
CANADA / JUDGMENT

Yaremkevich Estate (Re)

2015 BCSC 1124

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Supreme Court of British Columbia

DECIDED

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2015 BCSC 1124 Yaremkevich Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Yaremkevich Estate (Re),

2015 BCSC 1124

Date: 20150630

Docket: S028939

Registry: Chilliwack

In the Matter of the Estate of

Denise Lynn Bevan Yaremkevich, Deceased

Before: The Honourable Madam Justice Watchuk

Reasons for Judgment

Solicitor for the Applicant, Jacqueline Ellen Beirness:

R.D. Shantz

Place and Date of Hearing:

Chilliwack, B.C.

March 16, 2015

Place and Date of Judgment:

Vancouver, B.C.

June 30, 2015

INTRODUCTION

- [1] On July 7, 2014, Denise Lynn Bevan Yaremkewich passed away in Chilliwack, B.C. Ms. Yaremkewich left documents that do not comply with the formal execution requirements of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA] but may be testamentary in nature. Ms. Yaremkewich purports to appoint her niece Jacqueline Ellen Beirness (the applicant) as one of the executors. The other executor has renounced her co-executorship.
- [2] Ms. Beirness now applies for an order that all of the noncompliant documents or some portion of them be treated as a fully effective will pursuant to WESA, s. 58. If any document or record is held to be effective as a will, she requests that the court issue her a Grant of Probate for that will.
- [3] The property in Ms. Yaremkewich's estate is summarized in a Statement of Assets, Liabilities, and Distribution provided by the applicant. The estate includes Ms. Yaremkewich's principal residence, various banking and investment accounts, her motor vehicle, and some insurance benefits. The only liabilities of the estate are relatively small fees, many of which have already been paid but some of which need to be reimbursed to the payor. Added together, the value of the estate is approximately \$545,000.
- [4] This application is unopposed. The potential beneficiaries who are nieces, nephews, friends, and charities and the potential intestate heirs have been given notice.
- [5] Due to the issues raised and the fact that the legislation is relatively new, the decision was reserved.

SUMMARY OF THE EVIDENCE

- [6] Ms. Yaremkewich was a thoughtful and meticulous woman. She was predeceased by her spouse and was living alone prior to her death. She had no children, and her parents and older sister had passed away. Her relationships with her extended family and friends, including her nieces, nephews, stepsons, great-nieces and great-nephews were positive and friendly.
- [7] Ms. Yaremkewich had been diagnosed with cancer. She began chemotherapy treatment, but her health continued to decline during the months preceding her death. She took multiple medications, including hydromorphone (a form of morphine) and Ativan. The evidence does not indicate that either her medical condition or her medications seriously affected her mental abilities at the time she drafted the will.
- [8] During the first week of July 2014 Ms. Yaremkewich was admitted into the hospital. It is believed that she suffered a heart attack and was affected by some resulting complications. She passed away on July 7, 2014 in Chilliwack, British Columbia at age 64.

- [9] Before her death, Ms. Yaremkeiwich executed a pre-printed will template form titled "Last Will and Testament" that purports to revoke all of her former wills, codicils, and testamentary dispositions although there is no evidence of any prior will. The will form is dated April 20, 2014.
- [10] In this document, Ms. Yaremkeiwich appointed two individuals as the executors of her will: Jacqueline Ellen Beirness, the applicant in this application and the niece of Ms. Yaremkeiwich; and Gloria LeBlanc, a close friend of Ms. Yaremkeiwich.
- [11] The name of the first appointee, Ms. Beirness, is misspelled as "Jaqueline Beirness" instead of "Jacqueline Beirness". Ms. Beirness seems to have had a strong relationship with Ms. Yaremkeiwich and none of the many potential beneficiaries shares a similar name. I am satisfied that this is simply a spelling error and that Ms. Beirness is the person referred to in the document.
- [12] The second appointee, Ms. LeBlanc, renounced her right to apply as executor by executing a "Notice of Renunciation" on July 12, 2014. Accordingly, Ms. Beirness, the applicant in this proceeding, will be the sole executor and trustee if probate is granted.
- [13] The original of the pre-printed will kept was in an unsealed envelope that was first opened on July 7, 2014 after Ms. Yaremkeiwich's death. On the face of the outside of the envelope was written "Will of Denise Lynn Bevan Yaremkeiwich" in what Ms. Beirness believes is Ms. Yaremkeiwich's handwriting. Including the pre-printed will, there were four documents enclosed in the envelope, all of which are in the same handwriting.
- [14] For the sake of convenience I will refer to the completed self-counsel press template form as the "Will". Parts of the document are pre-printed and Ms. Yaremkeiwich filled in the necessary blank spaces by hand. This Will appoints the executors described above, sets out burial arrangements and directs certain expenses and taxes to be paid out of the estate. It also provides a number of gifts, including money bequests, a five-way division of the proceeds of Ms. Yaremkeiwich's house and a bequest of \$22,000 to the LeBlancs for the care of Ms. Yaremkeiwich's dog Jake during his lifetime. Finally, the Will refers to the three other documents found in the envelope by directing the reader to "see attached instructions" in provision 3, and "See attached for other bequests" in provision 6.
- [15] The second document is a twelve-page, stapled, handwritten list of bequests titled "Bequests (Personal)". This list is organized by beneficiary and type of gift. There are 19 beneficiaries, including Ms. Yaremkeiwich's nieces, nephews, stepsons, extended family and friends. Most of the gifts are specific pieces of personal property including jewelry, furniture, fine china, and Christmas ornaments. It is apparent that a large amount of attention and thought went into planning which beneficiary would be gifted which specific items.

