

CANADA / JUDGMENT

Fuller Estate v. Fuller

2002 BCSC 1571

COURT

Supreme Court of British Columbia

DECIDED

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2002 BCSC 1571Docket: 13161
Registry: Prince George
IN THE SUPREME COURT OF BRITISH COLUMBIABETWEEN: GERALD FLURRY, IN HIS CAPACITY AS EXECUTOR OF THE
ESTATE OF STANLEY FULLER
PLAINTIFFAND: DOUGLAS SHANE FULLER, BRIAN PATRICK FULLER,
ROSEMARY JEAN BEIER, AND THE PHILADELPHIA CHURCH OF GOD,
BENEFICIARIES OF THE ESTATE OF STANLEY FULLER
DEFENDANTS

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE ROGERS

Counsel for the Plaintiff:

R.M. Stewart

Counsel for the Defendants:

G. Wright

Date and Place of Trial:

October 21, 22, 23, 24, 25, 28, 29, 30, 31, 2002

November 1, 2002

Prince George, BC

- [1] When Stanley Fuller, late of Vanderhoof, B.C., died in July 2000, his will distributed \$1,000 to his three adult children and gave the rest, approximately \$1 million, to his church. The children and the church are the defendants in the action. The plaintiff is the head of the church and is the executor of the will. The children contest their father's capacity to make the will, and in the alternative ask that the will be varied so as to increase their shares at the expense of the church's share. The church supports the will and the gifts made by it.
- [2] At the outset I say I was impressed by the credibility of all of the witnesses who testified at trial. This is one of those happy occasions where the court need not prefer one witness over another. I accept that all of the witnesses did their best to fully and accurately inform the court.

HISTORY

- [3] Before his death Mr. Fuller lived a quiet life north of Vanderhoof. He was married to Hazel during the 1950's and 1960's; he and Hazel adopted their three children Rosemary, Shane, and Brian as infants. The Fuller family lived on a 1/2 section of farm land and operated a mixed farm and logging operation there. Life was Spartan for the family. Mr. Fuller was a very religious fellow. He forbade the installation of running water, electric power, or telephone in the family home. Mr. Fuller's word was the law on the homestead. In 1969 the couple separated and Hazel and the children went to live in Terrace. The 1/2 section was sold, the proceeds were equally divided between Mr. Fuller and his wife, the couple divorced, and in or around 1970 Mr. Fuller moved into a house he built on a nearby 3/4 section agricultural lease. Mr. Fuller eventually acquired clear title to the agricultural lease.
- [4] The 3/4 section comprised a good deal of old growth timber. Mr. Fuller's son Shane testified that as the 1980's went by the value of the timber began to make a significant rise. Mr. Fuller had periodically logged parts of the homestead over the years, and he was aware of the increasing value of the timber on the land.
- [5] At all material times Mr. Fuller was a devout and devoted member of the church and its predecessor the Worldwide Church of God. By all accounts Mr. Fuller was a deeply religious person. He accepted his church's doctrine and lived by its precepts.
- [6] Rosemary testified that by 1993 her father was well aware that the land had a value in excess of \$1 million. At Rosemary's request Mr. Fuller made a will in 1993. That will appointed Rosemary as executor and gave 80% of his estate to the three children in equal shares. The remaining 20% was to go to the church. Rosemary had no involvement in the 1993 will beyond encouraging her father to make it. She did not tell or suggest to Mr. Fuller that the will should contain any particular provisions. She did not participate in the lawyer's preparation of the will.

