

CANADA / JUDGMENT

Fornwald v. Page

2025 BCSC 532

COURT

Supreme Court of British Columbia

DECIDED

24 March 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 532 Fornwald v. Page

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Fornwald v. Page,

2025 BCSC 532

Date: 20250324

Docket: S242501

Registry: New Westminster

Between:

Dianne Fornwald

Plaintiff

And

Arthur Page, also known as Arthur L. Page, in his personal capacity and

as Executor and Trustee named in the Will of

Lawrence Thomas Page, Deceased

Defendants

Before: The Honourable Justice Caldwell

Reasons for Judgment

Counsel for the Plaintiff:

S. Payne

Counsel for the Defendants:

D.R. Greig

C.R. Anninos

Place and Dates of Trial:

New Westminster, B.C.

December 16-20, 2024

Place and Date of Judgment:

New Westminster, B.C.

March 24, 2025

Table of Contents

BACKGROUND AND EVIDENCE CHRONOLOGY. 3

THE LAW.. 9

APPLICATION OF THE EVIDENCE TO THE TATARYN TEST. 13

DECISION.. 14

- [1] The claimant, Dianne Fornwald, alleges that the will of her late spouse did not make adequate provision for her proper maintenance and support, and she seeks a variation of that will in order to provide her with such maintenance and support.
- [2] It is admitted that the claimant was the spouse of the deceased, Lawrence Thomas Page, at the time of his death.
- [3] There is no dispute that s. 60 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA] applies to the situation and provides the proper statutory guidance to the Court:

60 Despite any law or enactment to the contrary, if a will-maker dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children, the court may, in a proceeding by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the will-maker's estate for the spouse or children.

BACKGROUND AND EVIDENCE CHRONOLOGY

- [4] Lawrence Page ("Lawrence") died on January 16, 2022, leaving a Last Will and Testament (the "Will") dated March 5, 1984. He was 79 years old at the time of his death.

-
- [5] That Will was never varied or updated in any fashion and left Lawrence's entire estate (the "Estate"), in light of the prior passing of his father and mother, to his only sibling, Arthur Page ("Arthur").
- [6] Possibly as early as 1985 but certainly by 1987, Lawrence began living in a marriage-like relationship with Dianne Fornwald ("Dianne"). Dianne is currently 77 years old.
- [7] While certainly unconventional, that relationship continued and, I find as a fact, thrived up to the time of Lawrence's death. Dianne testified, and I accept, that their relationship over the years was "wacky, generous and wonderful". She referred to him as "my old boy" and he to her as his "Ma". They were both drinkers - he significantly more so than her. They "laughed a lot", were overtly physically affectionate with each other, travelled to Reno each year and throughout BC, and spoke of their relationship lasting for their lifetimes.
- [8] While they were often separated by hundreds of miles and for extended periods of time, I got the clear impression that theirs was a relationship that many would envy. It may have been "rough and ready". It may have been unusual. It was honest and it was strong.
- [9] Over the years, Lawrence's parents passed away and both Lawrence and Arthur inherited their estates.
- [10] Lawrence worked for the railroad for his entire working life. He purchased a home in Surrey in or about 1980 and retained ownership of that home, in his sole name, until the time of his death. His Estate is valued at a little over \$1.7 million.
- [11] Arthur has apparently enjoyed similar success and testified to having a net worth of approximately \$2.5 million. He makes no claim based in hardship or need.
- [12] Dianne, along with her children at times, lived with Lawrence in the Surrey home during the earlier years of their relationship. She stopped working outside of the home during this period and at Lawrence's request, but she did stay active with occasional part-time and volunteer work. Lawrence paid their living expenses entirely.
- [13] By approximately 2000, Dianne determined that the city life truly was not for her. She located a property in Rail Lake, a small settlement in the Cariboo-Chilcotin area of BC.
- [14] With Lawrence's blessing, she moved to the rented Rail Lake property. Lawrence paid her \$500 per month for her expenses and spent weekends and almost all his vacation time there with Dianne.
- [15] In 2004, Lawrence bought the Rail Lake property and registered it in their joint names. The property was a one-acre parcel with a two-storey house on it.
- [16] In 2013, Lawrence won a lottery and received approximately \$675,000. Pursuant to a standing agreement which they had, he divided the winnings equally and gave one-half to Dianne.

