

CANADA / JUDGMENT

Hoyle Estate

2022 BCSC 729

COURT

Supreme Court of British Columbia

DECIDED

4 May 2022

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

2022 BCSC 729 Hoyle Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hoyle Estate,

2022 BCSC 729

Date: 20220504

Docket: S2010325

Registry: Vancouver

Between:

Royal Trust Corporation of Canada, in its capacities as Trustee of the Una Hoyle Trust and
Executor of the Estate of Una Bernice Hoyle, Deceased

Petitioner

And

Robert Lewis Horner and Robert Standing Ferguson, in their capacity as co-trustees of the
Spousal Trust under the Will of William Leslie Hoyle, Deceased, Cameron William Hoyle, Leia
Lanley, Douglas Vernon Hoyle,

Gordon James Hoyle,

Jason James Laughlin, Christina Marie Laughlin, Jena Nicole Hoyle Friedrich, Ryan Cameron
Hoyle, Lauren Dawn Hoyle Walker, Courtenay Kate Hoyle Ikinc, Kyla Nicole Hoyle, Peter
Shaughnessy Hoyle, and

Emily Marie Bracken (minor), Aiden James Bracken (minor), Brandon Michael Friedrich (minor), Elaina Nicole Friedrich (minor), Cameron William Gordon Walker (minor), Kingston James Walker (minor), Aria Raine Walker (minor), Garret Fraeser Ikinici (minor), Nida Evangeline Ikinici (minor), Tiernin Austin Gray Hoyle (minor), Alexandria Noir Roberts-Hoyle (minor), by their Litigation Guardian, Kristen Okimaw, and

Cassidy Jade Hoyle, Skylar Blu Hoyle, John Moore, Susan Schott, Marilyn Menzies, in her capacity as the Personal Representative of The Estate of Norman Menzies, Deceased, Jennifer Dagg, Judi Hoyle, Diane Briggs-Hoyle, Kelowna Museum Association, Kelowna Museums Society, Lake Country Food Assistance Society, Lake Country Heritage and Cultural Society, and Central Okanagan Foundation

Respondents

Before: The Honourable Mr. Justice Brongers

Reasons for Judgment on Costs

Counsel for the Petitioner, Royal Trust Corporation of Canada

S. Field

Counsel for the Respondents, Douglas Vernon Hoyle and Cameron William Hoyle

H. McLellan

Counsel for the Respondent, Litigation Guardian

No other appearances

K. D. Darling

Place and Date of Trial/Hearing:

Vancouver, B.C.

Written Submissions Received March 22, 2022, March 31, 2022, April 5, 2022, and April 8, 2022

Place and Date of Judgment:

Vancouver, B.C.

May 4, 2022

Introduction

[1] This is my decision on costs arising from an oral judgment rendered further to an application to rectify or cure a trust document.

- [2] That application was brought by Royal Trust Corporation of Canada ("Royal Trust") in its capacity as trustee of the Una Hoyle Trust ("UH Trust") and executor of the estate of Una Hoyle. Royal Trust had become aware that a clerical error was made in respect of an estate planning document relating to the UH Trust. Royal Trust's petition was opposed by two of Una Hoyle's children, Douglas Hoyle and Cameron Hoyle, beneficiaries of the trust who stood to receive less if the error was corrected. A petition response was also filed by the Litigation Guardian on behalf of Una Hoyle's minor beneficiaries, albeit one that took no position on the relief sought.
- [3] In my judgment pronounced March 9, 2022, I granted Royal Trust's petition. While I found that I could not cure the trust document pursuant to s. 58 of the Wills, Estates and Succession Act, SBC 2009, c. 13 ("WESA"), I decided to correct the underlying clerical error by issuing an equitable rectification order instead. Royal Trust had suggested these two remedial approaches, and was indifferent as to which one was employed.
- [4] At the conclusion of my judgment, I invited Royal Trust, Douglas Hoyle, Cameron Hoyle, and the Litigation Guardian to produce written submissions on costs if they were unable to agree on the terms of such an order. They have accepted this invitation. My consideration of their submissions is set out here.
- [5] In doing so, I will be referencing the Hoyle family members by their first names in the balance of these reasons. This is simply to ensure clarity and readability, and should not be taken as a sign of disrespect.

