
CANADA / JUDGMENT

Rosinski v. British Columbia (Public Guardian and Trustee)

2016 BCSC 1204

COURT

Supreme Court of British Columbia

DECIDED

30 June 2016

Source: bccourts.ca - Research copy typeset by Esheria. Not court-issued or certified.

2016 BCSC 1204 Rosinski v. British Columbia (Public Guardian and Trustee)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rosinski v. British Columbia (Public Guardian and Trustee),

2016 BCSC 1204

Date: 20160630

Docket: S163634

Registry: Vancouver

Between:

Rita Fernanda Rosinski

Petitioner

And

The Public Guardian and Trustee of British Columbia

Respondent

Before: The Honourable Chief Justice Hinkson

Reasons for Judgment

Counsel for the Petitioner:

N.M. Safarik

Counsel for the Respondent:

P.A. Mazzone

Counsel for Suzanna Rosinski:

T. Goepel

Place and Date of Hearing:

Vancouver, B.C.

May 31 and June 9, 2016

Place and Date of Judgment:

Vancouver, B.C.

June 30, 2016

- [1] The petitioner is an 85-year-old woman. Suzanna Rosinski is her daughter and only child (the "daughter"). The parties named in the style of cause did not resist her taking part in the hearing of the petition.
- [2] On October 15, 2012, the petitioner gave the daughter an Enduring Power of Attorney, pursuant to which the daughter has managed the petitioner's financial affairs. On October 30, 2012, the petitioner executed a Representation Agreement with the daughter.
- [3] In November of 2015, the respondent decided to investigate the financial circumstances of the petitioner, and on February 17, 2016, decided to freeze the petitioner's bank accounts. The freeze was subsequently renewed on March 18, 2016.
- [4] In her petition brought pursuant to the Judicial Review Procedure Act, R.S.B.C. 1996, c. 241, the petitioner seeks the following orders:
 - a) An order [in the nature of] certiorari quashing the decision of the Public Guardian and Trustee of British Columbia dated November 24, 2015, to investigate the finances of the petitioner, Rita Rosinski;
 - b) An order [in the nature of] certiorari quashing the decision of the Public Guardian and Trustee of British Columbia dated February 17, 2016, freezing the Vancouver City Savings Credit Union and TD Canada Trust accounts of the petitioner, Rita Rosinski;
 - c) An order [in the nature of] certiorari quashing the decision of the Public Guardian and Trustee of British Columbia dated March 18, 2016, freezing the Vancouver City Savings Credit Union and TD Canada Trust accounts of the petitioner, Rita Rosinski;
 - d) A declaration that the Enduring Power of Attorney dated October 15, 2012 given by Rita Rosinski to Suzanna Rosinski is in full force and effect;
 - e) The time for hearing this petition be abridged;

- f) Costs; and
- g) Such further order or declaration as to this Honourable Court may deem just.

Background

- [5] The petitioner's husband passed away in 2010. The petitioner inherited the entirety of his estate.
- [6] The daughter is the only child of the petitioner and her husband, and is the sole beneficiary named in the petitioner's last will and testament.
- [7] The petitioner holds 2/3 of the shares in each of two companies. Each of the companies is the owner of a different home on the west side of Vancouver. The daughter holds the remaining 1/3 of the shares in each of the companies. The petitioner and the daughter own a home that is also on the west side of Vancouver and used to be the family home. The three homes are all rented to tenants and the petitioner and the daughter reside together in a condominium in Vancouver. The homes and the condominium were unencumbered prior to the death of the petitioner's husband, and the rental homes have collective assessed values in excess of \$6 million.
- [8] The daughter was previously employed in what she described as the marketing industry, but gave up her business to assist her parents with managing the two companies and rental properties, and caring for her father, who suffered serious injuries in 2005 after being struck by a motor vehicle. The daughter had effectively managed the petitioner's financial and legal interests even before the petitioner executed the Enduring Power of Attorney and the Representation Agreement. Since her father's death, the daughter has assisted with the petitioner's care needs and made health care decisions on the petitioner's behalf.
- [9] The revenues generated by the rental properties were routinely shared by the petitioner, her husband and the daughter and used for family purposes. The revenues from these rental properties were used to maintain the properties and in part for the petitioner's needs, but as the petitioner's living expenses rose, they were insufficient to pay for her needs. In the result, the petitioner and the daughter obtained a line of credit secured against the former family home in 2011. It has since been used to pay for the upkeep of the rental properties and for the living expenses of both the petitioner and the daughter.
- [10] In the winter of 2014, the petitioner and the daughter took a six-month holiday to Florida, which they financed by using the line of credit.

Legal Framework

- [11] The exercise of a statutory power such as that engaged in by the respondent can be challenged by way of a petition for judicial review.

