

CANADA / JUDGMENT

## Sipsas (Re)

2021 BCSC 876

COURT

Supreme Court of British Columbia

DECIDED

4 March 2021

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2021 BCSC 876 Sipsas (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sipsas (Re),

2021 BCSC 876

Date: 20210304

Docket: S206313

Registry: Vancouver

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

- and -

In the Matter of the Appointment of a Committee of Person and Estate for Fotini Sipsas

Before: The Honourable Madam Justice Fitzpatrick

Oral Ruling Re Competing Petitions to Declare Mental Incompetency and Appoint a Committee

In Chambers (Hearing proceeded via MS Teams)

Counsel for Eleftherious Sipsas:

C. Gale

A. Maragos

Counsel for Joyce Sipsas:

C.S.S. Immega

D. Babcock (A/S)

Place and Date of Hearing:

Vancouver, B.C.

March 3-4, 2021

Place and Date of Ruling:

Vancouver, B.C.

March 4, 2021

- [1] THE COURT: There are two competing petitions before me today, both involving Fotini Sipsas.
- [2] On June 18, 2020, Fotini Sipsas' son, Eleftherios Sipsas (also known as Jerry Sipsas, who I will refer to as "Jerry"), filed a petition to declare his mother incapable by reason of mental infirmity under the Patients Property Act, R.S.B.C. 1996, c. 349 (the "Act"). Jerry Sipsas seeks to be appointed as committee of both his mother's person and estate.
- [3] On August 19, 2010, Fotini Sipsas' daughter, Joyce Sipsas, filed a competing petition, also pursuant to the Act. Joyce Sipsas also seeks an order declaring her mother to be incapable by reason of mental infirmity. In the petition, she initially opposed her brother's application to be committee of their mother's person and the estate, proposing that instead she should be appointed as co-committee of both their mother's person and estate. However, at the start of this hearing, Joyce Sipsas' counsel confirmed that her client was withdrawing her application to be co-committee of her mother's estate. Accordingly, the only person now seeking to be committee of Fotini Sipsas' estate is Jerry Sipsas. Joyce Sipsas does, however, maintain that she should be appointed co-committee of her mother's person.
- [4] Throughout the course of this hearing, both counsel have referred to the Sipsas family members by their first names. In these reasons, I will continue to identify them individually for ease of reference, meaning of course no disrespect in that regard.

## Background

- [5] Fotini is an 82-year-old woman. She has been widowed for many decades. Jerry and Joyce, both in their 50s, are her only children. Fotini also has a brother and sister who both live outside of BC. Neither of them have been involved in Fotini's care, or her estate matters; neither are involved in respect of this application.
- [6] It is undisputed on this application that Fotini suffers from advanced dementia and that she has been deteriorating for some years now. She lives in her own home in Vancouver, BC, although she has required significant care over the last few years. Currently, Fotini has rotating caregivers that provide her with 24/7 care in her home, as supplemented by assistance from her children, more particularly Jerry.

- [7] Fotini is a wealthy woman, as evidenced by Jerry's Affidavit of Kindred and Fortune sworn June 17, 2020. Fotini owns substantial real estate that includes her Vancouver home and a rental property in Burnaby, BC. Those real estate holdings are valued in excess of \$8 million. In addition, Fotini has substantial cash deposits in excess of \$265,000. Fotini receives income from the tenancies in both of her properties, as well as a government pension and old age security. Fotini's expenses include expenditures relating to the rental properties.

### Committeeship of the Estate

- [8] Jerry is the sole applicant at this time for committeeship of her mother's estate. Both counsel addressed a substantial issue at this hearing in relation to that issue, one that also has some relevance as to who should be the committee of Fotini's person.
- [9] Jerry presented substantial evidence, which he says supports that Joyce has benefitted substantially from Fotini's cash resources over the last few years. Joyce currently lives in Edmonton, Alberta. There is substantial financial evidence before me showing numerous withdrawals from Fotini's bank accounts through ATMs in Vancouver and Edmonton and various credit card purchases by Fotini.
- [10] There is no dispute between Jerry and Joyce that Joyce received substantial amounts from her mother's bank accounts through these withdrawals. However, those withdrawals arose in a more nuanced situation. Fotini did, in years past, visit her daughter in Edmonton from time to time. Joyce asserts that many of these withdrawals and purchases were made and used for Fotini's benefit; alternatively, Joyce says that the withdrawals and purchases were for Joyce's benefit and done with Fotini's consent. Joyce alleges some amounts she received were gifts from her mother, said to be consistent with Fotini's pattern of making such gifts to her in years past.
- [11] These bank account withdrawals or transactions took place while Joyce was the holder of an enduring power of attorney (EPOA) for her mother. That EPOA was in favour of both Joyce and Jerry.
- [12] Jerry raises significant concerns regarding these transactions. A major underpinning of his argument is that, throughout these transactions, Fotini was incapable of managing her affairs. There is substantial medical evidence before me which suggests that Fotini was having some cognitive difficulties in mid-2015. Medical records of the presiding physicians throughout the period, Dr. Angela Hutchinson and Dr. Hetesh Ranchod, are in evidence. In particular, those records reveal that from mid-2017, when Fotini has a significant medical event, her dementia came on quite significantly at that point.