The Parties' Positions

Royal Trust's Position

- [6] Royal Trust submits that it should be fully indemnified for its expenses incurred in relation to this proceeding through a special costs award to be paid from the UH Trust. Royal Trust further submits that the Litigation Guardian should be afforded the same treatment. With respect to Douglas and Cameron, however, Royal Trust says that they should bear their own costs.
- [7] In support of its position, Royal Trust argues that it deserves a special costs award given that its petition was allowed and had to be brought in order to ensure that Una's testamentary intentions were respected. It notes that trustees and litigation guardians involved in estate litigation are generally indemnified through a special costs award. It also points to the terms of the UH Trust deed which provides for Royal Trust's indemnification, as well as its presumptive entitlement to be reimbursed for expenses prescribed by s. 95 of the Trustee Act, RSBC 1996, c. 464.
- [8] On the other hand, Royal Trust says that Douglas and Cameron should not have their costs indemnified from the UH Trust. Royal Trust accepts that Douglas and Cameron were not responsible for the clerical mistake that precipitated the need to bring the petition, and

therefore they ought not to pay the costs of this petition directly. However, Royal Trust argues that the cost of Douglas and Cameron's unfounded opposition to the petition should not be borne by the other beneficiaries of the UH Trust. Furthermore, Royal Trust alleges that Douglas and Cameron took positions that lacked an evidentiary or legal basis which increased the costs and time required for the petition. Accordingly, Douglas and Cameron should pay their own costs.

The Litigation Guardian's Position

- [9] The Litigation Guardian takes the same position with respect to costs as Royal Trust does. She says that her participation was necessitated by flaws in the execution of Una's estate planning documents. The Litigation Guardian also notes that Rule 20-2 of the Supreme Court Civil Rules, BC Reg. 168/2009 requires minors to be represented by a litigation guardian who must act by a lawyer. As such, she ought to be fully indemnified through a special costs award as well, just like Royal Trust. The Litigation Guardian also submits that rather than trying to parse out what portions of this matter should be borne by Douglas and Cameron, they ought simply to bear their own costs.

Douglas and Cameron's Position

- [10] Douglas and Cameron, who are collectively represented, submit that they also deserve to be awarded their special costs of this petition, payable from the UH Trust. They characterize the petition as one where the trustee was effectively seeking judicial guidance on behalf of all of the trust's beneficiaries. In such a situation, the trust should pay special costs to every litigant who participates in the proceeding so long as they make relevant submissions, whether or not they are accepted by the court. Accordingly, they say that Royal Trust's criticisms of Douglas and Cameron's specific arguments ought to be disregarded.
- [11] Even if the outcome of the petition was a relevant consideration, however, Douglas and Cameron say that their positions were brought in good faith and were helpful, particularly those regarding s. 58 of the WESA which the Court accepted. They therefore ask that an order be issued requiring UH Trust to indemnify all participating parties - Royal Trust, the Litigation Guardian, Douglas, and Cameron - with a special costs award.

Analysis

- [12] In its relatively recent decision in *Connor Estate v. Worthing*, 2021 BCCA 231 ("Connor Estate"), at paras. 56 to 61, the Court of Appeal confirmed that in estate litigation the "modern approach" to fixing costs applies. That means that costs generally follow the event and are to be assessed on a party and party basis, unless there is an applicable exception.

