CANADA / JUDGMENT

Stoker v. Young

2024 BCSC 637

COURT
Supreme Court of British Columbia

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2024 BCSC 637 Stoker v. Young

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stoker v. Young,

2024 BCSC 637

Date: 20240418

Docket: S246454

Registry: New Westminster

Between:

Elizabeth Aruna Devi Stoker also known as

Elizabeth Aruna Devi March

Plaintiff

And

Rachel Manorma Devi Young, Executor of the Will of Dorothy Dropati Ram, Deceased, Rachel Manorma Devi Young, Virginia Kalpana Devi Prasad

Defendants

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Plaintiff:

J.M. Diakow

Counsel for the Defendant, Rachel Manorma Devi Young, Executor of the Will of Dorothy Dropati Ram, Deceased:

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J. Parmar

Place and Date of Hearing:

New Westminster, B.C.

September 20, 2023

Place and Date of Judgment:

New Westminster, B.C.

April 18, 2024

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Introduction

[1] This matter comes before the Court based on cross-applications. The plaintiff seeks the appointment of an impartial trustee to take over the administration of the estate of the deceased and other orders. The respondents oppose the application of the plaintiff and seek its dismissal.

[2] The plaintiff applied, pursuant to section 103 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA], for the appointment of D. Manning & Associates Inc., licensed insolvency trustees as administrator pending litigation (the "Administrator") for the estate of Dorothy Dropati Ram, who died April 5, 2021 (the "Deceased"); and

[3] The plaintiff also applied, pursuant to section 102(2) of WESA, for an order that the estate of the Deceased shall vest in the Administrator, including the real property located at 5729 Neville Street, Burnaby, BC, and legally described as:

a) Parcel Identifier: 003-285-260

Lot 2 District Lot 159 Group 1 New Westminster District Plan 1025

(the "Home").

Background Information

[4] This case involves the estate of Dorothy Dropati Ram, who died April 5, 2021, at Burnaby, BC, at the age of 77 years (the "Deceased"). Years earlier, the Deceased had moved from Fiji to Canada.

[5] The Deceased was married to Shiri David Ram in 1981. Mr. Ram died during a tragic workplace accident in 2002 in the North Vancouver Port.

[6] Three children were born of the marriage: Elizabeth Aruna Devi Stoker, the plaintiff, born June 29, 1964; Rachel Manorma Devi Young, born June 18, 1974; and Virginia Kalpana Devi Prasad, born June 8, 1976. The latter two named children are defendants in this action, and will be referred to collectively in these Reasons as the Defendants, or individually by their last names, for ease of reference. It is noteworthy that the plaintiff is 10 and 12 years older than her younger siblings.

[7] The plaintiff resides with her husband in Maple Ridge, BC, and has two adult children. The defendant Rachel Young, has lived in the Home for many years, and continues to reside in that home. The defendant, Virginia Prasad, and her husband moved into the Home ostensibly to care for the Deceased prior to her death. Ms. Prasad also continues to live in the Home.

[8] There is a dispute between the parties concerning the relationships between the parties and the parents. The plaintiff asserts that she was in a close and loving relationship with her parents. The defendants assert that the plaintiff was estranged from the Deceased, an assertion which the plaintiff submits is false.

[9] In 1993, when the plaintiff's children were young, the plaintiff moved with her family from Coquitlam to Burnaby, where her family rented the top floor of the Deceased's home at 7883 Joffre Avenue, Burnaby, BC. The plaintiff and her husband paid rent of $500 or $600 per month to her parents. The plaintiff's parents were actively involved with both of plaintiff's children, their grandchildren. The grandparents and grandchildren met frequently and shared celebrations of holidays and special occasions including Christmas, Easter, Thanksgiving, Mother's Day, as well as birthdays, and these celebrations normally took place at the Deceased's home.

[10] The plaintiff asserts that for most of her adult life and up to the early 2020 she communicated with her mother by telephone almost daily and, in addition to regular telephone calls, shared the frequent celebrations referred to in the foregoing paragraph. The plaintiff also asserts that she travelled annually with her mother and other family members including a 2014 trip to Honolulu and a cruise to Seattle.

[11] In affidavit evidence, the plaintiff also spoke of the very close relationship between her daughter "S" and the Deceased. Following the death of the Deceased's husband, the Deceased experienced a deep depression. At that time, she formed a strong beneficial relationship with S, where the Deceased and S lived together in the Deceased's home for a period of about six years. During that time, the plaintiff provided child support benefits paid to the Deceased and continued to provide clothing and other items as needed for S. The Deceased and S also travelled together including trips to Fiji and England.

[12] The plaintiff also provided evidence that she had a close relationship with both of her parents, although the age difference negatively affected the relationship with her sisters, who are a decade, or more, younger than the plaintiff.