- [7] Shortly after he executed the will Mr. Fuller visited Rosemary and gave her a copy of the will along with a copy of his living will and a power of attorney he granted to her. Mr. Fuller said to Rosemary that he appointed her the executor of the will, but that he would ask Shane to be the executor if she did not want the post. Rosemary did not demur. I accept the evidence of Shane and Brian that they did not know the contents of the 1993 will until many years later. Unlike her brothers, Rosemary knew that the children were the major beneficiaries under the 1993 will.
- [8] In 1995 Mr. Fuller decided to sell his property. He engaged a real estate agent to list and market the land. The asking price was \$2.5 million. Shane and Rosemary testified that their father understood the nature of the negotiations over the sale of the land, and that they were confident that he was competent to govern the transaction. Mr. Fuller received two offers to purchase the land while the agent's listing was in effect. Mr. Fuller accepted the first offer, and when it did not complete he accepted the second. The second sale fell through as well, and the listing agreement expired. Sometime later one of the parties introduced to the property returned to Mr. Fuller and made another offer. Mr. Fuller enlisted Shane to assist him in those negotiations. A deal was struck and the property was sold for \$2.5 million. The real estate agent was unhappy with the affair and demanded payment of her commission. Mr. Fuller resisted, but eventually agreed to settle the agent's claim on payment of a portion of her commission.
- [9] The purchase price netted to Mr. Fuller more money, by several orders of magnitude, than he ever had before. After paying capital gains tax of some \$600,000 on the transaction, Mr. Fuller was left with roughly \$1.8 million in cash.
- [10] Shortly after Mr. Fuller received the sale proceeds his son Shane asked him for the loan of \$140,000. At the time Shane was in the process of moving from Vanderhoof to New Hazelton. It would have been convenient for him to have the loan as bridge financing while he waited for his Vanderhoof property to sell. Mr. Fuller put Shane off and went to talk to Rosemary about it. Rosemary suggested to her father that if he was uncomfortable loaning money to Shane, then perhaps he should consider giving it to him as an advance on his inheritance. Now, at that time Rosemary knew that the 1993 will gave her, Shane, and Brian 80% of the estate. She also knew that his estate was worth on the order of \$1.8 million. Mr. Fuller replied to her suggestion with a suggestion of his own: what would she think if he gave each of the children \$200,000 immediately? Rosemary was pleased by that idea and assisted her father to make a little ceremony of the presentation of those gifts.
- [11] The gifts were distributed by Mr. Fuller to the three children at a dinner party on March 30, 1995. Each child received a \$200,000 bank draft. After the presentation Mr. Fuller asked Rosemary to draw up a receipt which she did. The receipt reads:

MARCH 30, 1995

TO WHOM IT MAY CONCERN:

CONCERNING WILL OF STANELY FULLER OF VANDERHOOF, B.C.

THIS WILL IS REGISTERED IN VICTORIA AT THIS TIME.

ON THIS DATE MARCH 30, 1995 THE SUM OF \$200,000.00 TWO HUNDRED THOUSAND DOLLARS HAS BEEN GIVEN TO EACH OF THE FOLLING CHILDREN:

DOUGLAS SHANE FULLER, <SIGNATURE>

BRIAN PATRICK FULLER, <SIGNATURE>

ROSEMARY JEAN BEIER <SIGNATURE>

THIS HAS BEEN GIVEN AS A GIFT PRIOR TO THE NECESSITY OF THE LAST WILL.

THIS IS NOTED BY THE ABOVE SAID PERSONS AND SIGNED.

The children signed the receipt and spent the money.

[12] It is common ground that at the presentation ceremony Mr. Fuller said words to the children to the effect that they should spend the money wisely. The plaintiff argued that Mr. Fuller went further and told them that there would not be any more money. None of the children endorsed that proposition. All said that their father only told them to spend the money wisely. The receipt that Mr. Fuller had the children sign clearly connects the gift to Mr. Fuller's testamentary intentions, as does the way in which the gift was conceived; vis: in response to Rosemary's suggestion that Mr. Fuller advance part of Shane's inheritance. I find that at the presentation ceremony Mr. Fuller chose to say only that the children should be wise in their use of the money. Mr. Fuller did not intend at that time that the \$200,000 would exhaust the children's entitlement to share his wealth. I am confirmed in that belief by Shane's evidence that sometime after the \$200,000 gifts but still in 1995, he and his father were out fishing and his father said words to him to the effect that 'they (meaning the Fuller children) would be well taken care of' in the future. I accept that Mr. Fuller said those words, and by saying them he meant that the children could expect a further share of his considerable wealth in due course. Furthermore, the fact that the receipt he drew up concerning the gifts to the children reference his 1993 will makes it quite clear that Mr. Fuller was alive to and thinking about testamentary matters when the gifts were given. Had Mr. Fuller thought that the children should get no more than \$200,000 each he would likely have taken steps to change his will to reflect that intent. The change would have been to disinherit the children and give the majority of the estate to the church. The fact that he did not take that step is some evidence that he was of a mind that the gifts had not exhausted his intent to eventually bestow more upon them.

