

CANADA / JUDGMENT

Reid Estate

2024 BCSC 1932

COURT

Supreme Court of British Columbia

DECIDED

22 October 2024

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2024 BCSC 1932 Reid Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Reid Estate,

2024 BCSC 1932

Date: 20241022

Docket: S248957

Registry: New Westminster

Re: The Estate of Veronica Elizabeth Allen Reid, Deceased

Before: The Honourable Justice Chan

Reasons for Judgment

Counsel for the Petitioner:

S. Payne

Counsel for the Respondent:

D. Hobbs

Place and Date of Hearing:

New Westminster, B.C.

September 26, 2024

Place and Date of Judgment:

New Westminster, B.C.

October 22, 2024

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Introduction

- [1] Veronica Elizabeth Reid died on November 18, 2021. She was residing in Dawson City, Yukon, but was transported to Vancouver General Hospital ("VGH") on approximately November 8, 2021 due to liver failure. She was born on July 31, 1962, and was 59 years old at the time of her death. She is survived by three brothers: Gregory Vernon James Reid, Allan Malcom Reid, and David Byron Reid. As the parties share the same last name, I will refer to them by their first names to avoid confusion. Gregory has a son and two daughters and Allan is the father of Katie Reid. In total, Veronica had one nephew and three nieces.
- [2] As Gregory is the oldest of the brothers, he applied for and was granted administration of Veronica's estate by the B.C. Supreme Court on August 26, 2022. On June 1, 2023, Gregory obtained a Grant of Resealing Letters of Administration by the Supreme Court of Yukon. Gregory applied for these grants of administration on the basis that Veronica did not have a valid will. Gregory became the administrator of Veronica's estate and is the Respondent in this proceeding.
- [3] On May 24, 2023, Gregory was served with this petition filed by Anita Horner on behalf of her daughter Katie, one of Veronica's nieces. Katie is under 19 years old. In this petition, Anita Horner seeks an order pursuant to s. 58(3) of the Wills, Estates and Succession Act, SBC 2009, c. 13 [WESA], to have a handwritten document prepared by Veronica cured and

pronounced as the valid will of Veronica (the "Handwritten Document"). If the Handwritten Document is found to be a valid will, Veronica's estate is to go to Katie in trust until she is 30 years old. If the Handwritten Document is not found to be a valid will, then Veronica's estate will be distributed according to the laws of intestacy.

- [4] The Petitioner has filed one affidavit from Deborah McIntosh, a long-time friend. Ms. McIntosh lived with Veronica in Dawson City. The Respondent has filed his own affidavit, as well as an affidavit from a paralegal at his counsel's office attaching Veronica's medical records from Dawson City Medical Clinic and Yukon Health and Social Services. I am advised the estate is modest in size, totalling approximately \$80,000.

The Evidence

Deborah McIntosh

- [5] Deborah McIntosh deposed that she was very close to Veronica for 31 years until her death. They shared a home in Dawson City and Ms. McIntosh had daily contact with Veronica. Ms. McIntosh found the Handwritten Document in Veronica's office in their home in late 2021 to early 2022. Ms. McIntosh was not present when Veronica signed the Handwritten Document, but Ms. McIntosh confirms it is written entirely by Veronica. Ms. McIntosh deposed she is very familiar with Veronica's handwriting. On a few occasions, Veronica had told Ms. McIntosh that she had prepared and signed a will by hand. Veronica had told Ms. McIntosh that she kept her will in her office in their home.
- [6] Ms. McIntosh deposed that Veronica had told her on several occasions that she was leaving her entire estate to Katie, and that Veronica talked about Katie a lot. Ms. McIntosh deposed that she believed Veronica loved Katie and wanted to help provide for her. Veronica had purchased Christmas gifts for Katie prior to her death. Ms. McIntosh gave these gifts to Allan when he travelled to Dawson City in December 2021.
- [7] Ms. McIntosh deposed that in September 2021, Veronica told her she was working on a will questionnaire with a lawyer in Yukon, and planned to change her will and leave her estate to all her nieces and nephews. Ms. McIntosh deposed that Veronica had called all the mothers of her nieces and nephews to confirm their birthdates. When Veronica was leaving for Vancouver for medical reasons, Ms. McIntosh packed the will questionnaire in Veronica's suitcase. Ms. McIntosh deposed that Veronica appeared mentally sharp until she was flown to Vancouver around November 8, 2021. Ms. McIntosh deposed that Veronica was very ill and she was not with Veronica after that date.
- [8] Ms. McIntosh attached as an exhibit to her affidavit a copy of the Handwritten Document. Ms. McIntosh deposed she believes it is dated September 14, 2017. I reproduce the Handwritten Document at Appendix A at the end of my reasons.

