

CANADA / JUDGMENT

Spring (Re)

2016 BCSC 917

COURT

Supreme Court of British Columbia

DECIDED

24 May 2016

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2016 BCSC 917 Spring (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Spring (Re),

2016 BCSC 917

Date: 20160524

Docket: 52440

Registry: Kamloops

In the Matter of the Patients Property Act,

R.S.B.C. 1996, c. 349 and Amendments thereto

And

In the Matter of Eunice Marjorie Spring

Before: The Honourable Madam Justice Hyslop

Reasons for Judgment

Counsel for the Petitioner, Bernadette Joanne Stone:

E.C. Hughes

Counsel for the Respondent, Deborah Ann Flader:

S. Tucker

No one appeared for the Public Guardian and Trustee of British Columbia.

Place and Date of Trial/Hearing:

Kamloops, B.C.

April 18 & 19, 2016

Place and Date of Judgment:

Kamloops, B.C.

May 24, 2016

Introduction

- [1] The petitioner, Bernadette Joanne Stone and the respondent, Deborah Ann Flader are sisters. Each of them seek to be appointed as committee of the estate and person of their mother, Eunice Marjorie Spring pursuant to the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA].
- [2] Eunice Marjorie Spring, was born July 15, 1925 and she is now 90 years old
- [3] Both Mrs. Stone and Ms. Flader, as it relates to character and ability, qualify to be appointed as committee of their mother. Both Mrs. Stone and Ms. Flader financial circumstances are comfortable. Mrs. Stone is age 70 and Ms. Flader is age 56.
- [4] Mrs. Spring has been served with the petition as has the Public Guardian and Trustee of British Columbia (the "Trustee"). The Trustee takes no position.

Legislative Framework

- [5] Under the PPA, ss. 2, 3, 6, 18, 19(a) and 23(1) state:

Application and service of notice

2 (1) The Attorney General, a near relative of a person or other person may apply to the court for an order declaring that a person is, because of

- (a) mental infirmity arising from disease, age or otherwise, or
- (b) disorder or disability of mind arising from the use of drugs,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs.

- (2) Subject to subsection (3), a notice setting out the time and place of the application must be served personally on the person who is the subject of the application not less than 10 days before the date of the application.
- (3) On an application under this section, the court may
 - (a) direct that any person be served with notice of the application, or
 - (b) dispense with service on any person of notice of the application.

- (4) Despite subsection (3), unless the court is satisfied that service on the person who is the subject of the application would be injurious to that person's health or would for any other reason be inadvisable in the interests of that person, the court must not dispense with service on that person.

Hearing of application

3 (1) If, on

- (a) hearing an application, and
- (b) reading the affidavits of 2 medical practitioners setting out their opinion that the person who is the subject of the application is, because of

(i) mental infirmity arising from disease, age or otherwise, or

(ii) disorder or disability of mind arising from the use of drugs,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs,

the court is satisfied that the person is, because of

(c) mental infirmity arising from disease, age or otherwise, or

(d) disorder or disability of mind arising from the use of drugs,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs, it must, by order, declare the person

(e) incapable of managing his or her affairs,

(f) incapable of managing himself or herself, or

(g) incapable of managing himself or herself or his or her affairs.

(2) The court may, on hearing an application under this section and reading the affidavits described in subsection (1), direct an issue to be tried, and in that event the following provisions apply:

(a) the question in issue is whether the person who is the subject of the application is, because of

(i) mental infirmity arising from disease, age or otherwise, or

(ii) disorder or disability of mind arising from the use of drugs,

incapable of managing his or her affairs or incapable of managing himself or herself, or incapable of managing himself or herself or his or her affairs;

(b) this Act applies to the issue and the trial of it;

- (c) the Supreme Court Civil Rules apply;
- (d) the court must
 - (i) dismiss the application, or
 - (ii) by order, declare that the person who is the subject of the application
 - (A) is incapable of managing his or her affairs,
 - (B) is incapable of managing himself or herself, or
 - (C) is incapable of managing himself or herself or his or her affairs.