- [13] Both doctors have commented on Fotini's dementia, although it was not until these doctors swore affidavits in support of this hearing that they both indicated a medical diagnosis of mental incapacity. Dr. Hutchinson swore her affidavit on March 26, 2020, with respect to a January 2020 examination. Dr. Ranchod swore his affidavit on April 6, 2020, indicating that his opinion arises from an examination of Fotini in March 2020.
- [14] On December 17, 2020, the Public Guardian and Trustee (PGT) filed responses to both petitions. The PGT specifically noted the particular transactions or withdrawals by Joyce, stating in both proceedings that the use of Fotini's bank accounts by Joyce and the credit card purchases were "concerning" to the PGT. The PGT indicated that the Court should likely wish to hear further submissions with respect to the point.
- [15] These are substantial issues. Jerry invites the Court to make findings that Joyce was in breach of her fiduciary duty by making or assisting her mother in making the withdrawals and purchases in these circumstances. However, I do not consider that I am in a position to do at this hearing. These are summary proceedings and these are serious allegations. There are significant disputes on the evidence as between Jerry and Joyce concerning whether Fotini was incapacitated at the time, whether the transactions were made with the consent and approval of Fotini, whether they were for her benefit, or whether they were consistent with a pattern of gifting that Joyce asserts.
- [16] More importantly, I do not find it necessary for the purpose of these completing applications to make any findings of fact with respect to Jerry's allegations that Joyce breached her fiduciary duty.
- [17] Now that Joyce has removed her name from consideration in respect of the estate appointment, I also consider that the need to address and determine that issue has become moot. This is largely because Joyce's access to Fotini's substantial funds is no longer an issue. In mid-2019, Jerry took steps to freeze Fotini's bank accounts and, since that time, Joyce has not had access to those accounts.
- [18] As I will discuss below, it remains the case that these unresolved allegations quite significantly inform the relationship of the parties toward addressing the issue as to who should be appointed the committee of Fotini's person.
- [19] In summary, I am satisfied that the overwhelming evidence establishes, as conceded by both parties, that Fotini is incapable by reason of mental infirmity and that she is incapable of managing her person and estate. I find that Jerry is the appropriate choice as the committee of Fotini's estate and he is appointed in that capacity.

## Committeeship of the Person

- [20] The stark choice before me is Jerry's contention that he should be the sole committee versus Joyce's contention that she and her brother Jerry should be co-committees.

- [21] I am well aware, as noted by counsel, that the paramount consideration in terms of who should be committee must be the best interests of Fotini: Palamarek (Re), 2011 BCSC 563 at para. 13.
- [22] I have been referred to Justice Masuhara's list of relevant factors set out in Stewart (Re), 2014 BCSC 2321 at para. 29, including:
- (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.
- [23] Counsel have also referred to Spring (Re), 2016 BCSC 917, where this Court applied the Stewart factors.
- [24] Both counsel have taken me through the substantial record before the Court in terms of the relationship of Jerry and Joyce in relation to the care issues concerning Fotini.
- [25] It is clear that Fotini is not in a position to express her wishes, although I accept that she has a close and loving relationship with both her children.

- [26] The next factor is whether the immediate family members are in agreement with the appointment. Both agree that an appointment is necessary; they do not agree as to who should be the appropriate committee here.
- [27] The next factor is the proposed committee's level of involvement with the patient. Usually family members are preferred. Jerry lives in Vancouver. The evidence establishes that Jerry has been very much involved with his mother's care, no doubt in part since he lives in Vancouver and in close proximity to his mother. Jerry has been very much involved in his mother's medical appointments, meals, the buying of groceries, the dealing with the caregivers and the like. Joyce has also been very involved in her mother's care when she has been able to visit from Edmonton. The fact that Joyce lives in Edmonton has necessarily resulted in her having less day-to-day or "on the ground" involvement in her mother's care.
- [28] The next factor is the level of understanding of the patient's current situation. I accept that both Jerry and Joyce are very aware of their mother's current condition and the state of her dementia. They are both prepared to support their mother with love and care, as they are able to do so in the future.
- [29] The next factor is who is able to advocate for Fotini's medical needs. In my view, both Jerry and Joyce are capable of doing that, but that leads to another factor, the appropriate plan of care and management.
- [30] In his evidence and submissions, Jerry provides substantial details as to an appropriate plan of care. Joyce has provided less details, although she appears to be supportive of the ongoing involvement of the caregivers. She also has definite ideas as to how that the care plan should be implemented.
- [31] The last relevant factor that I will discuss is set out in Stewart, which I will reproduce again (para. 29(c)):

