

CANADA / JUDGMENT

Corbett (Re)

2023 BCSC 657

COURT

Supreme Court of British Columbia

DECIDED

24 April 2023

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2023 BCSC 657 Corbett (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Corbett (Re),

2023 BCSC 657

Date: 20230424

Docket: S246355

Registry: New Westminster

In the Matter of the Patients Property Act, R.S.B.C. 1996, c. 349

and In the Matter of Bertha Corbett

- and -

Docket: S247556

Registry: New Westminster

In the Matter of the Patients Property Act, R.S.B.C. 1996, c. 349

Between:

Mary Therese Hearnden and Christina Marie Bareti

Petitioners

And

Bertha Ella Corbett

Respondent

Before: The Honourable Madam Justice Wilkinson

Reasons for Judgment

Counsel for the Petitioners in Action No. S246355 and Respondents in Action No. 247556, Rose Marzocco and Stephen Bareti:

L. Read

Counsel for the Respondents in Action No. S246355 and Petitioners in Action No. S247556, Mary Therese Hearnden and Christina Marie Bareti:

J. Sandhu

Place and Date of Hearing:

Port Coquitlam, B.C.

April 5, 2023

Place and Date of Judgment:

New Westminster, B.C.

April 24, 2023

Introduction

- [1] These are my reasons for judgment on two petitions brought by family members with respect to applications under the Patients Property Act, R.S.B.C. 1996, c. 349 [Act] for a declaration that Bertha Corbett is incapable of managing her affairs and her person and appointment of committees of her estate and person.
- [2] By consent order made March 9, 2023, these petitions were heard together.

Background

- [3] The patient, Bertha Ella Corbett is 88 years old and suffers from dementia. Since July 2021 she has been residing in an assisted living facility in Fort Langley.
- [4] The Patient has no spouse. She has five adult children, being Rose Marzocco ("Rose"), Stephen Bereti ("Steve"), Mary Therese Hearnden ("Mary"), Kevin Bereti ("Kevin") and Louie Bereti ("Louie").
- [5] Christina Marie Bereti ("Tina") is Mary's adult daughter and the Patient's granddaughter.
- [6] The evidence is consistent that the Patient's health began to decline in or around 2010. From 2010 to 2021, the Patient required assistance with her medical needs and personal care. Mary deposed that as of April 2021, the Patient required assistance with her financial affairs. In April 2021, the Patient was admitted to Mission Hospital for a bladder infection and mental health concerns. She had exhibited aggressive and violent behaviour. During this

hospitalization, medical professionals advised that Ms. Corbett should not return to live at home. Mary and Tina arranged a placement for Ms. Corbett in the Fort Langley assisted living facility, upon the medical staff's recommendation.

- [7] Dr. Rashmi Raghavan and Dr. Prabhjot Chahal have each sworn affidavits in July 2022 offering the opinion that the Patient is not capable of managing her affairs and her person, and that her condition is untreatable and deterioration is expected over time. Their opinions are not disputed.
- [8] The Patient does not have a power of attorney or representation agreement appointing anyone to act on her behalf.
- [9] The Patient's estate consists of the following:
 - a) 50% interest in a mobile home ("#55 Mobile"), with unknown value;
 - b) 100% beneficial interest in a 2015 Jeep vehicle, with unknown value;
 - c) CIBC Personal Chequing Account, with a balance of \$5,824.43 as of January 31, 2023; and
 - d) CIBC Savings Account, with a balance of \$62,517.82 as of February 28, 2023.
- [10] The Patient's monthly income is approximately \$4,170.85.
- [11] The Patient's monthly expenses are approximately \$1,655.87.
- [12] On October 12, 2022, Rose and Steve filed a petition seeking to be appointed, jointly and severally, as committees of the Patient's estate and person.
- [13] On December 16, 2022, Mary and Tina filed a competing petition seeking to be appointed, jointly and severally, as committees of the Patient's estate and person.
- [14] Kevin and Louie consent to the appointment of Rose and Steve as co-committees of the Patient's estate and person.
- [15] The Public Guardian and Trustee ("PGT") takes no position on the applications but does make recommendations on certain terms with regard to whomever is appointed. The PGT filed responses but did not appear on the applications.