Appointment of committee

- 6 (1) Subject to section 13, on application by the Attorney General or any other person, the court may appoint any person to be the committee of the patient.
- (2) On application by the Attorney General, the Public Guardian and Trustee or any other person, the court may, subject to section 13, rescind the appointment of a person appointed as committee.
 - (3) Subject to section 16, except during the time that a person appointed under subsection (1), other than the Public Guardian and Trustee, is the committee of a patient, the Public Guardian and Trustee is the committee of the patient.
 - (4) An application under subsection (1) and an application under section 2 may be made as one application.

Exercise of powers

18 (1) A committee must exercise the committee's powers for the benefit of the patient and the patient's family, having regard to the nature and value of the property of the patient and the circumstances and needs of the patient and the patient's family.

- (2) A committee must, to the extent reasonable, foster the independence of the patient and encourage the patient's involvement in any decision making that affects the patient.

Effect on power of attorney or representation agreement of person becoming a patient by court order

19 On a person becoming a patient as defined in paragraph (b) of the definition of "patient" in section 1,

- (a) every power of attorney given by the person is terminated, and

Cost of maintenance, care and treatment

23 (1) A patient is liable for the cost of the patient's maintenance, care and treatment and, subject to section 18, the committee must pay out of the estate of the patient the amounts necessary to defray all just and reasonable charges for the maintenance, care and treatment of the patient.

Mrs. Spring's Health

- [6] The state of Mrs. Spring's health is not in dispute. Mrs. Spring suffers from Alzheimer's disease. Doctors Manville and Phillips agree that Mrs. Spring is incapable of carrying out most activities of daily living. Although Mrs. Spring can feed herself, she requires "cues" for all other activities. She cannot remember the location of her room where she lives at the Kiwanis Pavilion, nor is she able to express where she wishes to live. Mrs. Spring would not be able to recognize an emergency situation if presented with one. She is not aware of her finances. She believes a number of situations exist in her life, which existed in the past.
- [7] Based on the medical evidence and the evidence of her daughters, Mrs. Stone and Ms. Flader, I declare that Eunice Marjorie Spring, by reason of mental infirmity arising from disease, age or otherwise, is incapable of managing her affairs and her person.
- [8] The issue is who is best suited as between her daughters, Mrs. Stone and Ms. Flader, to be appointed as committee.

Positions

Mrs. Stone

- [9] Mrs. Stone's position is that she should be appointed as committee of the estate and person of her mother, as it is in the best interest of her mother. Ms. Flader should not be a preferred committee as Ms. Flader is not up to the job given the number of events that have occurred in her life and the manner in which she has provided care to their mother.

Ms. Flader

- [10] Ms. Flader's position is that she and Mrs. Stone have provided care to their mother pursuant to a valid power of attorney making an appointment of a committee unnecessary. Further, as Mrs. Spring is provided 24-hour care at the Kiwanis Pavilion, the appointment of a committee of the person is unnecessary as Mrs. Spring has executed a "Do Not Resuscitate" order in the presence of her physician. She argues that all Mrs. Spring's medical needs are met at the facility in which she resides.
- [11] However, if the court determines an appointment is necessary, then Ms. Flader argues that she is best suited because she has been caring for her mother for a number of years and she is better situated to discharge the duty of a committee.

Background

- [12] Mr. and Mrs. Spring retired to Victoria in 1991. Ms. Flader was residing in Victoria at that time and she continues to reside there. Mr. Spring died in 1997. Mrs. Spring's siblings have predeceased her.
- [13] The Springs, their two daughters, and their grandchildren had a close relationship.
- [14] Mrs. Stone and her husband, Ken and their family of three children moved to Kamloops over 30 years ago, where she and her husband raised their children.
- [15] Mrs. Spring came to Kamloops on many occasions to visit her daughter and her family. There were many occasions that Mrs. Stone visited Mrs. Spring in Victoria.
- [16] After 2012, due to Mrs. Spring's Alzheimer's diagnosis, Mrs. Spring no longer visited her daughter and her family in Kamloops.
- [17] Mrs. Stone states that at one point she considered moving her mother to Kamloops but received advice against it. There is no evidence that she discussed this with her sister, Ms. Flader, in fact, Mrs. Flader denies that her sister ever discussed this with her.
- [18] Mrs. Stone acknowledges in her affidavit #2, that her sister:
13. has lived in close proximity to our mother for most of her adult life, she took on the majority of the responsibility for her health and well-being. However, I took on all or most of the responsibility for our mother's health and well-being while she was visiting me or I was visiting her in Sidney.
- [19] Mrs. Stone and Ms. Flader find themselves in a bitter dispute over the care of their mother, Mrs. Spring.
- [20] It appears to have started when Ms. Flader's marriage of 31 years broke down. Up until then, Mrs. Stone was content to allow Ms. Flader to make decisions relating to their mother because of Ms. Flader's close proximity to their mother in Victoria. There does not appear to have been any disagreements about Mrs. Spring's care or whether she should be in a facility that she is in.
- [21] I gather that Ms. Flader's former husband, Richard, a chartered accountant, had a hand in looking after Mrs. Spring's finances. Mrs. Stone states:
31. Deb and Richard separated in November 2014. Following the separation, Deb became solely responsible for my mother's finances.
32. On April 18, 2015, I asked Deb for copies of my mother's banking and health documents. My intention was to become more involved in my mother's care. I also felt that Deb was under an enormous amount of stress and needed assistance. Further, if anything was to happen to Deb, I wanted to know where I could find all of my mother's important documents.

