
CANADA / JUDGMENT

Whiteside Estate

2018 BCSC 1871

COURT

Supreme Court of British Columbia

DECIDED

30 October 2018

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2018 BCSC 1871 Whiteside Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Whiteside Estate,

2018 BCSC 1871

Date: 20181030

Docket: 17371

Registry: Kamloops

Re: The Estate of James Henry Peter Whiteside, Deceased

Before: Master R.W. McDiarmid

Reasons for Judgment

Counsel for the Executor:

L.G. Bergerman

Place and Date of Hearing:

Kamloops, B.C.

October 15, 2018

Place and Date of Judgment:

Kamloops, B.C.

October 30, 2018

- [1] This is a passing of accounts pursuant to a Notice of Application filed September 21, 2018. Included in the passing of accounts was the seeking of an order to approve the personal representative's remuneration.
- [2] The deceased died November 14, 2016. He died without a Will in sad circumstances. It is apparent that he had health issues resulting from substance addiction.
- [3] He was survived by his father, by his sister and by his daughter, Crystal Dawn Wilson ("Crystal"), born August 5, 2000. She was 16 years of age when her father passed away, and is now 18 years old. She attended at the passing of accounts and, at my request, addressed the court.
- [4] She is presently in the care of the Director of Child, Family and Community Services, by way of a voluntary care agreement. According to a letter from Donna Maser, attached as exhibit D to the affidavit of Sandra Smith, legal assistant with the law firm representing the estate, her mother, Barbara Wilson, remains her custodian.
- [5] On April 11, 2018, Ms. Maser sent a letter to Mr. Beppe, then solicitor acting for the estate, setting out concerns with the distribution of the estate as presented.
- [6] The letter referenced a number of expenses, with the general comment that there are concerns:

that the Administrator is purporting to receive reimbursement for expenses that were excessive or unnecessary. The Administrator resides in Kamloops, and has expensed some hotel rooms, on one occasion expensing multiple hotels on the same date. Some of the food expenses are too high and likely include liquor, and are for several people. Crystal does not agree that the Administrator should expense the costs noted on April 8, 2017 for attending James' memorial as they are unrelated to the administration of the estate and were not discussed with her.

- [7] Ms. Maser has then helpfully set out a number of expenses of concern relating to trips taken by the administrator on December 28 and 29, 2016, January 17 and 18, 2017, January 31, 2017, February 2, 2017, March 11, 2017, March 14, 2017, March 18, 2017 and April 8, 2017.
- [8] Mr. Mensing, the administrator, is married to the deceased's sister, who is the aunt of the deceased's sole beneficiary, Crystal. He testified at the passing of accounts.
- [9] The circumstances of the deceased's death were sad and unfortunate. The fact of his passing went undetected for approximately a month. When the administrator attended at the deceased's residence, it was in a significant state of disrepair.
- [10] It is apparent that the administrator, along with his wife and son, worked hard to maximize estate assets and minimize expenses, such as storage fees, and other expenses.

- [11] The assessed value of the deceased's real property was set out on the probate documents at \$225,000.00. The home was a manufactured home and land with an address at 63965 Old Yale Road, Hope, British Columbia. The deceased also owned an unlicensed 2007 Dodge Ram, which was valued on the probate documents at \$27,500.00.
- [12] With the assistance of realtors, the real property was sold for \$240,000.00, which after deduction of the usual closing adjustments, resulted in a net of \$228,535.63 being paid into the trust account of the lawyers representing the administrator and the estate.
- [13] The deceased owned a "Bobcat" which is a small skid steer loader. It was not discovered to be an "asset" of the estate until after the probate application had been submitted and thus did not appear on the initial estate documentation. The deceased had apparently pre-authorized \$9,011.93 in repairs, and there were further issues with the bobcat which required acquisition of batteries and a starter.
- [14] The administrator works for United Rentals and is in the heavy equipment business. He initially valued the bobcat at \$3,000.00, after the repairs had been done to it. He eventually sold it for \$6,500.00, which represented approximately a net loss to the estate of \$5,000.00 after paying for the pre-authorized repairs. However, the evidence is that those repairs were pre-authorized and would have probably been charged to the estate in any event. I find that in all of the circumstances, the actions of the administrator with respect to the bobcat were reasonable.
- [15] There turned out to be significant issues with the 2007 Dodge Ram truck. It was disclosed in the probate documents as having a value of \$27,500.00. Crystal had hoped that it would go to her cousin at some point, so that it could remain in the family. In her address to me, she advised me that she had very little contact with her father's side of the family, including the administrator and his wife, who is her aunt.
- [16] The truck was sold to her cousin for \$15,000.00 in circumstances explained by the administrator. He testified that it had 197,000 kilometres on it, had been tampered with, and was having electrical issues which persisted after the sale. He consulted a neighbour who had experience in valuation of used pick up trucks, and was of the view that \$15,000.00 represented a fair value.
- [17] It is important to keep in mind the difficulties facing the administrator. There appear to be some communication issues between him and Crystal. On the other hand, he testified and I accept his testimony, that he did not charge for mileage when he made trips from his residence in Kamloops to Hope or to Sechelt, where he met with the deceased's elderly father, and where the wake was held. He testified that he utilized his employer's resources, with the employer's knowledge and consent, to assist in the administration of the estate. Balanced against that are the duties owed by an administrator who is a trustee and thus has fiduciary obligations and obligations of utmost good faith.