- [17] In 2014, using her share of lottery winnings, Dianne bought a property on Highway 24, not far from 100 Mile House in the Cariboo-Chilcotin area of BC. Dianne moved to the Highway 24 property and, again, Lawrence lived there on weekends and during his vacations. He was there more frequently during the last ten years or so following his retirement.
- [18] The Highway 24 property consisted of an 11-acre parcel of land with a single-wide mobile home located on it as a residence. Dianne maintained several horses, cattle, and other animals on that property - most were rescue animals.
- [19] In or about 2019/2020, the single-wide mobile home burned to the ground. Lawrence was injured in the fire and spent time in hospital. He later bought a fifth wheel trailer as a temporary residence on that property.
- [20] In 2021, they sold the Rail Lake property and divided the sale proceeds of approximately \$155,000 equally.
- [21] In late 2021, Lawrence was diagnosed with a terminal brain tumor. He had surgery in Surrey and died in Surrey on January 16, 2022.
- [22] Much was said about Dianne's failure to immediately drop everything and rush to Surrey upon learning of Lawrence's medical difficulty. I find that little if anything turns on these events.
- [23] Given the very close but unconventional nature of their relationship, their advanced ages, the physical distance between 100 Mile House and Surrey, the time of year, weather, other transportation issues, and the domestic obligations which Dianne had at her home with animals and other matters, her actions were understandable and appropriate.
- [24] Following Lawrence's death, Dianne remained in the Surrey home for some time. The exact length of that stay is uncertain and the evidence on that issue was inconsistent. Little, if anything, turns on that exact term of residence.
- [25] Emotions were somewhat raw and I have no doubt that exchanges and possible conflict, some of it heated, occurred between Dianne and Arthur, and possibly involved their adult children. I find that such exchanges occurred and that both Dianne and Arthur became defensive and protective of their respective positions and that this has continued throughout this litigation.
- [26] Dianne located approximately \$30,000, in envelopes marked as being for her, which had been placed in a safe in the Surrey house.
- [27] There were some firearms, but again, the number, types, and values of the firearms are not established on a balance of probabilities. Whatever guns there were, they were sold for somewhere between \$600 and about \$3,000. No purchaser was called to testify.

- [28] Both during the days immediately before and during the few days immediately after Lawrence's death, Dianne used his credit card to purchase items for her use, including a massive purchase of cigarettes. Her purchases totalled about \$10,000 or slightly more.
- [29] Dianne also directly received a BMO RRIF, an IG Mackenzie account, and a pickup truck upon Lawrence's death.
- [30] All in all, Dianne received cash, investments, and chattels worth at least \$230,000 following Lawrence's death. In her evidence, she indicated that the amount was higher, possibly as high as \$400,000, but the supporting documents provided did not corroborate a figure nearly that high.
- [31] Dianne remains the sole owner of the Highway 24 property which has an assessed value for 2022 of \$175,800.
- [32] Her tax records indicate income in 2021 of about \$8,500; in 2022, about \$16,000; and in 2023, slightly over \$18,000. Her income is from CPP and OAS only.
- [33] Dianne testified that most, if not all, of the money she received was used by her to buy a used double-wide mobile home and have it moved onto the Highway 24 property, and probably to buy her daughter a new car. She says that the mobile home is still significantly unfinished and requires considerable work and furnishing to be properly and permanently liveable. The evidence also indicated that Lawrence contributed a further amount of approximately \$73,000 towards the rehabilitation of the Highway 24 property following the fire.
- [34] Given the amount of money Dianne has received, it seems unlikely that it could have been exhausted by the purchase of an aging, used, double-wide mobile home - even with moving and set-up costs. What seems more likely, and certainly more than a possibility based on her testimony and the documents produced, is that Dianne has fallen victim to financial abuse at the hands of others.
- [35] A great deal of time was spent in cross-examining Dianne on her previously sworn affidavits and on her examination for discovery transcripts. There were certainly many inconsistencies highlighted by such questioning, particularly regarding dates and dollar values.
- [36] She was ordered to produce various documentation and refused or neglected to do so, although I note that her 6th Amended List of Documents was produced and dated December 10, 2024.
- [37] When questioned about most of these things, she clearly became "flustered" and, as noted, sometimes gave inconsistent or even somewhat nonsensical answers.

