

CANADA / JUDGMENT

Christink v. Black

2025 BCSC 2428

COURT

Supreme Court of British Columbia

DECIDED

9 December 2025

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2025 BCSC 2428 Christink v. Black IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Christink v. Black, 2025 BCSC 2428 Date: 20251209 Docket: S-231295 Registry: Victoria Between: Daintry Elizabeth Christink, Fraser Stuart Black, Geoffrey Alan Black and Wendy Christine Black-Mayer Plaintiffs And: Diana Frances Black Defendant

- and - Docket: S-245054 Registry: Victoria Between: Daintry Elizabeth Christink, Fraser Stuart Black, Geoffrey Alan Black and Wendy Christine Black-Mayer Plaintiffs And: Diana Frances Black personally and in her capacity as co-executor of the Estate of James Thompson Black, Ann Hillyer personally and in her capacity as co-executor of the Estate of James Thompson Black, Heather Diane Fisher in her capacity as co-executor of the Estate of James Thompson Black, Lester B. Pearson College of the Pacific and United World Colleges (Canada) Int. - College du Pacifique Lester B. Pearson et Colleges du Monde Uni (Canada) Inc., First Unitarian Church of Victoria Foundation, Mary Moira McClure Munro, Melanie Black, Rachel Goldsby, Sarah Osborne, Andrew Pittaway, Richard Pittaway, Jeanette Rosemary Lander, Denise Anne Pittaway, Robert Massey, Marion Massey, Nyssa Daniels Black Hayhoe, Kristen Elizabeth Thompson, Heather Black, James Andrew Shaver, Kimberly Alison Shaver, Ian Lancaster Shaver, Heidi Mayer, Michaela Mayer, Tanya Arongo, Craig Massey, Arran Massey and Paulette Creegan Defendants
- and - Docket: S-241578 Registry: Vancouver Between: Diana Frances Black Plaintiff And: Daintry Elizabeth Christink, Fraser Stuart Black, Geoffrey Allan Black, Wendy Christine Black-Mayer, The Lester B. Pearson College of the Pacific, The First Unitarian Church Foundation, Ann Hillyer, Mary Moira McClure Munro, Melanie Black, Rachel Goldsby, Sarah Osborne, Andrew Pittaway, Richard Pittaway, Jeanette Rosemary Lander, Denise Anne Pittaway, Robert Massey, Marion Massey, Nyssa Daniels Black Hayhoe, Kristen Elizabeth Thompson, Heather Black, James Andrew Shaver, Kimberly Alison Shaver, Ian Lancaster Shaver, Heidi Mayer, Michaela Mayer, Tanya Arongo, Craig Masey, Arran Massey, Paulette Creegan, and Heather Diane Fisher and Ann Hillyer in their capacity as co-executors of the Will and co-trustees of the Estate of James Thompson Black, Deceased Defendants Before: Associate Judge Harper Reasons for Judgment Counsel for Daintry Elizabeth Christink, Fraser Stuart Black, Geoffrey Alan Black and Wendy Christine Black-Mayer: J.A.S. Legh Counsel for Diana Frances Black: K.A. Kuntz Counsel for Andrew Pittaway, Richard Pittaway,

Jeanette Rosemary Lander, Denise Anne Pittaway, Rachel Goldsby, Sarah Osborne, Craig Masey, Arran Massey, Robert Massey, Marion Massey, Paulette Creegan: A. Girou Melanie Black: No appearance Counsel for Heather Diane Fisher and Ann Hillyer in their capacities as co-executors of the Will and co-trustees of the Estate of James Thompson Black, Deceased: No appearance Place and Date of Hearing: Victoria, B.C. October 23, 2025 Place and Date of Judgment: Victoria, B.C. December 9, 2025 Table of Contents Introduction.. 5 The Life Insurance Action.. 5 The Children's Wills Variation Action.. 5 Diana's Wills Variation Action.. 6 The Applications. 6 Discussion.. 7 Venue for Trial. 10 Summary of Orders. 11 Costs. 12

Introduction

- [1] James Thompson Black ("James" or the "Deceased") died on October 16, 2022 at Victoria, British Columbia, leaving a will made July 21, 2015 (the "Will"). I will refer to the family member parties by their first names, meaning no disrespect.
- [2] James had four surviving children from his first marriage: Daintry, Fraser, Geoffrey and Wendy (collectively, the "Children").
- [3] The Will names many beneficiaries, including the Children and relatives by marriage, but excludes as a beneficiary James's second wife Diana.
- [4] The gross value of the estate (the "Estate") is approximately \$2,560,000. A grant of probate was issued in September, 2023.
- [5] James took out a \$500,000 life insurance policy with Sun Life Insurance in October 1995 naming the Children and Diana as beneficiaries. James changed the beneficiary designation in January, 2016 naming Diana as the sole beneficiary.
- [6] James's death has resulted in three legal proceedings. The Life Insurance Action
- [7] The Children commenced an action in the Victoria Registry under number S-231295 on April 11, 2023 (the "Life Insurance Action") in which they seek to set aside the beneficiary change. They assert that at the time he made the beneficiary change, James did not have mental capacity to make the beneficiary change, and that he was under the undue influence of Diana. The Children's Wills Variation Action
- [8] The Children commenced an action in the Victoria Registry under number S-245054 on February 14, 2024 (the "Children's Action") in which they seek to vary the Will. They do not seek to challenge the validity of the Will. Rather, they seek to vary the Will under s. 60 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 ("WESA") asserting that James failed to make adequate provision for their proper maintenance and support.
- [9] In the notice of civil claim filed in the Children's Action, the Children attack transactions that James made during his lifetime that put assets into Diana's sole name or into joint names with Diana such that she would take sole ownership of the jointly-owned assets upon

