

CANADA / JUDGMENT

Briggs Estate

2020 BCSC 2115

COURT

Supreme Court of British Columbia

DECIDED

14 May 2020

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2020 BCSC 2115 Briggs Estate IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Briggs Estate, 2020 BCSC 2115 Date: 20200514 Docket: P50996 Registry: Vernon Re: The Estate of Percy Charles Sydney Briggs also known as Percy S. Briggs also known as Percy Briggs, Deceased Before: The Honourable Mr. Justice Betton Oral Reasons for Judgment Counsel for the Applicants Tracy Leah Briggs, Lisa Gayle Briggs and Barry Warren Briggs: R.J. Enns Counsel for the Respondent Executrix Vanessa Hoggarth: R.P. Barton Appearing on behalf of the Respondent Executrix Glenna Hoggarth, now deceased: G.W. White Place and Date of Trial/Hearing: Kelowna, B.C. May 5, 2020 Place and Date of Judgment: Kelowna, B.C. May 14, 2020

- [1] THE COURT: This decision addresses costs, following my decision on the substantive application from March 10, 2020.
- [2] The applicants are siblings and beneficiaries under their late father's will. The respondent, Glenna Hoggarth, now deceased, was the fourth child of the deceased and was a named executrix under her father's will. She did not attain probate and ultimately her daughter, the respondent, Vanessa Hoggarth, became the executrix.
- [3] The applicants sought various remedies in their application. I described them in my decision of March 10, 2020, in paras. 14 to 21. I will not read all of those now, but note that three remedies sought had been resolved by the date of hearing. As noted in my decision then, one of those was the application seeking an order that Vanessa Hoggarth pass the accounts of the estate. I noted then that that issue had been resolved by consensus and an application had been scheduled, but was subsequently adjourned as a result of the then outstanding application not having been concluded. There was also a request for disclosure of tax returns and I was informed by the time of hearing that the tax returns had been filed and disclosed. Finally, in terms of matters that had been sorted before the application proceeded, there was an application that the solicitors for the estate bill the estate up to a date and I had been informed that that had, in fact, occurred prior to the conclusion of the application. A further claim that had been advanced was for special costs, which obviously will be addressed in these reasons.

- [4] That left four contested substantive applications and each of those was ultimately dismissed through my reasons. Two of the applications related to claims that Glenna Hoggarth repay the estate sums of money. The first related to an expenditure for a headstone after the deceased passed and before Vanessa Hoggarth became the executrix. The second sum of money had been withdrawn from the deceased's account prior to his death. Again, I will reference my decision on the application at paras. 24 and 25:
- [24] I will deal first with the issues related directly to Glenna Hoggarth. The \$4,000 that was withdrawn from Percy's account by Glenna prior to his death was, according to Glenna Hoggarth, on the specific instructions of Percy and therefore not an exercise of the power of attorney. The applicants say that Percy was not competent at that time. As indicated, I cannot, and in my view I need not, resolve that issue on the evidence before me. What is critical is that that occurred at a time prior to Percy's death.
- [25] The applicants' efforts to cast the issue as something connected with Glenna Hoggarth's duties to the estate as a personal representative of the estate prior to Vanessa becoming the executor are, in my view, without merit. I agree with Mr. White that if the issue is to be pursued it is for the estate to do so either by Vanessa Hoggarth, or alternatively by the applicants employing the process under s. 151 of the Wills, Estates and Succession Act. The applicants have no standing to seek this relief. This part of the application is dismissed.
- [5] Another claim sought to fix Vanessa Hoggarth's remuneration at zero percent. The last was to cap the estate solicitors' fees.
- [6] As I noted, each of those claims for remedies were dismissed.
- [7] Addressing costs in the context of an administration of an estate invokes some unique considerations.
- [8] Rule 25-13(7) provides that in an application for an order for passing of accounts or for fixing of an executrix's remuneration, costs shall be special costs unless the court otherwise orders.
- [9] In *Deutschmann Estate v. Fallis*, 2011 BCSC 1009, a distinction was drawn between applications that could be described as being necessary for advice and/or the interpretation regarding administration and adversarial applications. In the former, the costs of all parties are typically paid from the estate; in the latter, traditional rules with respect to the unsuccessful party paying the costs to the successful party are typically applied.
- [10] The scale of costs to be paid in the adversarial context must also be determined. *Deutschmann* references other authorities and notes that generally executors are entitled to full indemnity for their legal costs, provided the executor has not proceeded unnecessarily or with wasteful litigation.

- [11] The positions of the parties vary significantly as to costs. The applicants say that the filing of their application had the effect of advancing the issues by getting a registrar's hearing scheduled and obtaining disclosure of information. They argue that Vanessa Hoggarth should not be entitled to her costs from the estate. They acknowledge that Glenna Hoggarth or her estate should receive her costs as special costs from the estate, but without any apportioning. They argue they should not be required to pay any costs personally and that they should be awarded special costs against Vanessa Hoggarth.
- [12] Glenna Hoggarth's estate says that both that estate and Vanessa Hoggarth are entitled to special costs from the estate. Mr. White argues that the applicants should pay costs on Scale B. He says that either the applicants should pay the special costs or reimburse one-quarter of the Scale B costs of Vanessa Hoggarth and Glenna Hoggarth personally to avoid unfairness to Glenna Hoggarth's estate, who is also a one-quarter beneficiary of her father's estate.
- [13] Mr. White, for Ms. Hoggarth's estate, also argues that the application was an abuse of process which, despite any other application of the Rules or authorities dealing with estate litigation, warrants special costs orders to be borne by the applicants.
- [14] Vanessa Hoggarth's position does not vary significantly from that advanced by Mr. White for Glenna Hoggarth. She takes no specific position in respect of Glenna Hoggarth's estate recovery from the applicants.
- [15] In my view, costs must be assessed based on the application that proceeded before me. The applicants say that the filing of the application prompted certain actions, which was reflected in the aspects of the claim that were not contested in the hearing. Had the applicants abandoned pursuit of the contested portions of their application, various scenarios may have unfolded as to costs. In the absence of any agreements as to costs, the issue could have been resolved by order or the registrar. That is not, however, what occurred and I must base my order as to costs on the outcome of the application as it proceeded. The fact that some issues raised have been left for the registrar's hearing does not assist the applicants in the costs issues here. That process was always available.
- [16] The hearing was not a picture of efficiency, but I do not intend to analyze the minutiae of that process. Costs orders are appropriately outcome-driven and I will not engage in a microscopic review of each step of the application and try to modify the traditional approach to awarding costs on the basis of how we got to those results.
- [17] Based on my decisions on the application, costs should achieve the following:
- a) Vanessa Hoggarth should be fully reimbursed for all costs incurred by her in the application; that is, she should receive her special costs.
 - b) The share of the estate to be obtained by Glenna Hoggarth's estate should not be diminished by any costs recovered by Vanessa Hoggarth.

