

CANADA / JUDGMENT

Peckover v. Wall

2026 BCCA 145

COURT

British Columbia Court of Appeal

DECIDED

10 February 2026

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2026 BCCA 145 Peckover v. Wall COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Peckover v. Wall, 2026 BCCA 145 Date: 20260210 Docket: CA50798 Between: Charles D. Peckover Appellant (Respondent) And Krista Catherine Florence Wall Respondent (Petitioner) Before: The Honourable Justice Dickson The Honourable Justice Winteringham The Honourable Justice Brundrett On appeal from: An order of the Supreme Court of British Columbia, dated June 11, 2025 (Re: Peckover Estate, 2025 BCSC 1240, Vancouver Docket S247213). Oral Reasons for Judgment Counsel for the Appellant: R.J.C. Deane, K.C. M.S. Kerwin Counsel for the Respondent: K. Vimalasan H.R. Solmon Place and Date of Hearing: Vancouver, British Columbia February 2, 2026 Place and Date of Judgment: Vancouver, British Columbia February 10, 2026 Summary: The appellant challenges the order of the judge below rectifying the will of his late sister pursuant to s. 59(1)(c) of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA]. The appellant argues the judge erred in law by misinterpreting s. 59 of WESA, failing to require cogent evidence of the will maker's true intentions, and failing to consider whether the rectified will would align with those intentions. Held: Appeal dismissed. There is no reason to interfere with the decision of the judge, who correctly interpreted s. 59 of WESA and applied the governing legal test, which included properly identifying the testamentary intentions in question. DICKSON J.A.:

Introduction

- [1] Charles Peckover appeals the order of the judge below rectifying the will of Patricia Peckover pursuant to s. 59(1)(c) of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA]. Mr. Peckover is the brother of the late Ms. Peckover, who died on March 15, 2023. The respondent, Krista Wall, is Ms. Peckover's surviving spouse.
- [2] Ms. Wall sought an order modifying two paragraphs of Ms. Peckover's will. According to Mr. Peckover, the chambers judge erred in law or principle in granting that order by misinterpreting s. 59 of WESA, failing to require clear, persuasive, and cogent evidence of Ms. Peckover's true intentions, and failing to consider whether the rectified will would align with those intentions.
- [3] I see no error in the judge's interpretation or application of s. 59 of WESA. For that reason and those that follow, I would dismiss the appeal.

Background

- [4] Mr. Peckover and Ms. Peckover were raised on a family farm in Saskatchewan. When they were children, they inherited two quarter-sections of farmland, including a portion of the mineral rights to the lands. At the time of her death, Ms. Peckover was the registered owner of 50% of the surface titles and 25% of the mineral titles to those lands.
- [5] Ms. Peckover and Ms. Wall met in 1992 and began a romantic relationship.
- [6] In January 2023, Ms. Peckover was diagnosed with advanced breast cancer. The following month, she and Ms. Wall jointly retained a solicitor in Courtenay, B.C., Suzanne Grant, to assist them with estate planning.
- [7] On February 17, 2023, Ms. Peckover completed and returned a will-planning questionnaire to Ms. Grant. Under the heading "Special Bequests" she wrote "Charles D. Peckover - land in Sask." In response to the question, "Do you wish to leave all your estate to your spouse?", she circled "yes" and wrote "Krista Wall".
- [8] On February 24, 2023, Ms. Peckover provided Ms. Grant with instructions for her will over the telephone. During the conversation, Ms. Grant reviewed Ms. Peckover's assets with her one by one.
- [9] In discussing the Saskatchewan land, Ms. Peckover distinguished between the subsurface rights, which she referred to as the "mineral rights", and the surface rights, which she referred to as the "land rights". She told Ms. Grant that the "mineral rights" would "go back to the government" upon her death, which was incorrect.
- [10] It appeared to Ms. Grant that Ms. Peckover understood the surface rights associated with the Saskatchewan land were not particularly valuable. This aligned with what Ms. Peckover told Ms. Wall, namely, that their value was roughly \$60,000 with an annual revenue of approximately \$15,000. In contrast, the revenue associated with the subsurface rights was much higher. For example, in 2022, Ms. Peckover received approximately \$1.37 million in royalties with respect to the subsurface rights.
- [11] Ms. Peckover instructed Ms. Grant that only the land rights were to be transferred to Mr. Peckover and the rest of her estate would go to Ms. Wall. She also advised Ms. Grant that she wanted to ensure that Ms. Wall did not have to deal with her family in the future, and so she had decided to leave her interests in the surface rights to Mr. Peckover.
- [12] Ms. Grant failed to carry out Ms. Peckover's instructions. She unilaterally decided to draft an expansive definition of Ms. Peckover's interest in the Saskatchewan lands to include the mineral titles. Paragraph 2(e) of the will defines "Saskatchewan Property" as: the property owned by me in Saskatchewan, being approximately 320 acres located at the South East and South West Quarters of Section 23, Township 5, Range 6. West of the Second Meridian in all or any part thereof owned by me at the time of my death including any interest owned by me in all mines and minerals within, upon or under the property, and any other interest in

