

CANADA / JUDGMENT

Jagpal v. Samra

2024 BCCA 211

COURT

British Columbia Court of Appeal

DECIDED

29 May 2024

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2024 BCCA 211 Jagpal v. Samra

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Jagpal v. Samra,

2024 BCCA 211

Date: 20240529

Docket: CA49717

Between:

Rina Jagpal also known as Ramenjit Kaur Jagpal

Appellant

(Respondent)

And

Sevina Samra

Respondent

(Petitioner)

And

Public Guardian and Trustee of British Columbia

Respondent

Before:

The Honourable Mr. Justice Butler

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated

February 28, 2024 (Jagpal (Re), 2024 BCSC 343,

Vancouver Dockets S236436 and E232905).

Oral Reasons for Judgment

The Appellant, appearing in person

(appeared via videoconference on May 29, 2024):

R. Jagpal

Counsel for the Respondent, Sevina Samra

(appeared via videoconference on May 29, 2024):

A.L. Colpitts

Place and Date of Hearing:

Vancouver, British Columbia

May 28, 2024

Place and Date of Judgment:

Vancouver, British Columbia

May 29, 2024

Summary:

This application relates to an appeal of an order appointing the respondent sister, rather than the appellant sister, committee of the mother and her estate. The respondent applies for security for costs of the appeal. The respondent contends the appellant has failed to provide any evidence regarding her finances, has demonstrated a willingness to breach court orders such that she anticipates difficulty in recovering her costs, and that there is no merit to the appeal. Held: Application granted. The appellant has not satisfied her burden to show that an order for security for costs would prevent her from pursuing a meritorious appeal. Further, the respondent raised a real concern that recovering costs of the appeal will be difficult, which the appellant failed to rebut. Finally, although the appeal is not wholly without merit, at this stage, it appears that the merits of the appeal are not strong.

BUTLER J.A.:

Nature of the Application

- [1] The respondent, Sevina Samra, applies for an order requiring the appellant, Rina Jagpal, to post security for the costs of the appeal in the amount of \$9,000 and an order staying the appeal until security is posted.
- [2] Ms. Jagpal opposes the application. The respondent, the Public Guardian and Trustee of British Columbia, did not appear at the hearing of the application and takes no position.

Background

- [3] Ms. Samra and Ms. Jagpal are sisters. Their mother is Gulsharanjit Kaur Jagpal and I will refer to her as Mrs. Jagpal. Both sisters sought to be appointed as committee of their mother's person and estate. Their dispute proceeded to a four-day hearing before Justice Fitzpatrick. In reasons indexed at 2024 BCSC 343 (the "Reasons"), the judge declared Mrs. Jagpal incapable of managing herself and her affairs by reason of mental infirmity under the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA]. The judge ordered that Ms. Samra be appointed as committee of Mrs. Jagpal and her estate.
- [4] The salient background, which I need not repeat for the purpose of this application, is set out in considerable detail in the Reasons. After applying the factors upon which the court is to exercise its discretion under the PPA in considering the question of who should be appointed as committee, the judge arrived at the following conclusions:
 - [175] I agree with the [Public Guardian and Trustee of British Columbia] that this is a complicated and nuanced matter. The family dynamics are such that the impartiality of all family members is potentially in issue, including both Sevina and Rina to a degree (although perhaps varying degrees). There is a distinct distrust among many family members, which is overlaid with the substantial amount of money involved, again invoking the suggestion of motivations toward securing those sums.
 - [180] I agree that Rina's extreme control of Sharan in the circumstances is concerning to the extent that she is restricting Sharan's access to others and completing shielding any information relating to Sharan from Sharan's family. She professes to be doing so in her mothers' best interests, although I do not agree that her motivations are as pure as she suggests. I also cannot discern any valid basis for Rina's "safety concerns" as regards Sharan. I also fail to see the need for this level of control, given her mother's present limited financial resources and the obvious wish of the family and friends to see her, which on the face of it is reciprocal.
 - [181] In making these comments, I do not wish to disregard entirely Rina's concerns in relation to the other family members. There may be similar motivations at play with other family members in relation to Sharan that are not evident in the record.

