

CANADA / JUDGMENT

Sohi v. Sohi

2020 BCSC 1870

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Supreme Court of British Columbia

DECIDED

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2020 BCSC 1870 Sohi v. Sohi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sohi v. Sohi,

2020 BCSC 1870

Date: 20201130

Docket: S217595

Registry: New Westminster

Between:

Dalbir Singh Sohi

Petitioner

And

Harbhajan Kaur Sohi, Hardev Singh Sohi, and

The Public Guardian and Trustee of British Columbia

Respondents

- and -

Docket: S225022

Registry: New Westminster

Between:

Hardev Singh Sohi

Petitioner

And

Dalbir Singh Sohi, Harbhajan Kaur Sohi, Sarvjit Kaur Chhina,

Sukhjeet Kaur Sandhu, and

The Public Guardian and Trustee of British Columbia,

Respondents

Before: The Honourable Madam Justice W.A. Baker

Reasons for Judgment

Counsel for the Petitioner, Dalbir Sohi:

M. Carter

Counsel for Hardev Sohi:

D. B. Ryneveld, QC

No other appearances

Place and Date of Hearing:

New Westminster B.C.

October 7, 2020

Place and Date of Judgment:

New Westminster, B.C.

November 30, 2020

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Introduction

- [1] In these two petitions which were heard together, two brothers agree that their mother is no longer capable, but disagree as to which of them should be appointed as her committee. The woman at the centre of the dispute is Mrs. Harbhajan Kaur Sohi. She is 93 years old, and was diagnosed with dementia in 2013. The two petitions are brought by her sons Hardev Singh Sohi (Petition 225022) and Dalbir Singh Sohi (Petition 217595).
- [2] At present Hardev Sohi has been responsible for his mother, and has arranged for her to live in The Vetrans Memorial Lodge at Broadmead, in Victoria, BC. Dalbir Sohi seeks to have his mother move into his home in Delta, BC, where she can be cared for by family. This is the essential disagreement between the brothers.

Issues

- [3] The issues on these petitions are the following:
- a) Should a declaration be made pursuant to s. 3 of the Patients Property Act, R.S.B.C. 1996, c. 349 that Harbhajan Sohi is incapable of managing herself and her affairs because of mental infirmity arising from disease, age, or otherwise?
 - b) Who should be appointed as committee of the person and estate of Harbhajan Sohi?
 - c) Should costs of either petition be paid out of the estate of Harbhajan Sohi?

Is Harbhajan Sohi incapable of managing herself and her affairs?

- [4] There is no dispute between the brothers that Mrs. Sohi is incapable of managing herself and her affairs, and both consent to such a declaration.
- [5] The Public Guardian and Trustee ("PGT") was given notice of both petitions. The response of the PGT states that medical affidavits in support of the petitions support the declaration that Mrs. Sohi is incapable of managing herself and her person, and takes no position on the declaration of incapability sought by the petitioners.
- [6] Dr. Shahzad Kurram, a geriatric and adult psychiatrist, examined Mrs. Sohi in September and November 2019. Dr. Kurram provided an affidavit setting out his opinion that Mrs. Sohi is incapable of managing both herself and her affairs by reason of mental infirmity arising from dementia of the Alzheimer's type which is both untreatable and irreversible.

- [7] Dr. Herbert Domke, a physician with a family practice, who recently confined his practice to nursing homes, began caring for Mrs. Sohi in June 2019 when she was admitted to the Gorge Road Hospital. He examined her ten times between June 2019 and January 2020. Dr. Domke provided an affidavit setting out his opinion, which is identical to that of Dr. Kurram, namely that Mrs. Sohi is incapable of managing both herself and her affairs by reason of mental infirmity arising from dementia of the Alzheimer's type, which is both untreatable and irreversible.
- [8] Pursuant to s. 3 of the Patients Property Act [PPA], the court is required to declare a person incapable of managing her affairs or herself where the court is satisfied, upon reading two affidavits of medical practitioners setting out their opinions, that the person is incapable of managing her affairs or herself because of mental infirmity arising from disease, age or otherwise.
- [9] Based on the uncontroverted evidence before me, I am satisfied that I must make the order of incapability sought in both petitions, consistent with s. 3 of the PPA.

Who should be appointed as committee of the person and estate of Harbhajan Sohi?

