

CANADA / JUDGMENT

Seifred v. Arnold

2021 BCSC 1418

COURT

Supreme Court of British Columbia

DECIDED

21 June 2021

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2021 BCSC 1418 Seifred v. Arnold IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Seifred v. Arnold, 2021 BCSC 1418 Date: 20210621 Docket: S171250 Registry: Vancouver Re: The Patients Property Act, R.S.B.C. 1996, c. 349 and Re: Grace Caroline Seifred Between: Daryl Richard Seifred Petitioner And: Donna Marie Arnold and Barbara Grace Sward Respondent

- and - Docket: S187633 Registry: Vancouver Re: The Patients Property Act, R.S.B.C. 1996, c. 349 and Re: Grace Caroline Seifred Before: The Honourable Madam Justice F. Marzari Oral Reasons for Judgment (In Chambers) Counsel for the Respondent, Grace Caroline Seifred appearing via videoconference: T.R. Britnell, Q.C. The Petitioner, Daryl Richard Seifred appearing on his own behalf via videoconference: D.R. Seifred Counsel for the Respondent, Donna Marie Arnold appearing via videoconference: E. Macaulay The Respondent, Barbara Grace Sward appearing on her own behalf via videoconference: B.G. Sward Place and Date of Trial/Hearing: Vancouver, B.C. June 21, 2021 Place and Date of Judgment: Vancouver, B.C. June 21, 2021

- [1] THE COURT: Thank you very much. I will give brief reasons.
- [2] I have received excellent submissions on the issues of the costs. I reiterate that this is a costs decision in a committee proceeding where our Court of Appeal in Vieira (Re), 2013 BCCA 420, has said that the type of costs to be awarded are discretionary. The usual practice is that the successful applicant is to be granted an order for special costs from the patient's estate, but there is a wide discretion to depart from that.
- [3] One of the factors to be considered is the ability of the estate to bear an order for costs. In these proceedings, I have already indicated my concern that Mrs. Seifred's estate is modest. It largely consists of the proceeds of her home in 2017, which was not substantially more than a million dollars. I had suspected that with the number of counsel and the number of parties and just the detail and level of commitment that everybody was giving to this proceeding, that the estate would be unacceptably depleted by an order for special costs.

- [4] On the submissions I have before me, that concern has been borne out. The parties have provided their without prejudice, round figure cost estimates at this point. These estimates amount to more than \$500,000 in legal costs and close to half of Mrs. Seifred's entire estate. That is before Ms. Arnold has had the opportunity to recover her costs of care from Mrs. Seifred's estate for the last four years.
- [5] I also have evidence from the chambers hearing, and before me now, that Mrs. Seifred is going to need complex care. It is clear to me that she is entitled to have the best care that she can afford and that she is entitled to rely upon her assets in order to provide that to her.
- [6] So the question is not what her estate can possibly bear and not be entirely depleted, but what it should bear in this case in terms of paying for her children's legal costs. Here, it is clear to me that a special costs award from her assets in favour of her children would impinge on Mrs. Seifred's ability to have the care she needs and for her committee to make decisions that are in her best interests.
- [7] I therefore reaffirm my initial concern stated in my reasons that this is not a matter where special costs ought to be awarded. The costs will be costs at the tariff level to the parties including Ms. Sward, Mrs. Arnold, and Mr. Seifred.
- [8] I am not including Mrs. Seifred herself in the costs award. It does not make sense in these circumstances to treat her legal expenses as costs to be recovered and paid to her from her own estate. Her lawyers are seeking to recover from her for their services provided to her and on her behalf, and the sole issue is whether and to what extent her legal fees should be recovered by her lawyers under the Legal Profession Act, S.B.C. 1998, c. 9. That shall be determined through an ordinary taxation of lawyer's fees.
- [9] I therefore, refer Mrs. Seifred's legal fees under the Legal Profession Act to the Registrar. I will also make a number of directions and observations in that regard because Mrs. Seifred is not able to take a position or represent herself in that taxation process, although Mr. Seifred, as her committee, may do so. I ask the Registrar to understand that we are dealing with a client who was not capable of instructing her own counsel at the time of the hearing before me. I specifically direct the Registrar to consider both what was desired by Mrs. Seifred as well as what was required by Mrs. Seifred, in terms of the legal services and the value they provided to Mrs. Seifred. Determining the appropriate value of those services is something the Registrar can receive evidence with respect to, and the Registrar will then be in a better position to determine this issue than I am.
- [10] With respect to the other parties, I agree with Mr. Macaulay that this was a case of unusual complexity and costs at Scale C are warranted. I am concerned about the parties and Mrs. Seifred incurring substantial additional legal costs in a hearing before the Registrar, particularly if it is approached in the same manner the main hearing was. I am prepared, if the parties are available and interested, to receive bills of cost from the parties and hear submissions with respect to an award on a lump sum basis that reflects the high level of commitment that was involved in this case. If, rather than going to the Registrar, the parties