- [9] Veronica and Ms. McIntosh are the registered owners of a half share as tenants in common of real property in Yukon. They together with Lorraine N. Butterworth are the registered owners of a one third share as tenants in common of another piece of real property in Yukon.

Gregory Vernon James Reid

- [10] Gregory is the eldest of Veronica's three brothers. Veronica completed courses at Langara College in Vancouver and worked as a bookkeeper in Dawson City. Gregory deposed that Veronica was a serious alcoholic who died of complications due to liver failure. He deposed it was common for Veronica to call in the middle of the night in a state of intoxication, with rambling speech and slurring of words. Gregory deposed that Veronica told him that after finding out about her failing liver, about a year before her death, Veronica tried to sober up to be considered for a liver transplant.
- [11] Gregory deposed that he went to visit Veronica at VGH in the days before her death on November 8, 2021. He deposed Veronica was jaundiced and swollen due to her failing liver. Gregory deposed that he asked her if she had prepared a will, and Veronica replied that she had not done so. Veronica told Gregory that she was thinking about leaving her estate to all her nieces and nephews. Gregory asked at the nursing station about the possibility of someone in the hospital being able to assist Veronica with preparing a will. Gregory was advised that was a possibility, and he told Veronica. To his knowledge, no will was finalized while Veronica was at VGH.
- [12] Gregory was advised by Christel Evers, Veronica's childhood friend, that Ms. Evers was assisting Veronica with preparing a will at VGH, but no will was finalized before Veronica died. After Veronica died, her belongings at VGH were packed in her suitcase. Gregory deposed that before he had an opportunity to see the contents of the suitcase, Allan had removed some items. Gregory deposed that on December 9, 2021, Gregory exchanged texts with Ms. Evers and asked if she had the draft will that was being prepared at VGH. Ms. Evers told Gregory she did not have it and that Allan had it with the suitcase. Gregory then asked Ms. Evers if she had told Allan to destroy the draft will and she confirmed she had done so. These texts are attached as an exhibit to Gregory's affidavit. In January 2022, Gregory picked up the suitcase from Allan and discovered that there was no draft will inside.
- [13] Gregory contacted Ms. McIntosh who sent him some documents regarding Veronica's bank accounts, property and vehicle ownership, and the Handwritten Document. Gregory deposed that the Handwritten Document appears to be dated "September 14, 2011² [sic]", though this is not clear. The Handwritten Document starts with "I smell death " which to Gregory sounded like Veronica's ramblings when she would phone him in the middle of the night. Gregory deposed he noticed "the poor line spacing, penmanship, word choice, and overall structure" of the document. He noted the Handwritten Document did not contain the phrase "the last will and testament" and it was not witnessed. Gregory deposed these observations made him question Veronica's condition when she prepared the Handwritten

Document. Gregory has not been able to locate a complete, signed, and witnessed will for Veronica since her death.

