
CANADA / JUDGMENT

Kartsonas v. Kartsonas

2008 BCSC 1437

COURT

Supreme Court of British Columbia

DECIDED

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2008 BCSC 1437 Kartsonas v. Kartsonas

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kartsonas v. Kartsonas,

2008 BCSC 1437

Date: 20081028

Docket: S067949

Registry: Vancouver

Between:

Perry Kartsonas and Stella Tarantino

Petitioners

And

Christophoros Kartsonas

Respondent

Before: The Honourable Madam Justice Loo

Reasons for Judgment

In Chambers

October 15, 2008

Counsel for Petitioners

E. F. Macaulay

Counsel for Respondent

T. G. Lewis

Place of Hearing:

Vancouver, B.C.

A. Introduction

- [1] This is an application by the petitioners Perry Kartsonas and Stella Tarantino under s. 3 of the Patients Property Act, R.S.B.C. 1996 c. 349 [Act], for an order declaring that the respondent Christophoros Kartsonas is incapable of managing his financial affairs and personal care decisions, and appointing them as co-committees. Alternatively, the petitioners seek an order that Christophoros Kartsonas be examined pursuant to s. 5 of the Act.
- [2] Perry Kartsonas and Stella Tarantino are the only children of Christophorous Kartsonas. They claim that their father is being unduly influenced by his sister and her daughter and that he is incapable of managing his financial affairs. Their father claims that they--his children--have cheated him and stolen his money. I may at times refer to the elder Mr. Kartsonas by his surname and the younger Mr. Kartsonas by his given name to avoid confusion and not out of disrespect.
- [3] Mr. Kartsonas filed a notice of motion seeking an order that his children provide a full and detailed accounting to him. That application has been adjourned generally, pending the results of this application.
- [4] The relevant words of s. 3(1) of the Act requires the affidavits of two medical practitioners setting out their opinion that Mr. Kartsonas is, because of mental infirmity arising from disease, age or otherwise, incapable of managing himself or his affairs. The primary argument advanced by Mr. Kartsonas is that the petitioners have failed to satisfy the requirements of s. 3(1).

B. The Evidence

- [5] Mr. Kartsonas is a widower. He was born in April 1924 and is now 84 years old. He has lived in his house on Blenheim Street in Vancouver since 1976. His son Perry is married and he and his family live about five blocks away. His daughter Ms. Tarantino is married and lives in Langley. Mr. Kartsonas has two younger sisters who live in Vancouver: Maria Pappmichail, a 75 year-old widow, and Niki Bordokas, who is 69 years old. Mrs. Pappmichail has a daughter, Linda Stamoulos.
- [6] English is a second language for Mr. Kartsonas and his sisters. Their affidavits were interpreted for them from the English language into the Greek language.

- [7] In 1974 Mr. Kartsonas built a restaurant on property he owned at 647 East Broadway. Mr. Kartsonas, his wife, and their two children worked at the restaurant until around 1981 when the business was sold and the property became rental property.
- [8] In 1986 Mr. Kartsonas gave Perry a general power of attorney because he and his wife were travelling to Greece and Perry needed to be able to look after the Broadway property and other financial matters.
- [9] In his 1986 Will Mr. Kartsonas named his children as the executors of his estate.
- [10] In 1988 Mr. Kartsonas arranged for the title to the Broadway property to become jointly held in his name and the names of his two children. From then until recently, Mr. Kartsonas, Perry and Ms. Tarantino each received an equal one-third portion of the rental income and they each declared the income on their respective income tax returns.
- [11] For the last 20 years or so, the petitioners have managed the Broadway property which has been vacant for the last few years. It requires some \$90,000 in repairs, is fairly large, and not in the most desirous of locations.
- [12] In or around 1989, Mr. Kartsonas purchased a house for Perry as a wedding gift.
- [13] In 1991 Mr. Kartsonas' wife died. After her death, Mr. Kartsonas made many trips to Greece. Perry and his wife vacationed in Greece with him in the summers of 1991, 1993, 1995, 1998 and 2001. In 1998 and 1999, Mr. Kartsonas went to Greece with his niece Helen who is a daughter of Mrs. Papamichail.
- [14] Mr. Kartsonas did not speak to Mrs. Papamichail for around 30 years, but shortly before his wife died, they resumed a relationship with each other. Mrs. Papamichail says that when Mrs. Kartsonas was dying in 1991, she called and asked to be forgiven which Mrs. Papamichail said she did. After that, Perry and Mr. Kartsonas' sisters and their families got along well with each other.
- [15] Perry and Ms. Tarantino noticed their father's mental condition deteriorating around 2004 when they learned that he had failed to pay his utility bills and received disconnection notices. This was out of character for him. In 2005 his home was damaged by fire when he forgot that he had left a pot on the stove, and the restoration company found \$3,500 under a place mat on the kitchen table. Perry says that his father did not remember putting the money there or that he had that much money in the house. By April 2005, Mr. Kartsonas had home support through Coastal Health, Bayshore Home Care and Meals On Wheels.
- [16] In May 2005 Mr. Kartsonas rented the Broadway property on a handshake against his children's recommendation that the lease be in writing and drawn up by their solicitor, which is what they had always done in the past.

