

CANADA / JUDGMENT

Beardsley v. Beardsley

2024 BCSC 116

COURT

Supreme Court of British Columbia

DECIDED

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2024 BCSC 116 Beardsley v. Beardsley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Beardsley v. Beardsley,

2024 BCSC 116

Date: 20240129

Docket No.: S09478

Registry: Courtenay

Between:

Jan Carollyn Beardsley

Plaintiff

And:

Bruce Alan Beardsley and David Anthony Beardsley

Defendants

-And-

Docket No.: S86586

Registry: Nanaimo

Between:

Jan Carollyn Beardsley

Petitioner

And:

Bruce Alan Beardsley and David Anthony Beardsley

Respondent

-And-

Docket No.: S89158

Registry: Nanaimo

Between:

Bruce Alan Beardsley and David Anthony Beardsley

Petitioners

And:

Jan Carollyn Beardsley

Respondent

Before: The Honourable Mr. Justice Riley

Reasons for Judgment

The Applicant:

J. Beardsley

Respondents:

No Appearance

Place and Date of Requisition Filed:

Nanaimo, B.C.

December 5, 2023

Place and Date of Judgment:

Nanaimo, B.C.

January 29, 2024

Introduction

- [1] I have before me four requisitions submitted by Jan Beardsley, seeking leave to file various applications or to commence various proceedings. Ms. Beardsley requires leave before these pleadings are accepted for filing, following an order made under s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443, declaring her to be a vexatious litigant.

Factual Background and Procedural History

- [2] Jan Beardsley is one of three children of Leslie and Maureen Beardsley, both of whom are now deceased. Leslie Beardsley passed away in 2006. Maureen Beardsley passed away in 2017.
- [3] After Maureen Beardsley's passing, there were legal disputes between Jan Beardsley on the one hand and her two brothers, Bruce Beardsley and Dan Beardsley on the other hand, concerning the administration of the estates of both parents.
- [4] Over several years, proceedings were initiated in this Court under three separate file numbers.
- [5] The first proceeding was Jan Beardsley's notice of civil claim bearing Courtenay File No. 09478, filed on 27 September 2017. In this claim, Jan sought: (i) declarations of trust with respect to real property that had been gifted to her brothers by Maureen Beardsley prior to her passing; (ii) orders finding Maureen Beardsley's 2006 and 2011 wills to be invalid; (iii) proof in solemn form of Maureen's 2001 will; and (iv) the appointment of Jan Beardsley as executor under the 2001 will.
- [6] The second proceeding was Jan Beardsley's petition bearing Nanaimo File No. S86586, filed on 25 January 2019. In this petition, Jan Beardsley sought, among other things: (i) directions regarding the estate of her mother Maureen Beardsley, relying upon the 2001 will; and (ii) orders of possession with respect to real properties that had been gifted by Maureen Beardsley prior to her passing to her two sons, Bruce Beardsley and Dan Beardsley.
- [7] The third proceeding was a petition bearing Nanaimo File No. S89158, filed by Bruce and Dan Beardsley on 7 November 2019. In this petition, Bruce and Dan Beardsley sought an order of proof in solemn form of their mother Maureen Beardsley's 2011 will, under which Bruce and Dan had been appointed executors, along with a grant of probate with respect to that will.
- [8] I am not going to go through the entire history of all three court files. I think it is enough to describe the three substantive judgments that have been issued by Justices of this Court in connection with these various proceedings.
- [9] The first judgment in point of time was given by Justice Dley on 24 February 2020. This was a ruling on the petition brought by Bruce and Dan Beardsley, bearing Nanaimo File No. 89158, seeking to prove Maureen Beardsley's 2011 will, along with an order of probate in relation to that will. Justice Dley granted the petition. He found that the will had been properly executed and that there was overwhelming evidence of Maureen's testamentary capacity at the time. Justice Dley also granted an order of probate with respect to Maureen Beardsley's 2011 will. Obviously, the finding that Maureen Beardsley's 2011 will was valid meant that it superseded any prior wills.

