

CANADA / JUDGMENT

Weitzel (Re)

2025 BCSC 1124

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1124 Weitzel (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Weitzel (Re),

2025 BCSC 1124

Date: 20250312

Docket: S2464184

Registry: Prince George

In the Matter of Undue Influence - Ellen Rosina Weitzel 2019 POA

Before: The Honourable Justice Gibb-Carsley

Oral Reasons for Judgment

In Chambers

The Petitioner, appearing in person:

C.M. Sandvoss

Counsel for the Respondent, Robert Geoffrey Weitzel:

K.E. Ducey

Place and Date of Hearing:

Prince George, B.C.

March 3, 2025

Place and Date of Judgment:

Prince George, B.C.

March 12, 2025

[1] THE COURT: These are my reasons for judgment.

Introduction

- [2] This petition is brought in the context of what appears to be a family disagreement between siblings over how their mother should be cared for, both in terms of her finances and her health. The petitioner, Cheryl Marie Sandvoss, seeks two orders from the Court. The first is to revoke a power of attorney (POA) for her mother, Ellen Rosina Weitzel, dated July 18, 2019 (the "2019 POA"). The second order sought is that Ms. Sandvoss become the sole power of attorney and have power of representation for Ms. Weitzel.
- [3] The respondent, Robert Geoffrey Weitzel, opposes the relief sought by his sister, Ms. Sandvoss. He argues that there is no basis for the Court to set aside the 2019 POA. Mr. Weitzel asserts that there is no evidence that he or anyone else exerted undue influence on Ms. Weitzel when she entered into the 2019 POA. Indeed, he argues that the evidence points to the contrary. He asserts that Ms. Weitzel had the capacity to enter into the 2019 POA and did so of her own volition. He also asserts that the 2019 POA was drafted by a lawyer, David Severide, who was familiar with Ms. Weitzel and the family because of earlier dealings, including drafting an earlier POA for Ms. Weitzel.
- [4] Mr. Weitzel also opposes Ms. Sandvoss's request to be appointed as a power of representation of Ms. Weitzel in respect of decisions related to Ms. Weitzel's health. He contends the Court has no jurisdiction to make such an order. He argues that if Ms. Sandvoss has concerns about the health or financial issues of Ms. Weitzel or that Ms. Weitzel is not being properly cared for, her remedy is to apply to be a committee under the Patients Property Act, R.S.B.C. 1996, c. 349 [PPA]. However, apart from the procedural opposition to the application, based on his submissions, he asserts there is no evidence he is making any improper health decisions for his mother.
- [5] For the reasons that follow, I accept that the petition must be dismissed.
- [6] In respect of the first order sought, setting aside the 2019 POA by Ms. Sandvoss, there is no evidentiary basis before me that supports her claim that there was undue influence over Ms. Weitzel when the 2019 POA was created. It was drafted by the same lawyer that drafted an initial POA in which both Mr. Weitzel and Ms. Sandvoss were named as having power of attorney over Ms. Weitzel. The lawyer had also been the family lawyer for some time on various issues. Indeed, in her own submissions to the Court, Ms. Sandvoss accepted that she believed that her mother was competent to enter into the 2019 POA. However, Ms. Sandvoss argued that there was an underlying influence by Mr. Weitzel that made her mother accept the 2019 POA. As I will discuss below, I also find that the terms of the 2019 POA are clear that it revoked any earlier versions of Ms. Weitzel's power of attorney. This includes the power of

attorney that had previously named Ms. Sandvoss as having shared power of attorney with Mr. Weitzel.

- [7] In respect of the second issue concerning the power of representation, I accept that the Court does not, in the circumstances of this case, have jurisdiction to grant the relief sought by Ms. Sandvoss, specifically, naming her to have power of representation over her mother. I will discuss my analysis of this issue in more detail below.
- [8] Before continuing in these reasons, I note that Ms. Sandvoss represented herself in this petition. Mr. Weitzel is represented by counsel. That said, I find that Ms. Sandvoss has prepared materials including supporting affidavits that allow me to understand the issues, her concerns, and come to a conclusion.
- [9] In these reasons I will first set out some background for context and then move to my analysis and determination.