Statutory Framework

Incapacity

- [16] Section 4(1)(6) of the Act provides that a person may apply to the court for an order declaring a person is no longer capable of managing themselves. The court may declare as such on hearing and on reading two affidavits from medical practitioners in support.
- [17] It is not disputed that Ms. Corbett is permanently incapable of managing her affairs or her person. The evidence of Dr. Raghavan and Dr. Chahal supports this position. She is diagnosed with advanced vascular dementia with possible mixed dementia.

[18] I therefore declare that Ms. Corbett is no longer capable of managing herself pursuant to s. 4(1)(6) of the Act.

Appointment of Committee

[19] Since she is an incapable person, Ms. Corbett requires one or more committees to be appointed.

[20] The Court in *Stewart (Re)*, 2014 BCSC 2321 at para. 41, identified the following considerations to be considered in selecting the appropriate committee:

- a) whether the appointment reflects the patient's wishes when he or she was capable of forming such a wish;
- b) whether immediate family members are in agreement with the appointment;
- c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;
- d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
- e) the level of understanding of the proposed committee with the patient's current situation, and whether that person will be able to cope with future changes of the patient;
- f) whether the proposed committee will provide love and support to the patient;
- g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;
- h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
- i) who is best to advocate for the patient's medical needs;
- j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
- k) whether a division of responsibilities, such as between the patient's estate and the patient's person to different persons, would serve the best interests of the patient, or would such a division be less than optimal for the patient.

[21] The above-noted considerations are non-exhaustive and not in any particular order. The inquiry is fact-specific, and a particular factor may or may not be applicable and may attract different weight depending on the circumstances of a case: *Stewart (Re)* at para 30.

Which appointment reflects the patient's wishes when he or she was capable of forming such a wish?

[22] It is unclear what Ms. Corbett's wishes were while she was capable. The Patient does not have a power of attorney or representation agreement appointing anyone to act on her behalf.

[23] In her will made in 2012, Ms. Corbett named Tina as the executor and sole beneficiary of her estate.

[24] This factor weighs in favour of Tina's appointment as committee.

Are immediate family members in agreement with an appointment?

[25] Louie and Kevin consent to the appointment of Rose and Steve as committees and have not consented to the appointment of Mary and Tina.

[26] This factor clearly weighs in favour of Rose's and Steve's appointment as committees.

Is there any conflict between family members or between the family and the patient? Would the proposed committee(s) be likely to consult with immediate family members about the appropriate care of the patient?

[27] Mary and Tina made the decision to place Ms. Corbett in her current facility without consulting other members of the family. They did not consult regarding the management of Ms. Corbett's affairs once she was admitted into hospital and was moved to her current residence.

[28] Rose and Steve depose that there is significant, long-standing, and deep-rooted conflict between the parties. They submit Mary in particular tends to escalate disputes and reacts poorly to anyone questioning her actions.

[29] It is clear that Mary was in contact with Louie and informed him of Ms. Corbett's situation. Mary's text conversations relay her impression that Ms. Corbett herself cut off contact with Rose and Steve. Tina's texts show a similar understating.

[30] All of the applicants depose that they will consult with immediate family members regarding Ms. Corbett's care and management of her affairs.

[31] The history of lack of consultation by Mary and Tina, even if it is based on a belief that Ms. Corbett herself did not want to maintain contact with Rose and Steve, weighs in favour of Rose and Steve as committees. However, I am satisfied that Mary and Tina would consult appropriately with the other immediate family members if they were appointed as committees.

What is the level of previous involvement of the proposed committee(s) with the patient?