33. However, Deb refused to provide me with copies of my mother's bank and health documents. I would have been happy if Deb offered to provide me with copies of all future banking information, but she simply refused to provide any copies of anything.
- [22] On April 18, 2015, Mrs. Stone states that Ms. Flader refused to provide her with Mrs. Spring's financial and health records. Mrs. Stone and Ms. Flader, at income tax time went to the accountant to review their mother's tax return. Mrs. Stone told the accountant in the presence of Ms. Flader that she wanted copies of her mother's financial records. Mrs. Stone states that the accountant stated that as a joint power of attorney, Mrs. Stone should have them. Mrs. Stone states:
36. I saw that Deb was visibly upset by Nigel's [the accountant] comment.
- [23] At that meeting, Mrs. Stone sought suggestions from the accountant as to how to better communicate with her sister. After that meeting with the accountant, she continued to press Ms. Flader for the documents.
- [24] On May 29, 2015, Ms. Flader responded with an email directed to Mrs. Stone and her husband, Ken which states:

Bernadette.

I'm too angry and hurt to speak to your face.

So now you decide to show up after I have cared for Mom alone for 15 years. Counting the money, her money, as she nears the end of her life and not-so-subtly point your accusatory finger at me. I'm really curious why you waited until now to become involved?

How dare you come into my home, enjoy my hospitality, and threaten me and my children with the loss of a relationship with your children.

REALLY?

Everything has always been available to you. I have absolutely nothing to hide. You have power of attorney so go to the bank and dig all you want. Hire a forensic accountant on your own dime. I have never done anything that was not in Mom's best interest. There Is nothing that needs defending therefore I will not defend it. I am gobsmacked after how much of my life I have given freely for the care of OUR mom ~ and THIS?

FYI. The records at moms house are messy and incomplete because she throws stuff out or hides it before I can get to them and put them away. They are out of order because I FIND them out of order. The records at my house are messy and incomplete because I can barely manage my own life. Paying her insurance and taxes, keeping the house from flooding and stocking it with food and taking her to the doctor trumps flawless record keeping. The last 10 years have been a living hell for me, but I looked after mom with love just like I promised Dad I would on his death bed. When I had to start having her statements sent to my house I was unprepared and didn't have a system at the beginning to store her stuff. After my move it has taken the bank awhile to get

things sent to the right address. Some stuff still goes to the old address. These things were by necessity, not choice, are not my fault and do not imply wrong-doing. You have spent 4 days here. How easy is it? Try 15 years with a family of six, a covert Narcissist husband that is taking advantage of you, a kid that ran away and a 31 year marriage lost. Honest to God I can hardly function myself and spend days in a fog crying.

I. Can't. Do. Any. More.

[25] In reference to caring for her mother and her mother's home, Ms. Flader states:

I did not ask for this job, I've done it purely out of love and have never asked for, nor expected anything in return. Who spent 4 hours on her hands and knees for 3 days in a row cleaning shit out of the carpet. And taking the shitty laundry home to wash?

You have a right to Mom's financial information and no one has ever tried to keep it from you - but you do not have a right to implicate or threaten me. Full Stop.