- [10] The second judgment was given by Justice Thompson on 10 November 2022, in reasons indexed as *Beardsley v. Beardsley*, 2022 BCSC 1952. In this judgment, Thompson J.: (i) dismissed Jan Beardsley's petition and her notice of civil claim; and (ii) considered but ultimately dismissed an application by Bruce and Dan Beardsley to have Jan declared a vexatious litigant, although Thompson J. gave leave to renew the application in the event of future vexatious conduct by Jan.
- [11] With regard to the Jan Beardsley's civil action and her petition proceeding, Thompson J. dismissed her resulting trust and unjust enrichment claims in action Courtenay File No. S09478, and dismissed her petition in Nanaimo File No. S86586, finding the claims made therein to be manifestly frivolous and not reasonable. Justice Thompson concluded that there was nothing to Jan Beardsley's allegations that her mother lacked testamentary capacity or was subject to undue influence in her estate planning in respect of the 2011 will. He noted that in the prior ruling made by Dley J. on File No. S89158, the Court conclusively determined Maureen Beardsley's 2011 will to be valid. Justice Thompson found that Jan Beardsley's efforts to re-litigate these issues were an abuse of the Court's process, and that the attack on the prior judgment of Dley J. due to alleged fraud was based on speculation and unjustified assumptions founded in hearsay. Justice Thompson also dismissed other aspects of Jan Beardsley's claims relating to prior unresolved debts, on the basis that these claims were unreasonable and stood no chance of success due to the passage of limitation periods.
- [12] With regard to Bruce and Dan Beardsley's application to have Jan Beardsley declared a vexatious litigant under s. 18 of the Supreme Court Act, Thompson J. found that Jan had "exhibited vexatious and reprehensible behaviour" in the course of the proceedings up to the date of the judgment on 10 November 2022. Among other things, Jan made scandalous and unsupported allegations against many individuals that she had linked in some way (directly or indirectly) to the proceedings pertaining to her mother's estate. However, Thompson J. was not satisfied, at least at the point of the judgment given on 10 November 2022, that Jan Beardsley had instituted vexatious proceedings, "habitually" and "persistently" within the meaning of s. 18 of the Supreme Court Act. Justice Thompson therefore dismissed the application to declare Jan Beardsley a vexatious litigant, without costs to Jan Beardsley, and with liberty for Bruce and Dan Beardsley to reapply, noting that if Jan were to initiate "further vexatious proceedings in this Court", this could result in an order designating her as a vexatious litigant.
- [13] At some point, Jan Beardsley evidently contemplated bringing appeals from the orders resulting from Thompson J.'s 10 November 2022 judgment, but she ultimately did not pursue or abandoned any such appeals.

- [14] The third and final judgment in relation to these proceedings was given by Thompson J. on 31 October 2023, indexed as *Beardsley v. Beardsley*, 2023 BCSC 1907. This was a ruling on a renewed application by Bruce and Dan Beardsley to have Jan Beardsley declared a vexatious litigant. Justice Thompson noted that since his ruling on 10 November 2022, Jan Beardsley had filed a further five applications in the various files relating to the administration of her parents' estates.
- [15] The first of these applications was filed on 26 April 2023. According to Thompson J., this application "advanced claims that had already been dismissed, and was eventually withdrawn".
- [16] The second application was filed on 19 June 2023. It sought orders overturning the proof of Maureen Beardsley's 2011 will in solemn form, which Dley J. had conclusively determined to be valid based on "overwhelming" evidence of Maureen's testamentary capacity.
- [17] The third and fourth applications were for orders sealing all court files, staying costs proceedings, removing Bruce and Dan Beardsley as executors of their mother's 2011 will, that all of the estate funds be paid into court, and the rather bizarre remedy that all matters related to the estates of Leslie and Maureen Beardsley be referred for criminal charges.
- [18] The second, third, and fourth applications were in chambers on 10 July 2023, but were not heard due to a lack of court time, and were adjourned generally.
- [19] The fifth application was filed on 23 September 2023, and was amended several times thereafter. In this application Jan Beardsley sought remedies in relation to the litigation of the estates of Leslie and Maureen Beardsley. The remedies included orders retroactively invalidating some 20 legal transactions relating to the administration of the estates, and taking possession of all estate property, along with findings of contempt.
- [20] On 17 October 2023, Thompson J. heard the fifth application, along with the renewed application by Bruce and Dan Beardsley to have Jan Beardsley declared a vexatious litigant. Justice Thompson reserved judgment on the applications.
- [21] In the reasons released on 31 October 2023, Thompson J. ruled on the fifth application listed above, and on the cross-application for an order declaring Jan Beardsley a vexatious litigant.
- [22] With respect to Jan's application (which, as noted, was the fifth application filed after the dismissal of the underlying proceedings as provided for in the judgment given on 10 November 2022), Thompson J. ruled that the application was vexatious and manifestly without merit. The breadth of the relief sought was breathtaking. It included findings of contempt against Bruce and Dan Beardsley, all of the lawyers who acted for them in the prior litigation, the lawyer who drafted Maureen Beardsley's 2011 will, that lawyer's successors in practice, and Maureen's medical doctor. Justice Thompson found that Jan's claim for this relief was "manifestly frivolous".