- [17] On June 15, 2005 Dr. Dan McDonald, a geriatric psychiatrist, assessed Mr. Kartsonas and concluded that he had "some frontal cognitive changes" that were mild but combined with his stubborn and independent streaks he created worries for his children. Dr. McDonald did not find him incapable at that time of managing his financial affairs, but he was concerned about Mr. Kartsonas' ability to drive.
- [18] In July 2005 Mr. Kartsonas rented his basement suite to two drug addicts after he uncharacteristically failed to take a deposit or check out any references. In September 2005, he broke his hip in a fall at home and was hospitalized for three months.
- [19] In November 2005 while Mr. Kartsonas was still in the hospital, the parties had just over \$419,000 in three separate joint accounts in all three names at Vancity, Canadian Western Bank, and Citizen Bank of Canada.
- [20] The petitioners were concerned that the Canadian Western Bank, where more than \$241,000 of the funds was deposited, was not yielding as high a rate of return as the other two banks. Perry was also concerned about the amount of the insurance coverage. Around late 2005, he opened a new account at Citizen's bank with \$100,000 from the joint account and used a dormant account that he had in his name to deposit a further \$100,000. On both new accounts Mr. Kartsonas was named on the joint accounts.
- [21] In November 2005 while Mr. Kartsonas was still in hospital Ms. Tarantino placed her father's car in storage. By this time, the doctors had his driver's license taken away from him and his car was uninsured.
- [22] The treating physician told Perry that his father should not drink alcohol because of his medications. Concerned for his father's health, Perry removed all of the alcohol from his father's house.
- [23] In anticipation of his discharge from the hospital in December 2005, the treating physician gave Mr. Kartsonas two options. He had to live in a care home or he could live in his own home with 24-hour care. Mr. Kartsonas chose to live at home. However, Mr. Kartsonas was not formally discharged. He simply left the hospital and returned home around the middle of December without his walker, which he needs.
- [24] At home Mr. Kartsonas went looking for his alcohol and continually accused his son of stealing from him. He accused his daughter of stealing his car. Ms. Tarantino apparently got so upset, she returned his car to him even though he was not allowed to drive. Mr. Kartsonas called Mrs. Papamichail and Ms. Stamoulos to say that his files were missing and that his children never even bothered to phone him on Christmas Day. His children say they saw him on Christmas Day.
- [25] In January 2006 Rosa Gabriel became Mr. Kartsonas' homecare worker. Ms. Gabriel noticed that Mr. Kartsonas' memory was poor and he was forgetful. He would forget that he had taken his medicine, so Ms. Gabriel had him sign each time he took his medicine so that she could show him that he had already taken it. Once he gave her \$10 to buy cigarettes for him

which she did. She gave him the cigarettes, the receipt for them, and his change. He then accused her of stealing the \$10 from him. On June 23, 2006 Ms. Gabriel went with Mr. Kartsonas and his two sisters to a lawyer's office. When they returned home, Mr. Kartsonas had the lawyer's business card in his hand and asked Ms. Gabriel where they had been. He did not recall that he had just returned from a lawyer's office.