You are welcome to take over her care and her finances at ANY time but it is a package deal.

And btw, if this is the kind of person you are, the threat of me and my kids not having a relationship with you is not a threat.

Do not threaten me that you will take away your kids and disown mine. That is a horrible thing to say or think and you should be ashamed. If you want to involve your children in this I will damn sure send them a copy of this email. I thought about it but I'm a bigger person and involving them is completely inappropriate. Why do I even need to tell you that.

I have had enough and you have crossed the line with that remark. I no longer tolerate people who disrespect me.

You have overstayed your welcome.

[26] Mrs. Stone responds in an email dated June 1, 2015. Mrs. Stone explains that by asking for documents, Ms. Flader should not construe this as not trusting her. She emails:

AS YOUR sister & a DAUGHTER to Mom I am flabbergasted at the way you acted in Nigel's office & also the way you feel now. You are treating me like a stranger & NOT your sister. We have always shared things before - why NOW all of a sudden are you lashing out at me??

We've talked about things for Mom before & because you have lived closer to Mom than me (I have lived in Kamloops for 32 years) you have had many last minute decisions to do for her. I GET THAT!!

It just wouldn't have worked any other way if you had to wait for me to arrive before making decisions. It takes me at least 7 hours just to get to Sidney.

[27] In a "P.S." Mrs. Stones writes:

Prior to Mom & Dad moving to Vancouver Island, we had asked them to move to Kamloops. They decided to go to Vancouver Island to watch your family grow as they had already spent quite a bit of time around our family. If their choice would have been Kamloops, we would have had the workload you ended up with, and you would have had the long distance trips.

- [28] These parts of the emails between the sisters are only the highlights as to what each said to the other. They both express their hurt and disappointment with each other.
- [29] In August of 2015, Ms. Flader sent a copy of the email that she sent to her sister to her sister's adult children.
- [30] This is how these sisters ended up in court quarrelling over who should take care of their mother and her finances.
- [31] It is obvious that Mrs. Stone and Ms. Flader have used bad judgement. First, Ms. Flader ought not to have sent the email. Rather, she should have pressed "delete" instead of "send" and prepared and sent a more reasoned email. This left Mrs. Stone to respond by defending herself against accusations levelled at her by her sister. Second, Mrs. Stone ought to have recognized that her sister was vulnerable and fragile after the breakup of a long marriage and that Ms. Flader's view of Mrs. Stone's position about documents was just another attack upon her. Mrs. Stone should also have pressed "delete" and should have answered her sister's email in more measured terms.
- [32] Mrs. Stone and Ms. Flader are now left in the position of coming to court to justify their positions. Mrs. Stone alleges that Lazy Boy chairs purchased for Mrs. Spring were not needed. Ms. Flader defends this purchase by stating that the furniture that Mrs. Spring owned was broken down and dirty. Mrs. Stone reviewed 37 cheques in her mother's bank account and describes them as "irregularities". To some people, "irregularities" could be as little as a minor error or outright dishonesty. Mrs. Stone queries certain actions that Ms. Flader took in moving Mrs. Spring's money to various accounts.
- [33] Ms. Flader states that she would welcome the assistance of her sister with her mother's finances. Ms. Flader in her affidavit explains the "irregularities" and explains why she moved money within Mrs. Spring's accounts. I accept those explanations.
- [34] Ms. Flader reviews family history in her affidavits stating that Mrs. Stone was 14 years older than her and had left their parents' home when Ms. Flader was 6 years old.
- [35] Mr. Spring died of Hepatitis C passed to him as a result of a blood transfusion. Ms. Flader promised her father that she would look after her mother. Ms. Flader describes her contact with her mother after her father died and her close contact with her mother.
- [36] As time went on, Mrs. Spring required more personal care. This was provided by Ms. Flader routinely and regularly and increased as Mrs. Spring's health declined. In addition, Mrs. Spring's home was older; it required repairs and changes to ensure the safety of Mrs. Spring. This is in addition to her own family responsibilities.

