
CANADA / JUDGMENT

Stanton v. Stanton Estate

2008 BCCA 32

COURT

British Columbia Court of Appeal

DECIDED

24 January 2008

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2008 BCCA 32 Stanton v. Stanton Estate

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Stanton v. Stanton Estate,

2008 BCCA 32

Date: 20080124

Docket: CA034604

Between:

Ophelia Stanton

Appellant

(Plaintiff)

And

Jo Ann Bernadette Stanton, Executrix and Trustee

of the Estate of Donald Wilfred Stanton, Deceased

and the said Jo Ann Bernadette Stanton

Respondent

(Defendant)

Before:

The Honourable Madam Justice Newbury

The Honourable Madam Justice Saunders

The Honourable Mr. Justice Frankel

R.S. Henderson

Counsel for the Appellant

M.V. Barnard

Counsel for the Respondent

Place and Date of Hearing:

Vancouver, British Columbia

January 7, 2008

Place and Date of Judgment:

Vancouver, British Columbia

January 24, 2008

Written Reasons by:

The Honourable Madam Justice Saunders

Concurred in by:

The Honourable Madam Justice Newbury

The Honourable Mr. Justice Frankel

Reasons for Judgment of the Honourable Madam Justice Saunders:

- [1] Ophelia Stanton appeals from the order of Mr. Justice Bernard made October 26, 2006, declaring the Last Will and Testament of her husband, Donald Stanton, made January 2, 2002, valid. The reasons for judgment are indexed at 2006 BCSC 1574.
- [2] The respondent, Jo Ann Stanton is the executrix and a beneficiary under the Will. She is the only daughter of Mr. Stanton and his first wife, who died in January 2001 after 56 years of marriage.
- [3] In December 2001, Mr. Stanton, then 81 years old, married the appellant. She had been his housekeeper. Shortly after their marriage Mr. Stanton executed the new will. In it he left his cars to his new wife and the residue of his estate to his daughter.
- [4] The major asset owned by Mr. Stanton was the family house. On January 9, 2002, Mr. Stanton transferred the house into joint tenancy between himself and his daughter, thus giving to her, in the event of his death, the substantial portion of his assets in addition to the bequest in his Will.

- [5] Mr. Stanton told his new wife about the Will and the land transfer in January 2002. Mrs. Stanton expressed concern that she and her children would not have a place to live if he should die, and they discussed purchasing another house. Mr. Stanton investigated the possibility of obtaining a reverse mortgage from the equity held in the residence in which they then lived. Mr. Stanton fell ill in May 2002 and died in October 2002 without making arrangements for the housing of Ophelia Stanton in the event of his death.
- [6] In February 2003, Ophelia Stanton commenced an action under the Wills Variation Act, R.S.B.C. 1996, c. 490. In November 2005, she commenced this probate action alleging "suspicious circumstances" and calling into question Mr. Stanton's testamentary capacity. This action required Jo Ann Stanton as the executrix to prove the Will in solemn form.
- [7] Mr. Justice Bernard described the issues this way:
- [5] The primary issues for determination are whether the defendant has proved:
- (1) that Mr. Stanton had the requisite testamentary capacity; and
 - (2) that Mr. Stanton knew and approved of the contents of his Will.
- [6] A secondary issue is whether presumptive proof of (2) above, arising from a duly executed will, has been displaced by circumstances which excite the suspicion of the court.
- [8] Mr. Justice Bernard canvassed the position of the parties and the evidence before him. The evidence included the testimony of Ophelia Stanton to the effect that she considered Donald Stanton mentally competent at the time the Will was made, the testimony of Jo Ann Stanton generally to the same effect, and evidence taken by deposition from the solicitor who drew the Will for Mr. Stanton and attended at its execution.
- [9] Mr. Justice Bernard concluded that Mr. Stanton was mentally sound at the time the Will was made, expressing his reasons fully in these passages:
- [32] I am satisfied that the evidence proves that in December 2001 and January 2002 Mr. Stanton was mentally sound, though failing physical health. At the time in question Mr. Stanton was 82 years old, living independently, reading books, handling his own mail, paying his own bills, and managing his own affairs (financial and otherwise) without assistance or the need of it from others. He made his own arrangements to execute a new Will in contemplation of his impending marriage. He, alone, gave instructions to his solicitor and executed his Will. There is no evidence from which one could reasonably conclude that he was suffering from any form of dementia or that he was failing mentally.
- [33] The evidence shows that Mr. Stanton clearly understood the extent of his estate and the circumstances of all those who might reasonably stand to benefit from it upon his death. Mr. Stanton had a relatively modest and contained estate built up over a life-time with his recently deceased wife. Mr. Stanton knew that his estate included ownership of the family home, and he was alive to its potential value in the real estate market.

