

CANADA / JUDGMENT

Seifred v. Arnold

2021 BCSC 278

COURT

Supreme Court of British Columbia

DECIDED

23 February 2021

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2021 BCSC 278 Seifred v. Arnold

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Seifred v. Arnold,

2021 BCSC 278

Date: 20210223

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

Respondents

- and -

Docket: S187633

Registry: Vancouver

Re: The Patients Property Act, R.S.B.C. 1996, c. 349

and

In the Matter of Grace Caroline Seifred

Before: The Honourable Madam Justice Marzari

Reasons for Judgment

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Place and Date of Trial/Hearing:

Vancouver, B.C.

October 13-15, 2020; and

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Vancouver, B.C.

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INTRODUCTION

- [1] Before me are two competing petitions brought by Mr. Daryl Seifred and Ms. Donna Arnold, two of the children of Mrs. Grace Caroline Seifred, for declarations that Mrs. Seifred is no longer capable of managing her person or her affairs, and for their appointment as committee for their mother. The parties are all agreed that a declaration pursuant to s. 6 of the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA] must be made, but they disagree as to who should be appointed Mrs. Seifred's committee.
- [2] Mrs. Seifred's other daughter, Barbara Sward, has filed a response in each of the petitions. She originally opposed Daryl's petition, but now supports the appointment of Daryl as Mrs. Seifred's committee, and opposes the appointment of Donna. Mrs. Seifred's other son, Kenneth Seifred, has not filed responses in either petition, but has filed an affidavit and supports Daryl's petition to be appointed Mrs. Seifred's committee.
- [3] I shall refer to Mrs. Seifred's children by their first names to avoid confusion, without intending any disrespect.
- [4] Mrs. Seifred is also represented by counsel and has filed a response to Daryl's petition. However, that response was not filed until shortly before the hearing of this petition, when her counsel acknowledged that she was no longer capable of managing her legal affairs. I understand that it was filed on the basis of instructions given in February 2017, when Mrs. Seifred swore an affidavit in Daryl's petition proceedings regarding the sale of her house. She also signed a nomination of committee in March 2017 appointing her daughters Donna and Barbara as her committees. Her litigation counsel before me sought to admit both Mrs. Seifred's affidavit and the affidavit of her solicitor, Ms. Britnell, attesting to the circumstances and indicia of capacity in which Mrs. Seifred made her February 2017 affidavit, and her March 2017 nomination of committee. After an exchange of written argument, her counsel did not seek to make submissions on the substance of the petitions before me.
- [5] The Public Guardian and Trustee of British Columbia (the "PGT") provided responses to both Daryl's petition and Donna's petition. The PGT consents to a declaration that Mrs. Seifred is incapable of managing herself and her financial affairs. While the PGT does not comment on who should be appointed as Committee, it recommends the following in any event:

- a) In lieu of a bond, that upon being appointed, the committee shall have the balance of the net sale proceeds from the sale of Mrs. Seifred's home, which are currently held in trust, transferred from the lawyer's trust account to a financial institution where an investment has been established by the committee in compliance with the Trustee Act, R.S.B.C. 1996, c. 464. The committee shall have no access to the capital of the investment account, other than for reinvestment purposes, without the prior written consent of the PGT or further Order of this Court, on notice to the PGT. The financial institution and any other successor institutions shall be served with a copy of the Order and proof of service of the Order shall be provided to the PGT and Trustee forthwith; and
- b) Whichever party is appointed committee of person, they shall keep all of Mrs. Seifred's family members promptly informed of significant health and personal care decisions, and facilitate the contact of those family members with Mrs. Seifred.
- [6] Guardianship of adults, or committeeship, is governed in British Columbia by the PPA. Section 3 of the PPA provides that the court must be satisfied upon reviewing the evidence of two medical practitioners that, because of mental infirmity arising from disease, age or other cause, a person is incapable of managing herself or her affairs, before appointing a committee.
- [7] The reports of Dr. Lee, Dr. Bell and Dr. Bahadori opine that Mrs. Seifred has dementia, and that she is incapable of managing her legal and financial affairs. The doctors agree that dementia is a disease that does not improve, but will get progressively worse. I am satisfied on the evidence that Mrs. Seifred is incapable of managing herself or her affairs; hence, it is necessary to appoint a committee.
- [8] The main issue that must be addressed in these proceedings is who should be appointed as Mrs. Seifred's committee. This requires a determination as to what is in Mrs. Seifred's best interests.
- [9] Donna has been caring for Mrs. Seifred in her home in Powell River since January 2017, and Daryl commenced his petition for committeeship very shortly afterward.
- [10] Daryl and Barbara argue that Donna has isolated Mrs. Seifred by moving Mrs. Seifred to Powell River and refusing Daryl, and other members of the family, the opportunity to visit her or to be informed about her well-being. They argue this isolation is not in Mrs. Seifred's best interests.
- [11] Prior to this move, Daryl had been Mrs. Seifred's power of attorney and health representative for many years. Daryl avers that he and Mrs. Seifred had a close, trusting and loving relationship before Donna moved Mrs. Seifred to Powell River, and that Mrs. Seifred had expressed a desire to continue to live in the Fraser Valley where she had raised her family and where most of her family lives. He argues that Donna has poisoned Mrs. Seifred against him. He argues that the sale of the family home was orchestrated by Donna and Barbara for their own financial benefit and not for Mrs. Seifred's benefit, and that Donna

continues to seek to benefit financially from being appointed Mrs. Seifred's committee.

- [12] Donna argues that her care for her mother for the last four years, without the support of her family and without the benefit of any funds from Mrs. Seifred's accounts other than an initial gift of \$50,000, demonstrates that she should be appointed committee. She points to the evidence of Mrs. Seifred's doctors that Mrs. Seifred is happy living with Donna. Donna also points to Daryl's angry and inappropriate communications with Mrs. Seifred at the outset of these proceedings as evidence of why Daryl is an unsuitable committee. Most importantly, she relies on Mrs. Seifred's own stated desires, including Mrs. Seifred's February 2017 affidavit and March 2017 nomination of committee, setting out her desire to sell her home in February 2017 and to have her daughters, and not Daryl, take care of her and be her committee.
- [13] Because Mrs. Seifred signed a nomination of committee in March of 2017 nominating Donna and Barbara, it is common ground that Daryl has the additional burden of establishing either that Mrs. Seifred was not competent to make that nomination, or that Mrs. Seifred's nomination of Donna and Barbara as her committee is no longer in Mrs. Seifred's best interests: see Cameron (Re), 2020 BCSC 157 at paras. 77-80.

BACKGROUND AND FACTUAL FINDINGS

The Evidence

- [14] The affidavit evidence in this case includes accusations, opinion, and contradictions. The hearing took four days in chambers, and only a fraction of the filed materials were directly addressed. I have had to disregard substantial portions of these materials that are unreliable hearsay or argument in the guise of evidence. For example, Donna's evidence includes frequent assertions of Mrs. Seifred's beliefs and desires without reference to any specific statements made by Mrs. Seifred which could be evaluated for their reliability. Donna has also filed expert reports that assume information that is not substantiated by direct evidence.
- [15] While I appreciate that a more relaxed approach to the rules of evidence, particularly with respect to the hearsay evidence of an incapable adult, is often taken in committeeship proceedings, these frailties in the evidence have reduced the weight, if any, that I am able to give much of this evidence.
- [16] I have given some weight to contemporaneous medical notes, and to the expert reports to the extent that the opinions are based on direct observation, contemporaneous records, or assumptions that are substantiated by other evidence. I address the more significant evidentiary issues as they arise in the course of this decision.
- [17] The factual findings I make below are based on my review of all of the evidence, subject to my findings as to the weight or admissibility of that evidence.

Mrs. Seifred's Family and Financial Situation

- [18] Mrs. Seifred is currently 91 years old. She was born in 1929, and lived with her husband, Roy Seifred, at their home in Langley for almost 60 years until Mr. Seifred's death on January 11, 2017. In that home she raised four children:
- a) Kenneth, the eldest, is a tradesman, and lives in the Fraser Valley and is approximately 66 years old;
 - b) Barbara, lives in the Fraser Valley, is a retired municipal employee, and is approximately 64 years old;
 - c) Daryl, lives in West Vancouver, is a retired accountant for BC Hydro and is approximately 62 years old; and
 - d) Donna, lives in Powell River, is a practicing licensed nurse, and is approximately 57 years old.
- [19] Kenneth appears to have been estranged from Mr. and Mrs. Seifred for some years prior to Mr. Seifred's death in January 2017. However, his daughter, Heather, remained close with Mrs. Seifred after her father's estrangement. The evidence establishes that Mrs. Seifred particularly enjoyed seeing Heather's son, Trevan, her great-grandson.
- [20] At the time of Mr. Seifred's death in January 2017, Mrs. Seifred became the sole owner of her home in Langley. As discussed below, that home was sold shortly after Mr. Seifred's death for a little over \$1,000,000. Mrs. Seifred gifted \$100,000 to her daughters Donna and Barbara after the sale of her home, and she has approximately \$820,000 remaining from that sale. Together with other savings, Mrs. Seifred currently has approximately \$900,000 in assets in various accounts, and receives an income of approximately \$1,500 per month in OAS and CPP payments.
- [21] As a result of a consent order entered shortly after Daryl's petition was commenced in February 2017, these funds are currently held in trust for Mrs. Seifred. Donna has been paying for Mrs. Seifred's care needs since January 2017 while Mrs. Seifred has lived with her. Donna has estimated Mrs. Seifred's monthly expenses at various times, most recently during the course of this hearing, in the \$2,000/month range. The appropriateness of these amounts are strongly contested by Daryl. By way of an agreement reached in April 2019, and an unfiled consent order that I confirmed at the hearing of this petition, Donna has been entitled to receive \$500/month for Mrs. Seifred's care as an interim measure.

Pre-January 11, 2017

- [22] In 2008, Mr. Seifred had a stroke, and Mrs. Seifred was his primary caregiver at their home. Mr. and Mrs. Seifred appointed Daryl as their power of attorney at this time. Daryl remained their power of attorney through to Mr. Seifred's death in January 2017. Mrs. Seifred also appointed Daryl as her alternative representative and as the executor of her will in 2008, if

her husband was unable to act in these capacities. As discussed below, Donna and Barbara arranged for Mrs. Seifred to see a lawyer and to revoke Daryl's power of attorney in January 2017 shortly after her husband's death, at which point Mrs. Seifred granted her daughters Barbara and Donna her power of attorney in Daryl's place. I understand that Mrs. Seifred also changed her health representative to Donna sometime in the spring of 2017 as well.