- [18] The Trustee Act, R.S.B.C. 1996, c. 464 provides for maximum remuneration of 5%. I have taken into account the concerns expressed by Crystal through her lawyer. Some of the expenses claimed appear unrelated to the administration of the estate. However, the administrator has testified that they are connected to services performed to assist in dealing with estate matters.
- [19] A trustee cannot profit and cannot expend estate money for the benefit of himself in matters unrelated to the estate or for the benefit of other relatives for whom the administrator bought meals. They have assisted him in the administration. The expenses set out in Ms. Maser's letter total slightly in excess of \$2,100.00.
- [20] The concerns with respect to those expenses were succinctly summarized by Crystal's mother, Barbara Wilson, in a letter to the lawyers for the estate, where at paragraph 2 of the letter she writes:

Some of these concerns arise from expenses pending reimbursement to the Administrator of the Estate as presented in Schedule "C" of the Statement of Account documentation. These concerns include a number of lodging and meal expenses, fees regarding the cleaning and/or maintenance of the property in Hope, British Columbia, as well as the assessed values reported of the 2007 Dodge Ram vehicle and Bobcat machinery along with their respective expenses. As well, some expenses were presented which I feel appear to be excessive and are unrelated to the estate and its business entirely.

- [21] I am satisfied that all of those expenses, and indeed all of the expenses set out in the accounting, have been actually incurred. Mr. Bergerman brought the receipts to court, although they have not been entered as exhibits keeping in mind a balance between the requirement not to not profit and the efficient way the administrator dealt with the estate, I deduct \$500.00 from the expenses shown on Schedule C.
- [22] Five percent is the maximum remuneration permitted to trustees. In this case, considering all the circumstances as set out by the administrator in his evidence and the issues raised by Crystal's mother and the Public Guardian and Trustee, I set the administrator's remuneration at 4% of capital, which is \$13,643.05.
- [23] I pass the accounts from date of death on November 14, 2016 to August 31, 2018 as presented in the Statement of Account affidavit made February 21, 2018 and filed September 21, 2018, and the Supplemental Reconciliation sworn September 14, 2018 and filed September 21, 2018 with the following changes:
1. I allow the capital fee at 4% which is \$13,643.05. Line E should be amended accordingly;
 2. I allow the income fee at \$22.60;
 3. I allow the care and management fee at \$1,737.92.

- [24] Those total \$15,403.57, from which I deduct \$500.00 for repayment of expenses claimed unrelated to administration of the estate.
- [25] On the Statement of Distribution, Line R2 should then reflect that amount - \$14,903.57, and it can be disbursed forthwith to the administrator. That adds \$3,910.76 to the distributable estate. In addition, the net funds set out on the Supplemental Reconciliation affidavit in an amount of \$7,844.95 ought to be added to the distributable estate. Those total \$11,755.71. The distributable estate, Line R4, should then be amended to \$263,389.02.
- [26] That sum should be paid to the Public Guardian and Trustee in trust for Crystal Dawn Wilson.
- [27] Upon payment of that sum to the office of the Public Guardian and Trustee, the administration bond issued by Intact Insurance Company is directed to be cancelled and any refund of premium added to the holdback funds.
- [28] Rather than submit amended accounts, I direct that an order be submitted reflecting the terms of these reasons.

"Master R.W. McDiarmid"

MASTER McDIARMID

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Prepared on 25 October 2026 · Esheria