- [10] In *Stewart v. Stewart*, 2014 BCSC 2321, the court summarized the kinds of considerations a court may engage in when deciding between two competing applications for the appointment of a committee. *Stewart* has been relied on by this court in numerous cases including *Cho (Re)*, 2020 BCSC 689, and *Morrison (Re)*, 2020 195. While I have not set them out here, the considerations set out in *Stewart* guide my analysis of the relevant facts in this case, as set out below.
- [11] Mrs. Sohi immigrated to Canada in 1979 with her husband, who predeceased her in 1992. Mrs. Sohi did not remarry after her husband's death. Mrs. Sohi has five living children. Dalbir Sohi is the eldest living son, followed in age by two daughters, Sarbjit Kaur Chhina and Sukhjeet Kaur Sandhu. Hardev Sohi is the next eldest son, followed by Harpartap Singh Sohi. Dalbir Sohi and his two sisters live in the Lower Mainland. The two younger sons live in Victoria.
- [12] Over the years Mrs. Sohi lived for different periods of time with all of her children, as well as some of her grandchildren. However, from approximately 1982 to 2019 Mrs. Sohi resided primarily on Vancouver Island with Hardev Sohi and his family, including at times Harpartap Sohi and his family.

Representation agreement and power of attorney

- [13] On March 5, 2013 Mrs. Sohi executed an enhanced representation agreement for health care, naming Hardev Sohi as her initial representative and Dalbir Sohi as her alternate representative. On the same day Mrs. Sohi also executed a power of attorney appointing Hardev Sohi as her attorney, permitting him to exercise this power of attorney during any subsequent mental infirmity.

- [14] Dalbir Sohi stated that his mother actually wanted him to be the initial representative, but Hardev Sohi insisted because he lived closer to their mother. Dalbir Sohi says that his mother wanted him to care of her, regardless of the power of attorney naming Hardev Sohi and Hardev Sohi being named the initial representative under the representation agreement.
- [15] However, the representation agreement was executed before a lawyer who certified that the provisions of the agreement had been explained to Mrs. Sohi, and she appeared to understand it. The power of attorney was executed before the same lawyer.
- [16] I am satisfied that these documents represent the wishes of Mrs. Sohi in 2013 that her son Hardev Sohi would be the primary person responsible for her care in the case of her infirmity. However, it is also clear that Mrs. Sohi considered Dalbir Sohi to be equally capable of looking after her. While in 2013 it made sense for Mrs. Sohi to name Hardev Sohi as her first choice, given that at that time she was living in his home, I find that Mrs. Sohi was equally confident in the ability of Dalbir Sohi to properly represent her interests.

Assets and financial management

- [17] The assets of Mrs. Sohi are minimal. She receives approximately \$18,350 per year. She has a bank account in Canada which was valued at \$6,165 in January 2020, and Hardev Sohi holds \$22,600 for Mrs. Sohi's future funeral expenses. Mrs. Sohi has some jewelry, which Dalbir Sohi values at \$25,000. Mrs. Sohi may have a bank account in India, but the details of such an account were not clear in the evidence.
- [18] A disproportionate amount of evidence was led regarding certain financial transactions which occurred in 2016-2018. There are disputes in the evidence regarding what exactly happened. However, the gist of the matter is that in those years Mrs. Sohi wished to gift some money to her children. In or around 2016, Hardev Sohi received \$20,000, Dalbir Sohi received \$10,000, and the two sisters each received \$15,000. The oldest son had passed away by this time, but no money was given to his daughters, and no money was given to Harpartap Sohi.
- [19] Hardev Sohi says he later discussed with his mother her decision to not provide any money to the eldest son's children or Harpartap Sohi. Hardev Sohi says his mother agreed to provide \$7,500 to each of the deceased eldest son's daughters, and \$15,000 to Harpartap Sohi. Dalbir Sohi disputes the suggestion that his mother agreed to make these payments.
- [20] There are a number of other disputes about various relatively minor accounting issues Dalbir Sohi raises with respect to Hardev Sohi's conduct acting for their mother in her financial affairs. In response, Hardev Sohi raised a number of concerns he has with Dalbir Sohi's treatment of an apparent account in India.

