

CANADA / JUDGMENT

Knelsen Estate

2020 BCSC 373

COURT

Supreme Court of British Columbia

DECIDED

13 March 2020

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2020 BCSC 373 Knelsen Estate IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Knelsen Estate, 2020 BCSC 373 Date: 20200313 Docket: S-P-125254 Registry: Kelowna In the Matter of the Estate of Jason Knelsen, Deceased -and- Docket: S125505 Registry: Kelowna In the Matter of the Estate of Jason Jacob Knelsen, Deceased Before: The Honourable Madam Justice Horsman Reasons for Judgment Re Costs Counsel for the Petitioner/Respondent Normal Arnold: B. Hankins Counsel for the Petitioner/Respondent Alanna Wertz: K. Rule Date of Written Submissions received: February 26 and March 3, 2020 Place and Date of Judgment: Kelowna, B.C. March 13, 2020

INTRODUCTION

- [1] In reasons for judgment indexed at 2020 BCSC 134, I allowed the petition of the petitioner Alanna Wertz and dismissed the petition of Norma Arnold. I expressed the provisional view that Ms. Wertz, as the successful petitioner, was entitled to her costs of the proceeding at Scale B. I gave leave to the petitioners to provide further written submissions on the issue of costs if either sought a different order, which they have both now provided.
- [2] Ms. Arnold seeks an order that costs payable to Ms. Wertz are payable from the estate of Mr. Knelsen rather than by Ms. Arnold personally. Alternatively, Ms. Arnold seeks an order that each party bear their own costs.
- [3] Ms. Wertz argues that there is no reason in this case to depart from the ordinary rule that the unsuccessful party must pay the costs of the successful party. She seeks an order that Ms. Arnold pay her costs, and that the costs be assessed on a lump sum basis at \$12,000.

DISCUSSION

- [4] By way of brief background, the petitions raised overlapping issues regarding the administration and distribution of the estate of the deceased, Jason Knelsen. The petitioner Norma Arnold is Mr. Knelsen's mother. The petitioner Alanna Wertz was in a marriage-like relationship with Mr. Knelsen for approximately 12 years prior to his death. They have two children together. Mr. Knelsen died by suicide on August 15, 2018.

- [5] The issue central to both petitions was whether Ms. Wertz was Mr. Knelsen's spouse within the meaning of s. 2 of the Wills, Estates and Succession Act, S.B.C. 2009, c.13 [WESA], at the time of his death. Ms. Arnold maintained that the spousal relationship between Ms. Wertz and Mr. Knelsen had terminated by the time of his death, and therefore the children were the sole beneficiaries of Mr. Knelsen's estate. In her cross-petition, Ms. Wertz sought declarations that she was Mr. Knelsen's surviving spouse, and accordingly entitled to the preferential spousal share of his estate under s. 21(5) of the WESA.
- [6] I allowed Ms. Wertz's petition and dismissed Ms. Arnold's petition.
- [7] Rule 14-1(9) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [SCCR] provides that the costs of a proceeding must be awarded to the successful party unless the court orders otherwise. The court's discretion to depart from the usual rule that costs follow the event is not unfettered; it must be exercised judicially and not arbitrarily or capriciously: *Tisalona v. Easton*, 2017 BCCA 272.
- [8] Ms. Arnold says that the ordinary rule that the unsuccessful party shall pay the costs of the successful party ought not to apply in the circumstances of this case. She says that Ms. Wertz's costs should be paid out of the estate as they are either a) a "cost of administration", or b) a cost necessitated by Mr. Knelsen's actions prior to death in creating confusion as to the status of his relationship with Ms. Wertz. Ms. Arnold says that Mr. Knelsen's repeated statements to family and friends that his relationship with Ms. Wertz was "over", was the impetus for the filing of her petition. Ms. Arnold relies on *Gosbjorn v. Hadley*, 2008 BCSC 1614; *Lee v. Lee Estate* (1993), 84 B.C.L.R. (2d) 341 (S.C.) [*Lee Estate*]; *Leung v. Chang*, 2014 BCSC 1243; and *Dyson v. Moser*, 2004 BCSC 500.
- [9] The estate cases cited by Ms. Arnold suggest that exceptions to the ordinary costs rules are made more readily in estate cases than other areas of the law. The reasons for this are explained by Master Horn in *Lee Estate* at 346-47: In probate or administration actions or in proceedings for the construction of wills, the rule may be more frequently departed from. In such cases where the validity of a will or the capacity of the testator to make a will or the meaning of a will is in issue, it is sometimes the case that the costs of all parties are ordered to be paid out of the estate. This is upon the principle that where such an issue must be litigated to remove all doubts, then all interested parties must be joined and are entitled to be heard and should not be out of pocket if in the result the litigation does not conclude in their favour. The estate must bear the cost of settling disputes as a cost of administration. The question to be asked in such case is whether the parties were forced into litigation by the conduct of the testator or the conduct of the main beneficiaries. But the case is different where the litigation does not relate to the validity of the will or the capacity of the testator or the construction of the will. Actions brought under dependants' relief legislation presume the validity of the will and the capacity of the testator and that his intentions are clear. There are no doubts to be settled. The remedies provided by such legislation are directed to the maintenance and support of the dependants of the testator and are based on public policy. The legislation does not invalidate the will, it merely permits the court to vary