[13] The plaintiff provided evidence, in paras. 28 and 29 of her first affidavit, that she had spoken to the Deceased from time to time about the Deceased's will and other estate planning. These conversations took place over the telephone and on at least one occasion during lunch at the Grand Villa Casino in Burnaby. The Deceased told the plaintiff she had made a new will with the assistance of a Notary Public located in Surrey, BC. During these discussions, the Deceased informed the plaintiff that her will divided her estate, equally, between her three children (the plaintiff and the two defendants).

[14] In the same affidavit, the plaintiff reported that in the period up to early 2020, before COVID, the Deceased attended regular exercise and stretching classes at a gym. Prior to working out in the gym she had exercised by walking outdoors; however, in periods of inclement weather exercise in the gym was more practical. The plaintiff reported that in February or March 2019, the deceased had a heart attack which occurred just before her great-granddaughter's first birthday. With the encouragement of S, the Deceased called an ambulance.

[15] In a telephone call the following morning, the Deceased told the plaintiff that she had been admitted to hospital after the heart attack. The plaintiff testified that in the afternoon following that telephone call, the plaintiff went to Burnaby General Hospital to visit the Deceased accompanied by her husband, Brian. During that visit, the Deceased told the plaintiff that Ms. Young had been removed from the Hospital by security staff as a result of inappropriate and loud behaviour while under the influence of alcohol.

[16] It is apparent that apart from personal observations of witnesses, some of this evidence is hearsay, but at this early stage of proceedings, documents, including hospital security records, have not been disclosed. Ms. Young confirmed that examinations for discovery have not been held in this action. Curiously, despite detailing matters in the two affidavits she has sworn herein, regarding alleged facts going back decades, Ms. Young has not responded to the allegation that hospital security removed her from hospital in the circumstances noted above.

[17] There are further examples of inadmissible statements made in Ms. Young's affidavits including in her first Affidavit at paragraphs 4 and 5. In para. 4, Ms. Young states that the Deceased's will was prepared by a named lawyer. In submissions, there was no evidence of any prior meeting between that lawyer and the Deceased. If the was any history between the named lawyer and the Deceased, the parties seemed to agree that there is no file in the lawyer's possession which recorded the preparation of the will. There is no evidence nor assertion that Ms. Young personally observed the preparation of the will by anyone. In para. 5, Ms. Young refers the execution of the will again without any evidence that she was present at the time the will was executed.

[18] In the same affidavit at para. 19, Ms. Young provides her personal medical opinion and attaches to it as Exhibit "F" a letter apparently signed by medical doctor commenting on files of other doctors. There is no evidence that the doctor, who signed Exhibit "F", was present during the activities of the other doctors. Insofar as Exhibit "F" was intended to be a statement of fact displaying the personal knowledge of the doctor named, as the "facts" are not personally known to the doctor, the letter is simple hearsay of which the doctor had no personal knowledge. Exhibit "F" is therefore not admissible.

[19] Insofar as Exhibit "F" was intended as an expert report, it is not admissible due to the complete lack of compliance with the requirements of Rules 11-2 and 11-6 of the Supreme Court Civil Rules, B.C. Reg. 168/2009. Rule 11-2 requires that an expert must certify that they are aware of their duty to assist the court and to not be an advocate for any party, and that their report conforms with that duty. Rule 11-6 requires that the expert's report set out: the expert's qualifications, employment and educational experience in an area of expertise; the instructions provided to the expert; the nature of the opinion sought as well as the factual assumptions on which the opinion is based; and a list of all documents considered in the preparation of the opinion. All of these are lacking in Exhibit "F" as tendered, such that it is not admissible as an expert report.

[20] With reference again to the first affidavit of Ms. Young, her comments at paras. 20, 21, 23 and 24 are not statements of fact but statements of opinion without factual support and are likely not admissible. Paragraph 20 appears to contain the affiant's medical opinions; and no medical qualifications of the affiant have been put forward. Such opinions are likely inadmissible and, in any event, have no weight.

[21] The plaintiff, in an affidavit, related statements said to be made by the Deceased to the effect that the estate would, on her death, be divided in three equal bequests, one for each daughter.

[22] Shortly before the Deceased's death, and at the time when the plaintiff believed her mother was mentally incapable because of poor medical and physical health, with a failing memory, including a brain tumour, a will was signed by the Deceased.

[23] The plaintiff submits that in order to sign a will, the Deceased, who was unable to drive herself, would have been transported to the lawyer's office; a lawyer with whom she had no prior contact and no prior history. It is noted that the lawyer involved has declared that there was no legal file for the Deceased at that law office, particularly with respect to a will. It was argued that the lawyer's witnessing of the testator's signature is evidence that the testator was of sound mind. That said, no affidavit describing the circumstances of the execution of the will was filed by the lawyer. Nor did the lawyer have any file which detailed the Deceased's attendance at the lawyer's office.

