

CANADA / JUDGMENT

Miao v. Lee

2025 BCSC 1844

COURT

Supreme Court of British Columbia

DECIDED

29 August 2025

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2025 BCSC 1844 Miao v. Lee

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Miao v. Lee,

2025 BCSC 1844

Date: 20250829

Docket: E242230

Registry: Vancouver

Between:

Nian Min Miao also known as Norman Miao

Claimant

And

Shui Wan Lee also known as Shu Wan Miao

Respondent

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for Claimant:

J.Y.K. Ling

Counsel for the Respondent:

D. Exel

Place and Date of Trial/Hearing:

Vancouver, B.C.

August 29, 2025

Place and Date of Judgment:

Vancouver, B.C.

August 29, 2025

- [1] THE COURT: When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered given that some matters were abbreviated in the interests of time. I have made such edits without affecting the substance or final disposition.
- [2] This is an application pursuant to Supreme Court Family Rules 20-3(10) for the appointment of a litigation guardian over the claimant, namely to appoint his daughter.
- [3] There is no dispute between the parties as to the need for a litigation guardian on the basis that the claimant is under a disability that affects his ability to protect his own interests in this litigation. Rather, the issue is whether the proposed litigation guardian is suitable, given various allegations by the respondent including that the proposed guardian was active and influential in the claimant's decision both to separate from the respondent, and in respect of certain dealings with family assets, specifically by the proposed guardian influencing the claimant to appoint her as an attorney under the Power of Attorney Act, R.S.B.C. 1996, c. 370, and to use that power of attorney to transfer out family assets prior to separation.
- [4] The position of the respondent is that the Public Guardian and Trustee would be better suited to act as a litigation guardian, although no formal request has been made to them to do so at this point, such that if that were to be the case then it would require a separate application.
- [5] For the reasons set out, I agree with the respondent.

Background

- [6] By way of background, the claimant is 94 years old. The respondent is 87 years old. They began to live together in 1990, marrying November 2, 1990, and separating on August 14, 2024. The separation date occurred after an altercation that involved various members of the family and did ultimately include police attendance.
- [7] The claimant has three adult children from a previous relationship. The mother of those children died when the children were quite young, specifically when the proposed guardian was 5 years old.

- [8] The respondent has an adult child who was adopted by her and her previous spouse. He is now 52 years old and has lived with the respondent for most of his life, other than a brief period of time when he lived in Alberta, meaning that he also lived with both of the parties for much of the relationship prior to the separation.
- [9] The parties entered into a marriage agreement at the commencement of the relationship, which confirmed that the claimant was entering into the relationship himself with no assets while the respondent was entering into the relationship with assets worth, at that time, approximately \$650,000 and primarily made up of real estate, I believe in the City of Vancouver.
- [10] In these proceedings, the claimant seeks to have that marriage agreement set aside such that the division of assets is a live issue, including the apportionment to each party.

Legal Framework

- [11] This application is brought under the SCRF 20-3(10).
- [12] The parties do not dispute the applicable law for such applications; however, they do put a different emphasis on the considerations relating to requirement that the guarding be indifferent, or have a "conflict free" status vis a vis their relationship with both the incapable party and the other party involved in the litigation.
- [13] In *Woike v. Woike* 2025 BCSC 1460 ("Woike"), the defendant's stepdaughter was sought to be appointed as his litigation guardian in an action involving her brother's claim for shares in a family company owned by the defendant, their father. The basis for the alleged conflict was that the proposed litigation guardian was an alternate beneficiary under the defendant's will by which, if her mother predeceased her father, she would receive the shares upon the defendant's death.
- [14] The respondent relied on this decision, arguing that the proposed guardian has a direct interest in the outcome of the proceedings, even if indirectly, in that the proposed litigation guardian here will "likely" realize the benefit of any finding as to entitlement of the claimant to family assets if the marriage agreement is set aside and assets are apportioned to him. Although no will was put into evidence, or any evidence as to estate planning in that respect.
- [15] The court in *Woike* referred to *Gronnerud (Litigation Guardians of) v. Gronnerud Estate* 2002 SCC 38 ("Gronnerud"), as to the applicable considerations when appointing a litigation guardian.
- [16] At para. 18 the court noted that the application, in that case to remove but I would say is equally applicable at the appointment stage, ultimately turns on the best interests of the "dependant adult". Further. At para. 19, the criteria was noted to be as follows:
- a) the evidence must establish that the incompetent is unable to act for himself or herself;

- b) evidence should be verified under oath as to the incompetent's mental condition and his or her inability to act as plaintiff;
- c) evidence must demonstrate that the litigation guardian is both qualified and prepared to act, and in addition is indifferent as to the outcome of the proceedings;
- d) the applicant should provide some evidence to support the claim being made;
- e) the applicant should obtain the consents of the next-of-kin or explain their absence and;
- f) if the applicant has a personal representative or power of attorney whose status is not being challenged in the proceedings, some explanation should be offered as to why the attorney or representative has not been invited to bring the claim.