Background

- [10] Ms. Weitzel is currently 93 years old. She lives in an assisted living facility in Tsawwassen, British Columbia, called KinVillage. Mr. Weitzel is her eldest child. He lives in proximity to Ms. Weitzel in the Lower Mainland of British Columbia.
- [11] Ms. Sandvoss is the daughter of Ms. Weitzel and the younger sister of Mr. Weitzel. Ms. Sandvoss resides in Prince George, British Columbia. She attempts to visit her mother whenever she can.
- [12] The parties have two other siblings: Lee William Thomas Weitzel and Richard Drew Weitzel. The other siblings, based on the submissions of Ms. Sandvoss, are generally aligned with Ms. Sandvoss's view that Mr. Weitzel is not acting in Ms. Weitzel's best interest, either in relation to her finances or her health, and that Ms. Sandvoss should be granted the power of attorney and the power of representation.
- [13] On September 29, 2014, Ms. Weitzel entered into an enduring power of attorney that named Ms. Sandvoss and Mr. Weitzel as equal powers of attorney (the "2014 POA"). Specifically, the 2014 POA provides that each of Mr. Weitzel and Ms. Sandvoss "may act separately" to be my attorneys. The 2014 POA expressly gave Mr. Weitzel and Ms. Sandvoss power to deal with land, make payments for support and care, to invest money, and to re-organize Ms. Weitzel's financial affairs.
- [14] While not specifically relevant to the matters before me, it appears that there were tensions related to a recreational property in Vernon, British Columbia (the "Vernon Property"). As I understand the facts, the Vernon Property was left to Ms. Sandvoss in Ms. Weitzel's will, but the gift would be accounted for by reducing her distribution from the estate by a similar amount. In other words, it was not intended to be a gift from Ms. Weitzel to Ms. Sandvoss in addition to a division of any inheritance.

- [15] However, in or about 2016, it was decided that Ms. Sandvoss should have the Vernon Property before Ms. Weitzel died. In order for the title to be transferred, it was agreed that Ms. Sandvoss would purchase the Vernon Property. As such, the fair market value of the Vernon Property had to be assessed such that Ms. Sandvoss would purchase the property from Ms. Weitzel. The assessment of the fair market value of the Vernon Property became a dispute between Ms. Sandvoss and Mr. Weitzel.
- [16] Eventually the parties settled on a price, and in February 2017, Ms. Sandvoss purchased the Vernon Property. However, it was evident to me that some resentment remains about this issue on the part of Ms. Sandvoss.
- [17] The issue of the Vernon Property is only tangentially related to the matters before me. However, I pause to note that it strikes me that at the time of the transfer, Ms. Sandvoss was the holder of the 2014 POA for her mother. Negotiating a lower price for the Vernon Property, as the holder of a power of attorney, appears to put Ms. Sandvoss in a conflict of interest at that time. Every dollar less that she paid for the property was a dollar less to her mother, and she was one of the individuals responsible for her mother's financial affairs. Her duty as the holder of the 2014 POA was to act as a fiduciary role to her mother and her mother's estate.
- [18] As held by our Court of Appeal in *Houston v. Houston*, 2012 BCCA 300, at para. 23, quoting from *Egli v. Egli*, 2004 BCSC 529:
- [23] It is the attorney's duty to use the power only for the benefit of the donor and not for the attorney's own profit, benefit or advantage
- [19] I am not suggesting that Ms. Sandvoss was using her power of attorney per se to her own advantage in the dealings with the Vernon Property, but a failure to even recognize that there was a potential conflict of interest between maximizing her mother's financial estate and her own interest is somewhat troubling. Indeed, Ms. Sandvoss does not appear to recognize that she was in or may have been perceived to be in a conflict of interest between acting as a fiduciary for her mother's financial affairs and then negotiating a lower price that she would pay for the Vernon Property. This issue was not raised before me, but it does strike me as curious that Ms. Sandvoss would involve herself in reducing her mother's estate for her own interest but asks the Court now to have sole control over her mother's financial affairs.
- [20] In any event, I only raise this issue because some time was spent on it by Ms. Sandvoss during the application. It is relevant to the issues before me only to the extent that it provides context to the parties' previous dealings.
- [21] Returning to the issues before the Court on this petition, in June 2019, Ms. Weitzel was hospitalized for a suspected heart attack. Upon being hospitalized, the diagnosis indicated that she had a blood clot in her lung. Ms. Weitzel was released from hospital but suffered reactions to some of the medical procedures and was readmitted to hospital. During this