- [21] It is clear that these past financial issues have caused significant discord between the siblings. On the evidence before me on this application, I cannot resolve whether Hardev Sohi or Dalbir Sohi acted improperly in relation to the relatively modest disbursement of funds in Canada to Mrs. Sohi's family or a possible account in India. However, I am satisfied that these issues do not need to be resolved on this application. I am not satisfied that either Dalbir Sohi or Hardev Sohi have conducted themselves in a way which would disqualify either of them from acting as Mrs. Sohi's committee.
- [22] If Mrs. Sohi had a large estate that was at risk of being dissipated by one of the brothers upon their appointment as committee, these issues might require an adjournment to consider further evidence and, potentially, cross examination of the affiants. However, presently Mrs. Sohi has limited resources and the real issue for me on this application is which brother is most capable of providing Mrs. Sohi with the best care for her remaining lifetime.

Mrs. Sohi's health and living arrangements

- [23] Most recently Mrs. Sohi was living with Hardev Sohi and his family. Her physical health began to deteriorate, making it difficult for Mrs. Sohi to negotiate stairs in Hardev Sohi's home. Her room was located down a short set of stairs away from the main living area in Hardev Sohi's home. She fell at least three times, and was admitted to Victoria General Hospital after each fall.
- [24] Hardev Sohi is a licenced practical nurse who works at Victoria General Hospital and his wife, Gurmej, works in the Victoria General Hospital kitchen. Both work full time, which resulted in Mrs. Sohi being home alone during their work days. However, since 2015 Mrs. Sohi did receive home care support from Beacon Community Services three times a day. This home care support ensured that Mrs. Sohi had breakfast and lunch and received attention for her hygiene when Hardev Sohi and his family were not there.
- [25] After her last fall in March 2019, Hardev Sohi determined that Mrs. Sohi needed to be placed in a long term care facility as it was not safe for Mrs. Sohi to remain in his home due to her high needs.
- [26] In June 2019 Mrs. Sohi was placed in the Arbutus View Unit at the Gorge Road Hospital. On October 21, 2019 she was transferred to The Veterans Memorial Lodge at Broadmead, where she remains today.
- [27] At the time Mrs. Sohi was moved to the first care home, Dalbir Sohi expressed his concern that the decision was being made in the absence of an opinion from Mrs. Sohi's family physician, which decision was required to allow Hardev Sohi to make decisions under the representation agreement. Dalbir Sohi had a lawyer write to Hardev Sohi to determine whether such a letter from the physician had been prepared, but Hardev Sohi did not reply to him. In 2019 Dalbir Sohi attempted to get information about his mother from the Gorge Road Hospital, but they refused to provide it. The petition of Dalbir Sohi was filed in

response to the state of affairs at that time. Since then more than a year has passed. Dalbir Sohi has received some of the records he sought, and opinions on Mrs. Sohi's mental status have been prepared.

- [28] Hardev Sohi states that he and the family members who live on Vancouver Island were able to visit Mrs. Sohi on a regular basis. Since the pandemic has been in effect, Hardev Sohi and his family have had window visits, video conference visits, and have participated in an email communication program the care home has set up to allow loved ones to send messages to patients. Hardev Sohi says that he has explained the pandemic and the rules restricting access to his mother. He says that given the problems with dementia, strict rules are required to control contamination.
- [29] Harpartap Sohi, Hardev Sohi's mother in law (also a long time friend of Mrs. Sohi), and Hardev Sohi's daughters all support Mrs. Sohi remaining in the care home. His daughter Anoop Sohi states that they have been visiting during the pandemic, and that Mrs. Sohi always appears happy and looks well taken care of. Ms. Sohi says that her grandmother understands the need for social distancing and admits she is in a good place. Ms. Sohi also says that there are several nurses at the Lodge who speak Punjabi.
- [30] Dalbir Sohi and his family have also visited Mrs. Sohi at the care home. They are very concerned that Mrs. Sohi is isolated as no other residents speak Punjabi, and Mrs. Sohi does not speak more than rudimentary English. Dalbir Sohi says that each time he visits his mother, she asks him when he is going to get her out of the care home. Since the pandemic, he has attended window visits at the home. On June 9, 2020 Dalbir Sohi and his sister visited their mother and Dalbir Sohi stated that Mrs. Sohi asked them 15 times "when will you take me home?"
- [31] Sarvijit Chhina and Sukhjeet Sandhu, daughters of Mrs. Sohi, say that when they visit their mother, Mrs. Sohi cries and tells them that she does not want to live in the home, and wants to live with her children. The sisters say that Mrs. Sohi also expresses anger at Hardev Sohi for placing her in the home.
- [32] Several translations of recordings made during visits to Mrs. Sohi appear to confirm these statement. These translations were made by the affiants and not a certified translator. However, although the two affidavits were sworn in August 2019, Hardev Sohi has not filed any material disputing the accuracy of the translations. While I do not reject the translations, I am not able to place much weight them, both because they are not certified translations and because Mrs. Sohi suffers from dementia and while she may express a desire to leave the care home she is not capable of expressing an informed position on her best interests.