[13] The gift to the children was not the only gift Mr. Fuller made in 1995. He also gave \$260,000 to his church by way of a tithe. Mr. Fuller understood that his obligation was to give the church 10% of the increase in value of his property. Shane testified that his father showed him a calculation he had done of the tithe he was to give to the church after the 3/4 section was sold. Shane recalled that Mr. Fuller started with a tithe of \$300,000. That is, of course,

more than 10% of the \$2.5 million the sale brought in. Shane testified that he understood from his father that in some years the tithe is greater than 10% depending on the church's need. He speculated that 1995 was one such year. That proposition was not put to either of Messrs. Thompson and Flurry who testified on behalf of the church. I cannot say, therefore, why Mr. Fuller thought that his tithe in 1995 should have been \$300,000, but I accept that it was so. In any event, Mr. Fuller's calculation of the tithe allowed for deductions for the cost of the sale including taxes, and the net tithe was only \$260,000. Shane said, and I accept, that Mr. Fuller was pleased by having found a way to reduce the tithe by \$40,000. Shane said, and I accept, that Mr. Fuller took his tithing obligation seriously, but at the same time he did not give the church more than what he understood to be his obligation. I find that Mr. Fuller was, in 1995, content to limit his giving to the church to the amount he understood doctrine required him to give; not more, not less.

- [14] I find, therefore, that despite having already distributed \$200,000 to each child, in 1995 Mr. Fuller intended for his children to still have a share in the remainder of his estate. At that time the 1993 will distributed his estate 80% to the children and 20% to the church. This was, in my opinion, consistent with Mr. Fuller's devotion to both his children and his church at that time.
- [15] Mr. Fuller regularly attended Fall and Spring meetings of the Church. Sometime between the Fall meeting in 1996 and the Spring 1997 meeting Mr. Fuller spoke to Rosemary about how his money should be invested. This was a normal conversation for the two to have. That is because in 1995 Mr. Fuller made Rosemary a joint owner of his bank accounts and investment certificates. He sought and heeded her advice concerning the investments he should make. It is clear that in 1995, at least, he trusted her completely.
- [16] When he returned from the 1996 Fall meeting, however, Mr. Fuller told Rosemary that he did not want his money to be locked into inflexible and non-liquid investments. He said that he wanted to have his money readily available because according Church doctrine he might have to retreat with his money to a 'place of safety' on only two weeks notice. Rosemary was not keen on this idea, and said so to her father. She pointed out that the investments she recommended would return higher interest than the more liquid investments he wanted to use. Mr. Fuller replied that he was not concerned about the lower interest rate. I find that to have been an entirely reasonable response by him; Mr. Fuller had ample money and did not need to maximize his investment income in order to meet his modest needs. Rosemary went further, though. During this conversation she questioned the bona fides of the Church. She suggested that the head of the church was not the good man Mr. Fuller believed him to be; that the Church was after his money; and that he might come to a tragic end such as the poor unfortunates at Jonestown. Jonestown is, of course, the spot in the Guyanese jungle where hundreds of Jim Jones' followers died by poison. Rosemary says that as soon as those words were out of her mouth her father took an expression of deep anger and she knew that she had gone too far in her questioning his faith in his Church. From that point on relations between her and her father cooled and became strained.

- [17] That was not the only strain on their relationship. Shortly after Mr. Fuller returned from the Fall 1996 Church meeting he telephoned Rosemary and said that someone had stolen \$3,500 from his house while he was away. He said that the culprit must have had a key to the house because there were no signs of forced entry. Rosemary had a key to the house. She took the conversation as an accusation that she had taken the money. This was deeply hurtful to her. Several days later Mr. Fuller called back to say she should not worry about it, the problem had been taken care of. By this call, and by meeting with Mr. Fuller at his house shortly after, Rosemary came to understand that Mr. Fuller had found the \$3,500 buried in a root cellar. Mr. Fuller never did apologize to Rosemary for implying that she stole from him.
- [18] In November 1996 Rosemary and her husband Roland proposed that Mr. Fuller loan them \$55,000 over two years at an interest rate higher than Mr. Fuller would get in a bank account but lower than Rosemary would pay to a bank for the loan. Mr. Fuller considered the request, and several days later told Rosemary that he did not want to make the loan. It is important, I believe, to note that Mr. Fuller did not respond to Rosemary's loan proposal with another gift to the children (which he could easily afford at the time). It is also important to note that the loan was proposed in the name of both Rosemary and Roland. Roland is a person of German descent; a fact the relevance of which will come soon come clear.
- [19] Finally it is important to note that between the giving of the \$200,000 and April 1997, other than the request to borrow \$55,000, none of the children approached their father with requests for money. They did not collectively or individually pester him for further advances of their inheritances. Between 1995 and April 1997 Mr. Fuller did not have to deny a request for a gift and he did not have to 'put his foot down' to restrain the children's demands.
- [20] On March 24, 1997, Mr. Fuller met with Ms. Ongman at her Vanderhoof office. Ms. Ongman is a solicitor with many years experience in wills and estate matters. She was a careful witness. I accept Ms. Ongman's evidence without reservation. Ms. Ongman interviewed Mr. Fuller about his wants. He said that he wanted to revoke a power of attorney he had given to Rosemary. Ms. Ongman prepared a revocation for him to sign then and there. Mr. Fuller told Ms. Ongman as well that he wanted to change his 1993 will. Ms. Ongman's notes reveal that Mr. Fuller expressed his reasons for wanting to change the 1993 will thus:
- a) He felt Rosemary had railroaded (Ms. Ongman's words) him into making the 1993 will;
 - b) The \$200,000 he had given to the children in 1995 was their inheritance;
 - c) He wanted the children to have only another \$1,000 each from his estate; and
 - d) He wanted his church to have the balance of his estate when he died.