real property located in Saskatchewan owned by me at my death;

- [13] In para. 5(c) of the will, both the surface rights and subsurface rights associated with the Saskatchewan Property are bequeathed to Mr. Peckover, which is inconsistent with Ms. Peckover's instructions to Ms. Grant.
- [14] On March 13, 2023, Ms. Grant attended at Ms. Peckover's home to execute the will. She reviewed the will with Ms. Peckover but did not read it to her word-for-word. Ms. Grant told Ms. Peckover that the will was drafted based on her instructions and that the land rights with respect to the Saskatchewan Property would go to Mr. Peckover and the remainder of her estate would go to Ms. Wall. She had no further discussions with Ms. Peckover, who died on March 15, 2023, two days after executing the will and without having seen the draft will that Ms. Grant had sent to her via email.
- [15] On October 21, 2024, Ms. Wall filed a petition under s. 59 of WESA seeking rectification of Ms. Peckover's will to exclude the mineral rights from the gift of the Saskatchewan Property to Mr. Peckover. Reasons for Judgment: 2025 BCSC 1240
- [16] The judge began by describing the nature of the rectification sought in the petition and noting that the parties agreed on the applicable test:
- [2] The parties agree that the test for rectification to be applied is as stated by the B.C. Court of Appeal in *Simpson v. Zaste*, 2022 BCCA 208 at para. 78:
- a) First, what were the testator's intentions with regard to the issue for which rectification is sought?
 - b) Second, does the Will as written fail to carry out those intentions?
 - c) Third, is that failure a consequence of one of the reasons specified in ss. 59(1)(a)-(c)?
- [17] After setting out ss. 59(1) and (2) of WESA, the judge observed that Ms. Wall advanced the case under subsection (c), a failure to carry out the will maker's instructions. She also noted the parties agreed that Ms. Peckover's intent was not to bequeath the subsurface rights to Mr. Peckover and stated "[a] corollary to this is that the testator intended to give only the surface rights associated with the Saskatchewan property to the respondent": at para. 5. Then she reviewed the evidence, which she found supported "the conclusion that the testator intended to grant only the surface rights to the respondent": at para. 8.
- [18] The judge also found there was "no question that the will fails to carry out the intention of giving only the surface rights to the respondent": at para. 9. She rejected Mr. Peckover's argument that she must find Ms. Peckover intended to bequeath the mineral rights to Ms. Wall before the rectification sought could be considered on the basis that it went beyond the rectification being sought: at para. 10. In her view, Ms. Peckover's mistaken belief that the mineral rights would escheat to the Crown upon her death was irrelevant given that her intention to give only the surface rights to Mr. Peckover was known and that was the extent of the proposed rectification: at paras. 11-15.