- [23] I am satisfied on all the evidence that prior to Mr. Seifred passing away, Barbara, Donna and Daryl assisted their mother and father in their daily lives and consulted each other on a regular basis. Barbara and her husband assisted in maintaining her parents' yard (for which it appears she received some payment), Donna was a primary contact regarding Mr. Seifred's medical care needs, and Daryl assisted with regular house maintenance, transportation, paying their bills and arranging for the delivery of their meals.
- [24] I accept Daryl's evidence that since approximately 2015 he had concerns for his mother's mental capabilities. She was forgetting things and was expressing fear and paranoia regarding the caregivers that came to assist with Mr. Seifred's care. He would speak to his mother almost every day, and see her weekly, occasionally staying overnight, and occasionally bringing Mrs. Seifred back to his home to stay with him there. Around this time, he also began to assist Mrs. Seifred with paying her bills and managing her accounts, as she was losing the ability to do this independently. Daryl also assisted Mrs. Seifred by driving her to medical appointments and taking her to spend time with the rest of her family, driving her to Chilliwack for Barbara's 60th birthday in summer 2016, and Powell River to spend time with Donna in the fall of 2016. He spent Christmas with Mrs. Seifred in her home in December 2016 while Mr. Seifred was in hospital.
- [25] Barbara also provided evidence as to her involvement with her mother's care, and evidence indicating that Mrs. Seifred's cognitive decline was noticeable beginning in 2015, and throughout 2016. She was forgetting to feed herself or Mr. Seifred, even with the meals Daryl had arranged to have delivered. She began losing weight. She also had difficulty with paying her bills, and would pay the same invoice numerous times, and couldn't remember her PIN to access the ATM or what banks she dealt with. Barbara encouraged Daryl to add his name to their parent's accounts to assist with bill paying and other financial matters in 2016, which he did.
- [26] While Mr. Seifred was in hospital in late 2016, Daryl also arranged for one or more lines of credit to be available to Mr. and Mrs. Seifred upon Mr. Seifred's return home from hospital, in anticipation of a potential surge in expenses related to Mr. Seifred's care needs. This credit was never drawn upon because Mr. Seifred died in hospital on January 11, 2017, before returning home.
- [27] Donna provided less information to the court in this proceeding regarding her past involvement with her mother's life and care. However, I am satisfied on the evidence that she provided her assistance with medical appointments, particularly around the time of her father's first stroke, and was involved in her mother's care and life prior to moving Mrs.

Seifred in to live with her. For example, after Daryl dropped Mrs. Seifred off at the airport after Christmas, Mrs. Seifred stayed with Donna in Powell River for approximately a week over New Years in 2016/2017 while Mr. Seifred was still in the hospital.

- [28] Donna's evidence was that the family, including Mrs. Seifred, had plans for Mrs. Seifred to move in with her in Powell River upon Mr. Seifred's death. That evidence is contested by Daryl, Barbara, and Mrs. Seifred's grand-daughter Heather, and I do not accept it. Donna had settled in Powell River not long before Mr. Seifred's death, and the overwhelming evidence is that when Daryl and Mrs. Seifred visited Donna in Powell River for Thanksgiving that fall, Mrs. Seifred expressed separately to Daryl, Barbara and Heather in various ways that she did not consider herself to be an "island girl" or words to that effect. Nor does it make sense for Mrs. Seifred to express a wish to so entirely uproot her life, her familiar surroundings or her family and social connections that she enjoyed in the Fraser Valley. Other than Donna's bald assertion that Mrs. Seifred wanted this, I have no evidence that Mrs. Seifred wanted to live with Donna in Powell River prior to the death of Mr. Seifred in January 2017, and considerable evidence that she did not.

Post-January 11, 2017

- [29] Mr. Seifred died in hospital in the early morning hours of January 11, 2017. The evidence suggests that this was not expected by any of his family members at the time. Daryl was still on vacation with his partner in Hawaii, having flown there after spending Christmas with Mrs. Seifred in Langley.
- [30] Immediately following the passing of Mr. Seifred's death, Donna and Barbara met with Mrs. Seifred and explained to her that her husband passed away. She was visibly shaken.
- [31] Within a day or two after Mr. Seifred's death, Donna became aware of the lines of credit that Daryl had arranged on their parents accounts for Mr. Seifred's care. Donna advised Barbara about these lines of credit and I find, on all of the evidence, that Donna and Barbara ascribed to Daryl an improper financial motivation in this regard and likely shared these suspicions with Mrs. Seifred.
- [32] Barbara no longer believes that Daryl had any improper motive in arranging these lines of credit.
- [33] Although in court Donna agreed that no improper motive can or ought to be attached to Daryl's arrangement of the line of credit, in her affidavit evidence Donna still seeks to intimate such a motive. In her written submissions before this Court, Donna states that Mrs. Seifred "was upset with Daryl's unilateral use of her funds" which she supports by reference to Mrs. Seifred's February 2017 affidavit that contains no such statement.

- [34] Donna also shared the allegation that Darryl had financially exploited Mrs. Seifred with others as late as 2019. For example, this allegation was repeated in a letter from Dr. Bell to Dr. Bahadori in April 2019 stating "Donna tells me that Daryl obtained a POA at a time when [Mr. Seifred] was actively dying. There were concerns about financial manipulation at this time." The letter also cautions Dr. Bahadori that "Daryl's previous financial exploitation is also a very important consideration".
- [35] On all the evidence, I find that Daryl did not use his power of attorney to arrange credit for any purpose other than the proper purpose of anticipating a potential surge in his parent's expenses upon his father's return from hospital in January 2017. I also find that Donna continues to believe that Daryl did improperly seek to allocate some of Mrs. Seifred's assets for himself through the arrangement of one or more lines of credit, and that she has shared this belief with Mrs. Seifred and others responsible for Mrs. Seifred's care. I find that Mrs. Seifred was left with the erroneous impression in January 2017, which may well continue to this day, that Darryl had sought to appropriate some of her funds for himself.
- [36] I also find on all of the evidence, including Barbara's direct evidence, that in January and February 2017, both Barbara and Mrs. Seifred were upset with Daryl because he did not return from his holiday with his partner in Hawaii immediately upon the death of Mr. Seifred. Instead, he appears to have arranged for Mr. Seifred's cremation and celebration of life to occur after his planned return. This was apparently communicated from Donna and Barbara to Mrs. Seifred as Daryl wanting to be there to see his father "be put in the furnace." Barbara deposed that Daryl never made this statement, and that she and Donna had used that phrase to make Mrs. Seifred upset with Daryl. I find that this was also distressing to Mrs. Seifred. Donna and Barbara then re-arranged their father's cremation.
- [37] Finally, there appears to have been a disagreement between Daryl and Barbara about the obituary for their father. While it is not entirely clear on the evidence, this seems to have revolved around Daryl's desire to mention their brother Kenneth in the obituary, who had been estranged from Mr. and Mrs. Seifred for some years prior to Mr. Seifred's death.
- [38] Within two days of Mr. Seifred's death, Donna and Barbara met with a realtor to arrange for the sale of Mrs. Seifred's house. When the realtor questioned Mrs. Seifred's capacity and required a power of attorney for this purpose, I find that Donna and Barbara made arrangements to revoke Daryl's power of attorney. They did so without discussing this with Daryl. They were initially unsuccessful because Mrs. Seifred's existing counsel in Langley was of the view that Mrs. Seifred did not have the capacity to make a new power of attorney.
- [39] On January 17, 2017, six days after the death of Mr. Seifred and before Daryl's return from Hawaii, Donna packed up all of Mrs. Seifred's belongings and moved Mrs. Seifred to her home in Powell River. She arranged for an appointment with a local lawyer in Powell River, who prepared the documentation required to revoke Mrs. Seifred's existing power of attorney and grant Donna and Barbara power of attorney. Donna then co-signed the listing agreement for Mrs. Seifred's home on January 26, 2017. The home was listed at just under

\$950,000. All of this was done in consultation with Barbara, and, I assume, Mrs. Seifred. However, the record is clear that efforts were made not include Daryl in these decisions.

[40] Upon his return from Hawaii, it is clear that Daryl was upset and concerned about the steps taken by Donna and Barbara to remove him as power of attorney, and to list the family home, without consulting him. He essentially accused Donna of "kidnapping" their mother, and called the RCMP in Powell River when Donna did not arrange the communication he requested between himself and Mrs. Seifred.

[41] Donna attaches to her affidavit postcards sent by Daryl to Mrs. Seifred at Donna's address which she says are examples of his attempts to intimidate and berate Mrs. Seifred (I note there is no evidence these postcards were provided to Mrs. Seifred). These postcards generally consist of loving photos of family members on the front, and on the back statements to the effect that Donna is lying to her about him, and that she has no reason to fear him, and that he wants to see her. Some of the more problematic statements in these postcards include:

Mom, it's criminal what Donna is doing. Barb says you are crazy and she just wants your money. Donna just wants your money also. The lawyers want your money too. Mom you will lose your money if you don't smarten up.

.

Don't be so foolish to let this happen to you. You need to stop acting like a farmer and show some intelligence . Your ignorance will drain your bank account.

[42] By Easter 2017, I find that Daryl's postcards to Mrs. Seifred ceased to contain warning or threatening messages and largely expressed that he loved and missed her, and hoped to see her again soon.

[43] In late January, after Mrs. Seifred's home had been listed, Daryl offered to purchase the family home in order to allow Mrs. Seifred to continue living there, and that he would move from his home in West Vancouver to live with Mrs. Seifred and provide her with the support she would need. The offer was for \$900,000 on its face, but the terms were more complex: Daryl would agree that each of Donna and Barbara would get \$300,000 of the purchase price, and that he would retain \$300,000 of the purchase price as "his" share, and commit to financially supporting Mrs. Seifred from those funds. In addition, he would provide another \$75,000 to their fourth sibling, Kenneth, upon Mrs. Seifred's death.

[44] I note that this offer was inappropriate in that it presumed an immediate distribution of Mrs. Seifred's main asset to her children upon the sale of her house. However, as I further discuss later in these reasons, when considering the circumstances of the sale, I find that Daryl's offer was made entirely for Mrs. Seifred's benefit rather than his own.