- [12] The question of whether the Public Guardian and Trustee acted outside her jurisdiction is reviewable.
- [13] As Madam Justice Harris commented in *Mayden v. British Columbia (Workers' Compensation Appeal Tribunal)*, 2015 BCSC 692 at paras. 88 - 89:
- [88] Judicial review is, in broad terms, a mechanism for enforcing legality in the statutory decision-making process and to preserve the rule of law: *Speckling v. British Columbia (Labour Relations Board)*, 2009 BCCA 155 at para. 17. Put another way, the function of judicial review is to "ensure the legality, the reasonableness and the fairness of the administrative process and its outcome". However, it is essential that courts avoid "undue interference with the discharge of administrative functions in respect of matters delegated to administrative bodies" by legislatures: *Dunsmuir v. New Brunswick*, 2008 SCC 9 at para. 27.
- [89] On an application for judicial review, the court may not set aside a tribunal's decision merely because it disagrees with that decision or would have reached a different result: *McIntosh v. Metro Aluminum Products Ltd*, 2012 BCSC 345.

Standard of Review

- [14] As Madam Justice Dickson observed in *Eshghabadi v. British Columbia (Minister of Public Safety)*, 2011 BCSC 434 at paras. 37 - 39:
- [37] The standard of judicial review on true jurisdictional and many legal issues is a standard of correctness. The standard of review on the merits of an administrative decision is a standard of reasonableness. An administrative decision is reasonable if it is reached within a justifiable, transparent and intelligible decision-making process and its result falls within a range of possible acceptable outcomes which are defensible in respect of the facts and law: *Dunsmuir*; *Foster*.
- [38] Section 1 of the JRPA defines, amongst other things, the terms "decision", "statutory power", "statutory power of decision", and "tribunal". It reads, in part, as follows:

"decision" includes a determination or order;

. . .

"statutory power" means a power or right conferred by an enactment

- (a) to make a regulation, rule, bylaw or order,
- (b) to exercise a statutory power of decision,
- (c) to require a person to do or to refrain from doing an act or thing that, but for that requirement, the person would not be required by law to do or to refrain from doing,

- (d) to do an act or thing that would, but for that power or right, be a breach of a legal right of any person, or
- (e) to make an investigation or inquiry into a person's legal right, power, privilege, immunity, duty or liability;

"statutory power of decision" means a power or right conferred by an enactment to make a decision deciding or prescribing

- (a) the legal rights, powers, privileges, immunities, duties or liabilities of a person, or
- (b) the eligibility of a person to receive, or to continue to receive, a benefit or licence, whether or not the person is legally entitled to it,

and includes the powers of the Provincial Court;

"tribunal" means one or more persons, whether or not incorporated and however described, on whom a statutory power of decision is conferred.

[39] Section 2 of the JRPA sets out the remedies available on a judicial review application. Section 3 of the JRPA deals with the court's power to set aside a decision based on an error of law. They provide:

Application for judicial review

2 (1) An application for judicial review must be brought by way of a petition proceeding.

- (2) On an application for judicial review, the court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for:
 - (a) relief in the nature of mandamus, prohibition or certiorari;
 - (b) a declaration or injunction, or both, in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.

Error of law

- (3) The court's power to set aside a decision because of error of law on the face of the record on an application for relief in the nature of certiorari is extended so that it applies to an application for judicial review in relation to a decision made in the exercise of a statutory power of decision to the extent it is not limited or precluded by the enactment conferring the power of decision.

Discussion

November 2015 Decision to Investigate the Petitioner's Finances

[15] Section 17 of the Public Guardian and Trustee Act, R.S.B.C. 1996, c. 383 authorizes the Public Guardian and Trustee to investigate and audit the affairs, dealings and accounts of an adult who does not have a guardian but who is apparently abused or neglected, as defined in the Adult Guardianship Act, R.S.B.C. 1996, c. 6. Section 17 similarly authorizes the Public Guardian and Trustee to investigate and audit an attorney under a power of attorney or an enduring power of attorney, if the Public Guardian and Trustee has reason to believe that the person who granted the power of attorney or enduring power of attorney is incapable of managing his or her financial affairs, business or assets.

[16] The Adult Guardianship Act defines abuse as:

the deliberate mistreatment of an adult that causes the adult

(a) physical, mental or emotional harm, or

(b) damage or loss in respect of the adult's financial affairs,

and includes intimidation, humiliation, physical assault, sexual assault, overmedication, withholding needed medication, censoring mail, invasion or denial of privacy or denial of access to visitors;

[17] The same Act defines neglect as:

any failure to provide necessary care, assistance, guidance or attention to an adult that causes, or is reasonably likely to cause within a short period of time, the adult serious physical, mental or emotional harm or substantial damage or loss in respect of the adult's financial affairs, and includes self neglect.