- c) Finally, an objective of my order as to costs is that Glenna Hoggarth is entitled to her costs at Scale B from the applicants.
- [18] The applicants did not succeed on any of the issues that remained contested during the hearing. Those issues were adversarial in nature. I note that only one of the two issues pursued against Glenna Hoggarth were connected to her function as the administrator of the estate, but I cannot differentiate how the costs on the hearing were apportioned between those two issues and I do not intend to dissect or make different orders with respect to the different issues as it relates to Glenna Hoggarth.
- [19] The model proposed by Mr. White in his written argument at page 3, paras. 3 and 4, seems to generally accord with and achieve the results that I say should flow from the results of the hearing. I will hear from counsel if they have specific comments as to how to accomplish that or what the options may be, but my intention is to award Vanessa Hoggarth her special costs from the applicants' share of the estate and that the applicants pay Glenna Hoggarth's costs at Scale B. Whether those costs are paid from the estate, specifically the applicants' share of the estate, or whether they are paid personally, I will hear from the parties.
- [20] First of all, are there any questions or lack of clarity in terms of my conclusions as to costs?
- [21] MR. WHITE: My Lord, it is Mr. White here. The only question I would ask is my understanding was that we were also requesting and I believe the respondents agreed that Glenna Hoggarth, if all she received was special costs, she would be significantly out of pocket for other costs incurred. My understanding was that she would receive special costs payable by the estate. Now, having done that, that would not diminish her, but she would still be paying a quarter of those special costs. So the idea was that, of her quarter special costs, what she would recoup or the estate would recoup from the applicants would be at Scale B.
- [22] THE COURT: Sorry, and that is what my intention was. I may have not stated that very clearly.
- [23] MR. WHITE: So the only thing that we would -- is Glenna would first get her special costs from the estate and then the estate would make an adjustment or get Scale B costs from the applicants.
- [24] THE COURT: Yes.
- [25] MR. WHITE: Thank you, My Lord.
- [26] MR. BARTON: And Vanessa's special costs, she is to indemnified from the estate and the applicants are to pay special costs as to the -- to indemnify the estate for those special costs?
- [27] THE COURT: Well, the objective is that Glenna Hoggarth not be contributing to the costs order that Vanessa Hoggarth would be recovering.

- [28] MR. BARTON: Right, so it is Vanessa's legal costs, effectively, be paid by the three applicants and then the issue is whether it is to be paid, as I understand My Lord's question, it is whether those costs are to be paid now or later on from the estate?
- [29] THE COURT: And I would certainly be content unless there is some issue with them simply being paid from the estate.
- [30] MR. BARTON: I think that is probably fine.
- [31] THE COURT: All right. Anything further, then?
- [32] MR. ENNS: My Lord, it is Mr. Enns. The Scale B costs you mentioned from the estate, I may have missed that distinction.
- [33] THE COURT: Well, no, as I say, the model that was set out -- sorry, I am just looking. Mr. White, I thought I had, but I do not -- I made a reference to it, but I am not having at my fingertips your argument that I --
- [34] MR. WHITE: Yes, so, My Lord, my understanding is Glenna Hoggarth will get her special costs from the estate, but if we left it at that, she would still end up paying a quarter of the special costs from her own share, and so what we had proposed -- we could have proposed that the applicants pay that full quarter, as well, of her special costs, but what we proposed is that that quarter would be paid by them as Scale B --
- [35] THE COURT: That is right.
- [36] MR. WHITE: -- and just that quarter.
- [37] THE COURT: Yes.
- [38] MR. WHITE: So what we will do is we will determine what the Scale B costs would have been and that quarter is what would be reimbursed by them back to Glenna Hoggarth. So she will bear some of her costs --
- [39] THE COURT: Yes.
- [40] MR. WHITE: -- but just a small proportion.
- [41] THE COURT: That is right.
- [42] MR. ENNS: All right. I understand. Thank you, My Lord.
- [43] THE COURT: All right, anything else?
- [44] MR. BARTON: No, it is just the final order, My Lord, I do not think an order has been entered yet with respect to the earlier part of your decision. So, when the final order is drafted, circulated, and signed by counsel and then returned to you for signing, it should contain the costs portion together with the earlier part of your order in one order?

[45] THE COURT: I think if the order on the substantive issues has not yet been entered, then there is no reason not to incorporate it all into a single order.

[46] MR. BARTON: Right.

[47] THE COURT: It should reflect that the decisions were delivered on different dates.

[48] MR. BARTON: Yes. "D.A. Betton J."

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