wish to submit their bills of costs at Scale C to me with their disbursements, I would be prepared to look at that, but I will not be free until the beginning of September.

[SUBMISSIONS]

- [11] THE COURT: I am going to ask that all the parties have their counsel prepare a bill of costs at Scale C of the tariff with disbursements, and I am going to suggest that all the parties exchange them with each other and provide them to the court to my attention within 30 days. Does that work for everybody?
- [12] DARYL SEIFRED: Yes, My Lady, 30 days is fine for Mr. Seifred.
- [13] THE COURT: Mr. Macaulay, will 30 days work for you?
- [14] CNSL E. MACAULAY: I am just checking my calendar, My Lady, and of course, it is not coming up.
- [15] THE COURT: Well, hopefully, it is one thing that you can give to someone to assist you with that --
- [16] CNSL E. MACAULAY: So --
- [17] THE COURT: -- if they get exchanged, and then what I propose to do is set this matter down for 10:00 a.m. on September 8th for me to review the costs and to determine the costs to each party, besides Mrs. Seifred. If you come to a resolution on tariff costs before September 8th, just send me a letter and that is fine and, if not, we will proceed on September 8th at 10:00 a.m.
- [18] CNSL E. MACAULAY: And, My Lady, I believe July 21st would be my drop-dead date for the Tariff C costs so I am good for that. That would work for me.
- [19] THE COURT: Okay, great. Thank you very much. Anything else, counsel?
- [20] CNSL E. MACAULAY: My Lady, should we put this in an order? I think in regards to Ms. Britnell, it would be appropriate so they would have something to pass onto the -- so that she can set her registrar's hearing even though it is under the Legal Profession Act and your directions, and I think Ms. Britnell and I could draft the order, and the question would be whether or not we need Mr. Seifred or Ms. Sward's endorsement on the order or just provide them with an entered copy and I am in your hands on that.
- [21] THE COURT: Mr. Macaulay, I am going to ask yourself and Ms. Britnell to take the lead in drafting that order. I would ask you to circulate it to Mr. Seifred and Ms. Sward. I am going to ask you to send it to my attention after circulating it for a minimum of a week, and it will not require signatures of Mr. Seifred or Ms. Sward. Mr. Seifred and Ms. Sward, if you have concerns about the order, please contact Mr. Macaulay or Ms. Britnell directly to discuss them. I will review the order and make sure that it reflects what I said today, and we will proceed from there.

- [22] CNSL E. MACAULAY: Thank you, My Lady.
- [23] THE CLERK: My Lady, it is the court clerk here. Can I just confirm the hearing on September 8th, will that be for a half-day or a full day?
- [24] THE COURT: That is a half-day.
- [25] THE CLERK: Perfect, thank you.
- [26] THE COURT: All right. Thank you very much, Ms. Sward, Mr. Seifred, Mrs. Arnold, Mr. Macaulay, and Ms. Britnell. Hopefully, you will be able to resolve this matter without seeing me again, but if not, September 8th.
- [27] CNSL E. MACAULAY: Thank you, My Lady.
- [28] CNSL T. BRITNELL: Thank you, My Lady.
- [29] DARYL SEIFRED: Thank you, My Lady. "Marzari J."

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