[18] In this case, the Public Guardian and Trustee received a report on June 9, 2015 from a confidential source, who is not identified in the material before me, that the petitioner was a vulnerable senior citizen and not capable of managing her finances and that the daughter was wrongfully taking money and mismanaging the petitioner's property assets. The identification of the individual who reported to the Public Guardian and Trustee is protected from disclosure pursuant to s. 17(3) of the Public Guardian and Trustee Act. That subsection states:

(3) Despite the Freedom of Information and Protection of Privacy Act, the Public Guardian and Trustee must not disclose or be compelled to disclose the identity of a person who makes a report resulting in an investigation or audit under this section. The report to the Public Guardian and Trustee also included the assertion that a banking power of attorney had been revoked by the petitioner on June 5, 2015, but that on the preceding day a bank statement on one of the petitioner's accounts showed a large transfer of funds and a large cash withdrawal in the amount of \$50,000, which was later determined to be unsuccessful due to insufficient funds in the account.

- [19] On June 15, 2015, the Public Guardian and Trustee was further informed by the same source that the daughter was in Europe, but would return to Vancouver at the end of that month.
- [20] In a letter dated June 22, 2015, the Public Guardian and Trustee's staff wrote to the petitioner and the daughter advising of concerns in respect of the management of the petitioner's financial and legal affairs, and that those affairs would be investigated by the Public Guardian and Trustee.
- [21] On June 29, 2015, the Public Guardian and Trustee received the advice from the staff at one of the banks where the petitioner held an account that the daughter was at the bank trying to establish new power of attorney documents for the petitioner's bank accounts.
- [22] On June 30, 2015, the daughter confirmed to the Public Guardian and Trustee's staff that the petitioner had dementia and was quite forgetful.
- [23] Section 18 of the Public Guardian and Trustee Act authorizes the Public Guardian and Trustee or his or her delegate, conducting an investigation or audit under s. 17(1) of that Act, to require an attorney to produce any accounts, securities or other records.
- [24] On July 15, 2015, the Public Guardian and Trustee's staff requested banking records from the daughter, but after further attempts to obtain the information, the requested material was still not provided to the Public Guardian and Trustee by November 24, 2015.
- [25] I am satisfied that based upon the report to the Public Guardian and Trustee, there was sufficient reason for concern that the petitioner was an adult whose financial affairs might be deliberately being damaged, or that she might not be receiving necessary guidance or attention and thus cause within a short period of time substantial damage or loss in respect of her financial affairs. I am therefore satisfied that there was sufficient reason for the resulting decision, dated November 24, 2015, to investigate the petitioner's finances.
- [26] I further find that based upon the daughter's advice as to the petitioner's dementia, the lack of a response to requests for documentation from the daughter, and the report from the confidential source, the Public Guardian and Trustee had reason to believe that the petitioner who had granted the Enduring Power of Attorney might be incapable of managing her financial affairs, business or assets.
- [27] In the result, I dismiss the first relief sought in the petition.

February 2016 Decision to Freeze the Petitioner's Accounts

- [28] David March is an accountant for the petitioner and the daughter. On January 14, 2016, he advised the Public Guardian and Trustee's staff that he was working on the accounting requested of the daughter but required more time to complete it. He was advised that he would have until January 22, 2016 to do so, but he did not provide the accounting until January 27, 2016.

[29] Section 19 of the Public Guardian and Trustee Act provides in part that:

19. (1) In this section, "adult" means an adult who is apparently abused or neglected, as defined in the Adult Guardianship Act.
- (2) If the Public Guardian and Trustee has reason to believe that the financial affairs, business or assets of a young person or an adult are in need of immediate protection, the Public Guardian and Trustee may do one or more of the following:
 - (a) instruct any institution where the young person or the adult has an account that no funds are to be withdrawn from or paid out of that account until further notice;
 - (d) take any other step that is necessary to protect the financial affairs, business or assets of the young person or adult and that is reasonable in the circumstances.
- (3) A step taken under subsection (2) remains in effect for 30 days or a shorter period set by the Public Guardian and Trustee.
- (4) A step taken under subsection (2) may be renewed, but
 - (a) each renewal period must not be longer than 30 days, and
 - (b) the step taken must not continue for longer than a total of 120 days.

[30] On February 16, 2016, further information was requested from Mr. March by the Public Guardian and Trustee's staff. The following day, the Public Guardian and Trustee concluded that the petitioner's accounts were in need of protection and invoked protective measures pursuant to s. 19 of the Public Guardian and Trustee Act with respect to the petitioner's accounts at the Vancouver City Savings Credit Union ("VanCity") and TD Canada Trust. The petitioner and the daughter refer to these actions as freezing orders.

[31] It is apparent from the documentation ultimately provided to the Public Guardian and Trustee's staff that between October 2014 and October 2015, the sum of roughly \$215,000 was spent from the petitioner's VanCity line of credit, which line of credit amounted to \$461,905.94 by the end of October 2015.

