

CANADA / JUDGMENT

Cameron (Re)

2020 BCSC 580

COURT

Supreme Court of British Columbia

DECIDED

16 April 2020

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2020 BCSC 580 Cameron (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Cameron (Re), 2020 BCSC 580 Date: 20200416 Docket: S189228 Registry: Vancouver In the Matter of Margaret Lillian Cameron and In the Matter of the Patients Property Act, R.S.B.C. 1996, c. 349, and amendments thereto Before: The Honourable Mr. Justice Grauer Reasons for Judgment on Costs Counsel for the Petitioner: Kenneth B. Friesen Counsel for the Respondent Leigh-Anne Cameron: Mikhael Magaril Place and Date of Written Submissions: Vancouver, B.C. March 31, 2020 April 3, 2020 Place and Date of Judgment: Vancouver, B.C. April 16, 2020

- [1] On February 10, 2020, I rendered reasons for judgment in this matter, indexed at 2020 BCSC 157. I now deal with the issue of costs.
- [2] The petitioner, Alison Primerano, applied for a declaration under section 3 of the Patients Property Act, RSBC 1996, c 349 [PPA], that her mother, Margaret Cameron, is incapable of managing herself and her affairs because of mental infirmity arising from disease, age or otherwise. Ms. Primerano further applied under section 6 of the PPA for an order appointing her committee of Mrs. Cameron's person and estate, or alternatively, appointing an independent party as committee of Mrs. Cameron's estate.
- [3] The respondent, Leigh-Anne Cameron, Mrs. Cameron's elder daughter, opposed that application, and applied for an order transferring the issues of capacity and committeehip to the trial list. Alternatively, if I declared Mrs. Cameron to be a patient, Leigh-Anne Cameron sought an order appointing her as committee.
- [4] In my earlier judgment, I found on the basis of the evidence filed that I was satisfied that Mrs. Cameron is incapable of managing herself or her affairs within the meaning of the PPA. The evidence, in short, met the requirements of section 3(1), and I made the declaration sought.
- [5] On the question of committeehip, however, I found that triable issues arose. While I was satisfied that Mrs. Cameron's living arrangements with Leigh-Anne in Mexico were appropriate, other issues arose which made the question of committeehip unsuitable for determination by petition in accordance with the law as discussed in *British Columbia (Milk Marketing Board) v Saputo Products Canada GP/Saputo Produits Laitiers Canada SENC*, 2017

BCCA 247. Accordingly, I directed that the matter of who should be appointed Mrs. Cameron's committee be converted into an action and remitted to the trial list.

- [6] In the meantime, I ordered that the Public Guardian and Trustee ("PGT") act as committee by operation of section 6(3) of the PPA, pending further court order.
- [7] I then directed that the costs of the parties should be borne by the estate of Mrs. Cameron. The parties were understandably unclear about what this meant. They appeared before Registrar Nielsen to settle my order, and the Registrar referred the matter back to me to clarify whether I meant special costs, or ordinary costs.
- [8] I advised the parties that my intention, regrettably imperfectly expressed, was to award both parties their special costs. Leigh-Anne Cameron, nevertheless sought to make further submissions, which I have now considered, along with a response from the petitioner. I received no submissions from Mrs. Cameron or from the PGT.
- [9] Leigh-Anne Cameron submits that I should leave the matter of costs to the trial judge, relying on obiter dicta from the decision of the Court of Appeal in *Vieira (Re)*, 2013 BCCA 420 at paras 17-20 and 22. She contends that such an order would be appropriate for three reasons. The first is that the motivations of the petitioner have not yet been tested through discovery and other pretrial and trial procedures, in circumstances where Leigh-Anne suggests the petitioner was not acting in good faith. The second is based upon the proposition that concerns raised by the petitioner about Leigh-Anne acting as committee are bound to fail. The third is that a deferral of a costs award would have the practical impact of avoiding giving the sisters the near certainty of a blank cheque to continue quarreling.
- [10] *Vieira* confirms that in circumstances such as this, the judge's discretion concerning costs is very broad, in accordance with section 27 of the PPA. I am not persuaded that the order I intended to make before should be changed. As I stated at para 6 in my earlier reasons for judgment, notwithstanding that there was deep distrust between the sisters, and each sought to impugn the motives of the other: I am satisfied that each firmly believes, in good faith, that their respective positions are in their mother's best interests as they perceive them. Their conflict has clearly been significantly exacerbated by the heavy weight of having to deal with an ailing parent.
- [11] In the end, the petitioner was right about her mother's lack of capacity, and the need for a committee to be appointed. Each sister had some valid concerns about the other, and Leigh-Anne successfully applied for an order putting that issue over to trial. Both were acting in good faith, though their approach was regrettably adversarial. The matter needed to be dealt with in Mrs. Cameron's best interests, and in my view, it is appropriate that both sisters be fully compensated for the proceedings to date. Accordingly, I award each party her special costs payable from Mrs. Cameron's estate.

[12] That should not, however, be viewed as a blank cheque for the future. The parties now have my findings to assist them. The temporary committee of the PGT should assist in resolving financial questions and concerns. In short, the parties ought to be able to come to an agreement. If they cannot, then significantly greater costs will be incurred, and the trial judge will have the discretion to deal with the costs of all further proceedings as he or she sees fit. "GRAUER, J."

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Prepared on 25 October 2026 · Esheria