- [45] In any event, Barbara responded to Daryl that Mrs. Seifred wanted an "arm's length sale" and his offer was rejected. Barbara attests that this email was not based on Mrs. Seifred's wishes, but hers and Donna's wishes, and that she now regrets sending this email rejecting Daryl's offer. Ultimately, a third party made an offer of \$1,050,000 in early February 2017, which I understand Mrs. Seifred accepted, co-signed by Donna as her power of attorney.
- [46] Daryl commenced this petition proceeding on February 9, 2017 seeking to be named Mrs. Seifred's committee (amongst other things), and brought an application to stop the sale of the house.
- [47] As noted above, Donna and Barbara opposed the application, and arranged for Mrs. Seifred to see Ms. Britnell to enable Mrs. Seifred to take a position on the sale application. Mrs. Seifred told Ms. Britnell that she wished the sale to proceed, and Ms. Britnell was satisfied that Mrs. Seifred was capable of making that decision, and prepared Mrs. Seifred's affidavit in these proceedings where she states this wish. The court then approved the sale later that day.
- [48] Barbara's evidence is that she and Donna pushed and coached their mother into selling her home at a time when Mrs. Seifred had already experienced a loss of capacity due to her cognitive decline. Barbara says that they took advantage of Mrs. Seifred's vulnerable state after the death of Mr. Seifred. Barbara explains this, in part, on the basis that she had significant concerns about Daryl's trustworthiness at that time after she heard from Donna that Daryl had arranged for the removal of funds from their parent's accounts.
- [49] Barbara says that she and Donna engaged in the undue influence of their mother, convincing her that she needed to sell her home, when she really did not need to. For example, Barbara says that she helped her mother to prepare a series of notes as to what to say about wanting to sell her house and not trusting Daryl when she met with Ms. Britnell. Barbara says that her mother's true state of mind regarding the sale of her house was reflected when their realtor asked Mrs. Seifred if she wanted to sell her home and she answered "no" but then expressed that she had to because the house was too much work for her alone and she needed the money to live on.
- [50] Donna denies any undue influence, and says that it was Mrs. Seifred who wanted to sell her home. Donna provides no direct or indirect evidence of Mrs. Seifred expressing this desire to her. However, by February 2017 Mrs. Seifred did express this wish to her counsel, Ms. Britnell. Specifically, Mrs. Seifred expressed to Ms. Britnell and in her sworn affidavit that she was scared to live alone in her house and that she also did not want to live with Daryl, even if that meant she could stay in her own home. She also expressed that she needed the money to pay her bills.
- [51] In fact, Mrs. Seifred was not in any immediate need of money: she had a sufficient income and considerable savings. On the other hand, I find that Donna and Barbara were interested in the funds that might be derived from the sale of Mrs. Seifred's home. Throughout this time, the evidence establishes that Donna and Barbara were discussing how to distribute the

sale proceeds from Mrs. Seifred's home. In email correspondence, Barbara proposed a division of the sale proceeds three ways between herself, Daryl and Donna. Donna attests that she did not agree to that proposal. She does not say what she herself proposed for the funds, but in evidence there is an email written by Donna and sent to Barbara dated March 1, 2017 stating as follows:

Hi Barb, I heard from, Ken regarding the \$\$\$\$

I talked with a financial advisor up here at the credit union and I have talked with mom.

About gifting i think we are going to have to gift all the money to us.

Kinda what Daryl was going to do. He was going to divide the money between the three of us.

Then if mom needed the money we would pay her as she went along, with life.

mom said that sounds good because once mom has gifted the money Daryl can't do anything.

[Emphasis added.]

[52] According to Barbara, whose evidence I accept on this point, the context of this email was an effort to ensure that Daryl and Kenneth would not receive any benefit from the value of the home, and to avoid distributing Mrs. Seifred's estate in accordance to Mrs. Seifred's will, which would have provided 1/3 to each of Daryl, Donna and Barbara, while disinheriting Kenneth. The overall tenor of the admissible emails adduced into evidence (that are not subject to privilege) was that very shortly after the death of Mr. Seifred, Donna and Barbara were engaged in conversations as to how best to realize and distribute the value of Mrs. Seifred's home.

[53] This purpose is also consistent with Ms. Britnell's evidence that she received a call from Barbara shortly after Ms. Britnell had assisted Mrs. Seifred with the sale of her home, saying that Mrs. Seifred wanted to divide the entirety of the sale proceeds between herself and Donna. Ms. Britnell took steps to ensure that the sale proceeds were safely held in trust for Mrs. Seifred, and arranged a meeting with Mrs. Seifred to discuss her wishes. Ultimately, Ms. Britnell was satisfied that Mrs. Seifred did want to make a gift to her daughters that would not only cover their legal costs and costs associated with Mr. Seifred's celebration of life, but significantly exceeded these costs. Ms. Britnell prepared, and Mrs. Seifred signed, a deed of gift, gifting \$50,000 to each of Donna and Barbara from the sale proceeds of the house.

[54] Around this time, on Daryl's application, the parties entered into a consent order that restricted Donna or Barbara from relying on their power of attorney to draw on Mrs. Seifred's funds without Daryl's approval. This consent order, and Daryl's subsequent demands with respect to a transparent accounting before he agrees to such withdrawals, has led Donna to argue that he is holding Mrs. Seifred "financially hostage".

- [55] On all of the evidence, I find that Daryl's concerns regarding the financial interest of his sisters in first the sale of Mrs. Seifred's home, and then in the distribution of funds from the sale to themselves, was reasonable. The circumstances giving rise to the sale of Mrs. Seifred's home are of particular concern because there is no indication that Mrs. Seifred had any immediate need to sell her home or to realize these funds for herself. There was no suggestion that Mrs. Seifred needed these funds to purchase another home or to go into care, and she had close to \$70,000 in savings as well as \$1,500 in monthly income to smooth any such transition, even had those plans been contemplated.
- [56] Assuming without finding that Mrs. Seifred had wanted to immediately leave her home and move in with one of her daughters, the decision to sell her home could have easily waited until Mrs. Seifred had a few weeks or months to recover from the death of her husband, and to meet with and discuss this decision with all of her children, or at least those most recently involved in her support and care.
- [57] Furthermore, I am satisfied on the evidence that Donna's intention was to distribute these funds only between Barbara and herself, in part to prevent Kenneth or Daryl from receiving any benefit from the value of the family home. I have no doubt that Donna expected and intended to support their mother with these proceeds as well, from her own home in Powell River. Nevertheless, the evidence establishes that the move to sell Mrs. Seifred's home was not accomplished for the purpose of ensuring that Mrs. Seifred had the full benefit of the value of her home.
- [58] The parties are agreed that it is not necessary in these proceedings to review the circumstances or the validity of the revocation of Daryl's power of attorney or representation agreement, and the appointment of Donna and Barbara, because s. 19 of the PPA provides that when a person becomes a "patient" pursuant to a declaration under s. 3, every power of attorney and representation agreement is terminated (unless the court orders otherwise). All parties agree that the appointment of a committee in this proceeding will have the effect of revoking and replacing all previous powers of attorney and the representation agreement.

Events Since the Commencement of the Petition Proceedings

- [59] In January and February 2017, Daryl made many attempts to speak with his mother in Powell River. I accept his evidence that many of his calls and texts to Donna in this period went unanswered, and that he only got three opportunities in late January 2017 to speak with his mother over the phone from Powell River.

- [60] I accept Donna's evidence that she felt that Daryl was harassing her, and I find that she took Daryl's commencement of litigation to stop the sale of Mrs. Seifred's home personally, and has essentially refused to communicate with him directly since then. Nor has she facilitated any communication between Mrs. Seifred and Daryl. As a result, Daryl has had no means of communication with his mother, and Mrs. Seifred has apparently not communicated with Daryl since late January 2017, with one exception discussed below.
- [61] For her part, Barbara and Donna continued to collaborate on Mrs. Seifred's care, as well as her legal matters, until approximately September 2017 when Barbara says she came to the conclusion that Donna was overly controlling, and was not acting in the best interests of Mrs. Seifred. After this breakdown in their relationship, Barbara found that she also was no longer able to arrange to speak to or see Mrs. Seifred.
- [62] On July 10, 2018, Donna filed her own petition to the Court seeking various orders including an order that she be appointed as committee of Mrs. Seifred.
- [63] As of September 2018, Mrs. Seifred had not seen Daryl or Barbara for a year or more. She had not communicated with Daryl since January of the previous year. As attempts at phone communication were not working, Daryl and Barbara decided that they would try to see their mother directly. They gave approximately five days' notice to Donna. Donna (through counsel) advised them not to come. Ms. Britnell communicated to Daryl and Barbara on September 5, 2018 that Mrs. Seifred did not wish to see them without a social worker or neutral party present.
- [64] Daryl and Barbara determined that they would try to see their mother anyway. I accept that they did not consider Ms. Britnell's correspondence to have been based on direct communication with Mrs. Seifred as to her wishes, but saw this communication as further evidence of Donna trying to isolate Mrs. Seifred from them.
- [65] Donna and Daryl travelled to Powell River on the weekend of September 8, 2018. Upon arriving at Donna's house, Barbara and Daryl met Donna's husband, Tim, at the front door. He would not allow Barbara and Daryl into the house to see Mrs. Seifred. After approximately 10 minutes of speaking with Tim he announced that "this family will never be reunited." He then slammed the door and called the RCMP. Barbara and Daryl left Donna's property.
- [66] It appears that Mrs. Seifred was not at Donna's home that weekend in any event. Based on Tim's affidavit, I find that Mrs. Seifred was staying with a companion to give Donna and Tim a respite weekend. Daryl argues that this weekend would have been an ideal weekend for him to see his mother, as it could have been accomplished on "neutral" territory without inconveniencing Donna or requiring her to welcome her siblings into her home to see their mother. A neutral third party was already effectively arranged for the entire weekend. Daryl also argues that, until then, he did not know Donna and Tim were arranging respite time, and that he would have happily provided that time to them by having Mrs. Seifred stay with him instead of with a stranger.

