

CANADA / JUDGMENT

Gowan Estate (Re)

2015 BCSC 795

COURT

Supreme Court of British Columbia

DECIDED

13 May 2015

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2015 BCSC 795 Gowan Estate (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Gowan Estate (Re), 2015 BCSC 795 Date: 20150513 Docket: 17111 Registry: Smithers Re: The Estate of Kenneth John Charles Gowan, Deceased Before: The Honourable Mr. Justice Crawford Reasons for Judgment Counsel for the Applicant: D.A. Giddings Place and Date of Hearing: Smithers, B.C. April 20 - 21, 2015 Place and Date of Judgment: Smithers, B.C. May 13, 2015

- [1] Mr. Norman Merlo petitions the Court for directions regarding the estate of Mr. Kenneth John Charles Gowan who died on May 24, 2014.
- [2] Mr. Gowan, who was in apparent good health, died suddenly while mowing his lawn outside his house at Grand Isle.
- [3] He was born in December 1944 and lived a full life. He obtained a degree in forestry and worked in Australia and finished up working in a saw mill. It was evident that he lived a somewhat private life but had many friends and different interests as reflected in his writings about his estate. He had outdoor interests reflected in the many guns he owned and he kept a detailed list of who was to obtain everything, both in his original will and the later document he wrote in or about 2010 - 2011.
- [4] The documents also reveal a sense of humor, such as his comment about "running out of toys" when giving the Royal Albert China tea set to George and Ann Moss in his 1990 will. However, by 2010 they were no longer around.
- [5] Mr. Gowan had written a will in his own hand writing dated August 15, 1990. By 2010 - 2011 it was evident that some of his assets had changed and some of his friends has passed away, and his later document reflects those changes, mostly with regard to who might benefit from some of the smaller items. However, with respect to the larger monetary gifts in his estate, which he intended to benefit his step-brothers and nephews and nieces, his primary intent did not change.
- [6] The executor in the 1990 will has died. Mr. Merlo was Mr. Gowan's friend and has assisted in the assembly of Mr. Gowan's estate and found the hand written eight page document that shows Mr. Gowan's changes to his testamentary intent.

- [7] Mr. Merlo now seeks his appointment as administrator of the estate of Mr. Gowan with will annexed.
- [8] I have carefully reviewed both documents and I am satisfied that the later document in large part varies some of the specific bequests but the principal bequests remain intact.
- [9] I am satisfied that Mr. Gowan adequately documented his testamentary intentions and they substantially dispose of his estate.
- [10] It appears from his notes that he carefully reviewed a booklet entitled "Death of a Taxpayer" and noted he should be consulting with a lawyer. He then listed his various assets and put beside the assets the persons that were to benefit. The list was not complete. For instance, of the nine guns he still retained at the time of making the notes, he failed to name four recipients. On the other hand, the house and a large part of the monies and many of his house items were clearly specified, as was his collection of fishing rods and reels.
- [11] I have set up a process that all interested parties can see what is being done with the estate with the intention that the bulk of his estate will be disposed of in accordance with his testamentary intention.
- [12] I have forwarded a memorandum to Mr. Giddings, who is counsel for the executor of the estate so that the proposed disposition of the estate can be made clear to all intended beneficiaries. It is not apparent on comparison of the two documents that anyone surviving has been left out. On the other hand it appears Mr. Giddings has given notice to all those who may have been interested, but I am taking this additional step so the process I propose is clear to all interested parties. A copy of the memorandum is attached to these reasons for judgment.
- [13] I take these steps in the belief that the intention of Mr. Gowan is being carried out, that it is just, and it is relatively inexpensive which should be the intent of the legal process. By the same token, those that properly have a dispute with this process will have their say. "The Honourable Mr. Justice Crawford" THE SUPREME COURT OF BRITISH COLUMBIA THE LAW COURTS MEMORANDUM TO COUNSEL TO: Sharon MacGregor Manager, Supreme Court Scheduling - Civil FROM: The Honourable Mr. Justice Crawford DATE: May 1, 2015 RE: Estate of Kenneth John Charles Gowan, Deceased By forwarding a copy of this memorandum to counsel, please advise counsel of the following: I am going to ask Mr. Giddings, counsel for the executor of the estate to send this memorandum to all interested parties. Mr. Gowan died while mowing his lawn at Grand Isle, BC on May 24, 2014. He had lived a full life and while practical in many ways, was not so practical in leaving his estate ready for probate. However, a recent amendment to the Wills, Estates and Success Act, S.B.C. 2009, c. 13 permits the Court to look at written documents to see if they contain testamentary disposition. Mr. Gowan did leave a hand written will made in 1990 but clearly there were many changes from then until 2014. It is evident that in 2011 or thereabouts, he made eight pages of notes from which I can deduce a certain testamentary intent as he listed items and gave people's names or relationships. I am attaching the list schedule of items, values, and

