

CANADA / JUDGMENT

Mendres v. Ramsay

2024 BCCA 378

COURT

British Columbia Court of Appeal

DECIDED

14 November 2024

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2024 BCCA 378 Mendres v. Ramsay COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Mendres v. Ramsay, 2024 BCCA 378 Date: 20241114 Docket: CA48170 Between: Jessica Mendres Appellant (Respondent) And Kenneth Wayne Ramsay, Marian Carol Dashwood-Jones Respondents (Petitioners) And Valerie Anne Edwards Respondent (Respondent) And Public Guardian and Trustee Respondent (Respondent) Before: The Honourable Chief Justice Bauman The Honourable Madam Justice Saunders The Honourable Mr. Justice Harris Pursuant to s. 4(6) (a) of the Court of Appeal Act, S.B.C. 2021, c. 6, these reasons are pronounced by the remaining majority of justices of the division who heard the appeal. Supplementary Reasons to Mendres v. Ramsay, 2023 BCCA 137, Vancouver Docket CA48170. Counsel for the Appellant: A. James Counsel for the Respondents Kenneth Wayne Ramsay and Marian Carol Dashwood-Jones: N.P. Lenaghan Counsel for the Respondent, Public Guardian and Trustee: M.G. Underhill Place and Date of Hearing: Vancouver, British Columbia March 21, 2023 Place and Date of Judgment: Vancouver, British Columbia March 21, 2023 Written Submissions Received: September 17 and October 7, 2024 Date of Supplementary Judgment: November 14, 2024 Supplementary Reasons of the Court Summary: Application by unsuccessful appellant to have her costs paid out of a patient's estate on a special costs basis. Held: Application dismissed. The Court is unable to conclude that the facts justify making such an order. Supplementary Reasons for Judgment of the Court:

- [1] Ms. Mendres, the unsuccessful appellant, applies for an order that she be paid her costs of the appeal out of the estate of Ms. Edwards as special costs, even though her appeal was dismissed. On the appeal, Ms. Mendres contended that the chambers judge had erred in principle in appointing the respondents as committees of Ms. Edwards' person and estate.
- [2] On this application, she argues that the appeal was bona fide and brought in an effort to protect and promote the best interests of Ms. Edwards.
- [3] We note, first, that this application was initiated in late August 2024, even though judgment was pronounced orally on March 21, 2023, in reasons indexed at 2023 BCCA 137. This is inordinate delay. In the meantime, Chief Justice Bauman, who presided on the appeal, has retired and is no longer able to participate in the resolution of this issue. Similarly, Madam Justice Saunders has also retired, but is able to participate because this matter has arisen within the 6-month period in which she can conclude matters on which she sat. The delay in

this case has come close to requiring a freshly-constituted division to resolve the costs issues. This is unsatisfactory and risks prejudicing parties to an appeal. The profession should resolve consequential issues arising from appeals expeditiously.

- [4] The parties disagree about the appropriate costs order arising from the appeal. The respondents, Mr. Ramsay and Ms. Dashwood-Jones, contend the ordinary rules should apply and the losing appellant should pay costs to the estate. Ms. Mendres says that we should exercise our discretion to award special costs to her payable out of the estate since the appeal had merit, was brought to protect the best interests of Ms. Edwards, and not for a collateral reason or to advance her own personal interests. She says neither court criticized her motives or conduct. Indeed, she says this Court expressly referred to the strong submissions advanced on her behalf.
- [5] There is no doubt that the Court may order special costs to be paid out of the estate to a losing party who has acted in the best interests of a patient and without any improper motive or to advance a personal interest: see, for example, *Mok v. Wong*, 2022 BCCA 418.
- [6] We would not make such an order here for several reasons. First, we are not persuaded that we have sufficient information to be confident that payment of special costs out of the estate would not be prejudicial to Ms. Edwards' financial interests. The respondents, Mr. Ramsay and Ms. Dashwood-Jones, assert that the estate has only the resources to fund 40 months of care in a long-term private facility. Ms. Mendres says that adequate resources are available because of the sale of some real property. Given the state of the record, we are not prepared to risk depriving Ms. Edwards of funds necessary to her care by ordering the estate to pay special costs to Ms. Mendres.
- [7] Second, the appeal was dismissed without calling on the respondents. Judgment was given from the bench. We do not agree that the appeal was meritorious. Its primary focus was an attack on the chambers judge's exercise of discretion. It is true that we accepted that the judge had erred in not evaluating the suitability of each of the respondents as a committee separately -- rather, treating the couple as a "unit"-- but, on the facts, this worked no injustice and amounted to a criticism that put form over substance. The judge did not misapprehend any material facts that could have led to a different outcome. Our comment that the appellant had made "strong submissions" reflects the vigour with which arguments were advanced, rather than their intrinsic merits.
- [8] Third, it is true that neither court made findings that were critical of Ms. Mendres, but this does not necessarily support a positive finding that proceedings were brought bona fide or to protect and promote the best interests of the patient. The record is unclear, and there was a body of evidence before the court that Ms. Mendres had taken monies from Ms. Edwards for her own use, that she and Ms. Edwards had had a falling out, and that Ms. Mendres had not been actively involved in caring for Ms. Edwards for some years before proceedings started. In light of this evidence, as an appellate court, we are not in a position to resolve the motivation of Ms. Mendres so as to find as a fact that it was entirely the best interests of the

patient.

- [9] Cumulatively, these factors lead us to conclude that we should not order that Ms. Mendres be paid special costs out of the estate. In these circumstances, we would decline to order that she pay costs to the estate pursuant to s. 44 of the Court of Appeal Act, S.B.C. 2021, c. 6. "The Honourable Madam Justice Saunders" "The Honourable Mr. Justice Harris"

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