Veronica's Medical Records

[14] The medical records indicate Veronica had been battling serious alcohol abuse for a long time prior to her death. One entry in 2017 indicated "long abuse of alcohol," and indicated she admitted to drinking one to two bottles of wine with dinner per day. In a 2020 entry, Veronica advised she had been drinking for years without any period of sobriety lasting longer than two weeks. In July 2020, she advised the last time she was sober for a significant amount of time was in 2004 for four years. She had been hospitalized several times for detoxification. In October 2021, she advised she drank throughout her adult life until about two years prior to 2021, when she was asked to stop drinking due to her liver disease. The entries on November 8, 2021, indicate Veronica was considering medically assisted death in Vancouver, depending on how long the liver transplant process would take.

Legal Framework

[15] Section 37(1) of WESA describes the three requirements for a valid will. The will must be in writing, signed by the will maker in the presence of two or more witnesses, and be signed by the witnesses in the presence of the will maker. A will that does not meet the requirements of s. 37(1) is invalid unless the court orders it to be effective as a will under s. 58: s. 37(2)(a) of WESA. Section 58 of WESA provides that a court may cure a testamentary document that is non-compliant with the formal requirements of a will:

58 (1) In this section, "record" includes data that

- (a) is recorded or stored electronically,
 - (b) can be read by a person, and
 - (c) is capable of reproduction in a visible form.
- (2) On application, the court may make an order under subsection (3) if the court determines that a record, document or writing or marking on a will or document represents
- (a) the testamentary intentions of a deceased person,
 - (b) the intention of a deceased person to revoke, alter or revive a will or testamentary disposition of the deceased person, or
 - (c) the intention of a deceased person to revoke, alter or revive a testamentary disposition contained in a document other than a will.
- (3) Even though the making, revocation, alteration or revival of a will does not comply with this Act, the court may, as the circumstances require, order that a record or document or writing or marking on a will or document be fully effective as though it had been made

- (a) as the will or part of the will of the deceased person,
- (b) as a revocation, alteration or revival of a will of the deceased person, or
- (c) as the testamentary intention of the deceased person.

- [16] Section 58 is remedial legislation that confers on the court a broad discretion to order a document purporting to be a will be fully effective, despite non-compliance with formal requirements. For an order to be granted under s. 58, the court must be satisfied the document represents the testamentary intentions of the deceased: *Hadley Estate (Re)*, 2017 BCCA 311 at paras. 34 to 35.
- [17] In deciding whether to exercise this curative power, Justice Dickson in *Hadley Estate* referenced her earlier decision in *Estate of Young*, 2015 BCSC 182:
- [36] As discussed in *Estate of Young*, s. 58 is very similar to Manitoba's curative provision and thus the leading appellate authority on its meaning is *George v. Daily*. *George* and several other Manitoba authorities are reviewed in *Estate of Young*, which review need not be repeated. Their import is summarized at paras. 34-37:
- [34] As is apparent from the foregoing, a determination of whether to exercise the court's curative power with respect to a non-compliant document is inevitably and intensely fact-sensitive. Two principal issues for consideration emerge from the post-1995 Manitoba authorities. The first is an obvious threshold issue: is the document authentic? The second, and core, issue is whether the non-compliant document represents the deceased's testamentary intentions, as that concept was explained in *George*.
- [35] In *George* the court confirmed that testamentary intention means much more than the expression of how a person would like his or her property to be disposed of after death. The key question is whether the document records a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death. A deliberate or fixed and final intention is not the equivalent of an irrevocable intention, given that a will, by its nature, is revocable until the death of its maker. Rather, the intention must be fixed and final at the material time, which will vary depending on the circumstances.
- [36] The burden of proof that a non-compliant document embodies the deceased's testamentary intentions is a balance of probabilities. A wide range of factors may be relevant to establishing their existence in a particular case. Although context specific, these factors may include the presence of the deceased's signature, the deceased's handwriting, witness signatures, revocation of previous wills, funeral arrangements, specific bequests and the title of the document: *Sawatzky* at para. 21; *Kuszek* at para. 7; *Martineau* at para. 21.
- [37] While imperfect or even non-compliance with formal testamentary requirements may be overcome by application of a sufficiently broad curative provision, the further a document departs from the formal requirements the harder it may be for the court to find it embodies the deceased's testamentary intention: *George* at para. 81.