- [26] Mr. Kartsonas drove his car many times between January and May 2006 (apparently at Mrs. Papamichail's urging) when the police found him at the bank with his car and impounded it because he was driving without insurance or a license.
- [27] Initially Mr. Kartsonas and Ms. Gabriel got along but Ms. Gabriel noticed this changed around the beginning of May 2006. After he got off the telephone from speaking to Mrs. Papamichail or Ms. Stamoulos, he would be upset with her and accuse her of being a spy.
- [28] In May 2006, Mrs. Papamichail and Ms. Stamoulos accused Ms. Gabriel of taking documents that belonged to Mrs. Papamichail. Ms. Gabriel saw Mrs. Papamichail accuse the relief care worker (Ms. Gabriel was entitled to two hour respites each day) of taking her documents.
- [29] Once when Ms. Stamoulos wanted to drive Mr. Kartsonas to the Broadway property, Ms. Gabriel wanted to go along because she felt responsible for him and he still had a catheter. Ms. Stamoulos refused to allow her to come. When Ms. Stamoulos learned that Ms. Gabriel had relayed this fact to Perry, she accused Ms. Gabriel of being a spy and told her that she was not to tell Perry anything.
- [30] Ms. Stamoulos says that at the beginning of May 2006, she was told by Melanie Parkinson who is Mr. Kartsonas' social worker, that Mr. Kartsonas had Alzheimer's and that if she or her mother or her aunt wanted to visit him they had to get Perry's permissions. Ms. Stamoulos says that she told Ms. Parkinson that she did not think that her uncle had Alzheimer's and that only he could tell her who could visit him. However, when Ms. Stamoulos telephoned Mr. Kartsonas to talk to him, Ms. Gabriel answered and said that he was not to accept any calls from his family.
- [31] But even Ms. Stamoulos says that there were times in March, April, and May 2006 she visited Mr. Kartsonas and he did not recognize her.
- [32] In May 2006 when Perry learned that his father was planning to go to Vancity to withdraw \$100,000, Perry alerted the bank and when Mr. Kartsonas went to the bank along with Ms. Papamichail and Ms. Stamoulos, he was not able to remove the funds.
- [33] In May 2006 the office of Public Guardian and Trustee became involved and filed caveats against Mr. Kartsonas' home and his one-third interest in the Broadway property. The petitioners engaged a solicitor who wrote letters on June 1, 2006 to Mrs. Papamichail and to Ms. Stamoulos, putting them on notice not to interfere with their father's affairs.
- [34] The battle lines were drawn and things went from bad to worse.

- [35] Mrs. Papamichail laid criminal assault charges against Ms. Tarantino.
- [36] Mrs. Papamichail and Ms. Stamoulos demanded that Ms. Gabriel leave Mr. Kartsonas' house, but Ms. Gabriel felt that her obligations were to Mr. Kartsonas who needed physical care and to Perry who paid her. Mr. Kartsonas also complained about Ms. Gabriel and told her that she should leave the house.
- [37] Mrs. Papamichail constantly demanded that Ms. Gabriel not tell Perry anything and that her brother did not need her. One day, Ms. Papamichail threw all of Ms. Gabriel's belongings on the front lawn and chased her out of the house in an effort to get rid of her. She succeeded because Ms. Gabriel's employment was terminated on July 7, 2006.
- [38] Ms. Gabriel maintains a daily journal on her clients. When she was forcibly removed from the house, Mrs. Papamichail kept the portion of Ms. Gabriel's journal from January 2006 to the end of April 2006. Ms. Gabriel managed to keep the portion of her journal from May 1, 2006 until July 7, 2006. The notes include notes of when Mr. Kartsonas went to the bank with his sister, when he accused Ms. Gabriel of being a spy and a thief, when he drove his uninsured car at the urging of his sister, when he was at the bank with his sister and the police seized his car from him, and the times Mrs. Papamichail refused to allow Mr. Kartsonas to have either Ms. Gabriel or any other home support workers in the house to care for Mr. Kartsonas.
- [39] Mrs. Bordokas says that she heard Mrs. Papamichail and Ms. Stamoulos tell Mr. Kartsonas that his children stole his money, they had people spying on him, Ms. Gabriel was a spy, and his children want to put him in an old folks' home. She heard Ms. Stamoulos tell Mr. Kartsonas to put everything he has, including his house and the Broadway property, into her mother's name. This is not denied.
- [40] In August 2006, Mr. Kartsonas revoked the power of attorney he had granted to Perry. He granted a power of attorney to Ms. Stamoulos. He plans to change his Will and disinherit his children. His house locks and telephone number have changed and since June 2006, he refuses to have anything to do with his children or grandchildren. He stopped seeing Dr. Robert Greenwood, his family physician for 30 years. Since around December 2006, he and Mrs. Papamichail have had nothing to do with Mrs. Bordokas because she is on the other side of the battle line.
- [41] Mr. Kartsonas now complains that his children seldom visited him while he was in the hospital. The petitioners say they visited him every day, except when Perry had a cold. Nothing in this application turns on this, except that Mr. Kartsonas seems to minimize anything and everything his children have ever done for him or in their lives, which is unfortunate. Perry continues to monitor and ensure that Mr. Kartsonas' bills are being paid on time, something he has done for many years. Both he and Ms. Tarantino are willing to account to the Public Trustee.