- [37] In June of 2015, Mrs. Spring was moved to Kiwanis Pavilion which specializes in people who suffer from dementia. The opening for Mrs. Spring to move to Kiwanis Pavilion came up quickly. Mrs. Stone was not advised of the move as she was away from her home at that time. I conclude that Mrs. Flader could have made a better effort to locate her sister.
- [38] Ms. Flader, together with her younger daughter, moved Mrs. Spring and some of her personal items to Kiwanis Pavilion. Mrs. Stone and her daughter travelled to Victoria and cleaned up Mrs. Spring's home. The cleaning of Mrs. Spring's home took one week.
- [39] Ms. Flader monitors her mother's health even though she is cared for by medically trained personnel at Kiwanis Pavilion. She alerts staff to any changes she observes or Mrs. Spring's need for some specific care.
- [40] Mrs. Spring is taken out by Ms. Flader for meals and other activities that she can enjoy. Ms. Flader makes sure that her mother has required new clothing and shoes. She has decorated her mother's room to brighten it up. She states that Mrs. Stone has not provided any day-to-day care to her mother since Mrs. Spring moved to Kiwanis Pavilion.
- [41] Ms. Flader explained why she was offended by what occurred in the accountant's office when reviewing her mother's tax return. The accountant suggested that Ms. Flader prepare a report relating to her mother's finances. Ms. Flader explains her predicament in her affidavit #1 at paragraph 77 and 78:
77. Following that meeting, Bernadette and I talked about Nigel's suggestion about my preparing Reports. At the time, I was recently separated from a 31 year marriage and deeply involved caring for my mom as she had deteriorated to the point of not being safe in her own home. It was all I could do to manage as I tried desperately to convey to Bernadette in that conversation and later my emails, which she attaches as Exhibits to both of her Affidavits; that I did not have the capacity to do more than I was already doing. I did not then and do not now say that I cannot continue to meet our mother's needs: I can, I do, and I am.
78. What I was trying to convey to Bernadette is that preparing the Reports would be one more obligation on my shoulders. Further, I did not consider the preparation of Reports to be necessary because Bernadette was full access to all of our mother's financial records. If Bernadette wants to take a more active role in monitoring or managing our mother's finances, I would welcome this; however, her decision to do so should not come as a further obligation to me.
- [42] Ms. Flader explains her present circumstances as follows:
99. Some months have passed from the time I sent those communications, and in that time I have largely settled my financial affairs with my former husband and feel more in control of my life and my future. I do not believe that I would have responded the same way, had the conversation about the Reports come up in 2016, as opposed to mid-2015. I believe that had I been in a less difficult period in my life, Bernadette and I could have had a more rational conversation about what was needed. However; I also believe that Bernadette bears some

responsibility to the breakdown in communication as well, including at one point actually threatening my relationship with her adult children with whom I have been close with their whole lives.

110 With hindsight, I can review the attached correspondence and acknowledge that I could have used different words and a different tone to communicate to Bernadette and her counsel my position with regard to issues around my mother's Power of Attorney and significant financial decision-making, including the sale of my mother's house. I can and do admit that I felt offended and upset that Bernadette, after electing to leave me with the significant task of managing my mother's day to day affairs, would challenge my commitment and ability to care for our mother. I could have communicated that fact in a less emotionally charge manner. For that I apologise.

[43] Ms. Flader states that her sister has misconstrued her not attending a meeting with her mother's case worker. Ms. Flader states that she has on numerous occasions met with case managers and on that particular date she had to work.

[44] Mrs. Stone is critical of the manner in which Mrs. Spring's home was kept and the schedule of care givers who came into Mrs. Spring's home when she was living there. Ms. Flader explains the state of her mother's home was as a result of her mother's ever-worsening Alzheimer's disease.

[45] Ms. Flader explains her mother's food bill costs. These costs are associated with her mother's Alzheimer's disease and will no longer be expenses because her meals are prepared and monitored at the facility in which she resides.

[46] Ms. Flader takes her mother out for lunch and for coffee. Mrs. Stone seems to suggest that Ms. Flader spends excessively.

[47] The sale of Mrs. Spring's home became another area of contention between Mrs. Stone and Ms. Flader. Ms. Flader acknowledges that she delayed in listing her mother's home because she wished to sell it privately so as to avoid the cost of real estate commission. Ms. Flader did obtain the consent of Mrs. Stone to show the home to private buyers. Unfortunately, Mrs. Stone and Ms. Flader exchanged some angry emails over the sale of Mrs. Spring's home. They could not agree on a real estate agent, so they co-listed it.