- [23] With respect to the renewed application that Jan be declared a vexatious litigant, Thompson J. noted that in his 10 November 2022 decision, in which he had found many aspects of Jan's conduct up until that point had been vexatious and frivolous, he gave Bruce and Dan Beardsley the right to renew the application if Jan engaged in further vexatious conduct. Justice Thompson observed that the five applications Jan had filed since the 10 November 2022 judgment clearly fit the definition of vexatious proceedings as described in *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91, at para. 29. Justice Thompson agreed with counsel for Bruce and Dan Beardsley that Jan's most recent applications could be characterized as "meritless, largely incoherent, duplicative and overlapping, disrespectful of the Court's prior decisions and often characterized by unsubstantiated allegations of wrongdoing". He found that any reasonable person would have known the five new applications were vexatious, and that Jan's conduct had reached the point where she was bringing proceedings, "habitually, persistently and without reasonable grounds" as contemplated in s. 18 of the Supreme Court Act. Accordingly, Thompson J. granted the application to declare Jan Beardsley a vexatious litigant, and issued an order providing that she must not, without leave of the court, file any further actions or petitions, or any chambers applications or requisitions relating in any manner whatsoever to Bruce Beardsley, Dan Beardsley, or the estate of their father or mother.
- [24] I should note that according to the court files, the only matter that remains outstanding in respect of the three proceedings (Courtenay Registry File No. S09478, Nanaimo Registry File No. S86586, and Nanaimo Registry File No. S89158) is the issue of costs, which is presently before Associate Judge Dick. The court files show that the costs assessment was before Dick A.J. on 29 November 2023, at which point deadlines were set for the parties to file supplementary written submissions. In particular, Jan Beardsley was permitted to file a written submission by 5 January 2024, and Bruce and Dan Beardsley were permitted to file submissions in response by 19 January 2024.
- [25] On 5 December 2023, Jan Beardsley submitted four requisitions, seeking leave to file further applications or pursue further proceedings. All four requests relate to proposed applications or further litigation in connection with the three subject proceedings as described above. In particular:
- a) What I will refer to as Requisition #1 is Jan Beardsley's request for leave to file an appeal from the 16 September 2020 decision of then Master Dick (now Associate Judge Dick)[1] settling the Order(s) arising from Dley J.'s oral reasons for judgment given on 24 February 2020.
 - b) What I will refer to as Requisition #2 is Jan's request for leave to make supplementary submissions per then Master Dick's order of 29 November 2023.

- c) What I will refer to as Requisition #3 is Jan's request for leave to seek directions with respect to Dley J.'s oral judgment on 24 February 2020. In particular, Requisition #3 asserts that "[t]here is a problem" with this matter, because the file was not dealt with by way of a trial, but rather a chambers application, which was not right because Rule 24-14(4)(b) was used to convert the petition into a notice of civil claim.
- d) What I will refer to as Requisition #4 is Jan's request for leave to proceed with proof in solemn form of the "1980 Will of Leslie/Maureen", which according to Jan will "resolve the litigation". Requisition #4 also states that Jan was "labelled" a vexatious litigant as a consequence of "politics in the supreme court office".

Analysis

- [26] The issue that I am required to address in this ruling is whether Jan Beardsley should be given leave to file the further applications or commence the further proceedings as requested in Requisitions #1 through #4 as described above.
- [27] In *Gichuru v. Purewal*, 2023 BCCA 345, at para. 46, Justice Groberman explained that in deciding whether to grant a vexatious litigant leave to commence proceedings, the court "is entitled to consider the totality of the circumstances", being mindful that the vexatious litigant order is not intended to punish the litigant, but rather to "prevent misuse of the justice system". On the one hand, the judge should take into account, "the very real possibility that the vexatious litigant, true to past form, is seeking to press proceedings that will waste court resources and serve to harass litigants". On the other hand, the judge must also consider the possibility that the contemplated litigation is legitimate and not abusive, such that refusing leave could result in serious injustice.
- [28] With these objectives and broader concerns in mind, as set out at para. 49 of *Gichuru*, the court must be satisfied that the proposed proceeding is "not doomed to fail", "brought for an improper purpose", or "a clear abuse of process". If the litigant overcomes that minimal threshold, the court must go on to consider whether to exercise its discretion to grant leave and thereby allow the proceeding, considering the "totality of the circumstances". In some cases, it may be apparent that refusing leave could result in "serious injustice" to the litigant. In other cases, the court may conclude that the proposed proceeding is "weak, of no real importance, and uneconomical to litigate". Many cases will fall somewhere in between these two extremes, and the court will be called upon to exercise its good judgment in deciding whether to grant leave.
- [29] Applying that reasoning to the four requisitions now before the court, I reach the following conclusions.