- [42] On December 26, 2006 Mr. Kartsonas married his friend Margot Longtin, although they are apparently not living together. Mr. Kartsonas says that he asked Mrs. Papamichail to take care of him and that she has been taking care of him almost around the clock since June 2006. Mrs. Papamichail says that she takes care of her brother full-time, 24 hours a day from Sunday night until Saturday morning, 6 days a week. She returns to her own house once a week. It is not clear who looks after Mr. Kartsonas when Mrs. Papamichail returns home, but what seems undisputed from Mr. Kartsonas and Mrs. Papamichail is that he needs someone to look after his daily living needs.
- [43] Mr. Kartsonas did not through his lawyer argue that he was incapable of managing himself, although I will return to this point. The argument was whether he was incapable of managing his affairs.

C. The Medical Evidence

- [44] The petitioners rely on the affidavits and opinions of two medical practitioners that Mr. Kartsonas is incapable of managing his affairs: Dr. Kiran Rabheru and Dr. Dan McDonald. Both are geriatric psychiatrists and medical practitioners within the meaning of the Act.
- [45] At Dr. McDonald's request, Dr. Rabheru conducted an independent assessment of Mr. Kartsonas for approximately two hours in his home on July 21, 2006 as to his capacity to manage his financial affairs. Dr. Rabheru also had written information from Perry, Ms. Tarantino and Ms. Stamoulos, hospital charts, and information from Dr. McDonald and Caroline Tanner who is Mr. Kartsonas' case manager.
- [46] Dr. Rabheru's five-page report dated August 14, 2006 (the report is incorrectly dated 2005) to Dr. McDonald concludes as follows:

IMPRESSION

1. Mr. Kartsonas is, in my opinion, not capable of managing his financial estate.
2. Mr. Kartsonas is currently capable of assigning or revoking Power of Attorney.
3. There is a significant amount of conflict between the family and also within the patient's mind about financial mismanagement with multiple accusations from various parties about defrauding and mismanagement of Mr. Kartsonas's estate. Given this situation, it would be my opinion that the Public Guardian and Trustee's Office should play a significant role in assisting to protect Mr. Karsonas's estate.
4. I did get Mr. Kartsonas's permission to speak to his son and daughter. A family meeting with his son and daughter was held today (August II, 2006) in Dr. McDonald's office. Present were Dr. McDonald, Caroline Tanner, as well as Mr. Kartsonas's son (Perry), daughter (Stella), and myself. I have explained the findings above to the son and daughter, who understand and appreciate the nature and consequences of these findings. They will, in consultation with Dr. McDonald and Ms. Tanner, decide on the next steps.

- [47] In his affidavit sworn December 1, 2006, Dr. Rabheru states that he is of the opinion that Mr. Kartsonas is incapable of managing his financial affairs due to dementia of a mixed type. His prognosis for Mr. Kartsonas is a progressive decline in his cognitive abilities. On a mini-mental status examination, Mr. Kartsonas scored 22 out of 30. He had a marked short-term memory loss, scoring 0 out of 3 and 1 out of 9 on short term memory testing.
- [48] I note in passing that Dr. Rabheru's assessment coincides with what Ms. Gabriel observed at about the same time when Mr. Kartsonas could not recall returning home from the lawyer's office.
- [49] On October 16, 2006 Dr. Rabheru completed a physician's questionnaire form in support of the committee application. He describes Mr. Kartsonas' short term memory as "poor." In answer to the question whether Mr. Kartsonas was able to perform simple financial calculations, Dr. Rabheru noted that "he had quite a lot of difficulty giving accurate info. re: his finances". In answer to the questions on whether Mr. Kartsonas was able to do his own banking, his own shopping or able to manage his own personal hygiene, Dr. Rabheru answered "No. Needs assistance."
- [50] Dr. Rabheru was not asked for his opinion on whether Mr. Kartsonas is capable of managing himself.
- [51] Dr. McDonald refused to provide an opinion without a subpoena and/or order, and an order was obtained on May 29, 2008. Dr. McDonald swore his affidavit on June 11, 2008.
- [52] Mr. Kartsonas, as I indicated earlier, argues that Dr. McDonald's opinion fails to comply with s. 3(1) of the Act.
- [53] Dr. McDonald deposes as follows:
2. I am a Geriatric Psychiatrist with the Geriatric Psychiatry Outreach Team at Vancouver General Hospital. I followed Christopher Kartsonas from June 2005 until the end of 2006 when Mr. Kartsonas no longer wanted the Outpatient Service involved in his care.
 3. Now produced and shown to me and collectively marked as Exhibit "A" to this my Affidavit are true copies of my letter dated October 11th 2007, my consultation reports of July 21st 2005 and March 1st 2006, and Dr. Rabheru's report.
 4. As I state in my October 11th 2007 letter "I believe that Mr. Kartsonas has not significantly changed since Dr. Rabheru found him financially incapable". It is also my opinion that the issue of Mr. Kartsonas's capacity is complex due to his frontal cognitive impairment.
 5. In my opinion Christopher Kartsonas would benefit from a complete competency assessment to determine his capacity to manage his financial affairs.