- [67] Daryl's offer to provide respite care for Mrs. Seifred when Donna needs it is one that Donna has never agreed to. I have no satisfactory explanation for Donna's refusal in this regard, but my efforts to encourage the parties to arrange a further visit during a continuation of the hearing in the fall of 2020 were equally unsuccessful. It appears that the litigation has now hardened the parties' positions to such an extent that their cooperation for the benefit of Mrs. Seifred is no longer possible.
- [68] In any event, Barbara and Daryl, through counsel, continued to try to arrange times to visit Mrs. Seifred. Eventually, counsel arranged a mediation on March 6, 2019. Barbara, Daryl, Donna and Kenneth attended with their respective counsels.
- [69] As a result of this mediation, Donna agreed to let Barbara and Daryl visit Mrs. Seifred on the condition that a third party would be present and that the visit would occur over two days in Powell River. At that time, Barbara had not seen Mrs. Seifred in over a year and Daryl had not seen Mrs. Seifred in over two years.
- [70] That visit proceeded on the weekend of March 22, 2019. On all the evidence, I find that the first day went well and Mrs. Seifred was happy to see Barbara and Daryl. The companion appointed through Ms. Britnell was satisfied that she was not needed and left after the first hour. Mrs. Seifred comfortably spent the whole day with Barbara and Daryl.
- [71] On the second day, however, Mrs. Seifred was to be picked up by the third-party companion between 6:30 and 7:30 p.m. On that night, Daryl texted the companion that dinner was starting late and Mrs. Seifred would not be ready to be picked up by 7:30. He and Barbara then kept Mrs. Seifred at their accommodation well past 7:30 watching the Canucks (which I accept Mrs. Seifred appeared to enjoy). I note that by this time all communication between Daryl and Barbara, on the one hand, and Donna on the other, had completely broken down. Donna was upset with the delay. She called the RCMP, and the RCMP came to Daryl and Barbara's accommodation and removed Mrs. Seifred in a police vehicle. This further escalated the conflict between Daryl and Barbara on the one hand, and Donna on the other.
- [72] At the March 2019 mediation, it was also agreed that Mrs. Seifred would undergo an assessment with Mr. Peter Silin, a registered social worker, following which the parties would proceed with a further mediation.
- [73] Mr. Silin provided his report on April 1, 2019, to the parties. Mr. Silin opined that Mrs. Seifred should remain in Donna's home "until she is no longer able to do so." This recommendation was made on "on the simple fact that she is there, and she is comfortable and familiar with her surroundings and routine." However, Mr. Silin also stated that there were "caveats" to his opinion, including that:
- a) Mrs. Seifred should not be left alone for an extended period of time, at the very most, three hours;
 - b) There should be an increase in her activity level; and

- c) That "Donna and Tim make a concerted effort to improve access to Mrs. Seifred by other family members and they make an effort to help Mrs. Seifred repair her attitude towards Daryl and others."
- [74] Mr. Silin's report was relied upon to some extent by all parties in evidence, but was not filed or entered as an expert opinion report. Nor did Mr. Silin provide an affidavit attesting to the truth of his observations made during the course of preparing the report. This is unfortunate, as the report is one of few truly independent potential sources of evidence as to Mrs. Seifred's condition in 2019, her care needs, and her wishes as relayed to Mr. Silin. I therefore requested that the report be filed in sworn and admissible form, but the parties were unable or unwilling to do so.
- [75] While Donna seeks to rely on the report in its current form in its entirety, Daryl argues that if the opinions stated in that report are not admissible as they do not comply with the requirements for expert evidence. Should the opinions be treated as expert evidence, Daryl states he would have required cross-examination of Mr. Silin.
- [76] Daryl and Barbara say that Mr. Silin's report can only be relied on for the fact that the parties received the report and had knowledge of its recommendations. Donna argued in the alternative that, if I do not consider the report as a whole to be admissible, I should exclude the opinion evidence in the report, but still rely on the portions of Mr. Silin's report that are in the form of observations.
- [77] On April 2, 2019, a second mediation occurred attended by counsel for all parties, including Ms. Britnell for Mrs. Seifred, and Kenneth. At that mediation, the parties were able to reach an agreement that Mrs. Seifred would participate in a further assessment through Vancouver Coastal Health and would have a two-week trial at a private care facility in Langley.
- [78] Another social worker, Mr. McHugh, conducted this assessment through Vancouver Coastal Health on April 15, 2019.
- [79] Daryl and Barbara seek to rely on the clinical notes from Mr. McHugh's assessment. Daryl and Barbara argue that I can rely on these clinical notes under the exception usually reserved for medical notations.
- [80] In the end, I am satisfied that I may rely on the clinical records from Mr. McHugh. I see little distinction between Mr. McHugh's notes and Mr. Silin's recorded observations in his report, and I treat them the same way. I note that both Barbara and Donna appended this report to affidavits in their own cases. However, the recommendations in Mr. Silin's report are not properly before me as opinion evidence, and they are admissible only for the purposes of establishing that the parties have received this input into Mrs. Seifred's care needs.

- [81] I have also considered whether admitting Mr. Silin's report for all purposes would have changed my factual findings and overall impression in this case, and I have determined that it would not have.
- [82] The relevant and admissible information available from Mr. Silin's report and Mr. McHugh's clinical notes indicate that Mrs. Seifred is suffering from both short-term and long-term memory loss, and that she is impaired in her problem-solving ability as well as insight and judgment. The notes indicate that Mrs. Seifred is generally well cared for by Donna and Tim, and that she is happy where she is.
- [83] The recommendations of Mr. Silin's report received by her children include that Mrs. Seifred should receive more care than what she is currently receiving, particularly for the hours when Tim and Donna are at work, and that Mrs. Seifred requires increased levels of activity and human interaction. The recommendations also include more respite time for Donna and Tim, and the necessity for better communication between the parties and efforts to be made to re-establish her relationship with Daryl.
- [84] Although the parties agreed that Mrs. Seifred would do a two-week trial at a private care facility on Langley during the second mediation that has yet to occur. This is primarily, I understand, because Mrs. Seifred has told Donna and her counsel that she does not wish to go.
- [85] Nonetheless, Mrs. Seifred is regularly being placed in respite care in Powell River, sometimes for a week or more. I have no evidence as to whether Mrs. Seifred prefers this respite care to the care she might receive in a private care facility in Langley, or the care that she might receive by spending time with Barbara or Daryl in their homes. Generally, I consider that greater connection and opportunities to be cared for by Mrs. Seifred's other children would be in Mrs. Seifred's best interests.
- [86] The evidence also establishes that Donna has not been forthcoming regarding Mrs. Seifred's physical and mental health conditions (even after agreements being made in this regard at the mediations), receptive to opportunities for Daryl or Barbara to visit with Mrs. Seifred, or for Mrs. Seifred to visit with Daryl or Barbara.
- [87] Donna, for her part, has provided current and projected accounts for the cost of caring for Mrs. Seifred, for which she says she has not been compensated. Donna claims over \$80,000 in this regard. Donna seeks \$400-\$500 per month to pay for Mrs. Seifred to have companion care eight hours a week, and for respite care for one weekend (three days and two nights) per month. She has also requested, and Daryl has refused to agree to, the cost of traveling to Newfoundland with Mrs. Seifred to visit her daughter.

- [88] Daryl contests many of the costs claimed by Donna as being unsupported or inappropriate. The inclusion of Donna's legal costs in these proceedings in those accounts, for example, are clearly inappropriate. The parties agreed that a reference to the Registrar will be required to address Donna's expense accounting to date if, as seems likely, this matter cannot be resolved by consent.

Medical Assessments

- [89] In June 2017, Ms. Britnell, on Mrs. Seifred's behalf, made arrangements for Mrs. Seifred's mental capacity to be assessed by a doctor. Dr. Lee assessed Mrs. Seifred in June 2017, and found that Mrs. Seifred was suffering from dementia, and no longer had the capacity to manage her legal and financial affairs. He found, however, that she did have the capacity to manage her basic living activities and her person. Mrs. Seifred expressed to Dr. Lee a desire to have her daughters, and not her sons, involved in her care and her finances.
- [90] In December 2017, Mrs. Seifred was also assessed by Dr. Bell. Dr. Bell also found that Mrs. Seifred was not capable of managing her legal and financial affairs, but that she did have the capacity to manage her person. Dr. Bell's opinion was largely unchanged when she examined Mrs. Seifred again the following spring.
- [91] However, based on later examinations in April and June 2019, Dr. Bell concluded that Mrs. Seifred's cognitive abilities had deteriorated to the point that she was no longer able to make personal care decisions.
- [92] Mrs. Seifred's family doctor since 2019, Dr. Bahadori also opined, based on examinations in October and December 2019, that Mrs. Seifred is "no longer able to manage her financial affairs or make personal care decisions."
- [93] The doctors agreed that Mrs. Seifred's cognitive impairment is untreatable and irreversible. Furthermore, Mrs. Seifred is likely to experience continued deterioration of her abilities. That deterioration is already notable in her decline from 2017 to 2019. On the basis of this evidence, I find that Mrs. Seifred's current condition has likely deteriorated further since her last assessments over a year ago.

THE NOMINATION OF COMMITTEE

- [94] Pursuant to s. 9 of the PPA, if there is a nomination in writing of a committee by the patient made when the patient was "of sound and disposing mind" the nominee must be appointed committee unless "there is a good and sufficient reason for refusing the appointment."
- [95] Donna relies upon Mrs. Seifred's nomination of herself and Barbara made on March 2, 2017 in her petition to be named committee.

- [96] As I understand her position, Donna says that she does not have to establish (at least at first instance) that it is in Mrs. Seifred's best interests that she be appointed pursuant to s. 6 of the PPA, because her appointment is presumed, even required, pursuant to s. 9.
- [97] Daryl argues that Ms. Seifred was not of sound and disposing mind when she signed the nomination of committee in March 2017, and that, in any event, there is good and sufficient reason to depart from Mrs. Seifred's nomination of Donna and Barbara as Mrs. Seifred's committees.

Was Mrs. Seifred of Sound and Disposing Mind?

- [98] For reasons given on the last day of the chambers hearing, I allowed Ms. Seifred's counsel, Ms. Britnell, to adduce an affidavit as to the circumstances in which she:
- a) Took instructions from Mrs. Seifred with respect to Mrs. Seifred's affidavit in response to Daryl's petition to stop the sale, and
 - b) Took instructions from Mrs. Seifred with respect to the nomination of Donna and Barbara as committees.
- [99] On the basis of Ms. Britnell's evidence I am satisfied that Ms. Britnell took the time and effort to establish to her satisfaction that Ms. Seifred had the capacity to give her legal instructions and to nominate her daughters as her committees.
- [100] This Court has interpreted the requirement of s. 9 of the PPA that the patient had to have been of "sound and disposing mind" as requiring something less than having the capacity to manage one's legal affairs. Instead, as was stated in this Court's decision in *Fraser v. Fraser*, 2008 BCSC 1733 at paras. 19-20, the patient need only have been "capable of understanding the nomination and selecting whom he wished to manage his estate and person" and "the patient's awareness and understanding does not have to be at a very high level to designate a family member to be in charge of their affairs. The patient need only know what his wishes are in that regard."
- [101] Daryl raises an interesting argument based on the principles of statutory interpretation and the whole of the PPA, that "sound and disposing mind" in the PPA is used consistently and synonymously with full capacity to manage one's own legal and personal affairs. However, this interpretation is not one that has been endorsed by this Court, and contradicts many years of this Court adopting and following the interpretation of s. 9 set out in *Fraser*. Furthermore, the existing more lenient interpretation of s. 9 in *Fraser* provides to patients a greater level of respect and attention to their wishes and their capabilities, which I consider to be a more modern approach, despite the somewhat dated and anachronistic history of the PPA more generally (as described in *Macdonald v. British Columbia (Public Guardian and Trustee)*, 2003 BCCA 428 at paras. 16-18).

