

CANADA / JUDGMENT

Ramsay v. Edwards

2022 BCSC 2418

COURT

Supreme Court of British Columbia

DECIDED

25 February 2022

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2022 BCSC 2418 Ramsay v. Edwards IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ramsay v. Edwards, 2022 BCSC 2418 Date: 20220225 Docket: S-210127 Registry: Victoria In the Matter of The Patients Property Act, R.S.B.C. 1996, c. 349, and Amendments Thereto, and in the Matter of Valerie Anne Edwards Between: Kenneth Wayne Ramsay Marian Carol Dashwood-Jones Petitioners And: Valerie Anne Edwards Respondent Before: The Honourable Justice B.D. MacKenzie Oral Reasons for Judgment In Chambers Counsel for the Petitioners appearing by videoconference: N. Lenaghan For the Respondent: No appearance Counsel for Jessica Mendres appearing by videoconference: P.B. Newman Place and Date of Hearing: Victoria, B.C. February 25, 2022 Place and Date of Judgment: Victoria, B.C. February 25, 2022

- [1] THE COURT: At the outset, as I mentioned earlier before the break, I am satisfied time is of the essence and that the parties in this particular case need some finality with respect to this issue involving Valerie Edwards. So I am providing a brief oral decision and reserving the right to edit it, if necessary, for clarity, grammar, and the like. At the outset, I would also like to thank both learned counsel for their excellent submissions on behalf of their clients. I am going to refer to the parties by their first names as counsel has done throughout without any disrespect to the individuals involved.
- [2] Ms. Valerie Edwards is 76 years of age. Unfortunately, she is now incapable of managing herself or her affairs. She does, however, still reside in her own residence that she owns. She does receive, of course, significant assistance from the caregivers.
- [3] Given Valerie's incapacity, her brother, Ken Ramsay, and his spouse, Marian Dashwood-Jones, now apply to be appointed as Valerie's committee pursuant to the relevant sections of the Patients Property Act. Ken's daughter, Jessica Mendres, has filed a response opposing her father's application. She has also filed her own application seeking that she be appointed as Valerie's committee. In this regard, the numerous affidavits and their contents filed in these two applications make it crystal clear there is dramatic ill will and animosity between father and daughter, which is most unfortunate and has resulted in these contested applications.

- [4] I am also satisfied it has, unfortunately, taken a significant emotional toll on Valerie who, while unable to manage her affairs, has for the last few years been aware of the conflict between her brother and her niece. In my view, having regard to all of the conflicting evidence here, it is reasonable to state that all parties could have approached this sensitive subject with a more holistic approach and a more conciliatory approach, but be that as it may, here we are. At the outset, I will state I am satisfied there is sufficient evidence in the form of affidavits from two medical practitioners that Valerie is incapable of managing herself and her affairs as a result of mental infirmity due to moderate to severe dementia.
- [5] Turning to the applications, as Ms. Mendres has emphasized throughout, in March of 2014, Valerie appointed Jessica as her power of attorney and representative. In addition, it appears that Valerie named Jessica as the executor of her will and the sole beneficiary. I also accept that Jessica and Valerie had a loving and caring relationship, at least until around 2017, when the petitioners submit Jessica commenced acting inappropriately and inadequately, given her duties and responsibilities as Jessica's attorney and caregiver. While acknowledging the fact that it is significant that Valerie entrusted Jessica with her affairs when she appointed her power of attorney, the petitioners submit that things went downhill around 2017. They, in their numerous affidavits, submit that Valerie was clear that she had a falling out with Jessica such that, in due course, it is alleged that Jessica was fired by Valerie.
- [6] In response, as has been the case throughout all of the assertions and counter assertions, Jessica says, "No, that's not correct," her and Valerie agreed that because of the difficulties Jessica was going through at that point in time with a separation and a young child, that she and Valerie decided to amiably part ways at that particular point in time. In addition, the petitioners submit there is substantial direct evidence by way of financial documents that illustrate Jessica had not been properly taking care of Valerie's financial affairs. There is also submissions by the petitioners that not insubstantial amounts of money were taken by Jessica from Valerie's account and many cheques were written that suggest some inappropriate conduct on the part of Jessica.
- [7] I will state for the record that I am unable to determine who is more accurate or reliable with much of the conflicting statements contained in all these affidavits, not just from the petitioners and Jessica, but also their acquaintances, friends, and sometimes relatives. What I do find most significant and, as I said to counsel before the break, I am satisfied, because of all of those conflicting assertions, what I should properly focus on is what has been occurring in the last two years or so, how Valerie is doing, and of course, what is in her best interests.
- [8] In this regard, there is affidavit evidence from ongoing caregivers which support the petitioners' position that over the last couple of years, the petitioners have been properly providing care and assistance for Valerie and in some occasions paying out of their own pockets Valerie's caregiver expenses. There is no need to dwell on the situation where Valerie's caregivers allege that they had to phone Ken because Jessica was not paying them and they were about to quit before Ken stepped in and took care of that. As I say, all of that is

relatively dated, and I can understand why the parties emphasized in their affidavit material all of the things they did in order to support their respective positions. In any event, the fact of the matter is the material that has been provided satisfies me that what has been taking place in the last couple of years has been in Valerie's best interests and that she is presently receiving the proper emotional and financial support that she needs because of the involvement of her brother, Ken.

