, 2025

Place and Date of Claire Marcotte's Submissions Received:

Vernon, B.C.

May 9, 2025

Place and Date of Judgment:

Vernon, B.C.

May 23, 2025

Introduction

- [1] This proceeding concerns the validity of Carole Ann Baylis' ("Deceased") August 31, 2021 will ("Will").
- [2] On March 11, 2025, I delivered reasons for judgment (neutral citation 2025 BCSC 410) ("Reasons") ordering the issue of the Will's validity to be placed on the trial list for determination. Those reasons followed a summary application ("Application") brought by the deceased's son, Julien Baylis ("Julien"), who was named in the Will as executor, to have the Will proven in solemn form and further to rectify an error in the Will regarding the disposition of one of the Deceased's assets.
- [3] The Application was opposed by the Deceased's daughter, Claire Marcotte ("Claire"), who alleges that the Will was prepared as a result of Julien's undue influence over the Deceased who lacked the testamentary capacity to make the Will in any event.
- [4] Costs of the Application were not spoken to, and I invited the parties to make submissions, failing which I ordered that both parties would be entitled to special costs payable by the Deceased's estate.
- [5] The parties have now provided written submissions.
- [6] Arguing that it would be unjust for the Deceased's estate to be required to pay special costs to both sides, Julien seeks an order that costs of the Application should be in the discretion of the trial judge. He contends that, in keeping with the modern approach to costs in estate litigation, the losing party should be required to pay costs. Alternatively, he argues that each side should bear their own costs. In the further alternative, and again consistent with the modern approach for contentious estate litigation, he submits that costs should be assessed at Scale B rather than special costs. In support, Julien relies on *Leung v. Chang*, 2014 BCSC 1243 at para. 36; *Schell Estate (Re)*, 2019 BCSC 2168 at paras. 18-20; *Singh Estate (Re)*, 2019 BCSC 1114 at para. 18 [*Singh Estate*]; *Conner Estate v. Worthing*, 2021 BCCA 231 at paras. 56 to 61 [*Conner Estate*]; *Royal Trust Corporation of Canada v. Huff*, 2021 BCSC 1400; and *Hoyle Estate*, 2022 BCSC 729.

- [7] For her part, Claire argues that, contrary to Julien's position, special costs are indeed consistent with the modern approach to estate litigation in situations, such as here, where the litigation is caused by the testator's conduct in preparing his or her will. She argues that this litigation was necessitated to address doubts in relation to the Will's preparation and signing. She points to paragraphs 13 and 14 of my Reasons wherein I note that it appears the Will was not prepared in accordance with the Deceased's instructions and the checklist prepared by her lawyer. It is these errors and oversights, she says, that give rise to this litigation. Claire says that in the circumstances, the special costs order I made is appropriate and should stand. In support, she relies on *Jung v. HSBC Trust Company (Canada)*, 2007 BCSC 1740 at para. 106 [Jung]; *Hadley Estate (Re)*, 2017 BCCA 311 at para. 47 [Hadley Estate]; *Coad v. Lariviere*, 2022 BCCA 350 at paras. 19-20 [Coad]; *Estate of Joyce Schulz v. Locke*, 2024 BCSC 293; *Cameron (Re)*, 2020 BCSC 580 at para. 11 [Cameron]; and *Primerano v. Cameron*, 2021 BCCA 64 at para. 58 [Primerano].

Discussion

- [8] The established principles under the modern approach to costs in estate litigation were summarized by Silverman J. in *Jung* at para. 106:
1. The costs of and incidental to a proceeding will follow the event unless the court otherwise orders.
 2. If the cause of the litigation originated from the conduct or errors of the testator (i.e., unclear wording or validity of the will), then the costs of all parties will generally be paid from the estate on a full indemnity basis.
 3. If there were circumstances which provided reasonable and sufficient grounds to have brought the action relating to questions of capacity or allege undue influence or fraud, the court will not normally make an order for costs against the unsuccessful party.
 4. In an action under dependent relief legislation (i.e., where the proceedings are adversarial in nature and are not brought about by the actions of the testator), costs follow the event.
 5. All costs awards are subject to the court's discretion and an overriding test of reasonableness.
- [9] Where litigation is brought to address doubts about a testator's capacity or the validity of the will itself, costs are typically paid by the estate: *Hadley Estate*; *Coad*. In *Hadley Estate*, the Court of Appeal confirmed the point at para. 47:
- [47] In estate litigation, courts commonly award special costs payable out of the estate to all parties. This practice is based on the principle that where an estate issue must be litigated to remove any doubts, all interested parties must be joined and all are entitled to be heard. In such circumstances, they should not be out of pocket if, in the result, the litigation does not conclude in their favour. The central question as to costs is whether the contested issue arises from the conduct of the deceased or the conduct of another. In the case of the former,

an award of special costs from the estate will usually be made: *Milwarde-Yates v. Sipila*, 2009 BCSC 277 at paras. 81-82.

