

CANADA / JUDGMENT

Stemkowski v. Atkinson

2003 BCSC 1910

COURT

Supreme Court of British Columbia

DECIDED

27 August 2003

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2003BCSC1910 Citation: Stemkowski v. Atkinson Date: 20030827 2003 BCSC 1910 Docket: S020890
Registry: Vancouver IN THE SUPREME COURT OF BRITISH COLUMBIA Oral Reasons for
Judgment The Honourable Chief Justice Brenner Pronounced in Chambers August 27, 2003
BETWEEN: MIKE STEMKOWSKI, by his Guardian Ad Litem, The Public Guardian and Trustee of
British Columbia PLAINTIFF AND: DARLENE ATKINSON DEFENDANT Counsel for the Plaintiff:
D. Herbert No one appearing for the Defendant:

- [1] THE COURT: This is an application by the Public Trustee for relief on certain financial transactions which took place between Mr. Stemkowski and the defendant, his daughter.
- [2] Mr. Stemkowski received settlement proceeds from his divorce on June 16th, 1999, in the amount of \$33,231.19. These funds were deposited into a joint account at Canada Trust in the names of Mr. Stemkowski and his daughter, the defendant. Counsel for the Public Trustee advises that the purpose for this was so the defendant daughter would have access to the funds to assist the plaintiff.
- [3] On June 23rd, 1999, the defendant received \$22,000 from the plaintiff's bank account. Additional sums were received from May 29th to July 14th, 1999.
- [4] Earlier, the plaintiff had been assessed in 1998 and found to be mildly impaired cognitively. The defendant had obtained the power of attorney, but there were difficulties between the plaintiff and the defendant.
- [5] The expert report of Dr. Sheldon filed in this application contains his opinion that the plaintiff, Mr. Stemkowski, had lost the ability to manage his financial affairs prior to January 7th, 1999. Dr. Sheldon, in his report, outlines the reasons for that opinion. A number of basis are advanced by the Public Guardian Trustee. The initial submission is that under Section 20 of the Patients Property Act, any transfer of assets by a person who is or was a patient of that Act is void as against the committee, and were such transfers to take place, the onus is on a defendant to prove, if the argument is that the monies were transferred as a gift, that those gifts are valid.

- [6] On this application, the defendant has not appeared. There was, at the outset today, an application by the defendant daughter for an adjournment. That was declined by the court because no reason for the adjournment was provided to the court and no information of any kind was provided in support of that application. Accordingly, the application proceeded.
- [7] There is no evidence from the defendant as to the circumstances of these transfers. There is nothing to suggest that the transfers were a gift.
- [8] The counsel for the Public Guardian Trustee advanced a number of other arguments in support of the relief sought. In my view, they are not necessary.
- [9] There will be an order that the defendant holds \$25,500 in trust for the plaintiff. There will be judgment for the plaintiff in that amount as against the defendant. There will be a tracing order for all monies received by the defendant and of any assets purchased with the same, or sale proceeds of the sale of same. Prejudgment interest will go in the amount of \$4,081.22.
- [10] And finally, in my view, this is an appropriate case for special costs, given the particular vulnerability of Mr. Stemkowski and the nature of the transactions that the defendant chose to engage in. In my view, this is conduct which should be sanctioned by the court by an order of special costs, and that will go as well. "D.I. Brenner, C.J.S.C." The Honourable Chief Justice D.I. Brenner

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Prepared on 29 October 2026 · Esheria