illness, Ms. Sandvoss travelled from Prince George to be with her mother. At that time, there were some verbal disagreements between Ms. Sandvoss and Mr. Weitzel regarding Ms. Weitzel's care. Ms. Sandvoss returned to Prince George on June 24, 2019.

- [22] On July 18, 2019, Ms. Weitzel had a new enduring power of attorney drafted by Mr. Severide, which I have referred to as the "2019 POA,". As referenced above, this was the same law firm that drafted the 2014 POA and was involved in the Vernon Property transfer from Ms. Weitzel to Ms. Sandvoss.
- [23] The 2019 POA appoints only Mr. Weitzel as Ms. Weitzel's power of attorney. It appoints Ms. Sandvoss as an alternative if Mr. Weitzel dies or becomes unable or unwilling to act as a power of attorney. The 2019 POA specifically revokes all other POAs previously granted by Ms. Weitzel.
- [24] Ms. Sandvoss says she was never notified about the creation of the 2019 POA and only became aware of it in June 2022 when she attempted to do some banking and was told that the 2014 POA was no longer the operative POA for Ms. Weitzel.
- [25] As mentioned above, Ms. Weitzel is currently residing at a long-term health care facility called KinVillage. Ms. Sandvoss has concerns about Ms. Weitzel's health treatments. The concerns raised at the hearing are largely centred on an email exchange that she had with Mr. Weitzel in which Mr. Weitzel arranged for a continuous positive airway pressure machine (CPAP), to be provided to Ms. Weitzel. Ms. Sandvoss believes that Mr. Weitzel is imposing his belief on what is in her mother's best health interest and also that it is costing additional amounts of money because there are costs involved with ensuring the CPAP machine is being operated by staff at KinVillage. As I understand her argument, she says that Mr. Weitzel is spending Ms. Weitzel's money irresponsibly and not in Ms. Weitzel's best interest from a health perspective and that the CPAP machine was not needed and, in fact, could be detrimental to Ms. Weitzel. Further, Ms. Sandvoss alleges that it is not in Ms. Weitzel's financial interest because the cost of care is excessive and unwarranted. Ms. Sandvoss asserts that while the cost of KinVillage is supposed to be limited to \$4,000 a month, under Mr. Weitzel's instruction, Ms. Weitzel's living expenses are approaching \$20,000 per month.
- [26] It is with this general understanding of the facts that I now turn to my analysis.

Analysis

- [27] I will first provide my analysis that led me to dismiss Ms. Sandvoss's request for an order to set aside the 2019 POA. I will then turn to my consideration of why I decline to grant Ms. Sandvoss a power of representation over Ms. Weitzel.

The Validity of the 2019 POA

- [28] Ms. Sandvoss contends that the 2019 POA should be nullified, thus restoring the 2014 POA, either because Ms. Weitzel entered into that agreement when Ms. Weitzel was vulnerable and under duress from Mr. Weitzel or because Ms. Sandvoss was never provided notice of the 2019 POA. In my view, there is no support to grant her order on either basis.
- [29] In short, there is simply no evidence before me that the 2019 POA entered into by Ms. Weitzel should be set aside because it was obtained under duress or undue influence or other questionable circumstances. As referenced above, it was prepared by David Severide and signed by Ms. Weitzel. Mr. Severide created the 2014 POA. From the evidence before me, he had at least some knowledge of Ms. Weitzel and the family from his dealings on the 2014 POA and in the transfer of the Vernon Property. The law firm also created Ms. Weitzel's last will and testament on September 29, 2014.
- [30] I would need at least some evidence that Mr. Severide had the 2019 POA signed by Ms. Weitzel despite having concerns that she was not doing so of her own free will or that she was incapable or lacked the requisite mental state to enter into the 2019 POA. There is no such evidence.
- [31] I note that the health issues that hospitalized Ms. Weitzel in June 2019 that Ms. Sandvoss argues made Ms. Weitzel vulnerable because she was on medication occurred a month before the 2019 POA was signed in mid-July. Further, the health issues that Ms. Sandvoss contends may have incapacitated Ms. Weitzel are "weaning off prednisone" - a drug she was required to take in response to her reaction to a diagnostic treatment while she was at the hospital. There is no evidence that a month after this medical observation that Ms. Weitzel was incapable of entering into the 2019 POA.
- [32] In this regard, I also note that s. 11 of the Power of Attorney Act, R.S.B.C. 1996, c. 370, deems that an adult is capable of making or changing power of attorney unless the contrary is demonstrated. Section 11 provides:

Adults presumed to be capable

11(1) Until the contrary is demonstrated, an adult is presumed to be capable of

- (a) making decisions about the adult's financial affairs, and
 - (b) understanding the nature and consequences of making, changing or revoking an enduring power of attorney.
- [33] There is no evidence to suggest that Ms. Weitzel is not capable of making decisions or understanding the nature and consequences of making the 2019 POA. The contrary has not been demonstrated, and I do not accept this as a basis to set aside the 2019 POA.

- [34] I have also considered Ms. Sandvoss's argument that Mr. Weitzel exerted undue influence over Ms. Weitzel. Undue influence is an equitable doctrine to protect people from being victimized by other people. In *Cowper-Smith v. Morgan*, 2016 BCCA 200, our Court of Appeal considered the doctrine of undue influence at paras. 49 and 50 as follows:
- [49] A presumption of undue influence is established when the nature of the relationship between the parties demonstrates the potential for domination. To rebut the presumption, the donor must be shown to have entered into the transaction of her own "full, free and informed thought."
- [50] Factors to be considered in determining whether the donor acted of her own "full, free and informed thought" in entering the transaction include: (i) the lack of actual influence or opportunity to influence the donor; (ii) the receipt of or opportunity to obtain independent legal advice; (iii) the donor's ability to resist any such influence; and (iv) the donor's knowledge and appreciation about what she was doing. See *Stewart v. McLean*, 2010 BCSC 64, at para. 97.

See also *Davy v. Davy*, 2019 BCSC 1826, at paras. 51 to 53.

- [35] I do not find that Ms. Sandvoss has raised a rebuttable presumption that Mr. Weitzel exerted undue influence over Ms. Weitzel. In examining the facts of this case, I do not see any evidence that Mr. Weitzel has received a benefit from any transactions carried out by Mr. Weitzel under the 2019 POA. Put another way, there is no evidence before me that Mr. Weitzel is using the 2019 POA improperly or for his own benefit. Even if I were to find that there was a potential of undue influence by Mr. Weitzel over Ms. Weitzel, I conclude that Mr. Weitzel has rebutted the presumption that the 2019 POA was not created based on undue influence. In this regard, as already mentioned, the creation of the 2019 POA was completed by a lawyer who was familiar with the parties and most importantly, with Ms. Weitzel. Further, there appears to be no benefit to Mr. Weitzel, or to use the language of the case law, transactions from which he benefitted.
- [36] It appears that a primary basis for Ms. Sandvoss's argument that the 2019 POA is invalid is because she was not provided with notice when it was prepared and that she was not provided notice that the 2014 POA was revoked. I will turn to that argument now.
- [37] Ms. Sandvoss's argument that the 2019 POA is invalid because the 2014 POA was not revoked also cannot succeed. Clause 3 of the 2019 POA revoked the 2014 POA as Ms. Weitzel declared, "I revoke all other Powers of Attorney previously granted by me". There is no ambiguity in this statement.
- [38] As I understand her argument, Ms. Sandvoss asserts that because she did not get notice of the 2019 POA, its revocation of the 2014 POA and her role as a power of attorney is not revoked and is still valid. I find this argument untenable. First, by her own evidence, she had notice of the 2019 POA on June 2, 2022, when she contacted the Severide Law Firm requesting information about the status of Ms. Weitzel's POAs. As such, from that time

onward, she cannot assert that she did not have notice and would be aware that the 2014 POA was revoked.