- [21] Although Ms. Ongman thought that Mr. Fuller was mentally intact, natural and proper caution caused her to raise the question of competency with him. She said that because he was intended to essentially disinherit his children she had to be satisfied that he was mentally competent. She told him to go to a doctor to certify his mental state. Mr. Fuller seemed fine with that idea and left her office.
- [22] That same day Mr. Fuller appeared at the office of his family physician Dr. Johnston of Vanderhoof. Mr. Fuller told Dr. Johnston that his family was questioning his ability to make a will and that he needed to be certified competent. Dr. Johnston testified that Mr. Fuller struck him as a perfectly appropriate elderly patient. Mr. Fuller passed the two mental state tests Dr. Johnston administered that day. Those tests were the Goldfarb and the Folstein tests. These tests assess a patient's orientation and, in a minor way, his cognitive function. Neither test showed Mr. Fuller to have deficits. On the other hand, Dr. Johnston admitted that neither test is particularly sensitive to mood or thought disorders, and they do not identify delusional thinking. Dr. Johnston did not have a reason to suspect that Mr. Fuller was delusional, and did not, therefore, probe that aspect of his mental state.
- [23] Dr. Johnston wrote a note to Ms. Ongman certifying that in his opinion Mr. Fuller was capable of making a will. That note was faxed to Ms. Ongman on March 24.
- [24] Ms. Ongman met with Mr. Fuller in Vanderhoof again on April 1, 1997. During that meeting she confirmed with Mr. Fuller his intention to change his will as he described during the earlier meeting. Their meeting was adjourned until the following week. On April 7, 1997, Mr. Fuller returned to Ms. Ongman's office and signed his will. All of the formalities of executing a will were observed on that day. I am satisfied that Mr. Fuller appreciated the nature of the document he was signing, he knew the extent of his estate and he understood who had potential claims upon that estate. The only question is whether Mr. Fuller lacked testamentary capacity due to a disease or illness of his mind that poisoned his affections towards his children and that led to his disinheriting them.

DELUSION AND TESTAMENTARY CAPACITY

- [25] There is evidence that Mr. Fuller's mind was affected by delusions in 1997. That evidence is supplied by laypersons who observed him and a medical doctor who examined him in 1998, and whose expertise permits him to opine as to Mr. Fuller's mental state in 1997. In this case I think it is appropriate to look first to the expert opinion, and then to the lay evidence. By that method one may determine whether the expert's expectations are born out by independent facts.
- [26] The expert to whom I refer was Dr. Schokking. Dr. Schokking is a medical doctor. He was qualified as an M.D. in 1985. His involvement in geriatric medicine began in 1986 when he took training in England. By 1996 Dr. Schokking was practicing family medicine in Prince George B.C. He signed onto the Geriatric Assessment Team operated by the Northern Interior Regional Health Board. Since then he has attended a number of conferences and

seminars concerning geriatric medicine. The primary focus of those programs is the diagnosis and treatment of Alzheimer's disease. Dr. Schokking has become the consulting physician to the GAT. I accepted Dr. Schokking as a person able to express expert opinion evidence concerning geriatric medicine and the nature and effect of Alzheimer's disease.