- [34] Mr. Stanton had only one child, a daughter with whom he was close and in frequent contact. He also had a new wife, with whom he had been in a relationship for about six months prior to the execution of his Will. Mr. Stanton knew that his second wife had young children for whom she was responsible.
- [35] The evidence establishes that Mr. Stanton intended that, upon his death, the bulk of his estate would go to his daughter as a beneficiary under his Will and as a surviving joint tenant. There is no evidence of any other expressed intention. In keeping with this intention, when Mr. Stanton decided to remarry he prepared a Land Transfer and a consulted a solicitor about a new Will. These were rational and sensible steps to further his intentions.
- [36] I reject the suggestion that execution of the Land Transfer was inconsistent with either Mr. Stanton's Will or with the evidence of his alleged desire to provide for his new wife and, therefore, indicative of a lack of testamentary capacity and/or a lack of knowledge and approval of the contents of the Will . As to the former, I am satisfied that these steps are complementary and consistent with his intentions. As to the latter, there is no evidence from which I might reasonably conclude that Mr. Stanton was precluded from providing for the plaintiff, if he so desired, merely because he put his daughter on title as a joint tenant.
- [37] The Will in question is short and simple. In essence it leaves Mr. Stanton's cars to the plaintiff and the residue of his estate to his daughter. It accords with the defendant's testimony that there existed a long-time family understanding that Jo-Ann Stanton would inherit the family home. This testimony is corroborated by a hand-written Land Transfer prepared by Mr. Stanton, which pre-dated the execution of the will.
- [38] The evidence shows that Mr. Stanton reviewed the Will with his solicitor before signing it. His solicitor had no concerns about Mr. Stanton's testamentary capacity and I find that there is nothing unusual about the Will's provisions. In relation to Mr. Stanton's comprehension of the contents of the Will and its effect, it is noteworthy that the plaintiff testified that Mr. Stanton accurately recounted to her the provisions of the Will shortly after it was signed; moreover, the plaintiff agreed that Mr. Stanton was, at the time, mentally competent.
- [10] In addition to the express finding of mental competence, Mr. Justice Bernard considered and rejected the submission that circumstances existed which should excite the suspicion of the court:
- [39] I have carefully considered the litany of alleged suspicious circumstances; however, in light of the foregoing findings I am unable to conclude that any of them, individually or in combination, are even remotely suspicious. They are neither capable of exciting the suspicions of the court with respect to Mr. Stanton's knowledge and approval of the Will nor do they call into question Mr. Stanton's mental capacity.

- [11] On this appeal, Mr. Henderson on behalf of Ophelia Stanton, submits Mr. Justice Bernard erred: in failing to give due regard to the pleadings of Jo Ann Stanton in the Wills Variation action concerning Mr. Stanton's lack of capacity at or about the time of making the will; in failing to give effect or due regard to Jo Ann Stanton's evidence concerning his lack of capacity; and in failing to find that circumstances existed with respect to the preparation and execution of the Will that excite the suspicion of the court. He contends that had adequate consideration been given to the first two matters or had suspicious circumstances been found to exist, the trial judge was required to determine whether Mr. Stanton's testamentary capacity was sufficient to rebut the suspicious circumstances, and that the trial judge erred in failing to take this analytical step.
- [12] The first submission concerns portions of the amended statement of defence filed by Jo Ann Stanton in the Wills Variation action in which she pleads that Ophelia Stanton exerted undue influence upon Mr. Stanton in the matter of his decision to marry, in particular this paragraph:
- [31] The Executrix says the Deceased lacked the appreciation and insight of the consequences resulting from this Marriage and did not have the mental capacity to enter into the Marriage given the undue influence exercised by the Plaintiff and the ill health of the Deceased at the time of the Marriage.
- [13] That pleading, as I read it, relates to an allegation of undue influence and some deficiency in Mr. Stanton's mental capacity in regards to entry into the marriage in December 2001. Pleadings, however, are not evidence. On its face this paragraph is clearly a pleading relating to the marriage and not a pleading in relation to the Will. Thus it cannot be seen as an admission that Mr. Stanton lacked mental capacity to make the Will in January 2002. As it is neither an admission on the issue in this case, nor evidence, it follows that it was not an error for the trial judge to fail to advert to it.
- [14] The second submission on behalf of Ophelia Stanton concerns the effect of a portion of the examination of Jo Ann Stanton in which she testified that her position is that Mr. Stanton was mentally incapable of making a decision concerning his marriage. However, in the same portion of her evidence she also advanced her view that her father was mentally capable of making a decision concerning his estate plan. I do not read her evidence as ever contrary to this latter position, and taken as a whole her evidence amounts to no more than her father was vulnerable to influence in the matter of his marriage. There was, therefore, in my view, no misapprehension of Jo Ann Stanton's evidence or failure to consider vital evidence contrary to the position advanced by Jo Ann Stanton at the trial, and I see no error in the fashion in which the trial judge considered her evidence.
- [15] These two submissions on which I have now expressed my view were in aid of the submission that circumstances existed with respect to the preparation and execution of the Will that should excite the suspicion of the court.