- [13] One such exception is the principle that an executor, trustee, committee, or representative is generally indemnified through a special costs award in respect of all reasonable litigation costs incurred in the fulfillment of their role: *Hollander v. Mooney*, 2017 BCCA 238 ("Hollander") at para. 41.
- [14] All parties agree that this exception is applicable to the trustee and the representative in this case. So do I. Royal Trust acted reasonably by bringing this petition to correct the clerical oversight that occurred during the preparation of the trust document in issue. The Litigation Guardian acted reasonably by appearing at the petition to represent the minor beneficiaries, and her decision not to oppose the relief sought by Royal Trust was also reasonable. Royal Trust and the Litigation Guardian shall be indemnified through a special costs award payable from the UH Trust.
- [15] The disputed question is whether Douglas and Cameron also deserve to receive such an award, even though they actively and unsuccessfully opposed Royal Trust's petition. The answer to this question depends largely on whether there is another applicable exception to the general rule that costs should follow the event.
- [16] Douglas and Cameron argue that there is such an exception. They rely in particular on the 1999 decision of Justice Allan in *Turner v. Andrews* (1999) 30 E.T.R. (2d) 126 (BCSC); aff'd 2001 BCCA 76 where the Court considered the question of how to award costs in the context of a s. 86 Trustee Act proceeding. Summarizing principles drawn from the English Court of Chancery's decision in *Re Buckton*, [1907] Ch. 406 (Eng. Ch. Div.), Justice Allan suggested at para. 8 of her judgment (reproduced by the Court of Appeal at para. 5 of its judgment) how costs applications should be treated in three types of estate cases:
- (1) An application made by trustees of a will or settlement, asking the Court to construe the trust instrument for their guidance; to ascertain the interests of the beneficiaries; or to answer a question which arises in the administration of the trusts. In such instances, the costs of all parties, which are necessarily incurred for the benefit of the estate, should be taxed as between solicitor and client and paid out of the estate.
 - (2) An application made by the beneficiaries as a result of difficulty of construction or administration of the trust which would have justified an application by the trustees. Again the application is necessary for the administration of the trust and the costs of all parties, which are necessarily incurred for the benefit of the estate, are paid out of the estate.
 - (3) An application made by the beneficiaries who make claims adverse to other beneficiaries. Such litigation is adversarial in nature and, subject to the Court's discretion, the unsuccessful party bears the costs of those whom he or she brings to Court.

[my emphasis added]

- [17] Douglas and Cameron say that this a "type (1) case", where the trustee has brought the application in order to address an issue in relation to a trust instrument which arose as a result of the deceased's actions while executing her estate planning documents. There was no application by a beneficiary. Therefore, they submit that all parties to the proceeding should receive special costs paid out of the trust.
- [18] In my view, however, the common law in British Columbia regarding costs in estate and trust litigation has evolved and the approach drawn from *Re Buckton* cannot be rigidly applied. In particular, the simple fact that such litigation has been instituted by a trustee ought not to automatically entitle all participating parties to full indemnification of their legal costs from the estate or the trust. Such a principle would create the perception that there is nothing to be lost in pursuing such litigation, and put estate and trust assets at unwarranted risk of being depleted: *Hollander* at para. 112, citing *McDougald Estate v. Gooderham* (2005), 255 DLR (4th) 435 (ONCA) at para. 85.
- [19] At the same time, I acknowledge that this is a case where the litigation was necessitated by Una's inadvertent clerical error, and was not precipitated by Douglas and Cameron. Therefore, a strict application of the ordinary costs rule whereby Douglas and Cameron should pay costs given their unsuccessful opposition to the petition would not be fair either. Furthermore, I also acknowledge that Douglas and Cameron's legal submissions were of assistance to the Court, particularly in relation to s. 58 of the WESA. That said, I agree with Royal Trust that Douglas and Cameron's challenge to the factual and evidentiary basis of the petition was unfounded and needlessly increased the length and complexity of this matter. It would therefore be unjust to fully inflict this cost on the other beneficiaries of the trust. Also, as was aptly noted by the Litigation Guardian, it would not be practicable to fashion a costs order which parses out the value and responsibility to pay for each of Douglas and Cameron's various submissions.
- [20] In these particular circumstances, I conclude that Douglas and Cameron ought to simply bear their own costs of participating in this proceeding.

Disposition

- [21] Royal Trust and the Litigation Guardian are to be fully indemnified by an award of special costs in respect of this proceeding. Such costs are to be paid from the UH Trust.
- [22] There shall be no costs paid to or payable by Douglas and Cameron.

"Brongers 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/22/07/2022BCSC0729.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/hoyle-estate-2022>

Prepared on 27 October 2026 · Esheria