

CANADA / JUDGMENT

Hejno v. Hejno

2025 ONCA 876

COURT

Court of Appeal for Ontario

DECIDED

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Hejno v. Hejno

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Tulloch, Michael H.; Lauwers, Peter D.; Dawe, Jonathan

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Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Hejno v. Hejno, 2025 ONCA 876

DATE: 20251217

DOCKET: COA-25-CV-0433

Tulloch C.J.O., Lauwers, and Dawe JJ.A.

BETWEEN

Jennifer Louise Hejno (formerly Stanley), Personally and as Named

Estate Trustee for the Estate of John Jeffrey Hejno

Applicant (Respondent)

and

Shawn Hejno, Jeffrey John Hejno, David Hejno

and Irene Veronica Hejno

Respondents (Appellants)

Neil Colville-Reeves and Robert McGlashan, for the appellants

Alan J. Butcher, for the respondent

Heard: September 29, 2025

On appeal from the order of Justice M. Dale Parayeski of the Superior Court of Justice dated November 26, 2024.

REASONS FOR DECISION

A. introduction [1] This is an appeal from the order of the application judge, Justice Parayeski of the Superior Court of Justice, validating unsigned 2024 draft wills under s. 21.1 of the Succession Law Reform Act, R.S.O. 1990, c. S.26.

[2] For the reasons that follow, the appeal is allowed, the order validating the 2024 drafts is set aside, those drafts are declared to be invalid, and the matter is remitted to the Superior Court for determination of the remaining issues on a full evidentiary record.

B. Background [3] John Jeffrey Hejno died on May 6, 2024, after a battle with hepatocellular carcinoma. He had been in a common law relationship with the respondent, Jennifer Louise Hejno (formerly Stanley), for over 14 years. John was previously married to Irene Veronica Hejno, with whom he had two children: Jeffrey John Hejno and David Hejno. David's son, Shawn Hejno, is John's only grandchild.

[4] John's relationship with his sons was uneven. He was estranged from David for more than a decade. Nonetheless, John maintained close ties with his grandson, Shawn, whose business ventures he sought to support. Jeffrey, his other son, remained connected but had no children. John's former spouse, Irene, received spousal support pursuant to a long-standing court order that also required his estate to continue payments following his death.

- [5] John's estate planning was complicated. In 2018, he signed a properly executed will that established a spousal trust for Jennifer, funded largely by his shares of one of his successful property development corporations, York Plaza Developments Limited ("YPDL"), and established a second family trust primarily for Shawn's benefit, funded by the shares of a second corporation, 244135 Realty Limited ("244135 Realty"). This will named Jeffrey and Shawn as the residual beneficiaries of the estate.
- [6] John suffered a mild heart attack in 2021. The following year, he prepared new primary and secondary wills, which he executed before his long-time accountant, Mr. Lepore, on December 8, 2022. The secondary will was designed to govern his corporate holdings and to minimize estate administration tax. Like the 2018 will, these wills established a spousal trust for Jennifer. Unlike the 2018 will, they do not create a second family trust for Shawn, or provide any assets to him until Jennifer's death, when he stands to inherit the residue of the estate. Under the 2022 wills, the shares of 244135 Realty form part of the property held by the spousal trust. However, these wills were not properly executed because there was only one witness, Lepore. No signed original of the 2022 wills has been located, but Mr. Lepore made and kept a photocopy.
- [7] In early 2024, as his illness advanced, John consulted David Simpson, a lawyer, with the intention of preparing new wills. Drafts were prepared based on the 2022 wills, but with certain "slip sheets" inserted to alter the stated shareholdings in YPDL. Those slip sheets were not initialed or signed. Importantly, the dispositive provisions were not changed. It is common ground that the 2024 slip sheets overstate the percentage of YPDL shares that John held and that the percentages stated in the 2018 and 2022 wills were accurate. The new wills were never completed before his death.
- [8] After John's passing, Jennifer located the 2024 drafts among his papers and applied to court to have them validated under s. 21.1 of the SLRA. In the alternative, she sought validation of the 2022 wills.
- [9] Jennifer's filings did not mention the 2018 will, of which the other parties had no knowledge. The appellants – Shawn, Jeffrey, David, and Irene – did not retain counsel or oppose the application.
- [10] The record before the application judge consisted of affidavits from three key witnesses: Lepore, John's solicitor, David Simpson, and Jennifer. Lepore witnessed the execution of the 2022 wills but was unaware of any subsequent "slip-sheeting." Simpson deposed that John was indecisive in early 2024 and had not finalized testamentary instructions. Jennifer asserted that John began to get his affairs in order in 2021, but she lacked personal knowledge of the 2022 wills. She also stated that John did not discuss the 2024 drafts with her, but that in early 2024 he was "trying to get an immediate appointment with an estate lawyer and an immediate signing of the draft Will he had ready." However, Simpson's evidence was that when he met with John in February 2024 and again in April 2024, he was indecisive about how he wanted to proceed, and that Simpson "never received final

instructions from John before he died.”

- [11] On November 26, 2024, the application judge declared the 2024 drafts and the spousal trust they created for Jennifer to be valid and ordered John’s estate to continue to pay spousal support to Irene. He provided no reasons for his decision, perhaps because the application was unopposed.
- [12] The appellants – John’s children, grandson, and former spouse – appealed the order validating the 2024 drafts. Their central concern is that those drafts do not reflect John’s true testamentary intentions, which his solicitor deposed were in flux at the time of his death.
- [13] The 2018 will came to light after the application judge’s order and the filing of this appeal. The appellants maintain that they learned of its existence from Jennifer’s counsel, who advised that John’s former corporate counsel had provided an electronic copy of it to her in early April 2025. Jennifer does not oppose its admission as fresh evidence.