- [182] What is before the Court is Sevina's sworn intention to act in her mother's best interests, while also facilitating contact between Sharan and Sharan's family and friends as is appropriate. She has demonstrated an ability to act as committee on both capacities. On the other hand, Rina has maintained a cloak of secrecy and non-disclosure that I find troubling, again suggestive of motivations that do not necessarily align with Sharan's best interests.
- [183] In all of the circumstances, I exercise my discretion to appoint Sevina as the committee of Sharan's person and estate. She is the more suitable choice, rather than Rina.
- [5] On March 1, 2024, Ms. Jagpal filed a notice of appeal asking that the above order be set aside in its entirety.
- [6] That same day, Ms. Samra obtained a without notice order from Justice Fitzpatrick declaring that the police were authorized to enforce and implement the committee order made February 28, 2024, including removing Mrs. Jagpal from any place and placing her in the care of Ms. Samra. There is some controversy over the circumstances giving rise to that order. Ms. Samra says the order was needed as Ms. Jagpal was refusing to comply with Justice Fitzpatrick's order. Ms. Jagpal denies any deliberate disobedience of that order. In any event, the police assist order gave Ms. Jagpal leave to apply to vary or set aside the order on not less than two business days' notice to Ms. Samra. It is my understanding that was not done.
- [7] Turning to the appeal, Ms. Jagpal filed the appeal record on April 29, 2024. Ms. Samra brought this application on May 6, 2024.

The Law

- [8] The authority to order security for costs is expressly provided for in s. 34(1) of the Court of Appeal Act, S.B.C. 2021, c. 6. The onus is on the appellant to show why security should not be required: *Creative Salmon Company Ltd. v. Staniford*, 2007 BCCA 285 at para. 9 (Chambers).
- [9] The factors considered on an application for security for appeal costs are summarized in *Gardezi v. Positive Living Society of British Columbia*, 2018 BCCA 84 (Chambers):
- [29] The first factor is the appellant's financial means. If ordering security for costs would prevent the appellant from pursuing a meritorious appeal, it may not be in the interests of justice to make the order: *Zen v. M.R.S. Trust Company* (1997), 88 B.C.A.C. 198 (Chambers). However, the Court may require the appellant to post security for costs of the appeal even if obtaining the funds would be difficult: *D. Bacon Holdings Ltd. v. Naramata Vines Inc.*, 2010 BCCA 427 at para. 21 (Chambers).

- [30] The second factor is whether the costs of the appeal will be readily recoverable if the respondent succeeds. If the applicant shows there is a serious question that recovery may be difficult, a presumption in favour of granting security for costs arises, unless the appellant can demonstrate the appeal has obvious merit: *Edwards v. Moran*, 2003 BCCA 443 at para. 14 (Chambers); *Sangha v. Azevedo*, 2005 BCCA 125 at para. 6 (Chambers).
- [31] The third factor is the timing of the application for security. Because the appeal is usually stayed until security is posted, injustice would result if the respondent applied for security for costs on the eve of the appeal: *M.(M.) v. F.(R.)* (1997), 43 B.C.L.R. (3d) 98 at 101 (C.A. in Chambers).
- [32] The fourth factor is the merits of the appeal. If the appeal is "virtually hopeless" or "bound to fail", security for costs may be ordered even if the order prevents the appellant from pursuing the appeal: *Jenkins v. Swallow Frames & Cycles Ltd.* (1997), 97 B.C.A.C. 81 at paras. 5, 7 (Chambers); *Freshway Specialty Foods Inc. v. Map Produce LLC*, 2006 BCCA 592 at para. 14 (Chambers). On the other hand, the Court will not order security for costs if it would prevent the appellant from pursuing a meritorious appeal: *Creative Salmon Company Ltd.* at para. 12.
- [33] The fifth and ultimate factor is whether the order for security for costs would be in the interests of justice: *Lu v. Mao*, 2006 BCCA 560 at para. 6 (Chambers).

[Emphasis added.]

Positions of the Parties

- [10] Ms. Samra contends it is in the interests of justice to grant the order for security for costs of the appeal. She notes that Ms. Jagpal has provided an incomplete and imperfect financial picture. As a result, she says Ms. Jagpal has not shown that she is unable to post security. In response to Ms. Jagpal's contention that she is owed approximately \$135,000 to reimburse her for expenses she incurred on behalf of Mrs. Jagpal, Ms. Samra notes that this issue is the subject of an application to be heard in the trial court in August. She has provided an affidavit setting out her position as committee on the various claimed expenses. Ms. Samra also indicates that the issue of reimbursement is further complicated by transactions Ms. Samra discovered while satisfying her obligation under the committee order to complete an affidavit describing all of Mrs. Jagpal's assets and liabilities. As committee, she is taking the position that Ms. Jagpal has appropriated funds from her mother.
- [11] Ms. Samra anticipates difficulty in recovering her costs from Ms. Jagpal. She submits that Ms. Jagpal has a history of disrespecting court orders. As I have indicated, she says that Ms. Jagpal failed to abide by the committee order. Further, she asserts that Ms. Jagpal did not obey an order of Justice Loo for disclosure of medical records. Ms. Samra says that this conduct indicates a severe disrespect for court orders such that this Court ought to have significant concerns that Ms. Jagpal would abide by a court order for costs if granted.

