
CANADA / JUDGMENT

Bizicki Estate

2019 BCSC 2142

COURT

Supreme Court of British Columbia

DECIDED

10 December 2019

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

2019 BCSC 2142 Bizicki Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bizicki Estate,

2019 BCSC 2142

Date: 20191210

Docket: S205212

Registry: New Westminster

In the Matter of the Estate of Alex Bizicki, aka Alick Bizicki

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

In Chambers

Counsel for the Petitioner, Yuet Ngor (Eva) Chow:

J. Wang

Counsel for Tracey Bizicki:

R.B.E. Hallsor, Q.C.

Place and Date of Hearing:

New Westminster, B.C.

November 22, 2019

Place and Date of Judgment:

New Westminster, B.C.

December 10, 2019

Introduction

- [1] This proceeding concerns the estate of Alex Bizicki. Mr. Bizicki died without making a conventional will, but he did leave behind three notes stating his wish that his girlfriend, Eva Chow, receive the money in his bank accounts and other personal property. Ms. Chow seeks an order pursuant to s. 58 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA] that the notes be given testamentary effect. Ms. Chow's application is opposed by Mr. Bizicki's next of kin.

Background

- [2] Mr. Bizicki was not wealthy. It is common ground that he was not sophisticated. Prior to his death in September 2016, Mr. Bizicki was a long-term tenant of a room in the Canadian Hotel on Seymour Street in Vancouver. He was a lifelong bachelor and had no children.
- [3] Mr. Bizicki grew up in McBride, British Columbia and had four siblings. By the time of his death, three of his siblings had predeceased him. He exchanged Christmas cards and appears to have been on amiable though somewhat distant terms with his surviving sibling, Mike Bizicki, who lived in California.
- [4] Ms. Chow got to know Mr. Bizicki in 1994 while she was working as a chambermaid at another hotel under common ownership with the Canadian Hotel. In the aftermath of a sexual assault, it was arranged to have Mr. Bizicki accompany her while she was working and they became friends. Eventually the relationship became one of boyfriend and girlfriend. Ms. Chow stopped working due to ill health in 2008, but her relationship with Mr. Bizicki continued. She was not well-off and Mr. Bizicki would sometimes give her gifts of money of up to \$2,000.
- [5] When Mr. Bizicki died, his estate consisted of the personal possessions in his room and \$272,042.35 in two bank accounts.
- [6] Mr. Bizicki died on September 18, 2016. His next of kin on an intestacy was Mike Bizicki, who died five months later. The respondent, Tracey Bizicki, is Mike Bizicki's personal representative.
- [7] The three notes are on separate pieces of paper. Ms. Chow found them in Mr. Bizicki's room following his death. There is no evidence addressing whether the notes were found together or, more generally, the organization of Mr. Bizicki's papers and possessions. A partial explanation for Ms. Chow's silence on this topic may be that her only schooling was to grade four in Hong Kong and she cannot read or write in English.

- [8] Expert evidence establishes that the notes are in Mr. Bizicki's handwriting. It is not disputed that Mr. Bizicki wrote them.

Legal Framework

- [9] Section 58 of the WESA permits the Court to give testamentary effect to a document that was not properly executed as a will if it is satisfied that the document represents the testamentary intentions of the deceased. It is common ground that the test to be applied on an application under s. 58 was settled by *Estate of Young*, 2015 BCSC 182 [Young Estate] and *Hadley Estate (Re)*, 2017 BCCA 311 at para. 36, both decisions of Justice Dickson.
- [10] The threshold question is always whether the deceased made the document. As I have already noted, the authenticity of the notes is not in dispute.
- [11] The core issue is whether the notes record "a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death" (as set out in *Young Estate* at para. 35). "Fixed and final" does not mean irrevocable, because it is in the nature of a will that it is revocable until the death of its maker. In my view, one way to think about this question is to ask whether it appears that the deceased intended the note to determine the distribution of his or her property on death.
- [12] In *Young Estate*, Justice Dickson stated:
- [36] The burden of proof that a non-compliant document embodies the deceased's testamentary intentions is a balance of probabilities. A wide range of factors may be relevant to establishing their existence in a particular case. Although context specific, these factors may include the presence of the deceased's signature, the deceased's handwriting, witness signatures, revocation of previous wills, funeral arrangements, specific bequests and the title of the document: ...
- [37] While imperfect or even non-compliance with formal testamentary requirements may be overcome by application of a sufficiently broad curative provision, the further a document departs from the formal requirements the harder it may be for the court to find it embodies the deceased's testamentary intention: ...