Requisition #1

- [30] With regard to Requisition #1, the request for leave to bring an appeal from the 16 September 2022 decision of then Master Dick, settling the terms of the Order(s) arising from Dley J.'s judgment given on 24 February 2020, I note that under Rule 23-6(8.1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, the time limit for filing an appeal from a Master's decision is 14 days after the order or decision is made. Thus, Jan Beardsley would have to obtain an extension of time to proceed with this appeal. In my view, given the passage of time and the procedural history of the case, there is no chance whatsoever that she would be successful in obtaining an extension of time within which to appeal. Further, there is no discernible merit in the appeal, because the terms of the order as reflected in the Minutes of Settlement before Master Dick on 16 September 2020 marry up with the relief granted at paras. 16 and 25 of Dley J.'s 24 February 2020 oral reasons for judgment. The proposed appeal is doomed to fail.
- [31] Even if I were convinced that the appeal was arguable, I would decline to exercise my discretion to allow it to proceed, given the passage of time, the history of the proceedings, and the conduct of Jan Beardsley in now seeking to challenge the terms of a straightforward order that was resolved years ago. Allowing this appeal to proceed would put the responding parties to continued unnecessary expense and delay, and would involve continuing abuse of the litigation process by Jan Beardsley.

Requisition #2

- [32] I turn next to Requisition #2, the request for leave to file written submissions in relation to the costs proceedings per the Order of then Master Dick dated 29 November 2023. My perusal of the court file indicates that Jan Beardsley was allowed to file the written submissions in issue, per the terms of Master Dick's order. Accordingly, this request is dismissed as moot.

Requisition #3

- [33] With regard to Requisition #3, Jan Beardsley seeks leave to obtain "[d]irections" in relation to Nanaimo Registry File No. 89158. Jan Beardsley asserts that there is a "problem" with this matter because Dley J. ruled on it as a petition; it was not dealt with in a trial. I do not agree that there is any "problem" in this regard. Justice Dley clearly gave judgment on a petition proceeding in chambers. I would not grant leave to seek "[d]irections" with respect to Dley J.'s judgment. There is no uncertainty in how the matter proceeded nor with the result, so I conclude that the request for directions is doomed to fail.
- [34] Further and in any event, I would not exercise my discretion to allow the matter to proceed as I see no discernible purpose for seeking directions, other than a continuation of Jan Beardsley's vexatious conduct in seeking to revisit or collaterally attack proceedings resolved against her long ago. To the extent that Jan Beardsley is concerned about the costs

implications in terms of this matter being dealt with as a petition in chambers and not by way of a trial, the issue of costs is presently before Associate Judge Dick, but this does not justify or require any further proceeding in the nature of "directions" in connection with the matters conclusively resolved by Dley J. in a judgment given almost four years ago.

Requisition #4

- [35] In Requisition #4, Jan Beardsley seeks leave to file a "notice of application" to prove the 1980 wills of both Leslie Beardsley and Maureen Beardsley in solemn form. Jan Beardsley asserts in this requisition that she had been designated as a vexatious litigant based on "politics in the supreme court office", and that proof of the 1980 wills "will resolve the ligation". I would not grant Jan Beardsley leave to file any such application. Save for costs matters currently before Associate Judge Dick, the litigation is already resolved. Justice Dley having found Maureen Beardsley's 2011 will to be a duly executed and enforceable last will and testament, Jan Beardsley's proposal to prove a 1980 will is an exercise in futility. With respect to Leslie Beardsley, he predeceased his wife, and all of Jan Beardsley's arguments about the estate property of both parents have been fully and conclusively litigated. Any effort to revive these issues would be barred by estoppel or would otherwise represent an abuse of process. I conclude that the proposed application is doomed to fail.
- [36] Furthermore, and in any event, I would not exercise my discretion in favour of allowing Jan Beardsley to bring an application to prove the 1980 wills. This proposed application is simply an effort by Jan Beardsley to go even further back in time, as a way to muddy the waters or somehow undo the legal consequences of the many prior decisions in the three estate proceedings involving herself and her two brothers. In her requisition, Jan Beardsley suggests that proof of the 1980 wills would make the opposing parties "look bad", a statement which evidences her intent to file yet another application as a continuation of a campaign of vexatious litigation against her brothers in relation to the estates of their parents.

Conclusion

- [37] Leave to file the applications or proceedings contemplated in Requisitions #1, #3, and #4 is hereby refused. With respect to Requisition #2, the request for leave is dismissed as moot.

"Riley J."

- [1] Effective 15 January 2024, the title "Master" has been replaced with the title "Associate Judge", per S.B.C. 2023, c. 47, s. , amending Supreme Court Act, R.S.B.C. 1996, c. 443.

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