- [32] It is agreed that Mary and Tina have been more involved with the Patient's daily life than Rose and Steve.
- [33] In 2010 Ms. Corbett purchased two neighbouring mobile homes and resided in one. Mary has resided in the neighbouring mobile home since 2011. Mary's residence was transferred into her name by Ms. Corbett in 2015. Ms. Corbett transferred a joint interest in her residence to Tina in 2016.
- [34] Since 2010 Mary assisted Ms. Corbett with her medical needs by setting medical appointments, providing transportation to medical appointments, attending medical appointments, administering medication, and following up with medical needs as directed.
- [35] Mary provided constant assistance to Ms. Corbett. This assistance included self-care, cooking, cleaning, driving, purchasing groceries, emotional support and assistance with financial matters. Mary deposes that Ms. Corbett was quite demanding of her time, and that Mary was often with her all day long. Mary helped facilitate Ms. Corbett's day-to-day activities, including visits out and visits to the casino.
- [36] Rose, Stephen, Louie, and Kevin rarely visited with Ms. Corbett. They also did not participate in holiday events. Tina helped when able. She also took Ms. Corbett to appointments, shopping, the casino, and performed yard work and other assistance as requested. Tina lived with Ms. Corbett until Tina was 24 years old. She says Ms. Corbett often referred to her as her daughter.
- [37] This factor weighs in favour of Mary and Tina as committees.

Will the proposed committee(s) provide love and support to the patient?

- [38] There is no doubt that each of the parties believes they will provide the most love and support to Ms. Corbett. I am satisfied that each of the proposed committees will fulfill this need.
- [39] This factor is neutral.

Is the proposed committee the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit?

Has a proposed committee breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs?

- [40] In the circumstances of these applications these factors are best considered together.
- [41] Each of the applicants has the acumen and ability to deal with Ms. Corbett's affairs. Steve, Mary and Tina all reside within easy visiting distance to Ms. Corbett's residence, medical care providers and banking location. While Rose resides in Kamloops, I do not see this as a hindrance to her ability to deal with Ms. Corbett's affairs. Although the locality of Steve, Mary and Tina is preferred.

- [42] Each of the applicants has the time available to handle Ms. Corbett's affairs and needs.
- [43] In 1999 Mary was charged with two counts of financial fraud arising from 1986 events. Those charges were stayed. Mary has provided adequate explanations of the circumstances regarding the charges and they are historic. I am not concerned that those circumstances negatively impact her suitability as a committee.
- [44] The main objection that Rose and Steve have to Mary and Tina's appointment relates to their concerns regarding how Ms. Corbett's finances were managed prior to her hospitalization. They submit that bank records showing numerous cash withdrawals in the years prior to hospitalization, the 2020 purchase and transfer of a vehicle into Mary's name, and the transfer to Tina in 2015 of a joint interest in Ms. Corbett's residence indicate that Mary and Tina have already benefitted from Ms. Corbett's estate and income without properly accounting for that benefit.
- [45] The banking records indicate that the vast bulk of the cash withdrawals were accomplished at the bank teller, not by using an ATM. The pattern is fairly consistent from 2016 until Ms. Corbett's hospitalization. Mary deposes Ms. Corbett instructed Mary to take Ms. Corbett to the bank to make these withdrawals. Ms. Corbett liked to shop and go to the casino. The closest shopping was at Costco. This was a regular feature in the financial records. Ms. Corbett would purchase multiples of items she liked.
- [46] Most telling is the significant reduction in withdrawals after Ms. Corbett was hospitalized. There are some withdrawals of a few hundred a month which are easily explained by Mary as covering utilities, and the needs of Ms. Corbett. In fact, after Ms. Corbett was hospitalized, her financial position greatly improved and is in good shape today due to accumulated income which has not been spent at the level previously.
- [47] I agree with Rose and Steve that it was not appropriate for Mary to use Ms. Corbett's ATM card once she was hospitalized, or at the latest once admitted to her new residence on a regular basis, without proceeding more quickly with her application for committee ship. However, the transactions themselves appear to me to be appropriate and not for the benefit of Mary and/or Tina or otherwise a misuse of Ms. Corbett's finances.
- [48] There is insufficient evidence before me to indicate that Ms. Corbett did not have the capacity to make the decision to purchase the 2015 Jeep in 2020 and transfer it to Mary. The vehicle was clearly often used for the benefit of Ms. Corbett's transportation needs. Her payment of insurance for the vehicle would not be extraordinary.
- [49] Tina has rented out Ms. Corbett's home and that should be accounted for in more detail. She deposes that the rent does not cover the carrying costs of the home.
- [50] I also agree with Rose and Steve that an application for committee ship should have been brought earlier. While Rose and Steve filed their application earlier than Mary and Tina, none of the applicants brought their application in a timely fashion.