- [54] Dr. McDonald's letter of October 11, 2007 is a very detailed three and one-half page single-spaced letter to Mr. Macaulay, counsel for the petitioners. Dr. McDonald was asked and provided his comments on two assessments of Mr. Kartsonas: an assessment by Dr. Amanda Hill on March 13, 2007 that concluded that Mr. Kartsonas did not meet the criteria for dementia, and an assessment by Dr. Wendy Cook on May 15, 2007 that indicates that Mr. Kartsonas was financially competent. I will return to those assessments.
- [55] In his letter of October 11, 2007 Dr. McDonald sets out the history of his involvement with Mr. Kartsonas and the concern his children had for him starting in June 2005 and later in June 2006. I quote from portions of his report at length because Dr. McDonald appears to have great insight into the family dynamics and because Mr. Kartsonas contends that Dr. McDonald's opinion is "just based on Dr. Rabheru's opinion". Referring to the time around the end of June 2006, Dr. McDonald's report states:

This was a very tense time for Mr. Kartsonas and his children. The children were understandably worried and Mr. Kartsonas was being particularly belligerent with his children and the homemaker. He was also behaving inappropriately with the homemaker at times and making sexual advances which made the Care Plan a bit tenuous at times.

Mr. Kartsonas' son Perry had also gone through the house while Mr. Kartsonas was in hospital and cleaned it out of liquor because of the concern of his previous drinking. Unfortunately Perry also took a bottle of very expensive brandy that Mr. Kartsonas was very upset about. He called the son a thief and threatened to remove him as Power of Attorney and no amount of explanation could change the thought that his son was a thief. I saw this rigidity in his thinking as well as his disinhibited expression of anger (with shouting and banging on tables) as a symptom of frontal cognitive impairment. This was a time of great stress and arguments in the house. Mr. Kartsonas was angry at the suggestion that he needed care and Perry was anxious and argumentative with his father and his lack of insight and judgment into his need for care. I tried to intervene and quiet down this escalating family situation, but I was obviously not successful.

I tried to help Perry understand the need for diplomacy and the need to allow his father to live at risk. At the same time I did agree with Perry that in fact his father's behaviour was not normal and was based on frontal cognitive impairment with disinhibition, poor insight and poor judgment.

An example of this was Mr. Kartsonas' resistance to accept that he was medically unable to drive. I carefully explained to Mr. Kartsonas that for a multiplicity of medical reasons including his extremely unsteady gait and general frailty (and his frontal behaviour) that he was medically unfit to drive. His family doctor had refused to fill out the Medical Certificate to renew his Driver's License. I explained on numerous occasions to Mr. Kartsonas that he was legally unable to drive and because of that would not have any I.C.B.C. coverage if he were in an accident. I also explained that he could potentially lose all of his assets if he injured someone with the car. Despite all of these explanations, Mr. Kartsonas was reported to take the car out on a number of occasions by the homemaker. I eventually suggested to the children that they remove his car,

which they did. The daughter however could not tolerate her father's wrath and she returned it. I finally suggested that the children or the homemaker telephone 911 if they saw him get into the car. His driving was a major concern for me and a major worry for his children. For this reason Perry asked the homemaker to secretly report to him about his father's activities. This ended up causing more problems than solving problems as Mr. Kartsonas now felt that he was being spied upon.

The son Perry also was worried about what kind of visitors his father was having and he was especially concerned about the niece who he felt had a history of financial misdealing and that she would try and take financial advantage of his father. Perry felt that he needed to safeguard his father's financial assets from the niece and was being very insistent with me that I do a financial competency assessment. He had been told that a financial competency assessment was necessary when his father was in the hospital and he was wondering, "why it had not been done". I tried to explain that this might have been necessary during his father's hospitalization in the context of his delirium but that it was different at that time. I explained that a financial competency assessment was very difficult to do in the context of the increasing family tensions and his father's extreme sensitivity to questioning his abilities. I also told Perry that because of the frontal nature of his father's cognitive impairment that he was on the borderline of being capable and that an assessment might end up simply alienating Mr. Kartsonas further. At a certain point in the family conflict it became clear that a competency assessment was necessary however. I told Perry that it would be best if someone other than myself would do the assessment as I felt that it would jeopardize my therapeutic alliance with his father who still appreciated my friendly visits.