- [10] Justice D. MacDonald discussed the issue in *Singh Estate* at paras. 11-13:
- [11] Traditionally, costs of all parties involved in an estate dispute were ordered to be paid out of the estate. The estate would bear the costs of settling disputes in estate proceedings unless the losing party's position was obviously unwarranted. The public policy behind the traditional approach is that where a will is ambiguous, and subsequent litigation ensues which is partially or largely caused by the testator, his or her estate ought to bear the costs of the litigation [citations omitted]
- [12] In *Steernberg v. Steernberg*, 2007 BCSC 953, Justice Martinson, citing the Court of Appeal in *Vielbig*, explained the traditional approach as follows:
- [21] . In [estate] cases where the validity of a will or the capacity of the testator to make a will or the meaning of a will is in issue, it is sometimes the case that the costs of all parties are ordered to be paid out of the estate. This is upon the principle that where such an issue must be litigated to remove all doubts, then all interested parties must be joined and are entitled to be heard and should not be out of pocket if in the result the litigation does not conclude in their favour. The estate must bear the cost of settling disputes as a cost of administration.... The question to be asked in such cases is whether the parties were forced into litigation by the conduct of the testator or the conduct of the main beneficiaries.
- [13] The traditional approach has been gradually displaced by the modern approach to cost awards where costs follow the event in estate matters. Courts retain discretion and have deviated from this trend and followed the traditional approach where justified. This often occurs where the deceased is wholly or partially the cause of the need for an inquiry.
- [11] And in *Conner Estate*, the Court of Appeal noted at paras. 56, 57 and 61:
- [56] The general rule regarding costs was described by this Court in *Giles v. Westminster Savings Credit Union*, 2010 BCCA 282 at para. 72, quoting *Victoria (City) v. Adams*, 2009 BCCA 563 at para. 180:

The general rule with respect to costs is that they follow the event and are assessed on a party and party basis unless the court otherwise orders: Rules 57(9) and 57(1) of the Rules of Court. Courts retain the discretion to depart from the general rule where the circumstances justify a different approach: *British Columbia (Minister of Forests) v. Okanagan Indian Band*, 2003 SCC 71, [2003] 3 S.C.R. 371 at para. 22. It is a broad discretion, and this Court will only interfere "if there is misdirection or the decision is so clearly wrong as to amount to an injustice": *Agar v. Morgan*, 2005 BCCA 579 at para. 26.

- [57] In estate litigation, the executor is generally indemnified through a special costs award against all reasonable litigation costs incurred in the fulfilment of their role: *Hollander* at para. 41.

- [61] While it is true that the general rule that costs follow the event has not always applied in estate litigation, the modern approach to fixing costs in such cases is to apply the general rule unless the court finds one or more exceptions apply: *Hollander* at paras. 39-40.
- [12] Claire argues that the wording of the Will was contrary to the Deceased's instructions and by executing it, the Deceased created doubt concerning her intentions which in turn required recourse to the courts on the rectification issue in any event. Further, the Deceased failed to give any reasons for disinheriting Claire or why the Will gives most of her estate to Julien. Claire refers to paras. 13 and 14 of my Reasons:
- [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.
- [13] In essence, Julien's position is that it is inappropriate to award costs of the Application prior to the case being heard on its merits. Claire's position is that it is entirely appropriate.

Decision

- [14] I have considered the parties' submissions including reviewing the case law to which I have been referred.
- [15] The circumstances of this case closely match what occurred in *Cameron*, where Grauer J. (as he then was) ordered a dispute between two sisters over who should be appointed committee over their mother's estate, referred to the trial list, with special costs of the application to be paid by the mother's estate to both parties. The costs order was upheld by the Court of Appeal in *Primerano*.
- [16] Here, the Will's validity will be determined by the trial judge after hearing the evidence and hearing fulsome submissions and it is the trial judge who will be in the best position to assess costs of the trial as he or she sees fit.
- [17] In the meantime, I agree with Claire's submissions that costs of the Application be paid by the Deceased's estate to both parties on a special costs' basis.

"G.P. Weatherill J."

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