- [27] Dr. Schokking saw Mr. Fuller for the first time in September 1998. He traveled from Prince George to Vanderhoof to make a preliminary assessment of Mr. Fuller's mental state. His trip was precipitated by requests by Rosemary and Shane. They had seen a significant decline in their father's mental function, and they were concerned that he may not be able to live on his own through another winter in his rural home. Dr. Schokking performed a moderately detailed assessment of Mr. Fuller. He concluded that Mr. Fuller had an atypical case of Alzheimer's disease. The case was atypical because Mr. Fuller's Alzheimer's had produced profound and disabling delusions in his mind, but his social function was largely preserved. Dr. Schokking said that most usually patients who are as severely affected by Alzheimer's as Mr. Fuller was also have significant impairment of their social skills. Mr. Fuller did not.
- [28] Dr. Schokking decided that the best thing to do would be to admit Mr. Fuller to the Prince George Regional Hospital for a more complete assessment. Mr. Fuller was admitted to Prince George Regional Hospital in early October 1998. Mr. Fuller was assessed at Prince George Regional Hospital by Dr. Schokking, the neurologist Dr. Adams, the psychiatrist Dr. Brink, and the psychologist Dr. Grimmer. They concurred with Dr. Schokking's opinion that Mr. Fuller was severely paranoid and delusional as a result of Alzheimer's disease. Dr. Schokking concluded that Mr. Fuller was not mentally competent. On October 8, 1998, Mr. Fuller was formally declared mentally incompetent. His disease progressed and after living with 24 hour care for approximately a year and a half, he died in July 2000.
- [29] Dr. Schokking's opinion was helpful in this case not so much for his diagnosis of dementia in September 1998, but rather his interpolation of the progress of the disease during the several preceding years. Dr. Schokking has had a great deal of exposure to Alzheimer's in a large population of patients. He has attended seminars and education conferences concerning the disease. He said, and I accept, that Alzheimer's is a progressive disease that affects the cognitive function of the patient's mind. The disease is not usually diagnosed until it has already been present for 3 to 5 years. Dr. Schokking says that when he saw Mr. Fuller in September 1998 he was in the moderate stage of the disease. Given the gradual progression of the disease, Dr. Schokking said that it is much more likely than not that Mr. Fuller's mind was affected by Alzheimer's in the Spring of 1997, and probably earlier than that.
- [30] Dr Schokking went on to describe the usual effect of Alzheimer's on patients. The diagnostic criteria of Alzheimer's is the presence of short term memory loss together with loss of one other memory domain, such as orientation to person, place or time. Because the patient experiences loss of memory, as the disease progresses he begins to experience episodes of unexplained phenomena. He might, for example, be unable to find his car keys one day, and

suddenly discover them in plain sight on the kitchen table the next. Two explanations are available to a patient in these circumstances. The patient may recognize his own failure and blame himself; or the patient may not admit the failure of his memory and look to some other agent to explain the missing keys. The latter response is the most common, and it is the genesis of the paranoid thinking that Alzheimer's patients develop as their disease progresses. The patient often blames persons close to him and with whom he has most frequent contact for what are to him unexplained events. That is paranoid thinking. The patient also develops delusions to explain why his family and friends would cruelly hide his car keys from him for days at a time. Delusions are simply stories that fill in motivation for what the patient perceives to be the nefarious actions of his family and friends. Delusions can also develop to explain other cognitive malfunctions of the patient's failing mind.

- [31] As to the lay evidence of delusions, that comes from Rosemary, Shane, Mr. Jack Johnston, and Mr. Holmquist. They say that as early as 1994 and certainly in 1995, 1996, and 1997, Mr. Fuller expressed views that were at least strange and most probably delusional. I do not propose to detail each of those incidents, but several examples may illustrate the situation that pertained before the Will was signed. Mr. Fuller told all four lay witnesses that a neighbour of his, Gary McIlrick, was stealing electricity and had stolen parts from his old logging truck. It was patent to those to whom Mr. Fuller told this story that it was not true. Mr. Fuller said that a very tall woman equipped with a flashlight would look into his bedroom window at night. He was convinced that she intended to sexually molest him. The story of the woman became more fantastic as time passed. Her height grew to between 7 to 9 feet by 1998. Similarly, Mr. Fuller told stories of having shot a black bear in his yard (a plausible enough tale for the area), but as 1995 became 1996, 1997, and finally 1998 the black bear became a grizzly bear, then a grizzly bear that stood on its hind legs while Mr. Fuller shot and killed it with a single .22 bullet. Finally, the grizzly bear attained the ability to levitate because, according to Mr. Fuller's story, the beast was able to walk along the narrow wooden rail of Mr. Fuller's fence line. I note these stories as evidence that convinced me that at least as early as 1995 Mr. Fuller was prone to delusional thinking and that his grip on reality of the world around him was slipping.
- [32] It is not enough to vitiate a will if the testator is delusional. The authorities are clear that only delusions that bear directly on and influence the testator's deliberations may bottom an attack on testamentary capacity. The question becomes, then, whether Mr. Fuller was delusional about his children in 1997, and if he was whether that delusion affected his decision to disinherit them.
- [33] The most compelling evidence about that comes from Mr. John Johnston. Mr. Johnston was Mr. Fuller's neighbour and close friend for many years. He is an elderly gentleman, and thought well of Mr. Fuller. Mr. Johnston's deposition concerning Mr. Fuller's reason for cutting the children out of the will in 1997 was thus:

117 Q Did Mr. Fuller ever talk to you about changing his will?

A Yes, he talked to me quite a bit about that.

118 Q Did that happen over a long or short period of time?

A When he changed the will? I would say six months before changing the will.

119 Q You were aware when he changed it, were you?

A Yes, reasonably well. I did not -- I don't pry, so I don't really.

120 Q Yeah. what did he tell you about changing
the will, or talk to you about it?

A He was going to give it to the church.

121 Q Right. Did he say what he was changing?

Of course, when you change something you make it different from what it was before, and I'm trying to focus on what was changing in his will, did he tell you?

A The money would to the church and excluding his family.

122 Q And did he give you any particular reasons
why he wanted to do that?

A They were out to rob him.

123 Q The family?

A Yes.

...

325 Q Well, I'm curious as to when the last time

it was that you actually saw him and talked to him before the will was changed? If you can't give me a date, tell me how long it was that you became, you know, from the time you became aware the will had been changed?

A He talked to me a good three months before he changed the will.

326 Q Had you seen him in between that period of
time and the time of the changing of the will?

A I saw him all the time.

327 Q And during that period of time, did you
observe any unusual behaviour on the part of Stanley?

A Erratic.

328 Q Erratic in what sense?

A Over changing the will.

329 Q You are saying that the mere fact of

changing the will was erratic?

A He was very concerned about whether he should change the will or not.

330 Q What did he say specifically as to why he

was changing the will?

A Because Rosemary and her two brothers were after his money.

331 Q Were after his money?

A Yes.

[34] Further, Shane testified that during a visit he had with his father on March 31, April 1, or April 2, 1997 (he cannot be certain of the exact date, but is sure that it was one of those days because he was in the process of clearing out his Vanderhoof home for possession by its purchasers) his father said words to him to the effect that the "German" had been over and was trying to steal his money. Shane asked who the German was; Mr. Fuller replied Roland Beier. Mr. Beier is Rosemary's husband. Also during this conversation Mr. Fuller told Shane that Rosemary was out to control his money. Neither of these things was true. Rosemary was not trying to control Mr. Fuller's money, although she was naturally concerned that he get a decent return on its investment. Roland was not trying to steal his money. The most that Roland and Rosemary did was make a sensible request to borrow \$55,000 from Mr. Fuller several months previous. Shane said, and I accept, that during this conversation his father was agitated and angry, and that his anger over financial issues was focused on Roland and Rosemary.

[35] The Church argued that Mr. Fuller's decision to disinherit his children was motivated by two factors: first, that Mr. Fuller decided that the \$200,000 he had given to the children in 1995 represented the whole of the inheritance they might expect from him; and second, by a lack of confidence in a Rosemary's reliability in carrying out the wishes he expressed in his 1993 will. The church says that this lack of confidence stemmed from Rosemary's direct attack on the church when she made the Jonestown comment. I do not accept that reasoning. In the first place, in 1995 when his mind was not sullied by delusions about his children Mr. Fuller was of the view that the \$200,000 gifts were an advance on the children's inheritance. That is to say: he expected that the children would have a further share his wealth when he passed away. There was no reason for him to become angry with the children and to change his view of the nature of the gifts unless it came about as a result of deluded thinking. Secondly, if Mr. Fuller were rational and lacked confidence in a Rosemary's liability as an executor, then all he had to do to ensure that the wishes expressed in his 1993 will were carried out

was to appoint a different executor. It does not make sense that Mr. Fuller would generalize Rosemary's dislike of the church to the two brothers, and it does not make sense that he would punish the three children for Rosemary's comments about the church.