[24] The defendants submit that the case of MacKinnon Estate (Re), 2023 BCSC 1396, is instructive, in which hearsay evidence was admitted for the purpose of proving the intentions of the testator. This submission is, with respect, an overstatement of the ratio of the noted case.

The Estate

[25] The Deceased's estate consists primarily of the Home, which had a 2022 BC Assessment value of $2,086,000, subject to a mortgage of $156,724.88 and a line of credit in the amount of $41,909.41, for an approximate value of $1,187,245.71. The estate also held a bank account in the amount of $1,630.06 for an estimated total estate value of $1,888,905.77.

[26] The terms of the will provided that the plaintiff would receive a total of $5,000 and the defendants would divide the residue of the estate, subject to probate fees and taxes, equally between them, in the approximate amount of $1,883,905.77.

[27] The contents of paras. 29 and 30 of Ms. Young's affidavit, sworn September 14, 2023, refer to a time when the plaintiff was 16 years old. At that time, the affiant referred to above was at most 10 years old. It would be extremely rare for a witness of that age to be called as a witness in this Court. There is approximately 60 years from the dates discussed in paras. 29 and 30 to the date of the hearing in this Court. The defendant, Ms. Young, refers to the plaintiff being married and running away from home but gives no information which would support any personal knowledge of this defendant as to either of these events. For instance, the defendant does not give evidence that she attended her sister's marriage or in any way witnessed the alleged "running away from home".

[28] The defendant refers to the plaintiff running away from home at age 16 as being "a well-known fact among our extended family/relatives". At best, the defendant repeats something she has heard and not evidence of which she has personal knowledge.

[29] It is puzzling, in para. 29, that the defendant refers to an event, the "running away", which would have occurred in 1980, when the plaintiff was approximately 16 years old, and that the defendant then boldly states that the plaintiff did not see her mother again until June 2020, forty years later. This statement is in direct conflict with other statements in the plaintiff's affidavit concerning "family travels" referred to in para. 32. Paragraph 29, assuming it is admissible, does not assist this Court to determine the facts of this case at all and can be

given no evidentiary weight.

[30] Paragraph 30 of the same affidavit presents similar challenges, where, for instance, Ms. Young refers to a conversation which someone else had with an unidentified police officer at an unspecified date after 1980. Again, this appears to be rank hearsay, and not admissible from this witness. The case of R. v. Khelawon, 2006 SCC 57, is authority that such statements are not admissible except for two noted exceptions; neither of which apply in this case.

[31] A more significant conflict is brought to light in the plaintiff's affidavit of September 8, 2023, at para. 11, where the plaintiff states that: (a) she married James Rao, a resident of Fiji, when she was 18 years old; (b) her parents were involved in arranging the marriage; (c) the plaintiff and Mr. Rao lived together for the following year; (d) the relationship became physically abusive and lasted about one year; and (e) when the relationship ended, the plaintiff returned to live with her parents in their home.

[32] In relation to the allegation made by Ms. Young about the plaintiff running away at age 16, the plaintiff stated she did not run away from home at age 16 but attended a private school called "Temple Academy". The plaintiff further stated that she lived in her parents' home until she was married at age 18, as noted above. The plaintiff was subsequently married to Christopher Stoker, which relationship subsequently produced two additional children.

[33] The plaintiff also described a number of meetings with her mother, in December 2019, and January or February 2020, following by COVID restrictions which prevented contact with the Deceased until June 2020.

[34] The plaintiff also asserted that she was asked by her mother, the Deceased, to travel to Hawaii; the plaintiff shared accommodation with her mother and an aunt; phonetically called "Pushpa". The three shared the cost of the room. Also shared was the cost of the Seattle cruise, where the plaintiff asserted she stayed in the same room as "Rachel" and "Manakshi". The plaintiff also asserts that she paid her mother for the cost of the trip.

[35] The difficulty throughout this case is that Ms. Young's evidence is substantially hearsay whereas the plaintiff's evidence is drawn from her personal knowledge.

[36] In the decision of MacKinnon Estate, Justice Girn noted that affidavits which purport to share the affiant's personal views as to intentions of a deceased are not admissible: at para. 30. I accept this statement as correct.

Conclusions

[37] Pursuant to Rules 25-10(10) and 25-10(11), the test to remove a Notice of Dispute is whether the filing of the notice is in the best interests of the estate: Richardson Estate (Re), 2014 BCSC 2162 at paras. 54, 58.

