

CANADA / JUDGMENT

Cameron (Re)

2023 BCSC 1849

COURT

Supreme Court of British Columbia

DECIDED

10 January 2023

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2023 BCSC 1849 Cameron (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cameron (Re),

2023 BCSC 1849

Date: 20230110

Docket: S189228

Registry: Vancouver

In the Matter of Margaret Lilian Cameron

and In the Matter of the Patients Property Act,

R.S.B.C. 1996, c. 349, and amendments thereto

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

In Chambers

The Petitioner, appearing in person:

A. Primerano

Counsel for the Respondent Leigh-Anne Cameron:

D. Magnus

Counsel for the Respondent Public Guardian and Trustee of British Columbia:

K. Unrau

Place and Date of Hearing:

Vancouver, B.C.

January 10, 2023

Place and Date of Judgment:

Vancouver, B.C.

January 10, 2023

- [1] THE COURT: This is an application being brought by Leigh-Anne Cameron, who is the committee of the patient Margaret Cameron. She seeks a declaration to vary some restrictions and conditions that have been placed on her being committee of the patient. She became committee pursuant to an order made in June 2022 after a partial trial before Justice Caldwell.
- [2] Specifically, the applicant seeks an increase to the amount of money that she is entitled to withdraw on a month-per-month basis or a trimonthly basis. She also seeks an order that would allow for the establishment what she calls an "emergency fund" of \$50,000 to be used only if emergency care is needed for the patient.
- [3] The Public Guardian and Trustee oppose the orders sought, as does Alison Primerano.

BACKGROUND

- [4] The patient is the mother of both the applicant and Ms. Primerano. There has been, from what I can tell, substantial litigation on this file regarding the care of the patient. I do not need to go through the details of that, except to say that litigation accumulated in a hybrid trial before Justice Caldwell.
- [5] I am told that on day three of that trial, the parties came to an agreement and put that agreement before the court. The court pronounced an order representing, as far as I understand, the agreement reached by the parties.
- [6] There was some dispute amongst the parties before me as to whether that was a consent order, or a final order made after trial. At the end of the day, that may not be material to the decision that I am going to make. However, if it is necessary to comment, I agree with the Public Guardian and Trustee that this was not a consent order because the parties cannot consent to a committeeship.
- [7] The court has an independent duty under the applicable legislation (Patients Property Act, R.S.B.C. 1996, c. 349) to make enquiries about appointing a committee. While guided by statute, the court's duty flows originally from its parens patriae jurisdiction; Therefore, it is not proper to call it a consent order.

- [8] I am satisfied based on the submissions of counsel as well as seeing the transcript that quite appropriately, Justice Caldwell took seriously that duty and made inquiries. He made the order after being satisfied that the conditions to grant a committee had been met.
- [9] My understanding is that just past 30 days after entry of the order, the applicant filed a notice of appeal. No further action has been taken on that. Her counsel says that was filed to preserve the right to do so. In the alternative, they brought this application seeking to vary certain terms that were pronounced this past June.
- [10] In terms of the test, there seems to be agreement that under the legislation, the court has the jurisdiction to vary the terms of an order granting a committee. In *Davenport v. Forliti*, 2019 BCSC 676, the court had opportunity to address what was identified at that time as a legislative gap (paras. 38-39). The court determined that the test for whether it is appropriate to vary an order that had been entered regarding a committee was whether there had been a material change in circumstances: paras. 41-48, 54. I also note the wording of s. 28 of the legislation.
- [11] I am not satisfied that the test of material change has been met here, and I dismiss the application.
- [12] One important reason for dismissing the application is that, given the material before me, I am not satisfied that the applicant's argument that there have been changes justifying a variance to the order are, in fact, material changes. She refers to circumstances that were either known or ought to have been known to her at the time.
- [13] Also, I am particularly concerned by the affidavit from the Public Guardian and Trustee that shows a history of the applicant's having difficulties meeting budgets that were preset.
- [14] Of particular concern is a statement in that affidavit that suggested that the applicant had continually and persistently sought increases to the budget. When you are appointed a committee of someone, it is your responsibility to look after that person, put their best interests first, and to do so within the means that are available, whether through their estate or you. If the applicant has expenses and continues to have expenses that exceed the budget that she agreed to last year, then she needs to change her living circumstances, failing which, she has to justify with better evidence why a change to the budget is needed.
- [15] The concern in these kinds of cases is the expenditure of money from an estate for a person needing care and the need for careful oversight. The parties came to a comprehensive agreement reflected in the order. As the Public Guardian and Trustee stated, the order was a compromise of the differing positions. In other words, presumably one daughter was concerned by the expenses and wanted the budget to be less while the other daughter perhaps wanted the budget to be higher. I do not know that for a fact, but it is likely that is what happened. In any event, they came to an agreement of what the budget should be. They were represented by counsel.