- [36] The church argued as well that Mr. Fuller could not have been severely affected by delusion around the time he made the second will because he gave no impression of delusional thinking when he visited with Mr. and Mrs. Schlote and Mr. Hartshorne in the Spring of 1997. The Schlotes and Mr. Hartshorne were acquaintances of Mr. Fuller from his church. He had known them for many years and had visited with them from time to time at church meetings and when they were passing through Vanderhoof. I do not think that it is inconsistent with Mr. Fuller having delusions that he did not mention them during his visits with church members. The Schlotes and Mr. Hartshorne said that a large part of their conversation with Mr. Fuller during their respective visits concerned church doctrine. Mr. Fuller had a good understanding of church doctrine and there is no evidence that he was delusional with respect to that topic. So it is hardly surprising that Mr. Fuller appeared to be perfectly normal when he discussed church business with his friends. I think it is entirely reasonable that during the balance of his conversation with the Schlotes and Mr. Hartshorne the opportunity to talk about topics on which Mr. Fuller was delusional did not arise. One would expect that Mr. Fuller would be more free in his conversation with his family and would be more likely to share strange stories with them and with his very close friends such as Mr. Jackson and Mr. Holmquist. Also, according to Dr. Schokking Mr. Fuller's social function was highly intact as late as 1998. He was probably functioning at least as well if not better in 1997. It is probable that the Schlotes and Mr. Hartshorne received essentially the same impression of him as Ms. Ongman and Dr. Johnston did. However, never were those good people alert to the possibility that Mr. Fuller was delusional about his children, and they had no reason to probe his thinking on that topic.

CONCLUSION

- [37] The central issue in this case is whether Mr. Fuller disinherited his children as a result of deluded thinking that poisoned his affections against them or as a result of a simple mistake as to their motivations and intentions. I am inclined to think that his reason was delusional and I have come to that conclusion primarily because after 1995 the only genuine rift to develop between Mr. Fuller and any of his children came about as a result of Rosemary's questioning his church. That event occurred, certainly; but a rational response to that event would not be to disinherit all the children. A rational response would be to change the executor of the 1993 will so as to ensure that the Church received the gift intended. A rational response coupled with anger would have been to decrease the gift to Rosemary to punish her for attacking his religion. It was not, in my view, rational for Mr. Fuller to have cut all three children out of the Will in response to importune comments made by one of them.

- [38] I find that the letter Mr. Fuller wrote to the church in July 1997 confirms his delusional state concerning his children's motivations and intentions. Although this letter was written after the will was made it is still relevant because Alzheimer's is a gradually progressive disease. I accept Dr. Schokking's opinion that delusions do not appear over night. It follows that evidence of delusions in July is some evidence that Mr. Fuller's mind was subject to delusions in April as well. The letter to which I refer contained the following passage:

After I sold my farm 3/4 sections of mostly large timber I received close to 2 1/2 million, so I called my 3 children to come to a restaurant in Vanderhoof for a supper for them & their children, I had my banker to make out 3 cheques - Bank drafts, 1 for each of my children all of whom were adopted and after the supper I handed each 200,00.00 to use as they saw fit - after giving the money to them - I just told them not to waste it because there would not be any more! but my daughter & husband soon had big plans it is easy to spend money that comes easy I suppose and thats when they found out that I meant it!

(emphasis added)

- [39] I have made some minor corrections to the spelling and grammar of the extract, but its sense is intact. The letter reveals two things about Mr. Fuller's thinking at the time. First, it shows that Mr. Fuller had convinced himself that he said more than he did about the children's gifts at the 1995 ceremony. Second, the extract indicates that Mr. Fuller felt that Rosemary and Roland were after his money and that he had to fend them off by resisting their demands. In fact, Rosemary and Roland made a sensible request for a loan, not a gift, in November 1996. This letter is further evidence that Mr. Fuller was not able to rationally appreciate his daughter's motivations and intentions, and that he attributed to her an ill will she did not have.
- [40] In the result, I find that Mr. Fuller's 1997 will was made at a time when his mind was affected by disease such that he was influenced by delusions which poisoned his affections for his children. The will cannot, therefore, stand. It will be for the parties to determine whether the 1993 will can be submitted to probate.