[17] With respect to those criteria, as noted, there is no dispute as to the majority threshold issues, those being (a), (b) and (d) to (f). I am satisfied as to the record on those factors.

[18] Rather, the issue here is primarily with (c) and whether the proposed litigation guardian is indifferent to the outcome of the proceedings. At para. 21 in Gronnerud, supra, the court specifically noted as follows:

... it is acceptable in most cases, and perhaps desirable in some cases, to have a trusted family member or a person with close ties to the dependent adult act as litigation guardian.

[19] It is this tacit acceptance that family member can act in this capacity that the the claimant relies on in making this application, noting that as a family matter there is always some element of a personal interest. However, at para. 21, the court also noted there is an exception, including the one that was in issue in that particular application, that being where there is:

... a particularly acrimonious and long-standing dispute among the children concerning their dead parent's estate. In such cases, the indifference required to be a litigation guardian is clearly absent.

[20] In Woike the court also referred to Re Poon (Patients Property Act), 2005 BCSC 254, where the court distinguished Gronnerud (and other decisions being relied upon the claimant in this application, such as Lodge v. Lodge, [2003] B.C.J. No. 1833 (B.C.S.C.) ("Lodge")) noting at paras. 32 and 36 that, in addition to having a conflict with the defendant adult there was a conflict with the opposing parties, which was an additional factor to be considered.

[21] The court ultimately concluded in Woike that the proposed litigation guardian was not in conflict and that she would be defending the action and preserve the defendant's position, specifically to preserve the alleged ownership status of the shares in issue in the family company, having the best interests of the defendant in mind.

[22] That conclusion was supported by the court's consideration of Morrison v. Greenwood 2020 BCSC 1356, which involved family litigation. The respondent argues that family litigation requires consideration, particularly as to the "indifference" determination. In Morrison, the

court referred to *Owen v. Owen*, 2010 ONSC 2852, at para. 52 and suggested that the indifference that was in issue there was more related to the indifference vis-a-vis the litigation guardian and the disabled person, as opposed to the outcome of the case. At para. 53, the court noted that in *Owen*, there was no established conflict between the interests of the daughter, the proposed litigation guardian, and her mother for the purposes of that family litigation.

- [23] In *Lodge*, as also relied upon by the claimant, also involved family litigation with there being three children of the parties, one of which had held a power of attorney and was litigation guardian in respect of one of the parties, with the other party seeking to have the child removed. The court, in considering the issue, referenced *Gronnerud* and concluded as follows:
20. The Szwydsky criteria provide guidance in defining the "best interests" test set out in Rule 49(1). The third criterion, that of "indifference" to the result of the legal proceedings, essentially means that the litigation guardian cannot possess a conflict of interest vis-à-vis the interests of the disabled person. Indifference by a litigation guardian requires that the guardian be capable of providing a neutral, unbiased assessment of the legal situation of the dependent adult and offering an unclouded opinion as to the appropriate course of action. In essence the requirement of indifference on the part of a litigation guardian is a prerequisite for ensuring the protection of the best interests of the dependent adult. A litigation guardian who does not have a personal interest in the outcome of the litigation will be able to keep the best interests of the dependent adult front and centre, while making decisions on his or her behalf. Given the primacy of protecting the best interests of disabled persons, it is appropriate to require such disinterest on the part of a litigation guardian.
- [24] The claimant also references and relies on para. 21 of the *Gronnerud*, supra, decision, as I mentioned previously, in terms of the desirability to have a trusted family member to act as a litigation guardian. In contrast, as noted, the respondent relies upon the court's comment in *Morrison*, that there is in fact a distinction when it comes to family litigation.

Analysis

- [25] Turning then to the relevant factors in the case at bar, and history involving the parties, the proposed litigation guardian is currently 60 years old. She deposes that she has "taken care of the family" since her mother's passing, i.e., since she was 5 years old. She deposes as to a close relationship with her father in that she would often visit her father when he was married to the respondent, although acknowledges that they would often meet at a restaurant as the respondent's adopted son did not wish to see her or her siblings. The proposed litigation guardian was appointed, as noted, as an attorney under the power of attorney. She deposes that that power of attorney arose after a social worker from Vancouver Coastal Health proposed it in June of 2024 at a family conference where other parties, including, she deposes, the adopted son, indicated that they were not willing to act in that capacity, and so she did agree to do so.