Proposal of Dalbir Sohi

- [33] Before his retirement, Dalbir Sohi worked in financial institutions for 44 years holding executive positions, including from 2001 to 2015 when he was the CEO of a credit union based in Surrey, BC. Dalbir Sohi is retired from his previous career and now works part time, mostly from home, as a mortgage broker. His wife is retired and is also home most of the time. His son, daughter in law, and their child also live with Dalbir Sohi. The daughter in law is a registered nurse, who is on a maternity leave at present.
- [34] Dalbir Sohi has a suite on the main level of his home which is available for his mother. There are no stairs between this suite and main living areas of the home, such as kitchen, living room, and family room.
- [35] Dalbir Sohi proposes that if he is appointed committee, he would like to have Mrs. Sohi move into his home to be cared for by his family. He says that between his wife and himself, someone will always be in the home to care for his mother.
- [36] In December 2019 Dalbir Sohi had a Home Safety Assessment performed of his home by JR Rehab Services. A report was prepared by an occupational therapist. The therapist was given documentation from the Gorge Road Hospital which described Mrs. Sohi's functional status as of September 2019. As is clear from the report, the functional status provided to the therapist included Mrs. Sohi's need for various assists, transfer belts, walker, and wheelchair. The therapist made a number of recommendations for equipment to be installed in the home to accommodate Mrs. Sohi. Dalbir Sohi states that he will install all recommended equipment if Mrs. Sohi is permitted to move into his home.
- [37] Dalbir Sohi has also arranged for Mrs. Sohi to be treated by Dr. Gulzar Cheema, a family physician practicing near Dalbir Sohi's home. Dalbir Sohi provided an affidavit stating that if he is named committee, "I undertake that I will not move my mother from a care facility to my home unless and until Dr. Gulzar Cheema says in writing that my mother is able to live in my home and I will follow all of Dr. Cheema's directions and conditions in this respect."
- [38] Dr. Cheema also provided an affidavit where he acknowledges the opinions of Dr. Khuram and Dr. Domke as to Mrs. Sohi's mental status. He made the following undertaking, "I undertake to oversee the potential transfer of Mrs. Sohi from a care facility to Mr. Dalbir Sohi's residence. I also undertake that I will only approve of and direct that Mrs. Sohi be transferred to live with Mr. Dalbir Sohi if I determine that it is medically safe for Mrs. Sohi to reside with Mr. Dalbir Sohi at his residence."
- [39] Dalbir Sohi also states that he is committed to ensuring that Mrs. Sohi receives all the medical support and care she needs from professionals, and notes that his daughter in law is a registered nurse and is available to assist.

Position of the Public Guardian and Trustee

[40] The PGT suggested that it was not in the interests of Mrs. Sohi to be removed from the present care home unless a further qualified assessment was completed of her functional and care needs, the level of residential care required to meet her needs, and the assistance Mrs. Sohi would require with respect to the activities of daily living, together with a clear plan as to how her needs would be met and funded. The PGT offered no opinion as to which of Hardev Sohi or Dalbir Sohi should be appointed committee.