[Citations omitted]

The Notes

- [13] I have examined the original notes. Their text is reproduced in an Appendix to these reasons, with personal information redacted. In the body of these reasons, I will outline their most salient characteristics.

- [14] Only one of the notes is dated. It bears the date, November 23, 2009, and a location, Vancouver, B.C. This note is unsigned. It is headed "Information" and directs that, in the event of death, the only person who has permission to disturb anything in Mr. Bizicki's room is Ms. Chow. It provides Ms. Chow's address and telephone number. I will call this the "Information Note".
- [15] The second note is unsigned and undated. It is headed "Executor". It states that Mr. Bizicki leaves "[his] personal property, clothing, etc." to Ms. Chow. It states that "she may do whatever she wishes with it" and gives Ms. Chow's address and telephone number. It then provides the name and address of Fred and Nancy Leake. Mr. Leake was a childhood friend of Mr. Bizicki, with whom he exchanged Christmas cards. Beside Mr. and Mrs. Leake's address is the word, "Executor?". Below Mr. and Mrs. Leake's name and address are the name and address of Mr. Bizicki's brother, Mike Bizicki. I will call this second note the "Executor Note".
- [16] The third note is signed. It gives a direction "as to my personal estate - (all moneys)". It directs the payment of cremation - cremation is underlined - and other expenses. It states Mr. Bizicki's wish that the money is to be applied to pay off debts, while noting (correctly) that Mr. Bizicki does not carry any debts, and that moneys left over are to be awarded to Ms. Chow. It indicates (correctly) that Mr. Bizicki's bank is the Bank of Nova Scotia. I will call this the "Moneys Note".
- [17] The Information Note is written in blue ink. The Executor Note and Moneys Note are written in black ink.
- [18] All three notes are written on note paper that appears to have come from a pad of 6" by 9" sheets. The Information Note is on a sheet that has been neatly cut short, so that its dimensions are only 6" by 5.1875". It appears that there was something written on the part of the sheet that was cut off, but it is impossible to tell what it was.

Analysis

- [19] The notes are not the work of an individual who was legally knowledgeable. It is important to make sense of them in their own terms by asking, given what we know of Mr. Bizicki, what, if anything, did he mean by them?
- [20] Each of the notes is written in contemplation of death and addresses what will be done with Mr. Bizicki's property when he is dead. The Information Note places the contents of Mr. Bizicki's room in Ms. Chow's custody. It does not address the distribution of Mr. Bizicki's estate. The Executor Note leaves personal property and possessions to Ms. Chow and addresses the appointment of an executor (albeit ambiguously). The Moneys Note states Mr. Bizicki's desire to be cremated, addresses the payment of debts, and states his wish that Ms. Chow receive the moneys left over.

- [21] Ms. Chow submits that, because the notes all address custody or disposition of Mr. Bizicki's property on death, they were probably all made at the same time, that is, on November 23, 2009. This does not follow, because people often change their minds, and sometimes they leave inconsistent directions reflecting different intentions at different times. The change in the colour of the ink suggests that the Information Note was not made at the same time as the others. All in all, I cannot infer that the notes were made at the same time, or determine in what order they were made.
- [22] However, comparing the notes, I do not read them as expressing an inconsistent or changing intention concerning the distribution of Mr. Bizicki's estate. As I have already noted, the Information Note does not address the distribution of his estate. The Executor Note states Mr. Bizicki's intention to leave "my personal property, clothing, etc." to Ms. Chow, adding "she may do whatever she wishes with it". The Moneys Note indicates Mr. Bizicki's wishes for the distribution of money in Mr. Bizicki's bank accounts, which Mr. Bizicki equates to his "personal estate". A lawyer would understand "my personal property" and "my personal estate" as the same thing, but both are technical terms and it appears likely that Mr. Bizicki understood them differently. He did not own very much, just the physical contents of his room and bank accounts. In the Moneys Note, he expressly identifies his "personal estate" as "all moneys" and names his bank. This note concerns the bank accounts. In the Executor Note, Mr. Bizicki addresses his remaining personal property, that is, the property in his room.
- [23] In short, the Moneys Note and Executor Note are consistent because they are best understood as addressing different subjects: on the one hand, the bank accounts, and on the other hand, Mr. Bizicki's personal possessions in his room.
- [24] Tracey Bizicki argues that the Moneys Note states only Mr. Bizicki's "wish", not a testamentary direction. As to the Executor Note, he submits that the statement that Ms. Chow "may do whatever she wishes" with the personal property is inconsistent with a testamentary intention, relying on *Balfour Estate (Re)* (1990), 85 Sask. R. 183 (Q.B.) [*Balfour Estate*]. He adds that ambiguity as to who is intended to be appointed as executor in this note conveys an air of uncertainty and deliberation over the note as a whole.
- [25] More broadly, Tracey Bizicki relies on the analysis of Justice Pearlman in *Lane Estate*, 2015 BCSC 2162. At para. 46, Pearlman J. took the informality of seven handwritten notes written on scrap paper as "suggesting impermanence and informality rather than a fixed and final intention", among other considerations. In written argument, Tracey Bizicki submits that:

The use of note paper indicates an expectation of impermanence and supports the proposition that these notes were incomplete ideas, recorded for the Deceased's own guidance rather than a final intention of how he directed his estate to be handled when he decides to take the time to draft a legally binding document.

- [26] The question at hand is one of the application of an established legal test to the facts of this case, and the application of the test in other circumstances is unlikely to offer much assistance.
- [27] Balfour Estate is unhelpful because it involved a self-drawn will in which the maker gave everything to her daughter but continued, in the same sentence, to say "[w]hatever Brenda Goll my daughter decides is O.K. If anyone else doesn't like it too bad". Justice Gerein interpreted this not as a gift to the daughter, but rather as an appointment, making the daughter the maker's deputy to decide how the estate should be distributed. Accordingly, the gift was not a testamentary disposition. I do not take Mr. Bizicki's statement in the Executor Note that Ms. Chow may do whatever she wishes with his personal property as an equivalent statement. He is not appointing Ms. Chow to decide who will get his personal property. He is giving it to her and noting that she can do what she likes with it.
- [28] In Lane Estate, Pearlman J. carefully weighed considerations on both sides before concluding that the notes in question should not be afforded testamentary status. The maker of the notes in that case already had a properly prepared will. She knew what was involved in making a will. The issue was whether she had amended her will by making notes on scrap paper. That the notes were on scrap paper was one consideration. Justice Pearlman also took into account other considerations, including that the notes were not witnessed, as the will had been, that there was no express revocation of the will, that none of the notes had a title, and that some of them were in the form of personal notes addressed to the maker's son.
- [29] In contrast, there is no evidence that Mr. Bizicki ever made a will executed in accordance with the formal requirements of s. 37 of the WESA. It is likely that he only had a hazy idea of what that might entail. In the notes, he made some attempt at formal language embodied in words and phrases such as, "as to my personal estate", "executor", and "I leave my personal property". He made the notes on note paper, not scrap paper. In these circumstances, I do not take the use of note paper as "suggestive of impermanence".
- [30] While I find the arguments based on Balfour Estate and Lane Estate unpersuasive in the circumstances of this case, Tracey Bizicki does not bear the onus of proof. It is Ms. Chow who must establish, on a balance of probabilities, that the notes should be accepted as testamentary documents.
- [31] Turning first to the Moneys Note, the question is whether Mr. Bizicki intended it to express his deliberate or fixed and final intention that the money left over in his bank accounts, after payment of funeral expenses and debts, was to go to Ms. Chow.
- [32] Put another way, did Mr. Bizicki intend the Moneys Note to determine the disposition of these funds? I think it is more likely than not that he did. It is true that he framed his intention as his "wish" but, reading the Moneys Note as a whole, the wish is not simply a hope or aspiration. Mr. Bizicki outlines a sensible procedure for the use of the funds: first, to be applied to the payment of funeral and other expenses; second, to the payment of debts, if any; and only then to Ms. Chow. The language of the gift to Ms. Chow is that the moneys left

over are to be "awarded" to her. This is not precatory or aspirational language. Mr. Bizicki signed this note, and it is likely that he did so because he intended that it be seen by someone after his death and given effect.