- [26] The power of attorney was executed on June 20, 2024, before a notary, and indicates that it will continue if the claimant was to become incapable of making decisions about his financial and legal affairs. The proposed litigation guardian, the respondent notes, executed it at the same time and as such appears to have been with the claimant when it was signed. There is no obvious indication that it was translated for him prior to signing, although there is some evidence that the notary spoke Cantonese and was able to do so and so perhaps might have. Regardless, the respondent's position is the power of attorney is invalid and that it was, as noted, used improperly by the proposed litigation guardian to transfer what appears to be approximately \$300,000, that being half of the funds that were held in the parties' joint bank accounts or financial accounts, to his sole name on or around July 9, 2024, i.e., well before the August 14, 2024 separation date.
- [27] Given the circumstances, the respondent disputes that the level of trust that would otherwise be indicated by having been granted a power of attorney is not evident or obvious in this case.
- [28] In addition, the respondent disputes the level of involvement of the proposed litigation guardian in the claimant's life, deposing that the proposed litigation guardian only became involved when the claimant's health began to deteriorate, at which time, that being early 2024, leading to June 2024 when it is alleged that she "secretly obtained the power of attorney and began secretly transferring their joint assets and influenced or pressured him to leave the relationship."
- [29] The proposed litigation guardian has, throughout the course of these submissions today, spent a considerable amount of time arguing the merits of the validity of the power of attorney and transfer of the assets under it.
- [30] The proposed litigation guardian has led evidence to the contrary, including other incidences which could suggest, potentially, vulnerability of the claimant in terms of whether or not he could be influenced to sign documents without knowing what they are, pointing specifically to evidence that the applicant themselves put before the court as to an incident where he was about to sign a revocation of that power of attorney and it was stopped on the basis that he indicated that he did not know what he was signing.
- [31] All of this is to say there is a significant conflict between the parties as to many of the facts which will have to be resolved in the course of this litigation. That conflict in facts is not only as between the claimant and respondent, but the proposed litigation guardian, specifically when acting under the power of attorney, and the respondent.
- [32] Determining the merits of those arguments is not necessary for the purpose of this application. However, it is clear that those factual disputes will ultimately need to be resolved to address the issues in dispute in this matter specifically as to family assets and any apportionment thereto.

- [33] The plaintiff argues that, given the following points, the fact that she may be in a conflict position with the respondent is not dispositive of the issue:
- a) she is a close family member who was entrusted with her father's care prior to his incapacity,
 - b) she was given a position of trust by the power of attorney, and
 - c) is the person that at least one of her other siblings agrees is the best person to act in this capacity (the adopted son is refusing to provide consent).
- [34] The issue, as she argues it, is that she will, in all respects, act in the best interests of the claimant and be aligned with his interests in that respect in terms of preserving his assets.
- [35] Here, however, the respondent disputes that the applicant can sufficiently establish that the proposed litigation guardian will in fact act in the claimant's best interests.
- [36] The respondent deposes that since the claimant has moved in with the proposed litigation guardian, there is some evidence that the claimant has been seen to be in an unwell, bruised, and rambling state, specifically by the adopted son. The response to that was that he may have suffered some falls. That is not outside the realm of possibility. However, there are concerns that the respondent has raised that they have not had a full opportunity to investigate, including whether, as I said, the proposed litigation guardian is acting in his best interests generally, such that she can be expected to do so in the course of this litigation.
- [37] I accept that the proposed litigation may, theoretically, be a beneficiary under the will. The will, however, is not before the court, and wills can be replaced. That is not dispositive.
- [38] I agree with the respondent that the court must be satisfied that the proposed litigation guardian will act in the best interests of the incapable party and that the fact that they may have a theoretical self interest as a family member is not disqualifying to that analysis.
- [39] Which leads to a consideration of whether the proposed litigation guardian will advance her own interests before that of the claimant. The respondent says her conduct indicates that she will.
- [40] The respondent pointed specifically to the fact that the transfer of 50% of the balances in the financial accounts was done prior to the separation by the proposed litigation guardian. If they had not yet separated, there was no reason for it. If it was known they would be separating, it was an improper self-help remedy, done at a time when there is some suggestion as to influence.

- [41] In my view, based on this conduct which the proposed litigation guardian was a part of, the interests of the claimant and the proposed litigation guardian are likely to fall out of alignment in the course of this litigation as the particulars of those transactions will be under scrutiny at trial. The proposed litigation guardian will likely be more inclined to justify her own actions, meaning that there is a reasonable possibility that she will put her own interests first and not, in all respects, act in the best interests of the claimant.
- [42] I also note that there is at least, what I would say, a considerable amount of acrimony between the not only the proposed litigation guardian and respondent, but also the respondent's son who, although it was not necessary to address for the purposes of these reasons, is a likely to become a party to this action. While the fact of acrimony between the other parties is not disqualifying as noted in Gronnerud in the context of this case, where the litigation guardian will also be a witness where her credibility and the credibility of those parties will likely be in issue it is another consideration as it goes to whose interests will be put first.

Conclusion and Orders

- [43] As such, I dismiss the application.
- [44] It is unfortunate that the involvement of the PGT had not been canvassed, as I would have been prepared to make an appointment if an appropriate application or alternative relief or cross-application had been before the court in that respect.
- [SUBMISSIONS RE COSTS].
- [45] THE COURT: Costs will be in the cause. Thank you. To confirm, the application is dismissed with costs in the cause.

"Associate Judge Robertson"

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Prepared on 29 October 2026 · Esheria