[39] Second, in my opinion, respectfully, Ms. Sandvoss confuses the implication of her not being provided notice of a revocation. Her view is that the failure to give notice to her somehow invalidates the 2019 POA, thus making the 2014 POA continue in force and effect. This misunderstands how and why the law has developed around issues of failure to provide notice of revocations of powers of attorney.

[40] A court may find that a previous power of attorney continues to have effect and is not revoked by a subsequent power of attorney being issued if there is not notice provided. However, such a situation generally arises in circumstances in which the court may intervene to protect the holder of that earlier power of attorney who may act in good faith and on a belief that they were acting with lawful authority under a power of attorney when they were not. Further, the law has developed to protect an innocent third party from engaging with a person who believed they held a power of attorney. This is made clear in s. 4(1) of the Power of Attorney Act which provides in part:

Effect of termination

4(1) If

- (a) the authority of an agent has been terminated, and
- (b) a person who has no knowledge of the termination purports to deal with the principal through the agent,

then, for the purpose of determining the legal rights and obligations of the principal in relation to that person, the transaction is, in favour of that person, deemed to be as valid as if the authority had existed.

See also *Houston v. Houston*, 2012 BCCA 300, at paras. 26 to 28.

[41] Put another way, failing to give notice of the 2019 POA to Ms. Sandvoss does not make its issuance invalid. Nor does it keep the 2014 POA operative. Ms. Weitzel had capacity to choose to whom to give her power of attorney. She chose to revoke her earlier power of attorney and appoint Mr. Weitzel as her sole POA. There is no basis to set aside the 2019 POA.

[42] As such, I dismiss this aspect of Ms. Sandvoss's petition.

The Power of Representation

- [43] The second aspect of this petition is Ms. Sandvoss's request to revoke the power of representation issued to Mr. Weitzel and to appoint herself as power of representation for Ms. Weitzel's health issues. As referenced above, Ms. Sandvoss's concern can generally be summarized as a concern that Mr. Weitzel is not making decisions that are in the best interests of Ms. Weitzel's health or her finances as they relate to Ms. Weitzel's health care.
- [44] As referenced above, the specific instance she cites is Mr. Weitzel's alleged insistence of having a CPAP machine used by Ms. Weitzel when she had a respiratory issue. Ms. Sandvoss contends that Mr. Weitzel is using his own unsupported medical views to make decisions that are not in Ms. Weitzel's best interest. She also asserts that it is causing additional expense at the long-term health facility because an attendant is required when Ms. Weitzel is using the CPAP machine.
- [45] Leaving aside the concerns expressed by Ms. Sandvoss, and I note I have no doubt that she brings these applications in respect of her mother's well being, in my opinion this aspect of the petition is ill founded and cannot succeed. The Court does not have jurisdiction to revoke a power of representation in the manner requested by Ms. Sandvoss. In my view, Ms. Sandvoss has two potential avenues to pursue if she is concerned that Ms. Weitzel's health was not adequately being cared for by Mr. Weitzel.
- [46] The first way is to seek a change in the representation agreement, which it appears Ms. Sandvoss is pursuing, as set out under part 5 of the Representation Agreement Act, R.S.B.C. 1996, c. 405 [RAA]. Section 30 of the RAA provides that a person may make an objection to the Public Guardian and Trustee ("PGT") if there is reason to believe certain circumstances are present. These circumstances include the following:

Objecting to agreements, changes or revocations

30(1) Any person may make an objection to the Public Guardian and Trustee if there is a reason to believe that

- (a) an adult is, or was at the time, incapable of making, changing or revoking a representation agreement,
- (b) fraud, undue pressure or some other form of abuse or neglect is being or was used to induce an adult to make, change or revoke a representation agreement,
- (c) the making, use or revocation of a representation agreement or a change to a representation agreement is clearly inconsistent with the current wishes, values, beliefs or best interests of the adult who made, revoked or changed the agreement,
- (d) there is an error in a representation agreement or an error was made in executing, witnessing or registering the agreement,

- (e) anything improper has occurred in the making, use or revocation of a representation agreement,
- (f) [Not in force. Repealed 2006-33-2.]
- (g) a representative is not qualified under section 5 (1),
- (h) a representative is
- (i) abusing or neglecting the adult for whom the representative is acting,
- (ii) failing to follow the instructions in the representation agreement,
- (iii) incapable of acting as representative, or
- (iv) otherwise failing to comply with the representation agreement or the duties of a representative,
- (i) a representative has given or proposes to give consent to health care that is not authorized by the representation agreement, or
- (j) any criteria specified in the representation agreement as grounds for objection have been met.