- [33] Turning next to the Executor Note, while this note is not signed, the language of bequest is firm. What is uncertain is the appointment of an executor. This note is headed "Executor", lists four people, and has "Executor?" next to the names of Mr. and Mrs. Leake. I do not think this note expresses a clear testamentary intention appointing any of the named persons as Mr. Bizicki's executor. But, read in the context of all the circumstances to which I have referred, I do think this note was intended by Mr. Bizicki to express his deliberate or fixed and final intention that his personal property would be left to Ms. Chow.
- [34] In my view, the Information Note does not state a testamentary intent. It does not address the distribution of Mr. Bizicki's property on his death. It is arguable that giving custody of the contents of his room to Ms. Chow on his death demonstrates an intention to assign her some of the rights and responsibilities of an executor, but it is not clear that Mr. Bizicki intended by this note that Ms. Chow would liquidate assets and distribute property as well, and these are fundamental responsibilities of an executor. On balance, I do not think this note can be given legal effect.
- [35] To summarize, I find that the Moneys Note expresses Mr. Bizicki's deliberate or fixed and final intention as to the disposition of the remaining money in his bank accounts, following payment of funeral expenses and debts. The Executor Note expresses Mr. Bizicki's deliberate or fixed and final intention as to the disposition of his remaining personal possessions. Both notes should be given testamentary effect, although the Executor Note does not effect the appointment of an executor of Mr. Bizicki's estate.

Costs

- [36] Counsel for both parties who appeared at the hearing seek special costs payable by the estate. In *Lee v. Lee Estate* (1993), 84 B.C.L.R. (2d) 341, Master Horn discussed costs orders in probate or administration actions such as this. At para. 13 he stated:

13 In such 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. This is the reasoning which underlies such cases as *Re Dingwall* (1967) 65 D.L.R. (2d) 43 (Ont. H.C.); and *McNamara v. Hyde*, [1943] 2 W.W.R. 344 (B.C.C.A.); and *Re Lotzkar Estate* (1965), 51 W.W.R. 99 (B.C.C.A.). The question to be asked in such case is whether the parties were forced into litigation by the conduct of the testator or the conduct of the main beneficiaries.

- [37] The Court of Appeal quoted Master Horn's reasoning with approval in *Vielbig v. Waterland Estate* (1995), 1 B.C.L.R. (3d) 76 at paras. 41-44.
- [38] In my view, this is a case in which the parties were forced into litigation by the conduct of the deceased. It was reasonable for Ms. Chow to apply to the Court to address the validity of the notes, and it was reasonable for Tracey Bizicki to present the case in opposition to Ms. Chow's application and obtain a ruling. All parties' costs should be paid from the estate as special costs: *Mawdsley v. Meshen*, 2011 BCSC 923 at paras. 35-40.

Disposition

- [39] For these reasons, I declare that the Executor Note and the Moneys Note represent Mr. Bizicki's testamentary intentions. Pursuant to s. 58(3) of the WESA, I order that these notes are fully effective as though they had been made as Mr. Bizicki's will and may be admitted to probate on application. I declare that, on its proper interpretation, neither note appoints an executor of Mr. Bizicki's estate. Ms. Chow and Tracey Bizicki are entitled to special costs payable from the estate.

"Gomery J."

The Honourable Mr. Justice Gomery

Appendix

Information Note

Vancouver, B.C.

Nov. 23/09

Information

In the event of death, nothing to be disturbed in this room #24 by anyone, but whom I give permission to, and that is to the following:

Yuet Ngor Chow (Eva)

[address and phone number].

Eva knows about this

Executor Note

Executor

I leave my personal property, clothing, etc. to

Yuet Ngor Eva Chow; she may do whatever she wishes with it.

Yuet Ngor Chow (Eva)

[address and phone number].

Fred and Nancy A. Leake

[address] Executor?

Mike Bizicki

[Address]

Moneys Note

- As to my personal estate - (all moneys) I wish this done
- (1) Pay off cremation and other expenses
- (2) Debts (which I do not carry)
- (3) I do not own any property
- (4) Total moneys left over, I wish to be awarded to Yuet Ngor Chow (Eva)

Bank = Nova Scotia"

[signed] "Alex Bizicki"

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/19/21/2019BCSC2142.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/bizicki-estate-2019>

Prepared on 28 October 2026 · Esheria