Undue Influence

- [102] Daryl also says that Mrs. Seifred was unduly influenced by Donna and Barbara when she expressed her preference to her counsel to have Donna and Barbara as the persons who would care for her needs (whether through the revocation and replacement of the powers of attorney and representation agreements or through the nomination of committee).
- [103] Interestingly, Barbara agrees with Daryl, and deposes that she and Donna took advantage of Mrs. Seifred while she was in a highly vulnerable position, to encourage not only the sale of Mrs. Seifred's home, but also the distribution of at least some of the proceeds of that sale to themselves, and more generally to wrest financial control from Daryl as Mrs. Seifred's power of attorney.
- [104] Donna argues that there was no undue influence, and that if there was any coaching of Mrs. Seifred that it was all done by Barbara and not herself. In support of this statement she sought to adduce a portion of the legal correspondence between Donna and Barbara and their former counsel, Ms. Page, which Donna says shows Barbara's leadership role in this effort. Donna says that no privilege should attach to this correspondence because in admitting to undue influence, Barbara has essentially admitted to fraud and so should not have the benefit of solicitor-client privilege.
- [105] Barbara asserts that she has not waived privilege over these files, including those shared with Ms. Britnell on the basis of common interest privilege. In any event, she says that the documents over which Donna has chosen to waive privilege are highly selective and do not reveal Donna's full involvement in this joint effort.
- [106] During the hearing of this matter I raised as an initial concern Donna's apparently selective waiver of privilege over only some of the privileged communications she and Barbara had with their former counsel. A selective waiver of this file disclosing Barbara's (already admitted) involvement in a campaign of undue influence is of only marginal relevance to the live question of Donna's own involvement in this effort. I advised that I would not consider reviewing the privileged communications unless Donna was prepared to waive privilege over the whole of the file relevant to this issue, and then only if proper notice of the file to be produced was first shared with Barbara to allow her to consider her position on such a waiver. No such application was made, and I have disregarded the privileged communications adduced by Donna and proceeded to determine this issue on the non-privileged materials before the court.
- [107] On the basis of those materials, including:
- a) Barbara's own admission of coaching Mrs. Seifred,
 - b) the notes Barbara produced that were prepared by Mrs. Seifred for her meeting with Ms. Britnell with Barbara's admitted coaching, and

- c) Ms. Britnell's evidence of the efforts she took to ensure that she was not receiving instructions that were the subject of undue influence,
- [108] I am not convinced that Mrs. Seifred was unduly influenced to nominate Donna and Barbara as her committees.
- [109] This is not a case where there is a presumption of undue influence. A presumption of undue influence does not arise in a relationship between a parent and adult child, unless there is a relationship of dominance or dependence: *Modonese v. Delac Estate*, 2011 BCSC 82, aff'd 2011 BCCA 501 at paras. 102-110. Therefore, as set out in *Modonese* at para. 96, the question is whether the nomination was the result of "influence which overbears the will of the person influenced so that in truth what she does is not his or her own act."
- [110] By all accounts, Mrs. Seifred is not an assertive or domineering personality. She is described variously as "shy and introverted" by Dr. Bell, and as "quiet and reserved" by Dr. Lee. Barbara deposed that Mrs. Seifred "has never been a decision maker in our family" and that she relied on Mr. Seifred or others to make decisions. Overall, I find that Mrs. Seifred generally has an obliging and agreeable personality, but this does not make her agreement any less her own.
- [111] I also find on all the evidence that Mrs. Seifred was already suffering in 2015 from the early stages of dementia. By early March 2017, when she made the nomination of committee, she did not have her full faculties, and was unclear or mistaken with respect to important aspects of her legal and personal affairs, including where she banked and what her assets were. Nor did she recall key events of the previous weeks, including the granting of a power of attorney to Donna and Barbara, or the circumstances in which her husband had died (she stated he had died at home and she had found him).
- [112] These factors suggest that Mrs. Seifred's was vulnerable to undue influence, but I do not find the evidence goes so far as to establish undue influence in the sense of overbearing her will such that her actions were not her own.
- [113] Overall, I am satisfied that when Mrs. Seifred gave Ms. Britnell her instructions with respect to nominating Donna and Barbara as her committees, she was expressing her own wishes at the time.
- [114] However, I also find that in expressing these wishes, Mrs. Seifred was under the incorrect impression that Daryl had attempted to take her money, and was not to be entirely trusted. She did not express a lack of trust in Daryl, whom she had relied on to manage her financial affairs for years, to Ms. Britnell, but she did express that her daughters were the ones she trusted. I also find that Mrs. Seifred was likely aware of the conflict between Daryl and her daughters, and had received angry messages from Daryl by that point.
- [115] Other than the inappropriate and angry messages from Daryl, these circumstances were, to a large extent, created by Donna and Barbara. Therefore, while I accept Mrs. Seifred's statement of her wishes at the time of nominating Barbara and Donna as her committees, I

must also take into account the circumstances and timing of that nomination. It was at a time when Mrs. Seifred had been newly alienated and isolated from Daryl, primarily by the inappropriate actions of Donna and Barbara (but also by Daryl's own inappropriate communications).

[116] That leaves the question of whether there is good and sufficient reason to depart from the nomination.

Good and Sufficient Reason

[117] Whether there is good and sufficient reason to depart from a nomination pursuant to s. 9 of the PPA engages the *parens patriae* role of the court and ultimately requires a determination of Mrs. Seifred's best interests: Cameron at paras. 77-80. In this respect, it is no different from the test for the appointment of a committee under s. 6 of the PPA.

[118] The main difference therefore between this court's considerations under s. 6 as opposed to s. 9, where there is a valid nomination of committee, is a question of the burden on the parties. As stated by the Court in Cameron at para. 80, "a committee nominated under s. 9 by a patient of sound and disposing mind should (must) be appointed unless it can be demonstrated that it would not be in the best interests of the patient." Section 9 essentially establishes a presumption that the named nominee is in the patient's best interests, unless it is established otherwise. Section 6 requires the same determination without the benefit of that presumption.

[119] In this case, Donna benefits from the presumption in s. 9 of the PPA that her appointment as committee is in Mrs. Seifred's best interests. Daryl does not benefit from such a presumption, and therefore bears the onus of both establishing that Donna's appointment is not in Mrs. Seifred's best interests and that his appointment is.

[120] Any concerns that arise from Mrs. Seifred's mental infirmity at the time of making the nomination can also be addressed in this context.

[121] I will therefore go on to consider the substantial evidence on the question of Mrs. Seifred's best interests with these principles in mind.

MRS. SEIFRED'S BEST INTERESTS

Legal Principles

[122] An appointed committee must exercise his or her powers in accordance with s. 18 of the PPA, and specifically must exercise those powers for the benefit of Mrs. Seifred and her family, having regard to the nature and value of the property and the circumstances and needs of Mrs. Seifred and her family, and must foster Mrs. Seifred's independence and encourage Mrs. Seifred's involvement in any decision-making that affects her.

- [123] In determining who should be appointed committee, the paramount consideration for the court is who will serve Mrs. Seifred's best interests: see *Bowman (Re)*, 2009 BCSC 523 at para. 32.
- [124] The PPA does not set out specific criteria for the determination of suitability when competing petitioners seek appointment as a proposed patient's committee. Nonetheless, the courts have identified a non-exhaustive list of factors for consideration.
- [125] In *Stewart (Re)*, 2014 BCSC 2321 at para. 29, Justice Masuhara summarized the following considerations derived from applicable case law on this question:
- (a) whether the appointment reflects the patient's wishes, obviously when he or she was capable of forming such a wish;
 - (b) whether immediate family members are in agreement with the appointment;
 - (c) whether there is any conflict between family members or between the family and the patient, and whether the proposed committee would be likely to consult with immediate family members about the appropriate care of the patient;
 - (d) the level of previous involvement of the proposed committee with the patient, usually family members are preferred;
 - (e) the level of understanding of the proposed committee with the patient's current situation, and will that person be able to cope with future changes of the patient;
 - (f) whether the proposed committee will provide love and support to the patient;
 - (g) whether the proposed committee is the best person to deal with the financial affairs and ensure the income and estate are used for the patient's benefit;
 - (h) whether a proposed committee has breached a fiduciary duty owed to the patient, or engaged in activity which diminishes confidence in that person's abilities to properly handle the patient's affairs;
 - (i) who is best to advocate for the patient's medical needs;
 - (j) whether the proposed committee has an appropriate plan of care and management for the patient and his or her affairs and is best able to carry it out; and
 - (k) whether a division of responsibilities such as between the patient's estate and the patient's person to different persons would serve the best interests of the patient, or would such a division be less than optimal for the patient.
- [126] In *Haston (Re)*, 2016 BCSC 1962 at para. 32, Justice N. Brown expanded on the non-exhaustive factors noted by Masuhara J. by adding the following considerations:

whether the proposed Committee's resides near the patient; whether the proposed Committee is able to provide transportation for the patient, if necessary; whether outside demands on the proposed Committee's time and availability will detract from his or her ability to perform his or her obligations; and whether the proposed Committee is able and willing to facilitate any recreation or religious practice in which the patient wishes to participate.

[127] In *Bowman* at para. 33, Justice Dardi also considered the proposed committee's level of experience and capability in performing the duties of committee as a factor for consideration, relying on *Farquhar (Re)* (19 June 2008), Vancouver S081504 (B.C.S.C.).

[128] The inquiry is fact specific. The relevance and weight of the above factors will depend on the circumstances of each case, and other factors may also be relevant in any given case. Overall, these considerations provide a helpful framework for considering the evidence in this case.

[129] One such factor is attempts to control access to the patient or to isolate other family members: see *Baker-MacGrotty v. Baker*, 2016 BCSC 699; *Sangha (Re)*, 2013 BCSC 1965 and *Vranic (Re)*, 2007 BCSC 1949. The ability to cooperate and consult with other family members is thus also a recognized and important factor for the court in appointing a committee. These factors are inter-related and infused within the above listed Stewart factors and I will consider them as such.

[130] I have considered all of the factors set out in the case law, and address each one, generally following the factors listed in Stewart but with some modifications to best identify and address the concerns that are particular to Mrs. Seifred.

Consideration of the relevant factors

A. The patient's wishes when she was competent

[131] In considering the patient's own wishes, the court must exercise care in the weight it gives to these wishes in light of the circumstances of the expression of those wishes, and in particular the extent of the patient's infirmity at the time: *Uragi (Re)*, 2016 BCSC 1517 at para. 51; *Re Marczak*, 2007 BCSC 684 at para. 15; [2003] B.C.W.L.D. 46 (S.C.) at para. 30.