- [38] Overall, in presenting her evidence, I found Dianne to be somewhat defensive, occasionally deceptive at least to some extent, but more tending towards confused and wanting in reliability rather than credibility. She was argumentative at times. She was stubborn and, to a large extent, unrepentant about her suggested failures.
- [39] I was left with the distinct impression that this, overall, was an accurate and genuine presentation of who she was and is. She pulled no punches. When confronted or challenged, she hitched up her trousers and met all comers and backed down from none. She presented as a tough, elderly woman whose mind and memory have begun to significantly abandon her in certain aspects.
- [40] In the end result, I did not find her to be dishonest or lacking in credibility on the matters of central importance in these types of "wills variation" cases. Exactly how long she stayed in the Surrey house after Lawrence died; whether she saw his Will prior to his death; exactly how long it took her to get to Lawrence after his surgery; even how much she did or did not spend on the double-wide mobile home, have little, if anything, to do with whether Lawrence's Will made adequate, just, and equitable provision for his spouse of some 37 years or more.
- [41] Arthur is Lawrence's brother and the named Executor in Lawrence's Will. He is currently 90 years of age. He appears younger. His memory and presentation seem clear and precise.
- [42] Arthur and Dianne appear not to have had much of a relationship over the years. He would meet Lawrence for coffee or breakfast regularly - perhaps two to three times per week after Lawrence retired - and they appear to have remained on good terms.
- [43] Arthur was critical of Dianne's behaviour, especially her failure to come to Lawrence's side immediately upon learning of his health problems.
- [44] He noted the poor condition of the Surrey house when Dianne moved out, although it seems that the condition of the house and yard had been poor for some considerable time prior to Lawrence's death. He acknowledged in cross-examination that Lawrence was a "hoarder" or "collector" during his latter years living in Surrey.
- [45] Arthur noted infestation of rats and raccoons in the house and by-law issues with the City of Surrey. It seems unlikely that such would arise over the period from January to April or May when he said that he got access to the house and yard and rented a "weed-whacker" to cut the grass.
- [46] He testified that Lawrence indicated to him that Dianne should get his money, or at least some of his money, but that Arthur should get the Surrey house.
- [47] Cross-examination of Arthur also focused on his previously sworn affidavits and he acknowledged that some of the contents were, to his knowledge, untrue.

- [48] From his evidence, I formed the distinct impression that Lawrence had inherited not insignificant assets from their parents and, in Arthur's view, those assets or other value generated from them should rightly stay in the Page family.
- [49] Lovelle Coppinger testified. She is a friend of Lawrence and Arthur's since childhood. She provided care for Lawrence during his later months of life and was critical of Dianne for not coming to Surrey and undertaking that care.
- [50] She confirmed that the Surrey house was "kinda hoarder style," at least during the last few months when Lawrence lived there.
- [51] She testified that Lawrence told her that the Surrey house was to go to Arthur as it was "Page money" and that because he had provided \$1 million to Dianne, she "would be fine".
- [52] Ms. Coppinger testified that she heard similar discussion between Lawrence and hospital staff and social workers.
- [53] She testified that Lawrence was "very loyal to his family."

THE LAW

- [54] As noted above, s. 60 of WESA provides:

60 Despite any law or enactment to the contrary, if a will-maker dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children, the court may, in a proceeding by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the will-maker's estate for the spouse or children.

- [55] Importantly, it is not the opinion of the testator as to what constitutes adequate provision for the proper maintenance and support of his or her spouse which is determinative, but rather the opinion of the Court.
- [56] This is important when assessing the comments alleged to have been made by Lawrence to Ms. Coppinger, Arthur, or hospital staff.
- [57] Even assuming such comments to have been made, they do not constitute a negotiation towards or determination of adequacy of provision in the context of this spousal relationship.
- [58] While now more than 30 years old, the leading authority regarding wills variation claims and adequate provision remains *Tataryn v. Tataryn Estate*, [1994] 2 S.C.R. 807, 1994 CanLII 51 (S.C.C.). That case dealt at length with delineating and analyzing a testator's legal and moral duties regarding provision for a spouse versus those regarding provision for adult children:

28 If the phrase "adequate, just and equitable" is viewed in light of current societal norms, much of the uncertainty disappears. Furthermore, two sorts of norms are available and both must be addressed. The first are the obligations which the law would impose on a person during his or her

life were the question of provision for the claimant to arise. These might be described as legal obligations. The second type of norms are found in society's reasonable expectations of what a judicious person would do in the circumstances, by reference to contemporary community standards. These might be called moral obligations, following the language traditionally used by the courts. Together, these two norms provide a guide to what is "adequate, just and equitable" in the circumstances of the case.

29 The first consideration must be the testator's legal responsibilities during his or her lifetime. The desirability of symmetry between the rights which may be asserted against the testator before death and those which may be asserted against the estate after his death has been noted by the dissenting member of the British Columbia Law Reform Commission in its 1983 report on the Act, Report on Statutory Succession Rights (Report No. 70). Mr. Close argues (at p. 154):

A person is under a legal duty to support his or her spouse and minor children. If this duty is not observed then it may be enforced through the courts. That a testator's estate should, therefore, be charged with a duty similar to that borne by the testator in his lifetime is not troublesome.

It follows that maintenance and property allocations which the law would support during the testator's lifetime should be reflected in the court's interpretation of what is "adequate, just and equitable in the circumstances" after the testator's death.

30 The legal obligations on a testator during his or her lifetime reflect a clear and unequivocal social expectation, expressed through society's elected representatives and the judicial doctrine of its courts. Where provision for a spouse is in issue, the testator's legal obligations while alive may be found in the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp), family property legislation and the law of constructive trust: *Pettkus v. Becker*, [1980] 2 S.C.R. 834; *Sorochan v. Sorochan*, [1986] 2 S.C.R. 38; *Peter v. Beblow*, [1993] 1 S.C.R. 980. Maintenance and provision for basic needs may be sufficient to meet this legal obligation. On the other hand, they may not. Statute and case law accepts that, depending on the length of the relationship, the contribution of the claimant spouse and the desirability of independence, each spouse is entitled to a share of the estate. Spouses are regarded as partners. As *L'Heureux-Dubé J.* wrote in *Moge v. Moge*, [1992] 3 S.C.R. 813, at p. 849:

... marriage is, among other things, an economic unit which generates financial benefits The [Divorce] Act reflects the fact that in today's marital relationships, partners should expect and are entitled to share those financial benefits.

The legal obligation of a testator may also extend to dependent children. And in some cases, the principles of unjust enrichment may indicate a legal duty toward a grown, independent child by reason of the child's contribution to the estate. The legal obligations which society imposes on a testator during his lifetime are an important indication of the content of the legal obligation to provide "adequate, just and equitable" maintenance and support which is enforced after death.

31 For further guidance in determining what is "adequate, just and equitable", the court should next turn to the testator's moral duties toward spouse and children. It is to the determination of these moral duties that the concerns about uncertainty are usually addressed. There being no

clear legal standard by which to judge moral duties, these obligations are admittedly more susceptible of being viewed differently by different people. Nevertheless, the uncertainty, even in this area, may not be so great as has been sometimes thought. For example, most people would agree that although the law may not require a supporting spouse to make provision for a dependent spouse after his death, a strong moral obligation to do so exists if the size of the estate permits. Similarly, most people would agree that an adult dependent child is entitled to such consideration as the size of the estate and the testator's other obligations may allow. While the moral claim of independent adult children may be more tenuous, a large body of case law exists suggesting that, if the size of the estate permits and in the absence of circumstances which negate the existence of such an obligation, some provision for such children should be made: *Brauer v. Hilton* (1979), 15 B.C.L.R. 116 (C.A.); *Cowan v. Cowan Estate* (1988), 30 E.T.R. 216 (B.C.S.C.), *aff'd* (1990), 37 E.T.R. 308 (B.C.C.A.); *Nulty v. Nulty Estate* (1989), 41 B.C.L.R. (2d) 343 (C.A.). See also *Price v. Lypchuk Estate*, *supra*, and *Bell v. Roy Estate* (1993), 75 B.C.L.R. (2d) 213 (C.A.) for cases where the moral duty was seen to be negated.