James's death by right of survivorship (the "Other Assets"). The Children say that James lacked mental capacity to make those transfers. The Children seek orders returning the Other Assets into the estate. Diana says that the reason she was not named in the Will was because James took care of his obligations to her by means of the Sun Life Policy and by transferring assets into joint names. Diana's Wills Variation Action

- [10] Diana commenced her own wills variation action in the Vancouver Registry under no. S-241578 on March 7, 2024 ("Diana's Action") to address the consequences of the Children's Action and the Life Insurance Action. If the Children are successful in either action, Diana will seek a variation of the will because otherwise she will be disinherited and receive a reduced share of the life insurance proceeds, both of which are outcomes that would be inconsistent with her right to proper maintenance and support. The Applications
- [11] There are four inter-related applications for determination. They all centre around the question of whether two or more of the actions should be heard at the same time and where the trial should be held (Vancouver or Victoria).
- [12] Diana and the Children agree, as do I, that the Children's Action and Diana's Action (collectively, the "Wills Variation Actions") should be tried at the same time. Diana and the Children disagree as to the venue of the trial. The Children say the trial should be in Victoria, and Diana says that the trial should be in Vancouver.
- [13] The Children seek an order that the Children's Action and the Life Insurance Action be tried at the same time in Victoria.
- [14] Diana disagrees that the Life Insurance Action should be tried at the same time as the Wills Variation Actions. Discussion
- [15] The court may order that two or more proceedings be tried at the same time pursuant to Rule 22-5(8) of the Supreme Court Civil Rules ["SCCR"].
- [16] The Life Insurance Action is ready for trial in that Diana has filed a notice of application seeking a summary trial dismissing the action. The summary trial has been previously scheduled, but adjourned twice, first, due to counsel for the Children seeking more time to prepare and, second, due to lack of availability of a judge. The summary trial is ready to proceed.
- [17] The Children say that there are overlapping issues in the Life Insurance Action and the Children's Action regarding James's capacity and the undue influence of Diana. However, it is important to remember that the Children's Action does not seek to impugn the will. Rather, the allegations of lack of capacity and undue influence are related to the inter vivos transfers. The executors correctly point out that the Children have no standing to raise these issues: they must make an application pursuant to s. 151 of WESA.

- [18] Section 151 of WESA provides: 151(0.1) In this section, "specified person" means a beneficiary, an intestate successor or a person who may commence a proceeding claiming the benefit of Division 6 [Variation of Wills] of Part 4 [Wills].
- (1) Despite section 136 [effect of representation grant], a specified person may, with leave of the court, commence proceedings in the name of the specified person and on behalf of the estate of the deceased person
 - (a) to recover property or to enforce a right, duty or obligation owed to the deceased person that could be recovered or enforced by the personal representative, or
 - (b) to obtain damages for breach of a right, duty or obligation owed to the deceased person.(1.1) A specified person may apply for leave of the court under subsection (1) in the proceedings described in that subsection.
 - (2) Despite section 136, a specified person may, with leave of the court, defend in the name of the specified person and on behalf of the estate of a deceased person, a proceeding brought against the deceased person or the personal representative. (2.1) A specified person may apply for leave of the court under subsection (2) in the proceeding described in that subsection.
 - (3) The court may grant leave under this section if
 - (a) the court determines the specified person seeking leave
 - (i) has made reasonable efforts to cause the personal representative to commence or defend the proceeding, (ii) has given notice of the application for leave to (A) the personal representative, (B) any other specified persons, and (C) any additional person the court directs that notice is to be given, and (iii) is acting in good faith, and
 - (b) it appears to the court that it is necessary or expedient for the protection of the estate or the interests of a specified person for the proceeding to be brought or defended.
 - (4) On application by a specified person or a personal representative, the court may authorize a person to control the conduct of a proceeding under this section or may give other directions for the conduct of the proceeding.
- [19] Executors must be impartial as between any opposing beneficiaries in a wills variation claim. Accordingly, the co-executors in the Wills Variation Actions maintain their neutrality. However, the co-executors specifically plead in their response to civil claim in the Children's Action that:
- (a) The Plaintiffs lack standing to advance claims for the return of Other Assets to the Estate;
 - (b) The Plaintiffs lack standing to pursue the attorney accounting claims against Diana;