I asked my colleague Dr. Kirin Rabheru, a Geriatric Psychiatrist with our Team, to do an assessment that he did on June 15th, 2005. I am enclosing Dr. Rabheru's assessment letter. I agreed with Dr. Rabheru's assessment that Mr. Kartsonas was not capable of managing his finances especially in that he was not able to understand the complexities of his Estate and the financial partnership that he established with his children.

[56] Mr. Kartsonas refers to the reports of Drs. Hill and Cook, a follow-up report from Dr. Hill dated January 15, 2008, an undated report from Dr. Janet Kushner Kow referring to an examination on January 17, 2008, and an affidavit of Dr. Andrew Ellison as supporting his contention that he is financially competent. There is, of course, a presumption of competence and Mr. Kartsonas does not have the onus of proving that he is competent.

[57] Dr. Ellison, who practises family medicine, swore an affidavit on May 27, 2008. He states that he has seen Mr. Kartsonas since October 2006 and he sees him approximately once a month. He also notes that Mr. Kartsonas was his patient approximately 25 years ago.

[58] Dr. Ellison states that in March 2007 he arranged for the conduct of a mini-mental exam of Mr. Kartsonas and he scored 28/28.

[59] Dr. Ellison concludes:

4. In my observations, I find him to be bright and alert. As a result of my experience in family practise and as a result of my interaction with and observations of Mr. Kartsonas since October 2006, I am of the opinion that he is competent to manage himself and his affairs, including his financial affairs.

[60] The mini-mental examination that Dr. Ellison refers to was carried out by Dr. Amanda Hill, geriatric consultant. In Dr. Hill's report of March 13, 2007 to Dr. Ellison, she writes in part:

Mr. [Kartsonas] was referred with concerns regarding cognitive impairment. He, himself, denies significant problems. He is keen to travel to Greece. He was last there in 2001. He has family in Greece and there are no reported problems. He was accompanied by his sister who denied any significant cognitive problems as well. He lives in his own house with his sister.

Examination

He was bright, alert and cooperative. He scored 28/28. He was unable to do any of the visual spatial testing because of his severe tremor. He was unable to do a clock drawing either. He could name 10/10 four legged animals. His fund of general knowledge was poor. He thought the Prime Minister of Canada was Mulroney. He knew who President Bush was and he knew about 2010 but otherwise his general knowledge was poor.

Assessment

1. It appears that Mr. [Kartsonas] has minimal cognitive impairment with some impairment of short-term memory and general knowledge. I think he may have some difficulty with a flight change in Toronto on his trip to Greece but apparently he will be accompanied so I suggested that if he is accompanied he should do well and should tolerate his trip to Greece well. He will be well attended to by family when he arrives in Greece. He does not meet criteria for dementia by my current assessment.

[61] Dr. Ellison also referred Mr. Kartsonas to another geriatrician, Dr. Wendy Cook who appears to have examined him on May 15, 2007. In her note to Dr. Ellison, Dr. Cook writes:

As we discussed on the telephone today during the patient's visit, there has been some confusion as to the origin and specific question regarding his financial competency. You had clarified today that the request had been generated by the patient's daughter. I spoke later in the day after the patient left the clinic to his niece, Linda, who has recently been designated as his new power-of-attorney. She clarified in fact that she herself had requested this assessment and that the purpose of it was for when he travels to Greece and undertakes financial dealings, one is required to have proof up front of one's financial capacity.

Mr. Kartsonas was aware of the purpose of the visit and did take steps to bring some information including his cheque book, which he reviewed with our clinic occupational therapist, Karen Gilbert. He was able to describe some sources of his income, although became somewhat muddled when attributing the actual amounts to each of these.

IDENTIFIED PROBLEMS AND RECOMMENDATIONS

1. I would concur at the moment with Dr. Hill's assessment that Mr. Kartsonas certainly does have cognitive impairment, which appears to be in the mild range at the present time based on the history available as there does not appear to be any report of significant functional deficits of late. I am unaware of the exact details surrounding the events of the house fire, which certainly does raise some concerns. As you had suggested, he certainly is a man with red flags regarding his cognition as he demonstrates some decreased ability to digest new information such as following the three-stage command on testing today. Some of the apparent deficits on the details of his financial history may have been related to problems with translation; however, I would expect that this should then been overcome with his translator present. I explained to Mr Kartsonas, and later on his niece, that there can be progression in 15 percent of persons of memory impairment to stages of greater severity that can impact on functional performance and that this should be regularly reassessed. I would respectfully suggest repeating Folstein screening every 6-12 months.
2. Financial competency. Within the limits of the information available to me today, there does not appear to be any identified significant risks in his current financial management.