- [18] The material time for determining testamentary intentions on a s. 58 application is usually the time at which the document in question was created. However, as noted in *Estate of Young*, depending on the circumstances, the material time may vary on this key issue: *Hadley Estate* at para. 36. Extrinsic evidence of testamentary intent may be admissible, including evidence of events that occurred before, during, and after the document was created: *Hadley Estate* at para. 40.
- [19] The onus is on the petitioner seeking to cure a non-compliant document to prove on a balance of probabilities that the document is authentic and that it represents the deceased's testamentary intentions. Testamentary intention means a deliberate or fixed and final expression of intention of disposal of the deceased's property on death. The material time for determining testamentary intentions is usually at the time when the document was created.

Analysis

- (1) Is the Handwritten Document Authentic?
- [20] Ms. McIntosh deposed that she is very familiar with Veronica's writing, and the Handwritten Document was written by Veronica entirely. I do not understand Gregory to challenge this assertion.
- [21] I find the Handwritten Document to be authentic. I find it was written by Veronica.
- (2) Does the Handwritten Document contain the testamentary intentions of the deceased?

Position of the Petitioner

- [22] The Petitioner argues the Handwritten Document does contain the testamentary intentions of Veronica. She argues it was signed by Veronica. It was made in contemplation or expectation of death, as referenced in the opening sentence. The Handwritten Document contains instructions on what to do with her estate and her remains. Veronica on several occasions told Ms. McIntosh that she had written a will, and that she was leaving her estate to Katie. Ms. McIntosh confirmed that Veronica was close to Katie, and bought Christmas gifts for her prior to her death. Veronica told Ms. McIntosh the will was in her office at her home, and that was where it was found after Veronica's death.
- [23] The Petitioner argues the evidence of Ms. McIntosh ought to be given greater weight, as Ms. McIntosh does not stand to gain whether the Handwritten Document is found to be a valid will or not. Ms. McIntosh is not a beneficiary under either scenario. In contrast, the Petitioner argues Gregory and/or his children stand to benefit if the Handwritten Document is not found to be valid. The Petitioner argues Gregory's evidence ought to be given less weight, as he did not advise in his application for probate of the existence of the Handwritten Document, which could potentially be found to be a valid will. The Petitioner argues this shows Gregory is not forthcoming about evidence which could be against his

interest.

Position of the Respondent

- [24] Gregory argues the Petitioner has not met the onus of proving the Handwritten Document is a valid will. Gregory points to the conversation he had with Veronica at VGH shortly before her death, when she advised she had not prepared a will. Gregory asked the hospital for assistance in preparing a will and advised Veronica there was a possibility she could prepare a will at the hospital. Gregory points to the content of the Handwritten Document, and argues it is more in line with the ramblings her sister engaged in when she phoned him in the middle of the night while intoxicated.
- [25] The Respondent argues the evidence is that Veronica was a serious alcoholic almost her whole adult life. Gregory argues Veronica did not bring the Handwritten Document with her to VGH, but instead brought the will questionnaire she had been preparing. He argues this shows Veronica did not consider the Handwritten Document to be important. He argues the Handwritten Document is vague, incomplete, and far from the formal requirements of a valid will. Finally, he argues that, as Ms. McIntosh is a joint owner of two real estate properties with Veronica, she may have a preference of who she wants to deal with in regard to ownership of the properties.

