

CANADA / JUDGMENT

Re Garrett-Jones (Patients Property Act)

2006 BCSC 234

COURT

Supreme Court of British Columbia

DECIDED

10 February 2006

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2006 BCSC 234 Re Garrett-Jones (Patients Property Act)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Re Garrett-Jones (Patients Property Act),

2006 BCSC 234

Date: 20060210

Docket: 05 5721

Registry: Victoria

In the Matter of the Patients Property Act, R.S.B.C. 1996, C. 349

and Paula Garrett-Jones

Before: Master McCallum

Reasons for Decision

Counsel for the Petitioner,

Charles Garrett-Jones

Valorie F. Hemminger Long

Respondent appearing in person

Maurice Garrett-Jones

Date and Place of Hearing:

January 25th, 2006

Victoria, B.C.

INTRODUCTION

- [1] Paula Garrett-Jones ("Paula") is incapable of managing herself or her affairs. Paula's grandson, Charles Garrett-Jones ("Charles"), is applying to be appointed as her committee. Paula's son, Maurice Garrett-Jones ("Maurice"), is opposed to Charles's appointment as committee and says he would be a better choice. Maurice is Charles' father. All of the other members of Paula's immediate family support Charles' application.

BACKGROUND

- [2] Paula is now 92 years of age and has been residing in a Victoria assisted living facility since the summer of 2005. Prior to that move Paula lived in the Lower Mainland in other care facilities. Until October 2005 Paula's affairs were administered by her daughter, Susan Pal ("Susan") by way of Power of Attorney. Susan died in October 2005 and Charles elected to apply to be appointed as Paula's committee.
- [3] Paula's relatives include Maurice, Charles, Michelle Garrett-Jones (granddaughter), Anna Doak (granddaughter) and Paul Pal (grandson). All of Paula's relatives, except Maurice, have consented to Charles' appointment as committee. The Public Guardian and Trustee has been served and is not opposed to the applications on terms that are acceptable to Charles with respect to Paula's capital.
- [4] The material contains evidence from 2 doctors with respect to Paula's ability to manage herself and her affairs. There is no doubt on the material that Paula is incapable of managing herself and her affairs as a result of mental infirmity arising from vascular dementia or Alzheimer's disease. Both physicians report significant cognitive impairment and a requirement for full time daily care.
- [5] Absent Maurice's objection there would be no reason to deny Charles' application. Charles is a member of Paula's immediate family who is willing to take on a significant burden. He has the support of all but one of the other members of Paula's immediate family. Charles is willing to abide by the Public Guardian and Trustee's suggestions concerning access to Paula's capital. Charles appears to have the necessary capacity to make decisions concerning Paula.
- [6] Maurice believes strongly that he is entitled to the appointment as Paula's committee by birthright. Maurice objects to Charles' appointment because he believes Charles has an irresponsible plan for Paula's care that will prove to be unaffordable. Maurice implies (without corroboration) that Charles is financially irresponsible when considering Paula's affairs and apparently believes Charles has already had inappropriate access to Paula's bank accounts. Maurice is unable to produce any evidence of his suspicions concerning Charles. Maurice says Charles is a "weasel" without specifying what that means or how it might relate to the application.

- [7] Maurice is the named executor in a will apparently executed by Paula in 1991. He has exhibited to his material copies of documents executed by Paula in 2002 and 2005 indicating that Paula wished Maurice to have control of her financial affairs. Maurice acknowledges that he prepared those requests and had Paula sign them but insists they represent her wishes. Maurice believes Paula has the capacity to understand those requests and make decisions concerning her affairs. The medical evidence does not support Maurice's view. Paula was served with the material in support of Charles' application and has made no response.
- [8] Paula has been resident in a local assisted living facility since she moved to Victoria in 2005. The cost of Paula's accommodation in that facility is a significant concern for Maurice. Maurice believes the current and ongoing cost is over \$11,000 per month. Charles says the monthly cost of Paula's accommodation is just over \$5,200 monthly. The statements from the facility support Charles view that the monthly basic cost is approximately \$5,200. The statements also show that there are additional costs on an as-needed basis that have resulted in a significantly higher monthly cost. Maurice's fears of escalating costs are not without foundation but it cannot be said that the monthly cost will exceed \$11,000 on an ongoing basis.
- [9] The evidence shows that Paula's capital amounts to approximately \$265,000. There is no statement of her monthly income. The evidence demonstrates that Charles is alive to the issue of ongoing cost and would not, contrary to Maurice's view, embark upon a financially irresponsible plan. Charles acknowledges in his affidavit that Paula's care options will have to be assessed based upon her condition. Maurice's material goes no further than demonstrating that he too is concerned about cost. Maurice provides no plan that would provide equivalent or better care at lower cost.

DISCUSSION

- [10] The application to be appointed committee is made pursuant to the provisions of the Patients Property Act, R.S.B.C. 1996 Chapter 349. The Act allows the court to appoint any person to be committee and establishes no criteria for the appointment. Some guidance as to the determination between competing applicants may be found in s.18 of the Act:

Exercise of powers

18 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.

- [11] From that passage one could infer that the interests of the patient and her family should be taken into account in the context of the patient's overall circumstances. In the case at bar, I am satisfied that either Charles or Maurice could effectively manage the patient's property. As stated earlier in these reasons, Charles and Maurice are both concerned about the cost and quality of Paula's care. Neither could be preferred on the basis of superior financial management.
- [12] Given the direction in s.18 of the Act it is necessary to turn to an examination of the interests, circumstances and needs of Paula's family. It is obvious that the family supports Charles. Maurice's material includes a series of e-mail correspondence between various family members around the issue of Paula's care and the appointment of a committee. A close reading of that correspondence does not support Maurice's view that he is the only one interested in Paula's well being. It is obvious that the various family members are unhappy about the acrimony that has resulted but all appear concerned about a good result for Paula. Although Maurice's antipathy toward Charles is plain, Charles (at least in correspondence) does not demonstrate a similar antipathy. Paula's other family appear to have taken a conciliatory approach to the problem although they support Charles.
- [13] Paula needs the support and attention of her family. Her committee must make decisions for her care that will facilitate that support. Maurice's approach to the issue of the appointment of a committee has inflamed relations among family members, to no good result. It does not appear likely that Maurice will change his strongly expressed views about Charles in particular. That will not serve Paula's interests well. Charles, on the other hand, says he intends to consult his family (including Maurice) about decisions that will affect Paula and the family. There is no reason to doubt either his competency or his motives. Appointment as a committee is a significant responsibility without a corresponding reward other than fulfilling that responsibility.

CONCLUSION

- [14] Charles is the person best suited to exercise the powers of a committee for the benefit of Paula and her family. I do not doubt Maurice's devotion to Paula or his motives in wanting the appointment. In the circumstances of this case, Charles has to be preferred given the family dynamic.
- [15] There will be a declaration that Paula Garrett-Jones is incapable of managing herself or her affairs.
- [16] There will be an order appointing Charles Garrett-Jones as committee of Paula Garrett-Jones. The order goes on the condition that the committee will have no access to the capital of the patient's funds held at National Bank Financial, other than for reinvestment purposes, without the prior written permission of the Public Guardian and Trustee. Income earned may be paid to the committee for the benefit of the patient. A copy of this order is to be served upon National Bank Financial.

[17] Charles Garrett-Jones is entitled to his costs of this application to paid out of the patient's estate as special costs with the approval of the Public Guardian and Trustee or upon assessment.

"Master William McCallum"

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