[48] Mrs. Stone and Ms. Flader have not discussed as to what to do with the sale proceeds of their mother's home. The funds remain in the lawyer's trust account.

Mrs. Spring's Wishes

[49] On July 28, 2000, Mrs. Spring signed a power of attorney making her daughters her attorney. In a side agreement, Mrs. Spring directs that

1. That neither of Bernadette nor Deborah will act unilaterally under said Power of Attorney without approval of the other so long as both are a live and competent to act as attorneys.

- [50] Mrs. Stone claims that she does not recall signing the side agreement, but does not deny that it is her signature on the agreement.
- [51] On the same date, Mrs. Spring signed a will in which her daughters are co-executors and entitled to share Mrs. Spring's estate equally.

Mrs. Spring's Estate

- [52] Mrs. Spring's income is approximately \$25,000 per year consisting of RRSP income, Old Age Pension income and Canada Pension Plan income.
- [53] The cost of her maintenance is approximately \$21,000 per year. Her capital does not exceed \$425,000.

The Law

- [54] When appointing a committee, the court exercises its discretion. The paramount consideration is that the appointment of a committee or committees must be in the best interest of the patient: *Palamarek (Re)*, 2011 BCSC 563, para. 13.
- [55] The factors to consider in the appointment of a committee are who best can deal with the financial affairs of the patient, insure that the patient's financial resources are applied for the patient's benefit, who is best to advocate for the medical needs of the patient, the previous involvement of the proposed committee with the patient, and that person's understanding of the patient's situation: *Palamarek* at para. 14, *Rempel (Re)*, 2001 BCSC 735, *Frazer v. Frazer*, 2008 BCSC 545 and *Bowman (Re)*, 2009 BCSC 523 at paras. 32 and 33.
- [56] The best interests of the patient trumps the wishes of family members: *Stewart v. Stewart*, 2014 BCSC 2321.
- [57] *Stewart* sets out for the court to consider a non-exhaustive list of criteria for the court to consider when appointing a committee. I have considered that criteria when appointing a committee to manage the person and the estate of Eunice Marjorie Spring.

Discussion

- [58] The appointment of either Mrs. Stone or Ms. Flader or both of them as committee would meet the wishes of Mrs. Spring based on Mrs. Spring's appointment of both of her daughters as her attorney and executors of her will. Mrs. Spring expected her daughters to agree as to how her estate would be managed so as to meet her needs at a time when she would be unable to manage her own financial interests.
- [59] There is conflict between Mrs. Stone and Ms. Flader. This conflict is recent in time, in particular, the spring of 2015.

- [60] Prior to that date, Ms. Flader managed the day-to-day care of her mother, not only personally, but also her mother's estate because she lived close to her mother and was acutely aware of her mother's needs and her mother's failing health. Mrs. Stone who lived in Kamloops was in communication with her mother, travelled to Victoria from time to time to provide some care for her mother when she could.
- [61] As to the management of Mrs. Spring's estate, Mrs. Stone was content to allow Ms. Flader to spend Mrs. Spring's money as Ms. Flader thought best and without interference.
- [62] Mrs. Spring's estate was not and is not complicated to manage, other than the repair of Mrs. Spring's aging home and meeting safety requirements for Mrs. Spring in her home.
- [63] Mrs. Spring's home has been sold and Mrs. Spring's safety is addressed at the facility in which she resides. The cost of her room and board is met each month with a single payment. Any other expenses are those for clothing, medication, entertainment and other miscellaneous expenses.
- [64] Both Mrs. Stone and Ms. Flader provide their mother with love and support.
- [65] Ms. Flader has in the past been involved in the daily support of her mother and making increasing decisions for her mother as her mother's health deteriorated. This is not a criticism of Mrs. Stone. To their credit, both of them educated themselves by taking a course about Alzheimer's disease and showed continued interest on the subject.
- [66] Mrs. Spring and Ms. Flader live in the same city and reasonably close. Over the years, Ms. Flader's care of her mother increased with the onset of Mrs. Spring's dementia. By all accounts, Ms. Flader's care of her mother has met all of her mother's needs. There is no evidence before me to suggest that Ms. Flader's care of Mrs. Spring has been less than appropriate. In fact, the medical evidence before me supports this conclusion.
- [67] Ms. Flader is able to pick up on health concerns that are not always noticed by care givers at the Kiwanis Pavilion. It is impossible for Mrs. Stone to provide this level of care given that she resides in Kamloops.
- [68] In order for Mrs. Stone to track her mother's care, she would have to rely on information communicated to her by the facility, not the day-to-day or week-to-week observations of her mother. This is the care that Ms. Flader provides to Mrs. Spring. Ms. Flader can act as an advocate for her mother's medical needs and other care provided at the Kiwanis Pavilion, a role difficult for Mrs. Stone to play because of where she lives.
- [69] I must also consider the discord that has arisen between these sisters. It has not always been that way. It arose as a result of Ms. Flader's personal circumstances and vulnerability at the time her 31-year marriage broke down. The discussion in the accountant's office was taken by Ms. Flader out of context and a criticism of her at the time when she could not take on any more responsibility, as purposed by Mrs. Stone and the accountant.