- [16] Determination of the existence, or not, of such circumstances is a matter within the purview of the trial judge. An appeal, of course, is not a fresh trial. This Court is not at liberty to interfere with the findings of fact, inferences of fact, or findings of credibility, absent a palpable and overriding error: *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235.
- [17] On my review of the evidence, I do not see the error urged upon us by Ophelia Stanton. The trial judge gave full and, in my view, unassailable, reasons for his conclusion that the circumstances were not suspicious. Further, he made a finding of fact that Mr. Stanton was mentally capable at the time he made his new will and, again, gave reasons for that conclusion.
- [18] It is true that some of the evidence the trial judge relied upon to come to his conclusion on mental capacity came from Jo Ann Stanton, who stood to gain from a conclusion favourable to her. That is not, however, a basis upon which to interfere with the factual conclusions of the trier of fact. In any case, there was ample evidence supporting Jo Ann Stanton's opinion of her father's competence in this matter and supporting the conclusions that Mr. Stanton was competent and that the circumstances were not suspicious. This evidence included the family relationships formed in earlier family life and the expectations of Mr. Stanton and his first wife, the sequence of events including Mr. Stanton's demonstrated intention to transfer the property into joint tenancy at a time that pre-dated his new will, and Mr. Stanton's conversations with Ophelia Stanton shortly after the making of the Will and the transfer of the property. The latter, in particular, demonstrated lucidity on the critical issues.
- [19] In addition to the evidence of the parties, there was evidence from the solicitor. We heard criticism of the fashion in which this solicitor performed her professional duties on behalf of Mr. Stanton. I think the thrust of this submission was that because the solicitor did not make a comprehensive assessment of Mr. Stanton's mental capacity, the trial judge should have doubted the sufficiency of the evidence adduced by the executrix as to his mental capacity, and his failure to do so demonstrated error. I do not agree. While it might have been helpful to have some notes from the solicitor as to her assessment of Mr. Stanton's mental capacity, the absence of this evidence simply meant that the trial judge was required to consider the evidence that was before him to determine whether the executrix had met her burden. He concluded that she had met her burden, and I cannot say this conclusion was an error.
- [20] In my view, there is no basis upon which to interfere with the order made. I would dismiss the appeal.
- [21] Last, Mr. Henderson made submissions on the matter of costs, urging this Court to award costs of the trial and of the appeal from the Estate. The trial judge has not yet made an order as to costs. The order disposing of the substance of the action was entered without finality on that issue. That is regrettable as it means that we cannot consider the issue of costs of the trial at this time. Nor, in my view, should we at this time consider costs of the appeal as the costs of the appeal should not be determined without knowing the disposition of costs at

trial.

[22] In summary, I would dismiss the appeal with liberty to the parties to make submissions on costs of the trial and the appeal when the order of costs in the Supreme Court of British Columbia is resolved and an order as to costs entered.

"The Honourable Madam Justice Saunders"

I AGREE:

"The Honourable Madam Justice Newbury"

I AGREE:

"The Honourable Mr. Justice Frankel"

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Prepared on 29 October 2026 · Esheria