[Emphasis added.]

[47] Evidence placed before me on this hearing indicates that Ms. Sandvoss contacted the PGT and voiced her concerns regarding the health decisions that Mr. Weitzel made for Ms. Weitzel. Indeed, during the hearing Ms. Sandvoss handed me a letter dated February 26, 2025, from the PGT which indicated that they will be reviewing Ms. Weitzel's circumstances. While not explicit in the letter, it appears that the PGT is responding, as it is required to do so under s. 30(3) of the RAA, which provides:

- (3) On receiving notice of an objection, the Public Guardian and Trustee must promptly review the objection and may do one or more of the following:
 - (a) conduct an investigation to determine the validity of the objection and then advise the objector of the outcome;
 - (b) to (d)[Not in force. Repealed 2006-33-2.]
 - (e) apply to the court for an order confirming a change to, or the revocation of, a representation agreement, or for an order cancelling all or part of a representation agreement;
 - (e.1) apply to the court for an order that a representation agreement is not invalid solely because of a defect in the execution of the agreement;
 - (f) recommend that someone else apply to the court for an order referred to in paragraph (d), (e) or (e.1);
 - (g) make a report under section 46 of the Adult Guardianship Act;

(g.1) appoint a monitor;

(g.2) authorize that a monitor appointed under paragraph (g.1) be remunerated, out of the adult's assets, for acting as a monitor in relation to authority given to a representative under section 7(1) (a), (b) or (d) and set the amount or rate of the remuneration;

(h) take any other action that the Public Guardian and Trustee considers necessary.

[48] Based on the letter, it seems that the PGT is undertaking an investigation which may or may not lead to the PGT taking further legal action. At the hearing before me, Mr. Weitzel's counsel informed me that the PGT had made arrangements to interview Mr. Weitzel in the days following the hearing of this petition and before these reasons for judgment are being issued.

[49] The other remedy which was referenced by Mr. Weitzel's counsel was that Ms. Sandvoss could apply pursuant to s. 2 of the PPA for an order declaring that Ms. Weitzel is, because of mental infirmity arising from disease, age, or otherwise, incapable of managing her affairs. Ms. Sandvoss could then apply to be appointed as a committee under s. 6 of that Act.

[50] Whether Ms. Sandvoss continues to pursue remedies under the RAA or commences an application under the PPA, are not now before the Court. Simply put, in the current circumstances of this case, I conclude that I have no jurisdiction to make such an order to revoke the power of representation issued to Mr. Weitzel and to appoint Ms. Sandvoss as Ms. Weitzel's power of representation. As such, I dismiss this aspect of Ms. Sandvoss's petition.

Costs

[51] Ms. Sandvoss asks the Court to award her costs of her petition. She contends that she has brought the petition under the 2014 POA, which she believes should still be operative and thus is acting in her capacity as Ms. Weitzel's power of attorney.

[52] Mr. Weitzel seeks full indemnity for his costs for this application from the assets of Ms. Weitzel because in the 2019 POA, under which he is acting, he was required to represent Ms. Weitzel in this proceeding. He also seeks that Ms. Sandvoss be required to pay costs of the application personally at Scale B to reimburse the estate of Ms. Weitzel for at least a portion of the amount paid to indemnify him.

[53] Mr. Weitzel has been entirely successful in his response to this petition. The general rule is that the successful party is entitled to costs and that costs follow the event. See Rule 14-1(9) of the Supreme Court Civil Rules. I find that Mr. Weitzel should be entitled to indemnification from the estate as he has been required to expend resources to defend the petition in his capacity as the holder of the 2019 POA and on behalf of Ms. Weitzel.