- [9] I think the most important evidence in this particular matter, quite frankly, can be narrowed down to the letter from Valerie's long-time doctor, Dr. Galanos, and that is a recent letter dated February 15, 2022, a week or so ago. In that particular letter, Dr. Galanos states that, "Bearing in mind her diagnosis, I can say that Valerie is doing well." He also confirmed that the petitioners are in contact with him and does add tellingly, in my view, unfortunately, that, "Jessica Mendres has not been in contact with me for four years."
- [10] Now, on that particular point, that statement, is hard to reconcile with Ms. Mendres' evidence in her February affidavit where she deposes that she has a very good relationship with Dr. Galanos and, in addition, in another affidavit, deposed that if she is successful in this application, she will immediately make an appointment with Dr. Galanos for a full medical assessment of Valerie. As counsel for the petitioners have put it, that would seem to be inconsistent with the assertion that Jessica has been involved in Valerie's wellbeing and care for the last couple of years. I am of the view that that is significant and, as a result, it is unnecessary for me to descend into a detailed analysis of various aspects of the material to determine who is more credible or who is more reliable; for example, does the Shaw telephone bill undermine Jessica's credibility when she says the petitioners cut off Valerie's phone and the like? I do not find it necessary to analyze all of those issues that have been presented throughout all of this affidavit material.
- [11] The particular applications that I have to deal with, as I say, are under the Patients Property Act, and as Master McCallum said in *Garrett-Jones*, 2006 BCSC 234, some guidance as to the determination between competing applicants can be found in s. 18 of the Act which states: A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.
- [12] Counsel have, quite properly, acknowledged that the law or the principles surrounding these type of applications are well settled and there is no disagreement that the factors outlined by Justice Warren in *Re Horton*, 2020 BCSC 87, which has been included in the petition record, are neatly summarized by Justice Masuhara in *Stewart*, 2014 BCSC 2321. I do not find it necessary to recite all of those factors. I will state for the record I have considered them all, and when I consider the totality of the evidence, applying those factors and the principles enunciated in the relevant authorities, I am satisfied that the petitioners' application should be granted and therefore I will make that order in due course.

- [13] Given the totality of the circumstances, I am satisfied that the petitioners are best suited to exercise the powers of a committee for the benefit of Valerie. So there will be a declaration that Valerie Edwards is incapable of managing herself or her affairs. There will be an order appointing the petitioners as committees as sought in paragraph 2 of their notice of application. The order will be made on the condition that the committee -- this is with respect to the position taken by the Public Guardian, the committee will have no access to the capital of the patient's fund held, I think it is CIBC Wood Gundy, other than for reinvestment purposes, without the prior written permission of the Public Guardian and Trustee. Income earned may be paid to the committees for the benefit of the patient. A copy of this order is to be served upon CIBC Wood Gundy.
- [14] I am also satisfied, having regard to the totality of the circumstances and Jessica's position as executor and apparent beneficiary of Valerie's will, that the paragraph located at number 9 of the response of the Public Guardian and Trustee should be included in the order and that is to preclude the committees from disposing of or encumbering the real property that is referenced at paragraph 9 of the Public Trustee's response.
- [15] In addition, it is appropriate to grant the petitioners' application that they are entitled to costs of this application paid out of the patient's estate and as outlined, as I said, in their notice of application, the reasonable costs and expenses of and incidental to the application.
- [16] So, Ms. Newman, Mr. Lenaghan, thank you very much and --
- [17] CNSL S. WATSON: Just with respect to costs, Mr. Justice, typically in these kinds of cases, if it is found that the party, even the party that is not successful, has brought the application in the best interests of the patient, it's typical that the respondent or, in this case, Ms. Mendres' costs would be paid out of the estate as paid on a special costs basis, as well.
- [18] THE COURT: I agree.
- [19] CNSL P.B. NEWMAN: All right.
- [20] THE COURT: Okay.
- [21] CNSL P.B. NEWMAN: Thank you.
- [22] THE COURT: All right. Thank you very much. "The Honourable Justice B.D. MacKenzie"

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