[132] I have already found that Mrs. Seifred expressed her wish to have Donna and Barbara as her committees through her March 2, 2017 nomination of committee. I found that nomination to be valid. However, I also found that it was made at a time when Mrs. Seifred had already experienced a substantial diminishment in her capacity, was strongly influenced by her daughters (though not to the point of overcoming her will), and had reason to distrust Daryl regarding her finances (but that reason was incorrect).

[133] Given the frailties of the circumstances of the nomination, I give it weight, but not the substantial weight I would have given it had the above factors not been present.

- [134] I also give considerable weight to the evidence that Mrs. Seifred continued to express that she was happy with her current living situation with Donna to her various doctors and to Mr. McHugh. This evidence is further supported by her various doctors' opinions that she had the capacity to express her wishes regarding personal care decisions, including where she wanted to live, in 2017 and 2018.
- [135] Mrs. Seifred's statements in February 2017, and relayed communication through her counsel after that date, that she wished to have a third party present when she was with Daryl is also relevant to this factor. However, on all the evidence, I find that this reservation about Daryl arose from the particular tensions and misrepresentations around the sale of Mrs. Seifred's house, and are not persistent. I rely on the uncontroverted evidence that when Mrs. Seifred finally saw Daryl again in 2019, the social worker hired to ensure that Mrs. Seifred was comfortable had no concerns in that regard and left after the first hour. I have no reason to conclude that Mrs. Seifred still harbours these concerns.
- [136] A further relevant factor is that Mrs. Seifred's nomination was of both Donna and Barbara together. At the time she made this nomination, there is evidence that Mrs. Seifred believed she was going to be splitting her time between Donna and Barbara (although in fact she only spent brief periods with Barbara in early 2017). Although the nomination of committee provides that if one of Barbara or Donna was not able to act as committee the other would act alone, Mrs. Seifred's expressed preference was to have both her daughters caring for her. That is no longer possible due to the complete breakdown in the relationship between Donna and Barbara since sometime in 2017.
- [137] In addition, Barbara is not seeking to be named Mrs. Seifred's committee, in part because she recognizes that her own conduct in early 2017 was not in Mrs. Seifred's best interests. She says that I should also disqualify Donna from acting as Mrs. Seifred's committee for the same reasons. However, Donna does not agree with the characterization of her conduct and attributes any such misconduct solely to Barbara. Unfortunately, it is not possible to fully resolve this conflict in the evidence on the basis of the affidavit materials before me, and I am limited to only those findings that I have been able to make on the basis of Barbara and Donna's evidence, and the whole of the materials.
- [138] In any event, balanced against the nomination of Donna and Barbara in March 2017, I also must consider that prior to the breakdown in Mrs. Seifred's relationship with Daryl (precipitated by Donna and Barbara's involvement in the sale of Mrs. Seifred's home), and while she had her full faculties, Mrs. Seifred had appointed Daryl her power of attorney, alternate health representative (after her husband), and executor of her will. There is no question of Mrs. Seifred's competence and capacity when she made these appointments. They indicate a high level of trust in Daryl when she was fully competent.
- [139] I have also accepted the evidence of Daryl, Barbara and Heather that, prior to Donna moving Mrs. Seifred to Powell River in January 2017, Mrs. Seifred had not wished to move to Powell River. To the contrary, Mrs. Seifred had expressed a wish to continue to live in the

Fraser Valley, where she had lived and raised her family for approximately 60 years, and where most of her family still lived. Her secretly-confessed wish expressed to Ms. Britnell was to move back to Alberta and live on a farm with her sisters. In 2018, she told her granddaughter that she did not consider herself an "island girl", and when asked in 2019 if she would like to live in a facility in the Fraser Valley where she could see the rest of her family, she said that she would like that.

[140] Furthermore, I have concerns that Mrs. Seifred's stated preference over the years to continue to live with Donna has been influenced by her isolation from Daryl and the rest of her family, a situation that Donna created and has maintained since January 2017 when she moved Mrs. Seifred into her home.

[141] Overall, I find that a consideration of Mrs. Seifred's wishes, which is an important factor, favours Donna's appointment as committee, but only slightly.

B. Ability to provide love and support to the patient

[142] Both Donna and Daryl are able to provide Mrs. Seifred with love and support.

[143] Donna and her husband have been giving Mrs. Seifred love and support almost exclusively for the last four years, and Mrs. Seifred has generally been stable, safe and content during this time.

[144] However, Donna has shown that she is not able to give Mrs. Seifred the love and support of anyone beyond herself and her own immediate family.

[145] Overall, this factor is neutral.

C. Whether immediate family members are in agreement

with the appointment

[146] All of Mrs. Seifred's children, with the exception of Donna, support Daryl being named committee.

[147] Barbara initially supported Donna taking over the care of Mrs. Seifred, but within less than a year regretted this support. She deposes that the person best suited to be committee is Daryl. She says she has observed Daryl acting only in the best interests of their mother, and that his unwavering love and support for their mother and family is undeniable. She says he strives to bring people together and find common ground to solve problems.

[148] Mrs. Seifred's eldest son, Kenneth, who had been estranged from the family for some time when Mr. Seifred died, supports Daryl as committee. He deposes that he wishes to reconnect with his mother before it is too late, something he cannot do while Mrs. Seifred lives with Donna in Powell River. He has had little contact with Donna since they were in their 20s, and their relationship has been further damaged over time. However, Kenneth trusts Daryl to act in Mrs. Seifred's best interests in terms of both her care and her property, and he believes that he would be able to visit with his mother if Daryl was appointed

committee.

[149] Heather, Mrs. Seifred's granddaughter, also support's Daryl's appointment as committee. For almost 10 years, before Mrs. Seifred's move to Powell River in 2017, Heather visited her grandparents at least once per week. Since 2011, when Heather was on maternity leave and after she had her son, her visits with Mrs. Seifred were even more frequent, and she deposes that Mrs. Seifred had a special bond with her great-grandson. Heather and her son visited Mrs. Seifred once in Powell River in 2018, with Donna's assistance in coordinating the visit. They saw her again in March 2019 with Daryl and Barbara. Heather and her son both miss Mrs. Seifred, but are unable to visit with any frequency because of the cost and distance of travelling to Powell River. Heather supports Daryl's plan of care that would re-locate Mrs. Seifred to the Fraser Valley where Mrs. Seifred could once again see her and her great-grandson more regularly.

[150] Although they have not sworn affidavits, the evidence also establishes that Mrs. Seifred would be able to maintain much broader contacts with her extended family if Daryl was committee. In addition to Heather, Mrs. Seifred has another granddaughter (Barbara's child) and four grandsons (Donna's two sons, Kenneth's son, and Barbara's son) that live in the Fraser Valley area. Daryl and his partner and their daughter live in West Vancouver, and she would undoubtedly see more of them as well.

[151] It is in Mrs. Seifred's best interests to have the love and support and interaction of seeing all of her extended family. This factor strongly favours Daryl's appointment as committee.

D. Conflict between family members or between the family and the patient, and the proposed committee's ability to communicate with family members about appropriate care and resolve conflicts

[152] As is evident from the facts recited above, there is a potentially irreconcilable conflict between Donna on the one hand, and Daryl, Barbara and Kenneth on the other.

[153] However, I am satisfied that, despite Mrs. Seifred's isolation from her other children since 2017, that there is no conflict between Mrs. Seifred and Daryl and Barbara. While there might be some lingering conflict with Kenneth, I find that it is in Mrs. Seifred's best interests to allow Kenneth to attempt to bridge that conflict in her remaining years.

[154] The conflict between Donna and her siblings is detrimental to Mrs. Seifred, as it has deprived Mrs. Seifred of their love, support, and company. Furthermore, Donna has demonstrated that she is unable to overcome this conflict, both after receiving Mr. Silin's recommendations in spring 2019 and later at the request of the Court during the continuation of this proceeding in the fall of 2020.

- [155] This conflict is also harmful to Mrs. Seifred, as it is in Mrs. Seifred's best interests that her family receive regular updates and information with respect to her well-being and her care needs. Donna's communication in this regard falls well below what would be expected of a committee.
- [156] The conflict is also harmful to Donna in that she has been unwilling to accept the support offered by her brother and sister to give her respite weeks or weekends, which the evidence establishes she and her husband need. Mrs. Seifred is then further deprived of a primary caregiver who has access to needed respite, and the support of her extended family in caring for her.
- [157] On the other hand, it is apparent from the materials before me that one of the reasons for Daryl's broader support among the family as committee is his greater ability to communicate, including his ability to communicate in circumstances of conflict and estrangement.
- [158] The evidence establishes that Daryl has consistently reached out to his other family members to include them in Mrs. Seifred's life. He was doing this before Mr. Seifred's death, when he drove Mrs. Seifred to visit Donna in Powell River, and Barbara in Chilliwack. He has reached out to his estranged brother Kenneth and re-established that relationship.
- [159] Donna points to cards sent to her by Daryl thanking her for the care she is providing to Mrs. Seifred. While Donna points to these as evidence that Daryl concedes what a good job she is doing, the greater significance of these communications is the demonstrated effort Daryl has made in the past and continues to make to keep Mrs. Seifred's family whole.
- [160] It is in Mrs. Seifred's best interests that her committee be able to communicate with the rest of her family, facilitate their involvement in her life, and be able to resolve conflicts between her family members regarding her care. This factor strongly favours Daryl's appointment as committee.

E. Previous involvement of the proposed committee with the patient with a preference for family members

- [161] Both Daryl and Donna are Mrs. Seifred's immediate family.
- [162] Donna has cared for Mrs. Seifred since 2017. The evidence establishes that during this time Mrs. Seifred has been well cared for, and there are few concerns with respect to her daily care.
- [163] However, the evidence also establishes that during this time Mrs. Seifred has been alone for significant periods of time while Donna and her husband are at work, and that she has been almost entirely isolated from the rest of her family.

[164] Daryl's involvement with Mrs. Seifred's care and support was extensive, but pre-dates January 2017 when his access to his mother ended. However, prior to that date, he regularly drove her to appointments, arranged for meals to be delivered to her home through meals on wheels, and coordinated her care and finances through his appointment as power of attorney with no concerns.

[165] Overall this factors is fairly balanced between Donna and Daryl.

F. The level of understanding of the proposed committee with the patient's current situation, and their ability to cope with future changes of the patient, including through an appropriate plan of care and management

[166] I find that Donna has the most intimate understanding of Mrs. Seifred's current care needs.

[167] This is not to cast fault on Daryl, who has doggedly pursued further information from Donna as to his mother's care needs for the last four years, with only limited success.