the provisions made by the testator. So an unsuccessful action under such legislation cannot be said to have been caused by the testator, or to have been necessary to enable the estate to be distributed. The action does not benefit the estate.

- [10] Ms. Wertz argues that there are no reasons to depart from the usual cost rules in the present case. She cites cases in which costs have been awarded in the ordinary way where there has been a dispute over spousal status: *Davey v. Gruyaert*, 2007 BCCA 20; *Volovsek v. Donaldsen*, 2019 BCSC 1820; and *Mother 1 v. Solus Trust Company*, 2019 BCSC 200. Ms. Wertz points out that Mr. Knelsen's estate is a modest one, and says that Ms. Arnold should face costs consequences in pursuing risky litigation that put estate assets at risk.
- [11] In my view, in the circumstances of the present case it is appropriate to depart from the usual rule that the unsuccessful party must pay the costs of the successful party. Although this was not a case that concerned the validity of a will, it is also not akin to a wills variation application. The actions of Mr. Knelsen and Ms. Wertz in the weeks before Mr. Knelsen's death, reviewed in detail in my original judgment, raised legitimate questions as to whether Ms. Wertz's relationship with Mr. Knelsen had terminated prior to his death. Mr. Knelsen had told numerous friends and family members that his relationship with Ms. Wertz had ended. Ms. Wertz initiated a relationship with another man who she referred to as her "boyfriend", and she told Ms. Arnold (among others) that she and Mr. Knelsen had broken up.
- [12] The uncertainty around the relationship between Mr. Knelsen and Ms. Wertz had to be resolved in order for Mr. Knelsen's estate to be distributed. If the spousal relationship had terminated, Ms. Arnold was an obvious person to apply to administer Mr. Knelsen's estate. In bringing such an application, Ms. Arnold was not acting as an officious inter-meddlor. The petition was necessitated by the actions of both Mr. Knelsen and Ms. Wertz before Mr. Knelsen's death. Ms. Arnold acted reasonably in bringing the petition.
- [13] For these reasons, I conclude that the circumstances of the present case fall within the exception recognized in the cases cited by Ms. Arnold where departure from ordinary costs rules is appropriate in estate cases. CONCLUSION/ORDER
- [14] Ms. Arnold has asked for an order that Ms. Wertz's costs be paid out of the estate. Ms. Wertz will likely be the only beneficiary of the estate given that her preferential share under s. 21 of the WESA (\$300,000) is expected to exceed the net value of the estate. Accordingly, the order sought by Ms. Arnold, that costs payable to Ms. Wertz be paid out of the estate, is tantamount to an order that each party bear their own costs.
- [15] Accordingly, I order that each of the petitioners bear their own costs of these proceedings. "Horsman J."

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Prepared on 25 October 2026 · Esheria