C. Analysis [14] We are satisfied that the appeal should be allowed. We would admit the 2018 will as fresh evidence, reverse the application judge’s decision to validate the 2024 drafts, declare those drafts invalid, and remit the issue of the validity of the 2022 wills to the Superior Court for redetermination.

- (1) The 2018 Will Is Admissible as Fresh Evidence [15] First, the 2018 will is admissible under the test in *Palmer v. The Queen*, [1980] 1 S.C.R. 759. It is relevant, credible, could not have been discovered earlier with due diligence, and could reasonably affect the result. Its existence might weigh against validating the later not fully executed 2022 wills and the 2024 drafts in the absence of a cogent explanation for the change in distribution: *Hadley Estate (Re)*, 2017 BCCA 311, 416 D.L.R. (4th) 673, at para. 43.
- (2) The 2024 Drafts Are Invalid [16] Second, the application judge’s order validating the 2024 drafts should be set aside and those drafts declared invalid.
- [17] The absence of reasons removes deference and justifies our intervention. Courts must ensure that documents validated under s. 21.1 of the SLRA truly express the testator’s wishes, and the lack of opposition did not remove the need to decide the application according to the law and the evidence: *Penate v. Martoglio*, 2024 ONCA 166, 496 D.L.R. (4th) 50, at para. 20; *Darwin Construction (BC) Ltd. v. PC Urban Glenaire Holdings Ltd.*, 2023 BCCA 436, at para. 89.
- [18] Since we do not have the benefit of reasons in the court below or full argument before us, this is not an appropriate case for us to definitively determine the legal test that governs applications under s. 21.1 of the SLRA. It is also unnecessary for us to do so here, since we are satisfied that the application judge’s order validating the February 2024 wills cannot stand.

- [19] The 2024 wills were not duly executed in accordance with the governing statutory formalities and, unlike the 2022 wills, they were not executed even in an imperfect manner. Further, they cannot be taken as an expression of John's testamentary intentions. The evidence of his lawyer, Simpson, confirmed that as late as April 2024, John remained undecided on aspects of his estate planning. As well, the unsigned and uninitialed inserted slipsheets recorded ownership interests at odds with the accountant's evidence, which raises significant doubt as to their reliability. Collectively, this evidence makes validation inappropriate.
- (3) The 2022 Wills' Validity Should Be Remitted to the Superior Court [20] Finally, we remit the validity of the 2022 wills to the Superior Court rather than validate them on appeal as Jennifer proposes.
- [21] Appellate courts rarely engage in first-instance fact-finding. This exceptional practice is only appropriate if it is both in the interests of justice and practically feasible. It is disfavoured if the court of first instance did not make essential factual findings or provide reasons, there are evidentiary conflicts, and/or credibility and testimonial evidence are at issue: *Canadian Council for Refugees v. Canada (Citizenship and Immigration)*, 2023 SCC 17, 481 D.L.R. (4th) 581, at paras. 146, 177-78; *Swiss Reinsurance Company v. Camarin Limited*, 2015 BCCA 466, 82 B.C.L.R. (5th) 68, at paras. 65-66, leave to appeal refused, [2016] S.C.C.A. No. 177; *State Farm Mutual Automobile Insurance Co. v. Aviva Canada Inc.*, 2015 ONCA 920, 128 O.R. (3d) 321, at para. 26, leave to appeal refused, [2016] S.C.C.A. No. 80.
- [22] This rule applies here. The validation of an improperly executed will is a fact-intensive inquiry that often turns on extrinsic evidence: *Hadley Estate*, at para. 40. Undertaking that inquiry would require us to make findings on a matter not addressed by the application judge which involves conflicting evidence that may implicate credibility and require testimony. For instance, Lepore's affidavit does not mention the 2018 will even though his assistant is alleged to have witnessed it, and the discovery of this earlier will could be in tension with Jennifer's assertion that John only began to get his affairs in order in late 2021. The appellants could attempt to use both these potential discrepancies to challenge Lepore and Jennifer's credibility, challenges which might require testimonial evidence to resolve.
- [23] Deciding this issue on appeal would not save the parties time and expense either. Related estate and oppression proceedings that engage overlapping issues are ongoing. Thus, the most efficient path forward is remittal. This will allow the Superior Court to address issues across all of the related proceedings with the benefit of discovery, preventing inconsistent findings and piecemeal appeals.

D. Disposition [24] For these reasons, the appeal is allowed. The order validating the 2024 drafts is set aside, those drafts are declared invalid, and the matter is remitted to the Superior Court of Justice for a full hearing on the merits, including the validity of the 2022 wills.

[25] If the parties cannot agree on the costs of this appeal, the appellants shall serve and file their costs submissions of no more than five pages plus a bill of costs within 7 days of the release of these reasons, the respondent shall serve and file her costs submissions of no more than five pages within 7 days of the receipt of the appellants' costs submissions, and the appellants shall serve and file any reply costs submissions of no more than two pages within 5 days of the receipt of the respondent's costs submissions.

"M. Tulloch C.J.O."

"P. Lauwers J.A."

"J. Dawe J.A."

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