[168] I am concerned, however, with respect to both Donna and Daryl's ability cope with the anticipated changes in Mrs. Seifred's needs as her dementia progresses.

[169] The evidence establishes that Mrs. Seifred's cognitive decline has progressed and is expected to continue to progress. Mr. McHugh assessed Mrs. Seifred's needs for service provision as "high" (based on the "Method of Assigning Priority Levels" or MAPLe score) in April 2019. This was almost two years ago. Although the evidence before me is limited in this respect, I find that there is a very real possibility that, given the progression Mrs. Seifred's dementia, Mrs. Seifred's care needs will soon exceed Donna's ability to fully support her from her home in Powell River. This leads to the consideration of Donna and Daryl's plans for Mrs. Seifred's future care.

[170] Donna intends to keep Mrs. Seifred in her home with her, with increasing use of home care visits and respite time in local Powell River facilities. If or when Mrs. Seifred requires more extensive care, Donna avers to the availability of a public long-term care facility in the Powell River area. Donna has provided little to no information about the Powell River facility, or the prospect of a different facility in the Lower Mainland.

[171] I accept that a publicly-funded and subsidized care facility would help Mrs. Seifred to maintain her assets. However, with the sale of her home in 2017, Mrs. Seifred can afford a higher standard of living than most publicly-subsidized care beds provide.

[172] Overall, I find that Donna's extended care plan is not in Mrs. Seifred's best interests, not simply because she can afford better, but more significantly because it would limit who would be able to visit her regularly to Donna and her husband, who are her only family members living in the Powell River area. While Donna states in argument that she is open to facilities in the Lower Mainland, that would detract from Donna's ability to then effectively manage her mother's care from Powell River. I am also not convinced that Donna will be able to overcome her pattern of limiting Mrs. Seifred's access to her other children.

- [173] Ultimately, I find that it is in Mrs. Seifred's best interests to have a care plan that removes family conflict, and removes Donna's control over Mrs. Seifred's ability to spend time with the rest of her family.
- [174] Daryl's care plan for Mrs. Seifred would achieve this important goal by relocating Mrs. Seifred back to the Fraser Valley in a high-quality private care facility where she would have specialized dementia care, and where all her children and grandchildren would be able to visit.
- [175] However, the one family member that would have the most difficulty visiting Mrs. Seifred is Donna, the child with whom she has spent the last four years of her life through her cognitive decline, and this may be quite disorienting for Mrs. Seifred. Mitigating this is the fact that Donna's own children, with whom Mrs. Seifred has spent respite time and who visit her in Powell River, also live in the Fraser Valley. In addition, Donna and her extended family would still be able to see Mrs. Seifred in a neutral location without having to interact with Daryl or Barbara.
- [176] Daryl's care plan involves relocating Mrs. Seifred sooner than might occur if Donna was her committee and she continued to reside with Donna.
- [177] Mr. Silin's recommendation to the parties was to avoid moving Mrs. Seifred from Donna's care into institutional care until Mrs. Seifred's care needs necessitated such a change. Dr. Bell relied upon and agreed with Mr. Silin's recommendations in April and June 2019, primarily on the basis that making major changes in living arrangements can be difficult, even traumatic, for persons like Mrs. Seifred who suffer from dementia.
- [178] While I accept Dr. Bell's expertise and her general opinion about avoiding significant changes for persons with dementia, I find I am not able to rely on her more specific opinion that Mrs. Seifred is better off staying with Donna. The usefulness of her opinion to me is limited by a number of factors, including that she relies particularly on the opinion of Mr. Silin which is not before this Court as opinion evidence.
- [179] More significantly, the full text of Dr. Bell's opinion contained in her April 2019 case note includes the statements noted above attributed to Donna by Dr. Bell, to the effect that Daryl attempted to appropriate "large lines of credit" from his parents through a power of attorney that was improperly obtained by him while his father "was actively dying". Both of these statements and their implications are incorrect. Dr. Bell further cites "Daryl's previous history of financial exploitation" as a "very important consideration" with respect to Mrs. Seifred's potential relocation. These factors considered by Dr. Bell undermine my ability to rely on Dr. Bell's opinion about whether Mrs. Seifred is better living in the care of Donna than in the care of Daryl.
- [180] In any event, both Dr. Bell and Mr. Silin's assessments were completed in spring 2019, almost two years ago now. Even in March 2019, Mr. Silin included recommendations for Mrs. Seifred to receive more care than Donna and her husband were then able to provide.

- [181] I must consider Mrs. Seifred's needs in 2021, and I don't have any current assessment of those needs. I do have, however, the evidence that Mrs. Seifred's cognitive decline had progressed considerably between 2017 and 2019, and was expected to decline further. Her care professionals all contemplate that eventually care in Donna's home might no longer be adequate. I also have Donna's care plan, where she seeks increased respite time where Mrs. Seifred will be moved from Donna's home for regular overnights, for days and occasionally weeks at a time.
- [182] I therefore have to balance the trauma of Mrs. Seifred making increasing numbers of small moves in her living arrangements against the trauma of a larger single move at this point in her life. While not seeking to diminish the extent of the potential trauma, Mrs. Seifred has already made such a move once in January 2017 while suffering from dementia and the further trauma of losing her husband, from which she appears to have suffered no significant health effects. If she were to move back to Langley, albeit to a care home there, she would have the benefit of the familiarity of the area that she spent 60 years of her life in, as well as the benefit of being able to have the love and support of members of her family who have been important to her throughout her life.
- [183] I have also considered that Daryl's care plan involves relocating Mrs. Seifred to a care facility in the Fraser Valley while there is an ongoing pandemic. Barbara has agreed to house Mrs. Seifred in a very suitable ground level suite in her own home in Chilliwack until Daryl is satisfied that an appropriate facility is both safe and available. I am satisfied that this arrangement, together with the increasing availability of vaccines in those facilities, addresses this concern.
- [184] Overall, I find that both Daryl and Donna have a strong track record of caring for Mrs. Seifred, and both have the ability to love and support her.
- [185] However, given Mrs. Seifred's documented care needs in March 2019 and the strong likelihood that these needs have increased, together with the importance of Mrs. Seifred having the benefit of the love and support of her entire family, and not living in the centre of a conflict between her children, I consider that it is in her best interests to begin the transition to a care facility in Langley. Furthermore, I consider that it is in Mrs. Seifred's best interests that the care facility be one where she can have a private room, dementia-focused care, and where she is close to as many of her children and grandchildren as possible.
- [186] Overall, this factor favours Daryl's appointment as committee.

G. Best person to ensure the income and estate are used for the patient's benefit

- [187] Donna was instrumental in arranging the sale of Mrs. Seifred's house at a time when Mrs. Seifred was still grieving, and had no financial need for the proceeds of sale from her home. Furthermore, Donna proposed splitting the entire proceeds of Mrs. Seifred's home between herself and Barbara, and ultimately accepted a gift of \$50,000 from those proceeds.
- [188] Giving Donna the benefit of the doubt in this regard, I accept that Donna planned to support her mother from these proceeds. Furthermore, she may have been motivated to ensure that Daryl not receive any benefit from the value of Mrs. Seifred's home more than she was motivated to ensure that she did receive such a benefit. Neither motivation was driven by her mother's best interests, however, and the evidence as a whole establishes that both Donna and Barbara began treating Mrs. Seifred's house as a family asset, and not Mrs. Seifred's asset, almost the moment Mr. Seifred died.
- [189] Furthermore, Donna in her various affidavits claims compensation for the care of her mother to the date of hearing significantly in excess of what the law would reasonably allow. In her original affidavit early on in these proceedings, she sought to recover over \$4,000/month, representing one-third of her mortgage, property tax and insurance, utility bills, food budget, and vehicle costs. During the course of these proceedings, she sought to recover over \$80,000 in costs despite providing accounting records for expenses closer to the \$40,000 range. Furthermore, she includes in the amounts that she seeks to recover from Mrs. Seifred some of her own legal costs, and a \$2,500 payment made to her own son for respite care.
- [190] In light of these past dealings, I do not consider that Donna is the best person to ensure Mrs. Seifred's assets and income are used for Mrs. Seifred's benefit.
- [191] Donna says that Daryl is also not an appropriate committee for Mrs. Seifred's assets because his offer to purchase Mrs. Seifred's house involved an immediate distribution of one-third of the sale proceeds to each of Barbara and Donna, and the retention of a similar amount for himself.
- [192] This is not an entirely accurate description of Daryl's offer: his proposal also included that he would exclusively use his portion of the proceeds to care for Mrs. Seifred in her own home, and further pay a portion of that amount to Kenneth upon Mrs. Seifred's death. I have also found that, considering the circumstances of this offer, Daryl made the offer for the benefit of Mrs. Seifred, not himself. I find that it was made in circumstances where the decision to list Mrs. Seifred's home had already been made, and that the purpose of the sale was, at least in part, to liquidate the asset and distribute the proceeds to (some of) her children. The evidence establishes that Daryl opposed the sale of the house at all, and made the offer in an attempt to satisfy his sisters' apparent desire for a distribution of the proceeds upon Mr. Seifred's death, while still allowing Mrs. Seifred to stay in her home.

[193] Donna points to other expenditures made by Daryl from Mr. and Mrs Seifred's accounts prior to Mr. Seifred's death. I am entirely satisfied with Daryl's explanation for these expenditures and that they were made for the benefit of Mr. and Mrs. Seifred and not for himself.

[194] Overall, I find that Daryl has established that he is the best person to ensure that the income and assets of Mrs. Seifred are expended only for Mrs. Seifred's benefit. For this factor, I find that it is not in Mrs. Seifred's best interests for Donna to be the committee of her estate, and that it is in her best interests that Daryl be that committee.

H. Any conduct that diminishes confidence in proposed committee

[195] In addition to Donna's treatment of Mrs. Seifred's assets discussed above, Daryl argues that Donna has also engaged in deliberately isolating and alienating Mrs. Seifred from Daryl and the rest of her family.

[196] The evidence establishes that Donna and Barbara convinced Mrs. Seifred to sell her home at a time when she was particularly vulnerable. Furthermore, this was done in a secretive manner without consultation with Daryl, who had been primarily responsible for coordinating Mrs. Seifred's care needs and finances for a number of years prior to that date.

[197] The evidence establishes isolation, and possibly alienation on Donna's part. The evidence does not establish what precisely Donna might have said to Mrs. Seifred about Daryl. However, I do accept Barbara's evidence that in early 2017, both she and Donna were communicating to Mrs. Seifred that Daryl was not to be trusted. Since then, the evidence establishes that Donna has stated that Daryl has engaged in financial abuse of Mrs. Seifred to other people, including, apparently, Dr. Bell.