- [12] On the merits, Ms. Samra submits that it is unclear at this time what arguments Ms. Jagpal intends to advance on appeal. However, she notes that the judge's rulings on the two main issues at the hearing--admissibility of expert opinion evidence and her decision to appoint Ms. Samra as committee--are exercises of discretion and subject to deference on appeal. She accordingly argues that there is no merit to the appeal.
- [13] Ms. Jagpal contends she suffers severe financial hardship, and that a payment of security would hamper her ability to support herself and pursue the appeal. She submits that her financial circumstances have been negatively impacted by Ms. Samra's failure, as committee, to reimburse her for \$135,000 in legitimate expenses. She further denies that she has misappropriated funds as alleged.
- [14] Ms. Jagpal argues that her appeal is meritorious. She intends to put forward new or fresh evidence in support of her claim that an expert witness, whose evidence was accepted, was biased. She submits that if that is accepted, the basis for the committee order falls away.

Analysis

- [15] Considering the relevant factors, I conclude that Ms. Jagpal has not satisfied her burden of establishing why security should not be required.
- [16] Ms. Jagpal has provided little concrete evidence, aside from her bald assertion, to support her argument that she would suffer financial hardship if required to post security. As she bears the onus of showing it is not in the interests of justice to make the order, her failure to produce useful evidence on that issue weighs in favour of making the order.
- [17] Regarding the dispute over Ms. Jagpal's claim that she is owed \$135,000 for legitimate expenses, I am unable to weigh in on that matter on this application. Ms. Samra has provided a sworn response to the allegation with a form of accounting and the matter is set to be resolved by Justice Fitzpatrick on the application set to proceed in August.
- [18] Moving to the question of whether costs will be readily recoverable, Ms. Samra has raised a real concern regarding Ms. Jagpal's disregard for court orders. While it is not possible to resolve their competing allegations on the circumstances leading to the police assist order, the fact that the order was made and, to my knowledge, has not been set aside, is troubling. It is evident to me that this is a very contentious and complex family matter, in which there is a "distinct distrust among many family members, which is overlaid with the substantial amount of money involved": Reasons at para. 175. In my view, that is sufficient to raise a serious question that recovery may be difficult, which Ms. Jagpal has failed to rebut.
- [19] Turning to the merits of the appeal, Ms. Jagpal has provided little in the way of written argument. The high level of deference afforded to the trial judge in her exercise of discretion to determine who should be a committee makes this appeal difficult: *Mok v. Wong*, 2022 BCCA 418 at paras. 20, 28. So far as Ms. Jagpal's grounds of appeal relate to new and fresh evidence, she will have to apply under Rule 59 of the Court of Appeal Rules to adduce such

evidence. This is an additional impediment to the appeal. While it is difficult to assess the validity of the application for fresh and new evidence on the information before me, it is apparent that the appeal will be challenging. Although I am not prepared to say that this appeal is wholly without merit, at this stage of the appeal and without the benefit of Ms. Jagpal's factum or more detail about the grounds of appeal, it appears that the merits of the appeal are not strong.

[20] Finally, I note that Ms. Samra has brought this application in a timely manner, and that no injustice could arise from making an order for security at this time.

[21] When I consider the relevant factors, I conclude that Ms. Jagpal has not satisfied her burden to show that an order for security for costs would prevent her from pursuing a meritorious appeal. I am satisfied that it is in the interests of justice to make an order requiring her to post security for the costs of the appeal.

Disposition

[22] I order that Ms. Jagpal must post security for costs of the appeal, in a form satisfactory to the Registrar, in the amount of \$7,500. The appeal is stayed until Ms. Jagpal posts the required security. If the security is not posted within 30 days of this order, Ms. Samra has liberty to apply to dismiss the appeal.

"The Honourable Mr. Justice Butler"

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