- [54] Having found that Ms. Sandvoss is not acting under the 2014 POA because it has been revoked by the 2019 POA, I conclude she is not entitled to be indemnified for her costs. Further, given the application was not well-founded and Mr. Weitzel was completely successful, I conclude it is appropriate that Ms. Sandvoss be ordered to pay costs of the petition at Scale B to the credit of Ms. Weitzel to reimburse her finances for the indemnification of Mr. Weitzel's costs.
- [55] If the parties are unable to agree as to the cost related to the petition, they have leave to appear before the Registrar to resolve that issue.

Summary of Orders

[56] In summary, I order as follows:

1. The petition is dismissed;
2. The respondent, Mr. Weitzel, is entitled to his reasonable legal fees payable from the estate of Ms. Weitzel in respect of this petition;
3. The petitioner, Ms. Sandvoss, is to personally pay costs of this petition at Scale B to the credit of the estate of Ms. Weitzel or to the credit of the sources of the funds from which Mr. Weitzel's reasonable legal fees related to the petition are paid;
4. For clarity, the respondent is not entitled to both indemnification of reasonable legal fees and the costs at Scale B;
5. The parties have leave to appear before the Registrar if they are unable to agree on the resolution of the costs;
6. The respondent's counsel is to draft this order;
7. Ms. Sandvoss's signature is dispensed with on this order; and
8. The order is to return to my attention for review and signature.

Conclusion

- [57] Ms. Sandvoss may have described the circumstances between the family members aptly during her submissions when she stated, "this is a legal application but has family emotion involved". It is clear to me that there is some level of history of discord between the parties. Of course, I do not know the nuances and the events that have led the parties to this matter now being before the Court.
- [58] From my perspective, as an outside observer, it strikes me that better communication from Mr. Weitzel to Ms. Sandvoss about Ms. Weitzel's health conditions might ease some of the tensions between Mr. Weitzel and his siblings. I am also aware that due to geographic locations, Mr. Weitzel is likely taking on the majority of the burden of the care of his mother. This can be forgotten by siblings who are not living in proximity to an elderly parent, where it may be easier to focus on criticism of the person doing most of the work as opposed to

providing support and even gratitude for efforts towards caring for an aging parent.

[59] In reviewing the record, email correspondence dated October 10, 2021, between the siblings caught my attention. It was a message sent by Mr. Weitzel to Ms. Sandvoss and their brother, Lee Weitzel. Mr. Weitzel wrote:

I can no longer continue like this. I was happy to help mom, and she is a joy in my life, but the obstruction, the name calling, and the lack of respect for me, for my efforts, or support from you has become too much for me to continue. I told mom last summer that I thought it was best if you two took over everything. She said then that was not what she wanted and that she had told you this, but I think she knows now that I have reached my limit.

The ongoing conflict is not good for anyone, including her. If I back out completely and leave you two to deal with everything going forward, the conflict can cease. When I spoke to mom about this last summer, she told me that if I could not continue, then her preference was to turn things over to a seniors advocate within the BC Government. I think this is an unfortunate outcome, so I suggest that you speak to her and lay out your plan for taking over. You need her agreement.

[60] This email contains hearsay regarding Ms. Weitzel's views. However, the truth of its contents is not the reason that I reference it. I refer to the message because it appears to highlight some of the frustration for Mr. Weitzel that he, being the child of Ms. Weitzel living in the closest proximity to her, has been tasked with doing most of the care for her. It also appears that from his perspective, he believes that his siblings tend to criticize his actions from afar and that he is willing to step away from assisting in order to reduce the tensions in the family.

[61] I reference this email because caring for aging parents and estate matters can cause great disharmony in families. I would encourage the parties to attempt to make all efforts to improve their relationships. Ms. Weitzel is 93 years old. Not to be callous, but at some point, she will pass away. Her time is finite, and her children spending it in litigation is divisive, expensive, and stressful. Further, upon the passing of Ms. Weitzel, the siblings will likely need to have some form of cooperation to administer the estate, which might be better nurtured sooner rather than later for the benefit of all involved.

[62] I thank the parties for their submissions.

[63] That concludes my reasons for judgment.

"Gibb-Carsley J."

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