[62] Dr. McDonald commented on the reports of Drs. Hill and Cook in his letter of October 11, 2007 to Mr. Macaulay and again I quote at length from his letter:

I cannot comment on the examinations themselves, as I had not seen Mr. Kartsonas for quite some time. I note he was no longer taking Clonazepam for essential tremor and this could have benefited his cognition. Although vascular cognitive problems generally tend to worsen over time there can also be some healing and there is often waxing and waning of cognition. I also note that Mr. Kartsonas scored 28/28 on March 13th, 2007 with Dr. Hill but scored only 20/28 on May 15th, 2007 with Dr. Cook. I don't know what specific changes are to account for that discrepancy in his score.

Dr. Hill felt that Mr. Kartsonas did not meet the criteria for dementia as he scored 28/28 on a Folstein. Although he may have tested well that day in a structured testing, it does not rule out the frontal cognitive changes and poor judgment and poor insight that was evident to me throughout the time that I followed him.

Certainly in Dr. Cook's more extensive assessment I did not get the impression that Mr. Kartsonas' overall cognition was substantially different from when I followed him. He demonstrated some of the functional memory problems that I had known him to do. For example he was "able to describe some sources of income although became somewhat muddled when attributing the actual amount of these". Also Dr. Cook's assessment stated that in discussion with the Occupational Therapist Mr. Kartsonas demonstrated "limited recollection of being at the lawyer's office at that time and was initially unsure about the exact details of changes to his Will and the Power of Attorney".

The purpose of Dr. Cook's assessment had been requested by the niece for the purpose of "when he travels to Greece and undertakes financial dealings, one is required to have proof up front of ones financial capacity". Perhaps in the limited context of being able to travel and handle money for traveling there may not be a significant risk. However in terms of dealing with the larger issues of his Estate as well as trying to resolve some of the family conflict I am not sure if Dr. Cook would find him capable.

The only collateral information made available was from Mr. Kartsonas' sister and his niece and Mr. Kartsonas did not give permission for Dr. Cook to contact his children for collateral. There was no mention of Dr. Rabheru's previous Financial Competency Assessment. In her conclusions Dr. Cook stated that "within the limits of the information available to me today, there does not appear to be any identified significant risk in his current financial management".

In summary I believe that Mr. Kartsonas has not significantly changed since Dr. Rabheru found him financially incapable. I do believe that his frontal cognitive changes make him vulnerable to undue influence and that the family conflict has created an undue influence. I believe that the issue of his competency is complex and that this matter should go before the Courts so that all of the information can be made available. That way all of the competency assessments can be put before a Judge and if necessary there can be an opportunity for an Independent Medical Examination to ascertain Mr. Kartsonas' financial competency.

[63] Dr. Hill wrote a follow-up report to Dr. Ellison dated January 15, 2008. In her report she states in part:

When I saw him today, he actually had not gone to Greece as he had planned to do a year ago, but he plans to go in the spring. He has family there and will be visiting with them.

MENTAL STATUS EXAMINATION:

He was bright and alert and a lot of fun to have in the office. His sister helped him out with most of the mental status examination, so between them, this is a score that they share. He scored 25/26 on the MMSE and I did not do the written tests because of his severe tremor. He knew the Prime Minister of Canada, about 2010, and about George Bush with a prompt.

ASSESSMENT:

2. Mild cognitive impairment. -- I think he has MCI that has currently been stable. He is managing well and I could not give him a diagnosis of anything more than that. I think he is well and fit to go to Greece.

[64] Mr. Kartsonas also relies on the undated note from Dr. Kow. It reads:

To Whom It May Concern:

I am a Geriatric Specialist in Vancouver, B.C. I examined Mr. Kartsonas on January 17, 2008. Based on that examination and previous records I feel that Mr. Kartsonas is able to direct his own financial affairs. Also in my opinion he requires some assistance with large financial transactions eg. selling property, managing sums of money over \$100,000US, etc. However he generally has the ability to direct the management and make decisions about his assets.

D. Analysis

[65] The relevant words of s. 3(1) of the Patients Property Act reads:

3 (1) If, on

- (a) hearing an application, and
- (b) reading the affidavits of 2 medical practitioners setting out their opinion that the person who is the subject of the application is, because of

- (i) mental infirmity arising from disease, age or otherwise,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs,

the court is satisfied that the person is, because of

- (c) mental infirmity arising from disease, age or otherwise,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs, it must, by order, declare the person

- (e) incapable of managing his or her affairs,

- (f) incapable of managing himself or herself, or

- (g) incapable of managing himself or herself or his or her affairs.