Whether there is any conflict between the 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.

- [32] In my view, this last factor is the most relevant factor to be considered on this application.
- [33] No doubt poisoned to some extent by the financial issues that I have already discussed, the relationship between Joyce and Jerry is very high conflict and dysfunctional. In the abstract, that would not be an issue; however, the evidence conclusively demonstrates that the level of dysfunction between the siblings has had a negative effect on Fotini and her care. I will not go through the myriad of circumstances that support this conclusion. One example is that the conflict has resulted in a change of caregivers for Fotini. Jerry asserts, and I accept, that this change had a negative impact on his mother's care.

- [34] A major source of the conflict stems from the fact that Joyce and Jerry have very differing ideas about the proper approach to Fotini's care. Joyce is of the view that a very regimented or strict approach to her mother's care is what is required. Joyce no doubt wishes only the best for her mother and wishes her mother's health to be maintained to the extent it can, even given her current cognitive difficulties.
- [35] To the contrary, Jerry takes a more relaxed approach to his mother's care. He supports promoting and encouraging behaviours that will be of assistance and a benefit to his mother. However, he also states that there comes a point when the conflict - arising when Fotini does not agree to do something that others want her to do - is not necessarily in her best interests.
- [36] Jerry is supported in his approach by the doctors. In particular, Dr. Hutchinson supports Jerry's more relaxed approach to Fotini's care. Dr. Hutchinson states in her Affidavit that she has noted a discrepancy in Jerry and Joyce's respective approach toward the management of Fotini's medical condition and health state. Dr. Hutchinson notes that Joyce's "restrictive" approach is not necessarily Fotini's best interests.
- [37] This type of conflict between family members is not unusual, either in the area of family law and arising these types of applications under the Act. On this point, I have been referred to Sangha (Re), 2013 BCSC 1965 as follows:
- [78] I must give considerable weight to the wishes of the patient. On the other hand, cases on the appointment of a committee have consistently held that there should be no joint appointment where there is the potential for friction between the parties. As indicated in Rodsgaard (Re), 2009 BCSC 891 at para. 23, "dissention [between the potential co-committees] would be decidedly unproductive and most certainly not in the patient's best interests" (see also Fraser at para. 21). In Frazer v. Frazer, 2008 BCSC 545 at para. 15, the court refused to appoint the parties as joint committees because "the antipathy between them makes that option entirely unworkable." The case is similar here. To name all three children as committee will invite costly litigation in the future. Such conflict and expense is not in the best interests of the patient.
- [38] This sentiment is driven by common sense; where there is significant conflict between persons who might otherwise have acted as co-committees, the job at hand - acting in concert toward the patient's best interests - is not really achievable.
- [39] I conclude that there is most likely to be continuing conflict between Jerry and Joyce, particularly as to their respective approaches toward their mother and her care. I am more than satisfied that the friction between Jerry and Joyce will continue and arise in the future, a result that will not be in Fotini's best interests. In that event, the real probability emerges that this conflict and friction will result in either a delay in Fotini receiving needed care in the future or harm the care and management that she requires at this time.

- [40] Accordingly, I reject Joyce's submission that co-committees should be appointed. I find that Jerry is the appropriate person to be the sole committee of Fotini's person. I base my conclusion particularly on the fact that Jerry has been very much involved in his mother's day-to-day care over the last few years when she has increasingly needed assistance. I have no doubt that he will continue to do so under his appointment as committee.
- [41] The Stewart factors also refer to the future involvement of family members who want to be involved in their loved one's care. I am certainly alive to that factor and support Joyce's continuing involvement, as may be appropriate. I am of the view that the order can be fashioned to facilitate Joyce's ongoing involvement, as is appropriate by Joyce, which I have no doubt will be of benefit to Fotini.
- [42] In summary, Jerry is appointed as the sole committee of Fotini's person.
- "Fitzpatrick J."

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