- (c) The Plaintiffs are not entitled to seek declaratory relief that Diana exercised undue influence against the Deceased regarding pre-death transactions; only the executors have standing to pursue claims against Diana on behalf of the estate;
 - (d) The Plaintiffs cannot pursue damages or a tracing order against Diana; and
 - (e) Absent leave of the court to pursue such claims, the Ancillary Claims should be struck.
- [20] Despite this affirmative pleading, the Children did not file a reply as they could have done pursuant to Rule 3-6 of the SCCR if they wished to confront the defence. If no reply to a response to civil claim is filed, a joinder of issue on the response to civil claim is implied: Rule 3-6(3), but a reply would have been helpful given the oral submissions of counsel for the Children that a s. 151 application was not required, contradicted by later oral submissions that the Children intended to make a s. 151 application, perhaps by the end of this year.
- [21] Diana is entitled to bring her summary trial application. The Children have done nothing to pursue a s. 151 application.
- [22] Further, the 24 beneficiaries under the Will and the two co-executors are defendants in the Children's Action. None of these defendants are parties to the Children's Action and they are unaffected by the outcome of the Life Insurance Action.
- [23] There are no intertwining issues between the Children's Action and the Life Insurance Action that outweigh the prejudice to Diana's right to pursue her summary trial application. A trial of the Children's Action and the Life Insurance Action would not make sense in the circumstances: *Sohal v. Argitos*, 2010 BCSC 916 at para. 22.
- [24] The co-executors take no position on the hearing of the matters together, but are in favour of the quickest route to resolution of the litigation so that the administration of the Estate may complete. I agree with these comments. Although I make no comment as to the likelihood of success of the summary trial application, there is a possibility that the Life Insurance Action may be resolved by the court now such that the parties can turn all of their attention to the wills variation claims and drive those claims towards finality.
- [25] The application that the Life Insurance Action be heard at the same time as the Children's Action is dismissed. Venue for Trial
- [26] The remaining question to be determined is whether the trial of the Wills Variation Actions should be in Victoria or Vancouver.
- [27] Rule 12-1(5) permits the court to order that the place of trial be changed.
- [28] Diana argues that the trial should be Vancouver because counsel for Diana and counsel for the executors are based in Vancouver. Diana further argues that there are no witnesses in Victoria apart from Diana.

- [29] The scale tips towards Victoria in my view. The events underlying the claims took place in Victoria. The Children started their action first and filed their notice of civil claim in the Victoria registry. Diana lives in Victoria and could have filed her notice of civil claim in the Victoria registry. It was foreseeable (one might say inevitable) that the Wills Variation Actions would be ordered to be heard at the same time. Diana and the co-executors could have retained Victoria counsel. Of course, they had the right to retain counsel in Vancouver, but should have anticipated that their counsel would have to travel to Victoria for trial. Given the neutral position of the co-executors, it is quite possible that their counsel will not be required to attend trial, or at least most of the trial. In-person versus remote attendance of the co-executors and their counsel will likely be considered by all parties as the case proceeds, and, if necessary, by the court at a case planning conference or trial management conference.
- [30] Eleven of the beneficiaries named as defendants in the Wills Variation Action reside in the United Kingdom. The expense of the U.K. defendants travelling to Victoria versus Vancouver is immaterial. In any event, and regardless of whether the trial were held in Vancouver or Victoria, the court may permit the U.K. defendants to attend trial remotely depending on the circumstances as they exist when such an order is sought. Summary of Orders
- [31] The Children's Action will be tried at the same time as Diana's Action.
- [32] The venue for the trial of the Wills Variation Action will be Victoria.
- [33] The evidence in each of the Wills Variation Actions shall be admissible in the other, subject to the right of any party to dispute the admissibility of evidence on the basis of relevance or otherwise.
- [34] Documents produced throughout the process of discovery and the exchange of documents in each of the Wills Variation Actions shall be made available to any of the named parties in the Wills Variation Actions.
- [35] All transcripts stemming from examinations for discovery conducted in the Wills Variation Actions, including requests for documents and information arising from a discovery, and answers to any interrogatories shall be made available to any parties in the Wills Variation Actions upon request and may be used as evidence in either of the Wills Variation Actions.
- [36] Counsel in the Wills Variation Actions may adopt and use against any adverse party at trial any questions and answers from any and all transcripts stemming from examinations for discovery, answers to interrogatories provided by that party, and any responses to notices to admit made by that party in either of the Wills Variation Actions.
- [37] Any party to either of the Wills Variation Actions may apply to court for further directions with respect to any procedural issues arising from the order that the Wills Variation Actions be tried at the same time.
- [38] The Life Insurance Action will be tried separately. Costs

[39] Determining who should be entitled to costs of any of the applications and on what basis (against a party personally or paid from the Estate, and party/party costs or special costs) is a complex exercise at this interlocutory stage. Accordingly, costs of all the applications is reserved to the trial of each of the actions. "Associate Judge Harper"

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Prepared on 25 October 2026 · Esheria