[66] Mr. Kartsonas does not take issue with Dr. Rabheru's affidavit or opinion.

[67] However, Mr. Lewis, counsel for Mr. Kartsonas, contends that Dr. McDonald's affidavit fails to comply with s. 3(1) and relies on *McNeal v. Few* (1975), 63 B.C.L.R. 281 (C.A.) [McNeal]. He argues that Dr. McDonald's affidavit must set out his opinion that Mr. Kartsonas is, because of mental infirmity arising from disease, age or otherwise, incapable of managing his affairs or incapable of managing himself. He argues that Dr. McDonald's affidavit did not express such an opinion because "he couldn't do it"; instead he defers to the opinion of Dr. Rabheru which is therefore the only opinion in support of the petition.

- [68] McNeal in my view stands for the proposition that without the affidavits of two medical practitioners, a court cannot make an order declaring that a person is incapacitated. In that case, there was no affidavit by any qualified medical practitioner and no medical evidence of mental infirmity.
- [69] I do not think it is necessary for Dr. McDonald in his affidavit to state word-for-word the content of s. 3(1)(b)(i) as was suggested to me.
- [70] Reading Dr. McDonald's affidavit, together with his letter dated October 11, 2007 and his consultation reports, it is clear that by June 2006 he had decided that a financial competency assessment was now necessary. However, Dr. McDonald wanted another medical practitioner to conduct the assessment and he chose his colleague Dr. Rabheru because he did not want to jeopardize his continuing therapeutic relationship with Mr. Kartsonas.
- [71] Dr. McDonald knew the family and the family dynamics, he saw the dynamics change from June 2005 to the end of 2006, he saw Mr. Kartsonas on what appears to have been a regular basis, he understood the issues surrounding the Broadway property and the house, he was Mr. Kartsonas' treating geriatric psychiatrist, and he agrees with Dr. Rabheru's assessment that Mr. Kartsonas is incapable of handling his estate. That opinion is echoed in Dr. Kow's brief report that he cannot manage amounts over \$100,000. Mr. Kartsonas' only significant assets are the Broadway property and his Blenheim Street house, both of which are valued in excess of \$100,000.
- [72] Dr. McDonald and Dr. Rabheru's opinion that Mr. Kartsonas is unable to understand the complexities of his finances is borne out by Mr. Kartsonas in his own affidavit. Mr. Kartsonas states that the transfer of the Broadway property was done without his consent, that his signature is a forgery, and that he first became aware of the joint ownership in late 2006 when he consulted counsel.
- [73] Mr. Kartsonas was the sole owner of the Broadway property from 1974 until 1988 when it was placed in joint ownership. Mr. Kartsonas should know that for the last 20 years that he has been receiving only one third of any rental income from the property.
- [74] While Mr. Kartsonas has focussed on Dr. McDonald's assertion that Mr. Kartsonas would benefit from a complete competency assessment to determine his capacity to manage his financial affairs, I do not find that necessary. I take Dr. McDonald's comments in that respect as a response to the reports of Drs. Cook and Hill or a way of resolving the dispute in this unfortunate family battle.
- [75] I agree with the petitioners that the examinations of Mr. Kartsonas by Drs. Hill and Cook were for the purpose of assessing his ability to handle finances when he travelled to Greece. The examinations were certainly not in response to the report of Dr. Rabheru, which formed part of the Petition which Mr. Kartsonas would have had at the latest when he filed his response to the Petition in January 2007. Neither Dr. Hill nor Dr. Cook seems to be even aware of Dr. Rabheru's report or these proceedings. I do not find their reports contradict or

conflict with the opinions of Dr. Rabheru and Dr. McDonald, and find that the requirements of s. 3(1) have been met.

E. Conclusion

[76] I am satisfied that Christophorous Kartsonas because of mental infirmity arising from disease, age or otherwise is incapable of managing his affairs. There will be an order under the Patients Property Act declaring Christophorous Kartsonas incapable of managing his affairs.

[77] While the evidence strongly points to Mr. Kartsonas also being incapable of managing himself, there are not the two affidavits as required under s. 3(1) giving such an opinion. As Dr. Rabheru states in his affidavit, he was not asked to assess Mr. Kartsonas' capability to manage his personal care decisions.

[78] The petitioners sought costs of the application on a special costs basis to be paid by the Patient's estate. If the parties cannot agree, they may make submissions.

"Loo J."

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