

CANADA / JUDGMENT

James (Re)

2013 BCSC 566

COURT

Supreme Court of British Columbia

DECIDED

3 April 2013

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2013 BCSC 566 James (Re) IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: James (Re), 2013 BCSC 566 Date: 20130403 Docket: 47518 Registry: Kamloops In the Matter of Doreen Glenora James And In the Matter of the Patients Property Act, R.S.B.C. 1996, Chapter 349 and Amendments Thereto Before: The Honourable Madam Justice Hyslop Reasons for Judgment Counsel for the Petitioner: J.M. Hogg, Q.C. Counsel for the Respondent, Douglas James: F.R. Scordo Place and Date of Hearing: Kamloops, B.C. March 26, 2013 Place and Date of Judgment: Kamloops, B.C. April 3, 2013

Introduction

- [1] In the summary appeal cited at 2013 BCSC 3, I appointed the patient's, Doreen Glenora James, husband, Douglas James, committee of the person. I appointed Mr. James committee of the patient's estate upon giving notice to the Public Guardian and Trustee, who was to provide the court with recommendations as to any security that Mr. James was to provide. That process is complete, and Mr. James is committee of the estate of his wife without security.
- [2] I invited counsel to make submissions as to costs. These reasons address that issue.
- [3] Mr. James is not seeking any costs for his appointment as committee based on an undefended hearing. Costs in those situations are usually awarded as special costs to the applicant.
- [4] Mr. James is seeking party/party costs as against Cindy Doreen Beka for the contested hearing before the Master and the summary appeal of the Master's decision, when the Master appointed Ms. Beka, the daughter of the patient, committee. The Law
- [5] As it relates to costs, the Patients Property Act, R.S.B.C. 1996, c. 349 states: Costs 27 The costs of all proceedings under this Act are in the discretion of the court.

- [6] In a contested application for the appointment of a committee, whether the applicant is successful or not, the court may, in its discretion, order the patient's estate pay the costs as special costs or otherwise, despite the applicant's lack of success. The court is also entitled to order costs personally against the opposing parties.
- [7] In exercising its discretion, the court must consider the intentions of the party seeking the appointment, and whether the appointment was sought out of concern for the patient or to protect the interest of the patient's estate: *Bush (Committeeship of)* (1995), 8 E.T.R. (2d) 293.
- [8] In *Carr v. Gladman Estate* (1989), 35 B.C.L.R. (2d) 91, Mr. Justice Seaton considered costs in estate litigation. He said the following:
- [7] It is sometimes thought that you can take action against an estate or take an appeal against an estate and the court will order that the estate bear the costs. I do not subscribe to that approach. I think it necessary to look at who will bear the costs if they are paid out of the estate. Often that will be the residuary beneficiaries and frequently it will be unjust that they be burdened with the costs. Unless there is good reason, costs of a proceeding against an estate ought to be disposed of by the usual rules. The successful litigant, whether it be the estate or the opposing side, should recover costs.
- [8] On this appeal, the usual rule would be that Mrs. Carr, who was successful on appeal, would receive her costs on a party-and-party scale. I see no good reason to depart from that accepted procedure in this case. Mrs. Carr should have her costs of the appeal on a party-and-party scale out of the estate.
- [9] In *Loewe Estate (Re)*, 2008 BCSC 1663, Mr. Justice Barrow considered Mr. Justice Seaton's comments in *Carr* and granted costs against an applicant for a committee whose motives were not in the best interests of the patient.
- [10] In *Bowman (Re)*, 2009 BCSC 523, siblings opposed one another as to their appointment as committee of their mother's estate. Despite one sibling's success in being appointed committee, Madam Justice Dardi found:
- [50] I am satisfied that both parties engaged in this litigation with the genuine goal of protecting and promoting the best interests of the patient and, in the circumstances, I am awarding each of them special costs of and incidental to this application, subject to review by the Public Guardian and Trustee. Positions
- [11] Mr. James alleges that Ms. Beka did not act in her mother's best interests, but rather in her own.
- [12] Ms. Beka claims that she acted in her mother's best interests when she learned that her mother had run away to the neighbour's home in a "dishevelled" state.

Analysis

- [13] I will not go through all the evidence and my findings of fact. Ms. Beka and some of her siblings were not supportive of Mr. and Mrs. James' relationship or their marriage.
- [14] When Mrs. James turned up at the neighbour's home, Ms. Beka exploited the situation by taking her mother into her home and then placing her mother in a care home located a distance from the town in which Mr. and Mrs. James resided. From that point on, she prevented Mr. James from visiting his wife or participating in her care.
- [15] Ms. Beka intervened in Mr. and Mrs. James' banking arrangements by making statements to the Credit Union that were untrue.
- [16] She then started a family law claim seeking dissolution of the James' marriage, the division of their assets, which was intended to create an estate from which Ms. Beka could benefit. There was very little in the actions of Ms. Beka that she could point to which benefited her mother, or was in the best interests of her mother's estate.
- [17] Ms. Beka is not entitled to any costs from her mother's estate. As a result, I award the usual costs to a successful party. I award Mr. James costs of the hearing before the Master and the appeal of the Master's decision as against Ms. Beka. Those costs are pursuant to the Supreme Court Civil Rules and are party/party costs, Scale B. "H.C. Hyslop J." HYSLOP J.

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