beneficiaries, which I am satisfied is supported by evidence of Mr. Gowan's testamentary intent: Schedule A. A second list of items has no beneficiary and that is marked Schedule B. It may be noted that with respect to some of the guns that were not disposed of in the more recent memorandum, two of the guns would have gone to Mr. Jackson and Mr. Appleby, and I am assuming they are no longer with us. With respect to the balance, the larger items will fall into residue, while the smaller items can be disposed of by Mr. Merlo. Mr. Merlo will also be responsible for paying the estate accounts, including Mr. Giddings upon completion of this process. Any balance or residue should be shared equally between Frank Edey, Debbie Edey, and the four nephews and one niece. If any of the interested parties takes issue with the proposal being put forth, then I will require that person to file an affidavit in the court registry in Smithers BC stating any facts that give rise to their objection, and provide a copy to Mr. Giddings who can then seek to set a date for hearing with notice to all interested parties. On the other hand, if there are no objections to the proposed distribution within 45 days of receipt of this memorandum to all interested parties, then Mr. Giddings will be permitted to proceed with the estate on the basis that all interested parties have consented or are not opposing the proposed distribution of Mr. Gowan's estate. If there are no objections to the proposed distribution within 45 days of receipt of this memorandum, then I will permit Mr. Giddings to proceed with the estate on the basis that it has either been consented to or no opposition has been expressed. PLEASE DO NOT REPLY TO THIS EMAIL, instead reply to Supreme Court Scheduling at sc.scheduling_sm@courts.gov.bc.ca if you have a response or any questions/concerns. The Honourable Mr. Justice Crawford Encls. cc: Donald A. Giddings - Via Email Schedule A Asset Value Beneficiary House at 10 McDonald Ave Grand Isle, BC \$50,600 Larry Hatwell S-10 Blazer \$1,000 Norman Merlo CIBC Investors Edge, Toronto \$83,142.84 Divided between Frank Edey, and Debbie Edey Guns: .223 Krico \$500 Manfred Baron 30 - 30 \$350 Bob Atkins 308 Steger Mannlicher SSG \$2,200 Norman Merlo 30 - 06 Steger Mannlicher \$1,200 Norman Merlo 45 - 70 Marlin Guide rifle \$450 Andy Briggs Fishing rods and reels Daryl McLaughlin, Fred Bernard and Larry Hatwell Household Items: Needle point pictures Cathy Lavery Vases Yvonne Rothenberger Dusty Antler Yvonne Rothenberger Eskimo rock carvings Paula Forbes Blue flower tea set, coffee tables, walnut chest, silver flatware Cathy Lavery Spritfire picture Larry Hatwell/Bob Atkins Polar bear rug Cathy Lavery Moose and goat Bulkley Valley Rod and Gun Club Hobby Stuff: Airbrush etc. Jim Forbes Re-loading equipment Larry Hatwell Flying stuff Daryl McLaughlin Stamp collection Daryl McLaughlin Completed models _ and Mr. Hatwell to distribute except for the P47 to go to Bob Hurrell Other pictures go into residue, save for 35 mm slides to be dealt with Frank, Davy, and Cathy Steel tool box Norman Merlo Books/workshop Colin Macintosh DVD's Larry Hatwell, except for documentaries which go to Colin Macintosh Schedule B Asset Value Beneficiary Toyota Tacoma \$34,000 CIBC Smithers chequing account \$8,066.11 CIBC Wood Gundy Nelson Investment \$105,170.83 RRSP's \$68,322.74 CPP death benefit \$2,500 9 ounces of gold bullion \$13,500 Clothing/furniture/personal effects No value Cash \$600 Guns: .22 BRNO \$250 (1990 Jim Jackson) 300 Browning \$400 308 M-98 Carbine \$300 (1990 Peter Appleby) 12 x 12 Russian shot gun \$350 (1990 Peter Appleby)

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Prepared on 29 October 2026 · Esheria