WILL VARIATION

- [41] If I am wrong and the 1997 will is good, it remains for me to determine whether the will should be varied so as to make just and adequate provision for Mr. Fuller's children. The evidence at trial established the following about Mr. Fuller's children:
- [42] Rosemary is 44 years old. She is in good health. She is married to Roland and lives with him on a ranch north of Fort Fraser, B.C. They have two grown and independent children. Their ranch comprises 1,300 acres on which they run about 180 cows. They also grow crops for their own use. After their minor debts are accounted for Rosemary and Roland have a net worth on the order of \$1 million. Rosemary invested the whole of the \$200,000 given to her by her dad in the ranch. Her health is good.

- [43] Brian is 46 years old. He has been separated from his wife for six years. His two children aged 16 and 7 live with their mother in Prince George. Brian went as far as grade 10 in high school. He has worked since leaving school in a variety of labouring jobs. He has no marketable skills other than his ability to drive heavy equipment and do manual labour. He has nothing left of the \$200,000 given to him by his father. Brian has been unemployed in recent months that expects to have worked during the winter operating snow removal equipment in the Fraser Lake area. Brian has no significant assets or property, but he does enjoy robust health.
- [44] Shane is 48 years old. He left high school and worked for some years as a certified millwright. He injured his back around 1990 and had surgery to repair that injury in 1991. He tried to return to his former employment but found that he was unable to continue. Shane then enrolled in a program to obtain his grade 12 education. He was successful and then began a two-year program to train as a community health worker. He completed that program and now has a job as a support worker for mentally challenged individuals in New Hazelton where he lives. Shane is married. His two daughters are grown and independent. Shane and his wife own the house in which they live as well as several rental properties and some bare land. Although Shane is not wealthy he is financially comfortable. Unfortunately he is not also physically comfortable. Shane's back ailments have left him with chronic pain. His ability to participate in the work force is limited by a partial disability caused by his back condition.
- [45] The evidence at trial established that the church is headquartered in Oklahoma, USA. It has approximately 7000 members throughout the world. The church's mission is to propound the message of Herbert W. Armstrong. Mr. Armstrong founded the Worldwide Church of God in the early 1960s. After Mr. Armstrong's death the Worldwide Church of God continued on but certain of its members perceived that it was straying from Mr. Armstrong's teachings. Those disaffected members and decided to break away from the Worldwide Church of God and to form their own institution. The Philadelphia Church of God arose from that decision. The church's financial health depends on tithing and gifts made to it by its members. A large part of the church's operating expense is the production and distribution of its literature. There can never, so far as church officials are concerned, be too much money to facilitate the distribution of the church's message. From the church's point of view, then, it has a demonstrated need for the gift Mr. Fuller intended to give to it.
- [46] The principal that guides the court in its consideration of a Wills Variation Act action is whether the will made just and adequate provision for the claimants. What is just and adequate varies from case to case. Even in the absence of need, adult independent children may, in appropriate circumstances, be entitled to an order varying a will. That is particularly so when the estate is large. I note the comment of Taylor J.A. in *Nulty v. Nulty Estate* 1990 41 B.C.L.R. (2nd) 343 where he said at pg 347:

While there may be much to be said for the argument advanced by the appellants from other points of view, the direction in which the law has moved in recent years in this province seems clearly towards recognition, whenever the size of the estate and any competing claims permit, of a right in an adult self-supporting child to receive a portion of the estate of his or her parents, and rejection of the view that it is only towards children who are unable adequately to support themselves by their own efforts at the time of the testator's death that this parental "moral duty" extends.

[47] Mr. Fuller's estate is large indeed. That fact permits the court greater latitude than might otherwise be the case. On the evidence Brian's need for a share of his late father's wealth is greater than his two siblings. However, Brian is capable of making his own way in the world and although his means are more modest than his brother or sister I cannot say that his "moral" claim on the estate is any greater than theirs. Given Mr. Fuller's evident affection for his children as demonstrated by the gifts he made to them in 1995, and the fact that he is the only one of their relatives who amassed significant wealth, I have concluded that Mr. Fuller owed a moral duty to his children to make greater provision for them than the \$1,000 given in his 1997 will. If that will is good then I would order that it be varied so that 50% of the estate go to the church and the balance be distributed equally between Rosemary, Brian, and Shane.

COSTS

[48] The usual course is that each party's costs be assessed as special costs and that those costs are paid out of the estate. That will be the order in this case unless within 15 days of this ruling a party files a praecipe setting down an application for an order that costs be assessed or paid in some other fashion.

"P. Rogers, J."

The Honourable Mr. Justice P. Rogers

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