- [51] Mary and Tina's management of Ms. Corbett's finances and property has improved Ms. Corbett's financial position since she was hospitalized. I do not find that Mary and/or Tina have engaged in inappropriate management of Ms. Corbett's finances and property. There is no evidence before me that they took undue advantage of Ms. Corbett when she transferred property into their names.
- [52] I have confidence that any of the proposed committees could appropriately handle Ms. Corbett's affairs and provide an adequate accounting, both for outstanding expenses (i.e., the rent and carrying costs for the mobile home) and going forward.
- [53] I agree with the PGT's recommendation that any appointee have parameters placed on access to accounts.

Which proposed committee(s) is best to advocate for the patient's medical needs?

- [54] Mary and Tina have been more involved with Ms. Corbett. However, Rose and Steve clearly want to be involved and want to advocate for Ms. Corbett's medical needs. Like Mary and Tina, Steve is local and readily available to respond to any urgent issues arising.
- [55] This factor is neutral.

Does the proposed committee have an appropriate plan of care and management for the patient and her affairs and who is best able to carry it out?

- [56] Neither party has provided a specific care plan for Ms. Corbett. All agree Ms. Corbett's current residence is suitable. It does have a facility for long-term dementia care when needed. All agree on the medical evidence that this will likely be necessary.
- [57] This factor is neutral.

Would a division of responsibilities, such as between the patient's estate and the patient's person, to different persons serve the best interests of the patient, or would such a division be less than optimal for the patient?

- [58] All applicants submit that a division would not be optimal for Ms. Corbett.
- [59] It is unlikely that they could effectively work together as necessary to provide the best possible care and support for Ms. Corbett.

Conclusion

- [60] In conclusion, I find that the close longstanding relationship Ms. Corbett has had with Mary and Tina is the distinguishing factor which places them in a better position to manage Ms. Corbett's affairs.
- [61] I make the following orders:
- a) Mary and Tina are appointed jointly and severally as committee of Ms. Corbett's estate and person;

- b) Mary and Tina will keep Rose, Steve, Louie and Kevin informed regarding Ms. Corbett's living situation and medical status, and shall consult with Rose and Steve before making any significant decisions regarding Ms. Corbett's care or medical treatment;
- c) Mary and Tina will not transfer or alter the composition of any significant assets in Ms. Corbett's estate without the prior written approval of the PGT, and must give Rose and Steve written notice of any such proposal to be submitted to the PGT for approval;
- d) Mary and Tina will make all reasonable efforts to facilitate visits and regular communication between Ms. Corbett and her family members.
- e) Tina will provide an accounting of the income and expenses associated with the manufactured home that she owns jointly with Ms. Corbett;
- f) In lieu of a bond, the committees will have no access to the capital of the funds held with CIBC in Ms. Corbett's savings account or any successor accounts, other than for reinvestment purposes, without the prior written permission of the PGT.

Costs

[62] If the parties cannot agree on the matter of costs, I will determine them based on written submissions as they requested. The parties should arrange for the timing of submissions amongst themselves.

"Wilkinson J."

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Prepared on 29 October 2026 · Esheria