[38] In this case, the objection to the ground raised by the Notice of Dispute pertains directly to the will's validity and the validity of the estate grant which is sought. In the circumstances, it is necessary for the will to be proven in solemn form.

[39] In the case of Martyniuk Estate, 2016 BCSC 2024, Master McDiarmid held that it was not appropriate to deal with an application to cancel a notice of dispute where more issues were at play than the administration of the estate, and in that case a summary trial was directed on the issue of spousal status.

[40] Further, in the case of Schell Estate (Re), 2019 BCSC 2168, Justice Norell held that where there are allegations of lack of testamentary capacity or allegations of undue influence, proof in solemn form is required.

[41] In this case, the plaintiff asserts that the Deceased was confronted by significant medical issues affecting her capacity when the will in issue was executed, and there is no evidence admissible before this Court available to satisfy the capacity issue. There is also a concern about undue influence raised by repeated statements about an equal three-way sharing of the Deceased's estate. As it stands, the will divides the estate particularly unequally, where one beneficiary receives $5,000 or 0.26% and two other beneficiaries receive 99.74%.

[42] The bequest in the will relied upon by the defendants is less than clear, as it appears to refer to a half share in the estate being divided between the defendants resulting in a half share in the estate subject to an intestacy.

[43] Based on the findings made above, I conclude that the will in question must be proven in solemn form and that, pending the trial of that action, pursuant to section 103 of WESA, that D. Manning & Associates Inc., licensed insolvency trustees, is hereby appointed as administrator pending litigation ("the Administrator") for the estate of Dorothy Dropati Ram, late of Burnaby, British Columbia, who died on April 5, 2021, referred to herein as the Deceased.

[44] Pursuant to section 102(2) of WESA, the Deceased's estate shall vest in the Administrator, including the real property located at 5729 Neville St., Burnaby, British Columbia and legally described as:

a) Parcel Identifier: 003-285-260

Lot 2, District Lot 159, Group 1, New Westminster District Plan 10257.

[45] There shall further be an order that all documents and records of the Deceased in the possession of the defendants be delivered to the Administrator.

[46] Pursuant to section 103(2) of WESA, the administrator shall have all rights, powers and duties of a personal representative, other than the right to distribute the Deceased's estate. Without limiting the generality of the foregoing, the Administrator has the following rights and powers:

a) to collect and realize the Deceased's property of any kind whatsoever and transfer any of the Deceased's property into the name of the Administrator as administrator of the Deceased's estate;

b) to control the Deceased's bank accounts, investments, and other financial assets including the right to cash in or withdraw funds, to transfer them into a separate account, to invest them as allowed by law, and to spend them on expenses of the Deceased's estate;

c) that subject to the approval of this Court, first obtained on notice to all named beneficiaries, to sell the Deceased's property of any kind whatsoever;

d) to enter contracts on behalf of the Deceased's estate including without limitation for the purposes of insuring the property of the Deceased;

e) to commence, continue, or defend legal proceedings on behalf of the Deceased's estate; and

f) to take any steps regarding the managing of the Home, including but not limited to payment of expenses related to the Home and managing and collecting any rents in relation to the Home.

[47] The Registrar of Land Titles shall register the title of the Home in the name of D. Manning & Associates Inc., as administrator of the estate of the Deceased.

[48] The hourly rates charged by the Administrator as set out in Appendix "A" to the Notice Application of the plaintiff dated December 5, 2023, are approved by this Court as the remuneration of D. Manning & Associates Inc. for their services as Administrator for the Deceased's estate.

[49] The parties of record and the Administrator are at liberty to apply to amend this order following the resolution of any dispute, and for directions or instructions as appropriate.

[50] There will be an order that the parties of record shall exchange lists of documents within 30 days from the date of this order.

[51] Pursuant to section 19(1)(d) of the Power of Attorney Act, R.S.B.C. 1996, c. 370, and s. 2 of the Power of Attorney Regulation, B.C. Reg. 20/2011, Virginia Kalpana Devi Prasad and Rachel Manorma Devi Young shall, within 30 days of the date of this order: (a) provide in writing a complete accounting listing of any and all dealings as Power of Attorney for the Deceased or the period from January 1, 2018 to April 5, 2021 (the "Accounting"); and (b) produce all documents and records required to be kept by an attorney prescribed by section 2 of the Power of Attorney Regulation as part of the Accounting.

[52] There is a further order that the defendants shall, within 30 days of the date of this order, provide an inventory in writing of all documents or records in support of any claim that assets or property passed from the Deceased to either of the defendants or their family members (spouse, child or grandchild).

[53] The plaintiff shall be entitled to her costs of this Application paid from the Deceased's estate on a solicitor-client basis as an expense of administering the estate.

"Ball J."

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