32 How are conflicting claims to be balanced against each other? Where the estate permits, all should be met. Where priorities must be considered, it seems to me that claims which would have been recognized during the testator's life - i.e., claims based upon not only moral obligation but legal obligations - should generally take precedence over moral claims. As between moral claims, some may be stronger than others. It falls to the court to weigh the strength of each claim and assign to each its proper priority. In doing this, one should take into account the important changes consequent upon the death of the testator. There is no longer any need to provide for the deceased and reasonable expectations following upon death may not be the same as in the event of a separation during lifetime. A will may provide a framework for the protection of the beneficiaries and future generations and the carrying out of legitimate social purposes. Any moral duty should be assessed in the light of the deceased's legitimate concerns which, where the assets of the estate permit, may go beyond providing for the surviving spouse and children.

[Emphasis in original.]

[59] I have not been provided with any subsequent authority from the Supreme Court of Canada which has in any significant fashion modified the analysis and test as laid out in *Tataryn*.

[60] I have reviewed the case of *Kish v. Sobchak Estate*, 2016 BCCA 65, but find that it is factually different and distinguishable. That case involved people of similar ages but a relationship of shorter duration and one in which the parties themselves did not wish to be considered or treated as spouses. Each had adult children from prior relationships who were owed at least a moral consideration by the parties as testators. The estate at issue was very modest, amounting to less than \$200,000. The surviving spouse herself held assets with equity exceeding the value of the estate. Finally, and importantly, the testator's daughter, to whom he owed a moral duty, had significant financial need which led the Court to give greater weight to the principle of testator's autonomy and wishes.

APPLICATION OF THE EVIDENCE TO THE TATARYN TEST

- [61] I note the following evidence and findings of fact which I view as highly relevant to addressing the issue of adequate, just, and equitable provision in the circumstances of the case before me and in applying the test as laid out in Tataryn:
- the dispute is not between a surviving spouse and surviving adult children - it is a dispute between a spouse who was excluded from a will and an adult brother of the testator who was named as the sole beneficiary in the will;
 - the only legal obligation or duty which Lawrence had was to Dianne and that duty included an obligation to provide her with maintenance and a recognition of her interest in the assets;
 - Dianne has limited assets and income;
 - Lawrence owed absolutely no legal and, at best, a tenuous and extremely modest moral duty to Arthur given the nature of their relationship and that his net worth probably exceeds the net worth of both Dianne and Lawrence combined;
 - there are no other potential claimants to whom Lawrence owed a legal or moral duty;
 - the Will was prepared over 40 years ago and prior to when Lawrence and Dianne began their spousal relationship;
 - the spousal relationship lasted at least 37 years;
 - Lawrence was the primary, and in most ways sole, financial provider for himself and Dianne throughout their relationship and, in fact, asked her early in that relationship to stop working outside of the home as it was his desire to financially support them and their relationship;
 - Lawrence and Dianne bought, sold, and together accumulated property and other assets over the course of their relationship, regardless of the actual legal registration of such assets; and
 - Lawrence and Dianne shared such assets, including lottery winnings, and allowed each other freedom to deal with those assets while still retaining an overall view that the accumulated assets belonged to "them" as a couple, not each of them individually and to the exclusion of the other.

DECISION

- [62] I find that Lawrence's Will did not make adequate, just, and equitable provision for the maintenance and support of his spouse, Dianne.
- [63] I find that Lawrence owed no legal or moral duty to Arthur.

[64] I find that the Estate is large enough that it is appropriate to recognize, to some extent, Lawrence's testamentary autonomy and wishes to provide some benefit to his brother, Arthur.

[65] I vary the Will of the deceased, Lawrence Thomas Page, to provide:

1. Arthur Page shall receive the sum of \$350,000 from the Estate; and
2. Dianne Fornwald shall receive the balance and residue of the Estate of Lawrence Thomas Page.

[66] If counsel wish to make further submissions as to costs, they may do so in writing, filed within 45 days of the release of this decision and comprising no more than five pages from each party.

"Caldwell J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/05/2025BCSC0532.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/fornwald-v-page-2025>

Prepared on 27 October 2026 · Esheria