[32] I find that the Public Guardian and Trustee's decision to freeze the petitioner's accounts in February of 2016 while she continued her investigation was a decision that at that time was reached within a justifiable, transparent and intelligible decision-making process and its result fell within a range of possible acceptable outcomes which are defensible in respect of the facts and law.

[33] I therefore dismiss the second relief sought in the petition.

March 2016 Decision to Freeze the Petitioner's Accounts

- [34] Following the freezing of the petitioner's accounts in February 2016, the Public Guardian and Trustee's staff continued with the investigation of the petitioner's financial affairs. This created a hardship for the petitioner and the daughter as they had no way to meet their considerable ongoing expenses. The petitioner's monthly expenses are approximately \$9,950. The daughter was forced to use her credit cards to meet those expenses.
- [35] The freezing of the petitioner's accounts was renewed on March 18, 2016, as it would otherwise have expired pursuant to s. 19(4)(a) of the Public Guardian and Trustee Act. By that date, the Public Trustee and Guardian's staff were still seeking information from the daughter. While the Public Guardian and Trustee could have sought an order from this Court to compel the provision of the information she was seeking, I am unable to say that in the absence of the voluntary provision of that information from the daughter, the Public Guardian and Trustee's decision to renew the freeze in March 2016 was a decision that at that time was reached without a justifiable, transparent and intelligible decision-making process or that its result fell outside a range of possible acceptable outcomes which are defensible in respect of the facts and law.
- [36] The March 18, 2016 freeze does not appear to have been renewed, and should therefore have lapsed pursuant to s. 19(4)(a) of the Public Guardian and Trustee Act by April 18, 2016. It is apparent, however, that it continued to be honored by the petitioner's banks after April 18, 2016.
- [37] On April 26, 2016, Mr. Justice McEwan ordered that the protective measures instituted by the Public Guardian and Trustee be lifted in respect of the petitioner's line of credit account at VanCity to the limited extent of permitting the petitioner to obtain the sum of \$40,000.
- [38] On May 31, 2016, I granted a further order lifting the protective measures in respect of the petitioner's line of credit account at VanCity to the limited extent of permitting the petitioner to obtain the further sum of \$10,000.
- [39] It is unclear to me why the protective measures are still effective in light of the fact that the freezing orders renewed on March 18, 2016, should have lapsed pursuant to s. 19(4)(a) of the Public Guardian and Trustee Act on April 18, 2016. For her part, the Public Guardian and Trustee is prepared to vacate the protective measures at this time, and I am satisfied that she is satisfied that the measures are no longer necessary, and her ability to sustain them would have lapsed on June 14, 2016 in any event pursuant to s. 19(4)(b) of the Public Guardian and Trustee Act. But so that there can be no uncertainty, I will quash the decision of the Public Guardian and Trustee of British Columbia dated March 18, 2016, freezing the VanCity and TD Canada Trust accounts of the petitioner, Rita Rosinski, as of April 18, 2016, on the basis that it is no longer required.

Declaration as to the Force and Effect of the Enduring Power of Attorney

- [40] Insofar as the fourth relief sought in the petition, a declaration that the Enduring Power of Attorney dated October 15, 2012 given by Rita Rosinski to Suzanna Rosinski is in full force and effect, is concerned, counsel for the Public Trustee and Guardian conceded that the Enduring Power of Attorney remains effective and operative, but took the position that the Court lacked jurisdiction to make the declaration pursuant to the Judicial Review Procedure Act.
- [41] Section 2(2)(b) of that Act provides that on an application for judicial review, the Court may grant any relief that the applicant would be entitled to in any one or more of the proceedings for a declaration in relation to the exercise, refusal to exercise, or proposed or purported exercise, of a statutory power.
- [42] The declaration sought by the petitioner does not fall within the exercise, refusal to exercise, or proposed or purported exercise by the Public Guardian and Trustee of a statutory power. She has expressed her view through her counsel as set out above, and I agree with her counsel that I do not have the jurisdiction to make the declaration sought on this petitioner for judicial review of the Decision of the Public Guardian and Trustee. The fourth relief sought in the petition is therefore dismissed.

Other Relief Sought

- [43] The fifth relief sought in the petition is no longer required, and the seventh relief sought was not pursued.

Costs

- [44] During the hearing of the petition, I invited the parties to compromise by essentially agreeing to have the protection orders vacated and the Enduring Power of Attorney recognized as operative and valid. For their own reasons they declined to do both. In the circumstances, neither party nor the daughter has achieved the result that they sought, and I therefore order that they each bear their own costs.

"The Honourable Chief Justice Hinkson"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/16/12/2016BCSC1204.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/rosinski-v-british-columbia-public-guardian-and-trustee-2016>

Prepared on 29 October 2026 · Esheria