- [19] Moreover, the judge stated:
- [16] By requiring the Court to seek intention beyond the specific rectification being sought, or the testator's knowledge of the residue of her estate, the respondent's approach unnecessarily creates a gap in the understanding of the testator's intent and compels the sort of speculation that is forbidden in such cases, citing to Simpson. This is not necessary and would lead to the absurd result that the Court could not rectify the one thing all parties agree the testator did not intend, which was to give the subsurface rights to the respondent.
- [20] The judge went on to state that the "absurd result" of adopting Mr. Peckover's proposed approach was not supported by the words of s. 59 of WESA interpreted in their entire context and grammatical and ordinary sense, harmoniously with the scheme and object of the act and the intention of legislator: at para. 17. She found the intent that was relevant to the specific rectification sought was readily established on the evidence, which met the first part of the Simpson test, as was the second part of the test given that the will did not carry out Ms. Peckover's intentions. As to the third part of the test, she stated that she was "satisfied that this arises from a failure on the solicitor's part to carry out the will maker's instructions", reviewed the supporting evidence, and found that it readily established that the failure to carry out Ms. Peckover's instructions arose under s. 59(1)(c). In the result, she granted the order sought by Ms. Wall: at paras. 20-23. Discussion
- [21] Mr. Peckover contends the judge erred in law or principle by misinterpreting s. 59 of WESA to require only an assessment of whether one of the circumstances described in ss. 59(1)(a), (b) or (c) was present, and not "the will-maker's intentions" on the basis of the entirety of the will in question. In his submission, ss. 59(1)(a), (b) and (c) simply provide the court with "gateway" authority to inquire into a will maker's intentions, and represent the beginning, not the end, of the required analysis. However, he says, the judge misinterpreted s. 59(1), erroneously limited her analysis to whether the circumstances in (c) were satisfied, and ordered rectification without making findings on what Ms. Peckover did intend with respect to the gift of the mineral rights. In his submission, this was an error as s. 59 required her to find that the will as rectified was consistent with the intentions of the will maker.
- [22] In other words, Mr. Peckover says, the application required the judge to determine whether the will deviated from all of Ms. Peckover's actual intentions and the disposition in issue was the gift of the mineral rights. However, he says, due to her attenuated interpretation of s. 59, the judge did not consider or give effect to Ms. Peckover's actual intentions in two respects. First, he says, based on the judge's finding that Ms. Peckover incorrectly believed the mineral rights would not form part of her estate, she could not have formed any actual intention with respect to their disposition. Second, he says, the judge did not consider whether it was necessary to rectify the will to carry out Ms. Peckover's actual intentions more broadly, including her wish that Ms. Wall would not have to deal with her family, including Mr. Peckover.

- [23] According to Mr. Peckover, had Ms. Peckover understood that the mineral rights would form part of her estate she might have formulated a different distribution scheme. For example, he says, she might have formulated a scheme designed to avoid ongoing contact between Ms. Wall and Mr. Peckover or recognize that she had inherited the mineral rights from a family member. However, as the judge recognized, given the nature of the evidence, resolving that question would require impermissible speculation. Accordingly, he submits, on the record before her, a rectification order under s. 59 of WESA was simply unavailable.
- [24] Mr. Peckover acknowledges that his argument results in an "uncomfortable situation". However, he says, the problem is with s. 59 and its requirement that a rectified will conform to the will maker's actual intentions. Moreover, he contends, Ms. Wall is not without any remedy. For example, he argues that, given the nature of the evidence, it would be open to her to seek to prove the dispositions in the will as written were made without her knowledge and approval, which would throw into question the validity of the will.
- [25] I am not persuaded by these submissions.
- [26] As the judge noted, the test for rectification under s. 59 of WESA is set out in Simpson. To repeat, on an application brought under s. 59, the court asks: first, what were the testator's intentions with regard to the issue for which rectification is sought; second, does the will as written fail to carry out those intentions; and third, is that failure a consequence of one of the reasons specified in ss. 59(1)(a)-(c): at para. 78.
- [27] In my view, the judge correctly interpreted s. 59 and applied the governing legal test, namely, the test articulated in Simpson. In doing so, she correctly identified the testamentary intentions in question, namely, Ms. Peckover's intentions with regard to the issue for which rectification was sought. The issue for which rectification was sought was the true nature of Ms. Peckover's intended bequest to Mr. Peckover, and the evidence on that issue was overwhelming: she intended to gift him only the surface rights to the Saskatchewan Property. Her reasons for doing so were irrelevant. Given that the will as written failed to carry out those intentions due to Ms. Grant's failure to carry out her instructions, the s. 59 criteria were all met and the judge was entitled to rectify the will by correcting it in the manner that her order reflects.

Conclusion

- [28] I would dismiss the appeal.
- [29] WINTERINGHAM J.A.: I agree.
- [30] BRUNDRETT J.A.: I agree
- [31] DICKSON J.A.: The appeal is dismissed. "The Honourable Justice Dickson"

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Prepared on 26 October 2026 · Esheria