- [70] Despite the discord between them, I have concluded that Mrs. Stone and Ms. Flader can repair their relationship. It will not be repaired with court applications. To do so can only be to the detriment of Mrs. Spring's care, and in particular, Mrs. Spring's estate.
- [71] I have concluded that Mrs. Stone and Ms. Flader are committed to the care of their mother.
- [72] I conclude that given the proximity that Ms. Flader is to Mrs. Spring, the past care she has provided to her mother and the familiarity that she has with her mother's needs and medical care, Ms. Flader is best suited to be appointed as committee of Eunice Marjorie Spring's person. However, there are conditions to this appointment. They are as follows:
- 1) Ms. Flader must sign irrevocable authorizations directed to Kiwanis Pavilion and all medical professionals providing care to Mrs. Spring, providing permission for Mrs. Stone to obtain any and all information about her mother.
 - 2) Mrs. Stone may visit and take her mother for outings from Kiwanis Pavilion without the consent of Ms. Flader, but as a courtesy she should provide Ms. Flader notice of her intentions.
 - 3) Ms. Flader will not change Mrs. Spring's care facility without the consent of Mrs. Stone and failing that, a court order.
- [73] I appoint Mrs. Stone and Ms. Flader as joint committees of Eunice Marjorie Spring's estate without bond, subject to the following conditions:
- 1) Neither committee will purchase any item or any service exceeding \$1,000 without the other's consent, except the payment of Kiwanis Pavilion's monthly expense.
 - 2) Mrs. Stone will keep all records of Mrs. Spring's estate.
 - 3) Each month, Ms. Flader will send Mrs. Stone all receipts relating to all expenditures that she has made from her mother's money or reimbursement to herself for expenses she paid relating to her mother.
 - 4) Mrs. Stone shall receive all bank statements and all bank records relating to and belonging to Mrs. Spring. Mrs. Stone will provide copies to Ms. Flader upon request. This obligation is satisfied by Ms. Flader accessing this information on line.
- [74] By appointing both Mrs. Stone and Ms. Flader as co-committees of Mrs. Spring's estate, is not a criticism of Ms. Flader as to the manner she handled her mother's financial interests. Rather, it is in keeping with Mrs. Spring's wishes and the need for Mrs. Stone to participate in the care of her mother.

Transferring this Proceeding to Victoria

- [75] I see no need to consider at this time the transfer of this court file for all purposes to Victoria.

[76] Despite their apparent hostility to each other, it is not longstanding. I do not see any need for further intervention by the court. I adjourn this application generally.

Costs

[77] Ms. Flader seeks special costs against her sister, Mrs. Stone for pursuing an alleged meritless claim: *Westsea Construction Ltd. v. 0759553 BC Ltd.*, 2013 BCSC 1352, and alleged reprehensible conduct in conducting this litigation: *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 BCLR (3d) 242 (CA). Mrs. Stone's conduct does not warrant an order of special costs against her. It is not even close.

[78] I am satisfied that both Mrs. Stone and Ms. Flader engaged in this litigation with the goal of protecting and promoting their mother's best interests. I award each of them special costs, and incidental to this application, from Ms. Spring's estate to be determined either by agreement or as assessed by the registrar.

"H.C. Hyslop J."

HYSLOP J.

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