Analysis

- [26] I have not considered any of the evidence of Christel Evers, as referenced in the affidavit of Gregory. In my view, the evidence of Ms. Evers is hearsay, and not admissible through Gregory.
- [27] In my view, the Petitioner has not met the onus of proving on a balance of probabilities that the Handwritten Document contains the fixed and final testamentary intentions of Veronica. The Handwritten Document does not contain any explicit information indicating that Veronica considered it to be her will, such as the title "Will" or any similar phrasing indicating she was executing her will: Estate of Young at paras. 29 and 30. In my view, the contents of the Handwritten Document can be more appropriately described as thoughts or ruminations of Veronica at the time.
- [28] Another difficulty is the date of the Handwritten Document is unclear. While Ms. McIntosh deposed that she believes it is dated September 14, 2017, she provides no reason why she believes it was in 2017 and not some other year. The task of the court is to consider if the document consists of the deceased's fixed and final testamentary intentions at the time it was made. The task becomes more difficult when it is unclear when the document was made. It is clear the first three digits of the year are "201", meaning the Handwritten Document could have been made any time from 2010 to 2019.

- [29] Further, the Handwritten Document appears to be incomplete in several aspects. The Handwritten Document starts out with "I smell death " It is unclear what Veronica intended by the " ". While Veronica wrote all her worldly possessions less the cost of her interment is to go to Katie Reid in trust until she is 30, Veronica does not reference who the trustee is to be. Veronica does not appoint an executor for her estate. Veronica wrote she wished to be interred by cremation and her ashes scattered in a place she had always wanted to go but has never gone. She then wrote "first option Ellesmere Island." As argued by counsel for the Respondent, Ellesmere Island is a remote northern island in Canada that is extremely difficult to reach. It does seem to be a very impractical location for someone to instruct their loved ones to travel to in order to fulfill their last wish. Further, the use of the phrase "first option" leads one to believe that Veronica had not yet completed her thoughts on the subject, as there may well be a second or third option to come. Veronica does not say if the first option is her final choice.
- [30] In the Handwritten Document, Veronica wrote about interment, then wrote she wanted her ashes scattered. Interment involves putting a person's cremated ashes in a permanent resting place while the scattering of ashes is done when someone does not want their ashes put in a set place. The Handwritten Document does not appear to be well thought out or complete.
- [31] I agree with the Petitioner that evidence that Veronica wanted to make different bequests in the days before her death cannot affect a prior valid will. Essentially, evidence that Veronica was in the process of changing her will but did not complete this change does not affect the validity of the Handwritten Document, provided that it set out Veronica's testamentary intentions at the time it was created. However, I find the evidence of Veronica consulting a lawyer and completing a will questionnaire in September 2021 does not support the contention that the Handwritten Document expressed her fixed and final testamentary intentions at the time she wrote it.
- [32] That is to say, if Veronica intended the Handwritten Document to be her will, why did she not simply write another handwritten document as her new will? The inference I draw from that evidence is Veronica did not consider that she had a valid will, and did not consider the Handwritten Document to be a representation of her fixed and final testamentary intentions at the time she wrote it. This finding is consistent with the evidence from Gregory's affidavit that Veronica told him at VGH that she did not have a will.
- [33] The Petitioner argues the only requirement missing in the Handwritten Document is that it was not signed in the presence of two or more witnesses. She argues it is similar to *Akins Estate (Re)*, 2019 BCSC 738, where the court upheld the validity of a handwritten will, though it was not witnessed by two people. However, in *Akins Estate (Re)*, the handwritten document was titled "Wishes on My Passing," which in my view, is clear evidence the deceased considered this to be his will. The handwritten document in *Akins Estate (Re)* also contained clear and unequivocal instructions on how to dispose of his body after death, specific bequests to specific individuals, and a clear date. These elements distinguish *Akins*

Estate (Re) from this case.

Conclusion

[34] The petition is dismissed.

[35] In my view, the petitioner acted reasonably in bringing this application. Both parties are entitled to special costs payable out of the estate.

"Chan J."

Appendix A

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Prepared on 25 October 2026 · Esheria