Conclusion

- [41] It is clear to me that all the children and grandchildren love and care deeply for Mrs. Sohi. It is also clear to me that Mrs. Sohi has been well taken care of during her time with Hardev Sohi, and in the two care homes she has been in since 2019.
- [42] Unfortunately, the decision to place Mrs. Sohi in the care home has caused an enormous rift between two camps within the family, and has resulted in the application before me.
- [43] As already discussed, this is not a case where significant financial assets are at risk. This is also not a case where the patient is being mistreated in her current living and care arrangements. Both Hardev Sohi and Dalbir Sohi agree that Mrs. Sohi is not capable and is in need of significant care. Mrs. Sohi clearly felt both Hardev Sohi and Dalbir Sohi were capable and competent to care for her needs, as both were named as her representative in the Representation Agreement in 2013.
- [44] The medical care provided to Mrs. Sohi at The Veterans Memorial Lodge at Broadmead is not challenged by Dalbir Sohi. The concerns of Dalbir Sohi arise from the fact that Mrs. Sohi is not living with family, as she has all her life. He is worried that she is isolated and lonely. This has been exacerbated by the pandemic which has necessarily placed severe restrictions on who can visit patients, and how those visits happen.
- [45] Dalbir Sohi has produced a viable proposal for Mrs. Sohi to move into his home and live with his family. He has carefully addressed her physical needs, the requirements for changes to his home to accommodate her physical limitations, and has ensured that she will have a local physician tending to her needs. Both Dalbir Sohi and Dr. Cheema have undertaken that Mrs. Sohi will not be moved into Dalbir Sohi's home unless it is medically safe to do so.
- [46] Mrs. Sohi has family both on Vancouver Island and in the lower mainland. While she has lived on Vancouver Island for many years, it appears from the evidence that most of her visitors are family, including the family who live in the lower mainland. Dalbir Sohi says that Mrs. Sohi has 33 family members in the lower mainland, and 14 family members on Vancouver Island.

- [47] There is a divide in the family as to who would be the most appropriate committee. One brother supports Hardev Sohi while two sisters support Dalbir Sohi. Unsurprisingly, the children of Hardev Sohi and Dalbir Sohi support their fathers being appointed. I cannot say on the material before me that the family at large clearly supports one brother over the other.
- [48] The real issue before me is whether Mrs. Sohi should live out her days in a care home on Vancouver Island, as she would if I appoint Hardev Sohi as her committee, or should live out her days in the care of her family, as she might if I appoint Dalbir Sohi as her committee and Dr. Cheema approves her move into his home.
- [49] Counsel for Dalbir Sohi concluded his submissions by stating that it is in the best interests of Mrs. Sohi to give her a chance to live with her family, and Dalbir Sohi is committed to give her that chance.
- [50] I am satisfied that Mrs. Sohi will benefit from living with her family, as she has done all her life. Mrs. Sohi may not live very many more years. It is my view that Dalbir Sohi has provided a plan which, if it is medically safe to do so, will allow Mrs. Sohi the best quality of life in her remaining years. She will be surrounded by people she loves and who love her. She will be in a familiar environment, with people she can easily communicate with. I find that the concerns of the PGT are met by the proposal of Dalbir Sohi.
- [51] I am satisfied that Dalbir Sohi will:
- a) respect the medical opinion of Dr. Cheema and will only move Mrs. Sohi if it is medically safe to do so,
 - b) ensure whatever equipment needed to assist Mrs. Sohi will be installed in his home before she moves into it, and
 - c) ensure that Mrs. Sohi has all the medical support and care she needs from professionals.
- [52] I find that it is in the best interests of Mrs. Sohi that Dalbir Sohi be appointed committee of the person of Harbhajan Kaur Sohi.
- [53] The response of the PGT states that, given the size of the estate, a bond is not required of Dalbir Sohi if he is appointed committee of the estate. I am satisfied that no bond is required of Dalbir Sohi. I am also satisfied that Dalbir Sohi has a solid financial background which will allow him to make appropriate decisions with respect to the estate of his mother. There is no reason why the committee of the person and the estate should be separated, and I appoint Dalbir Sohi as committee of the estate of Harbhajan Kaur Sohi

Should costs of either petition be paid out of the estate of Harbhajan Sohi?

- [54] In their petitions, both Hardev Sohi and Dalbir Sohi sought costs payable out of the estate of Harbhajan Sohi. Pursuant to s. 27 of the PPA, the court has discretion whether to make an order for costs. In *Viera (Re)*, 2013 BCCA 420, the Court of Appeal confirmed that the usual

order is that a successful applicant will have their costs paid out of the estate, because the appointment is made for the benefit of the patient. However, there is discretion to depart from this practice. The court in *Viera (Re)* notes that one reason to depart from the practice is that the estate of the patient cannot bear an order for costs.

[55] As already noted, the estate of Mrs. Sohi is very modest. Her income is only approximately \$18,000 each year, and she had less than \$10,000 in her accounts in January 2020. Mrs. Sohi has many health and physical needs, and her income is appropriately spent on her care, and not on an order for costs in favour of either son.

[56] In argument both petitioners acknowledged that estate could not bear an order for costs and, quite properly, both petitioners abandoned their claims for costs.

[57] As such, I have no difficulty exercising my discretion to make no order for costs in either petition.

"Baker J."

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