- [16] Importantly, the court specifically enquired whether that rate of spending and drawing of the capital would last the lifetime of the patient. Justice Caldwell very specifically raised that concern. Both counsel must have assured the judge the agreement took that concern into account because no changes were made to the budget after that enquiry.
- [17] In those circumstances, I am not satisfied that there is evidence in front of me establishing a material change to justify a variance of the order. To be clear, that is because the issue of whether the committee can meet the monthly budget was an issue raised before.
- [18] However, I also point out that the order itself has mechanisms within it if there are legitimate expenses that go beyond the budget. Those mechanism should be pursued before one would contemplate applying to change the order.
- [19] The order is actually quite comprehensive and pragmatic. It addressed the issue arising here, which is what if there is an expense that is extraordinary. There is a mechanism to deal with that. Accounts are to be passed yearly before the registrar. Also, a request can be made to the Public Guardian and Trustee if there is an extraordinary expense. Most committees do not have those mechanisms, as I understand it. The applicant has not exercised those mechanisms.
- [20] I understand the applicant is concerned about the mechanisms that involves a "decider". She submits there have been difficulties with that. I appreciate there is a relationship between what the decider is doing and the source of the funds, and I accept there may be difficulties. However, if that is the case, the applicant has other means under the order to deal with that in a different way. Those types of difficulties do not justify altering an order entered into six months ago. It is notable that the court made the order after hearing some testimony and having the parties come to an agreement setting out what, by most accounts, is a fairly generous budget for looking after their mother.
- [21] I say again, if the budget is a problem and has continued to be a problem, then it is the committee's responsibility to make adjustments, and then satisfy the Public Guardian and Trustee, who is neutral, that additional expenses are required. Or, the applicant needs to satisfy the registrar, who is also neutral, that expenses made in the past were justified.
- [22] The applicant submitted her concern about wanting to get ahead of having to spend the money before the review next June. However, she was appointed committee. She had a good knowledge of what the expenses should be. Her concern is a possibility, and it is a risk that she obviously took on, with the advice of counsel. I am not satisfied her concern amounts to a reason to interfere with a recently entered order.
- [23] For all those reasons, I dismiss the application.

(DISCUSSION)

[24] THE COURT: Counsel for the applicant was concerned and sought a clarification to the judgment. He believes he did not have opportunity to address the issue about whether it was a consent order, with specific regard to the decider. If I did not make it clear, I will do so now. My intention and my finding is that the entire order is a court order, not a consent order. I say that because the court has a responsibility and a duty to determine what is best for the patient when appointing a committee, as well as what conditions are attached to it. If I am wrong about that, I trust someone will tell me.

(SUBMISSIONS ON COSTS)

[25] THE COURT: The parties addressed costs. Counsel for the Public Guardian and Trustee, as well as Ms. Primerano, seek costs of this matter from the applicant. The applicant submits costs should be paid for in the normal course as it is in committee matters on a solicitor/client basis from the estate.

[26] I have decided to exercise my discretion and award costs to the Public Guardian and Trustee and to Ms. Primerano. They are not to be paid out from the estate.

[27] As I said in my judgment, I am concerned by the history set out in the affidavit. The applicant had other routes to address the matters raised in this application. Specifically, there were other routes available for the applicant to seek increases or payment of expenses. Those routes were ones she specifically agreed to. In my view, this application ought not to have been brought forward, so the other two parties are entitled to their costs which should not come at the detriment of the patient's estate.

"Sharma J."

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Prepared on 29 October 2026 · Esheria