[198] The evidence also establishes that Daryl attempted to tell Mrs. Seifred not to trust Donna. The postcards he sent to Mrs. Seifred in the early days of the litigation in 2017 contained statements, some of which are reproduced above, that Donna was lying to her about him, and just wanted her money.

[199] However, since that date, the evidence establishes that it is Daryl who has attempted to mediate and to propose solutions that might overcome the current conflict.

[200] On the other hand, Donna's behaviour has persisted. Donna's inability to facilitate the mediated agreements for Mrs. Seifred to spend more time with Daryl and Barbara, or to facilitate communication or visits with Daryl over the course of the last four years, significantly diminishes my confidence in her ability to act as committee for her mother.

- [201] Donna also argues that Daryl has wielded the consent order, which requires his consent for any expenditures of Mrs. Seifred's assets by Donna under the January 2017 power of attorney, without regard to the best interests of Mrs. Seifred. She says that Daryl has improperly withheld his consent to necessary expenditures that would have benefited Mrs. Seifred. However, the evidence before me does not establish this allegation.
- [202] From the evidence that I have, it appears that Mrs. Seifred continued to have access to her funds for a number of matters, including for legal expenses, counselling and social worker assistance. For example, Mrs. Seifred was able to pay for the airfare to fly Heather and her son to come and see her at one point. The sale proceeds from her home are worth approximately \$200,000 less than they were after the sale, presumably as a result of these authorized expenditures. Of course, \$100,000 of this was a gift to Donna and Barbara. Donna received \$50,000 of this amount which she deposes she accepted to support Mrs. Seifred's needs. Daryl provides calculations of Donna's various expenditure accounts that suggest that the \$50,000 was sufficient to cover these accounts to date with room to spare. While I am not in a position to fully evaluate this claim, Mrs. Seifred's \$50,000 gift to Donna in 2017 will have provided Donna with more than \$1,000/month on average over the approximately four years since the gift was made. In addition, the parties also agreed that Donna could withdraw \$500/month after March 2019 for Mrs. Seifred's day-to-day care needs.
- [203] Finally, Donna points to Daryl's "over holding" of Mrs. Seifred when he and Barbara visited her in March 2019 which resulted in Mrs. Seifred being returned home by the local police. This was discreditable conduct by Daryl--with tensions running as high as they were, it was important that he engender trust by sticking to the agreed upon "pick up" time. However, in calling the police, Donna also overstepped and failed to act in Mrs. Seifred's best interests. Over-involvement of the police was also a mistake Daryl made in the early days of Donna's move with Mrs. Seifred to Powell River when he accused Donna of "kidnapping" Mrs. Seifred.
- [204] Overall, both Daryl and Donna have conducted themselves in ways that are not admirable. However, none of these individual incidents alone diminish my confidence in them as committees of Mrs. Seifred's person. The one exception to this is Donna's ongoing and persistent inability to communicate with her siblings and facilitate Mrs. Seifred's access to her other children.

I. Best advocate for the patient's medical needs

- [205] Donna is a practicing nurse. I have no doubt of her ability to advocate for Mrs. Seifred's medical needs, so long as they can be met in Powell River.
- [206] Daryl's expertise is in financial matters, but I have no concerns about his ability to advocate for Mrs. Seifred's mental and physical needs as well.

[207] I have very little evidence relating to this factor beyond the above comments. Overall, this factor favours Donna's appointment as committee.

J. Potential division of responsibilities

[208] While a division of responsibilities with Donna as Mrs. Seifred's committee of the person and Daryl as Mrs. Seifred's committee of her estate might have been ideal had Daryl and Donna been able to better communicate and reconcile their differences as to how best to care for Mrs. Seifred in January 2017, that ship has now sailed. It would not be in Mrs. Seifred's best interests to make her care contingent upon cooperation between Daryl and Donna.

[209] Donna is prepared to act solely as committee of Mrs. Seifred's person, and to have the PGT act as Mrs. Seifred's committee of her estate. Were I to appoint Donna, I would agree that this would be an appropriate division given Donna's dealings to date with Mrs. Seifred's assets.

[210] Daryl's care plan for Mrs. Seifred would put Mrs. Seifred's day-to-day care needs in the hands of a professional care facility, and her expenses would be fairly fixed. There would be no need, in that scenario, to involve the PGT as committee, and I do not have any concerns with Daryl acting as Mrs. Seifred's committee of person or estate.

DECISION

[211] Overall, I am convinced that it is in Mrs. Seifred's best interests that Daryl be appointed her committee.

[212] In coming to this decision, I have not simply tallied the factors enumerated above like a scorecard. Some factors weigh more heavily than others.

[213] In this case, I put considerable weight on the fact that as of 2019, the evidence of Mrs. Seifred's care professionals was that she was stable, safe and content living with Donna, and that major changes to the living situation of persons with dementia can be traumatic to them.

[214] I also consider the fact that it is precisely such a precipitous move that is the origin of the conflict that now exists in Mrs. Seifred's family, and that has deprived her of the love, care and support of her other children. I may have been prepared to overlook Donna's role in that move, including the unilateral and non-consultative manner in which it was done, had I been satisfied that Donna was now capable of overcoming this conflict and had found ways to facilitate contact and communication between Mrs. Seifred and Daryl and Barbara, and possibly even Kenneth.

- [215] The requirement that the appointed committee "keep all of Mrs. Seifred's family members promptly informed of significant health and personal care decisions, and facilitate the contact of those family members with Mrs. Seifred" is one of only two recommendations that the PGT expressed, underlying the importance of this factor. It is one that Donna has established that she is unable to meet.
- [216] The PGT was not the first to make this recommendation. Facilitating contact between Mrs. Seifred and the rest of her family was a recommendation of Mr. Silin's for Mrs. Seifred's continued care in Powell River in March of 2019. The fact that Mrs. Seifred had only one visit, and no video or phone calls, since that time is clearly not from Daryl's lack of trying. The full responsibility for this failure can only be placed with Donna who has been essentially acting as Mrs. Seifred's de facto committee of her person for many years.
- [217] During the two-month continuation of this case in the fall of 2020, in part to offer Donna a further opportunity to provide evidence of her ability to perform this important aspect of acting as committee, I invited new evidence of efforts made by Donna to facilitate such visits or communications. I was advised that no such arrangements could be made, and was given no evidence of Donna's efforts in this regard.
- [218] I can only conclude that the relationship between Donna and her other siblings is now so wholly damaged that Donna cannot see beyond it to provide for the best interests of Mrs. Seifred. Those interests include being surrounded by the people and places that have been important to her throughout her life, and receiving the love and support of as many of her children and grandchildren as are willing to share their time and affection with her. She also deserves to have all of her children regularly informed about her well-being, so that they can support her as necessary and openly communicate regarding their concerns.
- [219] For all of the above reasons, I find that Daryl has established that it is not in Mrs. Seifred's best interests that Donna be named Mrs. Seifred's committee, despite her nomination as such in March 2017. I find that Daryl has established that he can act in Mrs. Seifred's best interests, both with respect to her mental and physical health, as well as in relation to her estate and finances.
- [220] The appointment of Daryl as committee is subject to the following agreed upon conditions, as recommended by the PGT with some elaborations:
- a) In lieu of a bond, that upon being appointed, Daryl shall have the balance of the net sale proceeds from the sale of Mrs. Seifred's home, which are currently held in trust, transferred from the lawyer's trust account to a financial institution where an investment has been established by the committee in compliance with the Trustee Act, R.S.B.C. 1996, c. 464;
 - b) Daryl shall have no access to the capital of the investment account, other than for reinvestment purposes, without the prior written consent of the PGT or further Order of this Court, on notice to the PGT;

- c) Daryl shall cause a copy of this Order to be delivered to the financial institution, and any other successor institutions, and shall provide reasonable proof of service of the Order to the PGT;
- d) Daryl shall provide updates to all of his siblings as soon as reasonably practical of significant changes to Mrs. Seifred's health, including significant personal care decisions, such as where Mrs. Seifred is living and her care regimen; and
- e) Daryl shall make all reasonable efforts to facilitate visits and regular communication between Mrs. Seifred and her family members.

COSTS

- [221] Donna is entitled to recover her reasonable costs of care of Mrs. Seifred since January 2017. If the parties are unable to agree with respect to these amounts, they shall be referred to the Registrar. These amounts should not include legal costs incurred by Donna. Nor should they include payments to Donna or members of her family to care for Mrs. Seifred during this period.
- [222] Section 27 of the PPA provides that costs of committee proceedings are in the discretion of the court. Generally, where parties contest the issue of committee in good faith and for no obvious benefit to themselves, the parties costs come out of the patient's estate. In *Vieira (Re)*, 2013 BCCA 420, the Court of Appeal noted as follows:
- [17] In applications for committee, it appears that the usual practice of the Supreme Court is to award the successful applicant costs from the estate. This is a sensible position where the application is brought in good faith and where the applicant receives no obvious benefit from the appointment of a committee. Where a committee is appointed, it is because the court has concluded that it is in the best interests of the patient. A party who has brought an application that is found to be in the best interests of the patient, and with no ulterior motive, should be reimbursed for their costs in doing so.
- [18] While it appears to be the usual practice for a successful applicant on a committee application to be granted an order for special costs to be paid from the patient's estate, there is wide discretion to depart from this practice. If, for example, there are concerns about the motives of the applicant, the applicant's conduct of the application, or the ability of the estate to bear an order for costs, a different order might be called for. I do not suggest in any way that this is an exhaustive list of considerations.
- [223] Daryl is entitled to recover his costs in this matter. Despite the fact that I did not appoint Donna as committee, I accept that she was motivated in pursuing this petition to seek the best outcome for Mrs. Seifred, albeit from her own perspective. Barbara also participated in these proceedings seeking the best interests of her mother. Mrs. Seifred was also represented by counsel before me, as was her right. I would therefore award costs to all the parties from Mrs. Seifred's estate.

[224] However, I am not certain that the scale of those costs ought to be as special costs. While I do not have concerns regarding the bona fides of each of the participants, I do have concerns about the ability of Mrs. Seifred's estate to bear an order for special costs: see Vieira para. 18.

[225] I do not wish to embroil Mrs. Seifred's estate in any further costly litigation. Therefore, if the parties are able to settle costs amongst themselves, which would include counsel for Mrs. Seifred and the PGT, then I encourage them to do so. However, if the parties are unable to do so, I will hear them on the scale of costs issue. The parties have 60 days to request a hearing before me on the issue of costs if they are unable to settle costs.

[226] Regardless of the costs issues and the settling of Donna's accounts, the order regarding committee ship shall go into effect immediately upon pronouncement of these reasons.

"Marzari J."

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