- [16] The third document, titled "Charitable Bequests", is a one-page, handwritten list of charitable bequests which purports to distribute the "remaining money from estate". This list appears to have been stapled to the personal bequests list but at some point it came loose in the envelope.
- [17] The fourth and final document is the care instructions for Ms. Yaremkeiwich's dog, Jake Bevan. It is titled "Jake Bevan (the dog)". There are three stapled, handwritten, double-sided pages of detailed instructions and descriptions of Jake's likes and temperament.
- [18] I am satisfied that the envelope and all of the documents inside it are written in Ms. Yaremkeiwich's handwriting. They are all written in the same handwriting, and Ms. Beirness stated that she believed this to be Ms. Yaremkeiwich's handwriting. Further, many of the pages are initialed and the care instructions and many of the gifts are of a highly personal nature.
- [19] The Will was signed by two witnesses, Mary Bepalko and Garry Bepalko. They depose that on April 20, 2014 they visited Ms. Yaremkeiwich and signed the Will when she asked them to do so. However, they both state that they recall that the Will was a blank template when they signed as witnesses and that there were no attached pages setting out bequests. Further, they state that they believe that Ms. Yaremkeiwich had not signed the Will before they signed and they "do not specifically recollect" whether she signed the Will at the same time as them.
- [20] Mr. and Mrs. Bepalko say that during this visit, Ms. Yaremkeiwich told them that there were some charities she was considering giving money to and that she had not yet made a list of bequests. She then asked them which of her personal items they would like.
- [21] Sometime later in April 2014, Ms. LeBlanc received from Ms. Yaremkeiwich a copy of her completed Will which was missing the last page, which is the page with the signatures of Ms. Yaremkeiwich and the witnesses. Considering the great detail that went into planning all the gifts in her documents, I find that this omission was most likely the result of a photocopying error.
- [22] Ms. LeBlanc deposed that she was given only a copy of the Will itself and that she did not receive copies of the three handwritten documents attached to the Will. She was not involved with the preparation of the Will and did not have any knowledge of the additional documents.
- [23] It is impossible to determine exactly when Ms. Yaremkeiwich executed the Will. The Will and the envelope are dated April 20, 2014, which is the same date that Mr. and Mrs. Bepalko signed the incomplete will form as witnesses. However, both witnesses stated that the will form was blank and that Ms. Yaremkeiwich asked them what items they would like for themselves out of her estate.

[24] Given the length and detail of the various documents, it is unlikely that Ms. Yaremkewich finished preparing them on April 20, 2014. However, since the Will references the "attached" documents in provisions 3 and 6 and it is clear that the documents were intended to operate together, it is likely that she completed all of these documents at the same time shortly after the witnesses signed the Will.

THE LEGAL FRAMEWORK

The Formal Requirements for a Valid Will

[25] The formal requirements for a will are set out in s. 37 of WESA:

37(1) To be valid, a will must be

- (a) in writing,
 - (b) signed at its end by the will-maker, or the signature at the end must be acknowledged by the will-maker as his or hers, in the presence of 2 or more witnesses present at the same time, and
 - (c) signed by 2 or more of the witnesses in the presence of the will-maker.
- (2) A will that does not comply with subsection (1) is invalid unless
- (a) the court orders it to be effective as a will under section 58 [court order curing deficiencies],
 - (b) it is a will recognized as valid under section 80 [validity of wills made in accordance with other laws], or
 - (c) it is valid under another provision of this Act.

[26] On the evidence, I am satisfied that the Will does not comply with the formalities of WESA. The effect of sections 37(1)(b) and (c) is that Ms. Yaremkewich had to sign or acknowledge her signature in the presence at least two witnesses who were present at the same time and signed in the presence of the will-maker. In the circumstances, it is clear that the will form was not validly witnessed as required by WESA.

[27] These requirements are strict, and the court does not have the discretion to waive the witnessing requirements: *Bolton v. Tartaglia*, 2000 BCSC 576 at paras. 18-19, citing *Ellis v. Turner* (1997), 43 B.C.L.R. (3d) 283 (C.A.).

[28] Mr. and Mrs. Bepalko, the witnesses to the Will, provided uncontradicted evidence that when they signed the Will, it was still a blank template document and had not been signed by Mrs. Yaremkewich. Accordingly, I find that the contents of the executed will were added after the will template was signed by the witnesses. Although it is not clear whether Ms. Yaremkewich signed the form at that time, even if she had, she would not be signing at the end of the will since the will template was blank at that time. Therefore, Ms. Yaremkewich's will was not validly witnessed in accordance with WESA, ss. 37(1)(b) and (c).

[29] WESA, which came into effect on March 31, 2014, contains a new provision in s. 58 that even if a document fails to comply with the formalities of the statute, a court may nonetheless order that the document is fully effective as if it had complied with the statute. The provision reads as follows:

Court order curing deficiencies

58(1) In this section, "record" includes data that

- (a) is recorded or stored electronically,
 - (b) can be read by a person, and
 - (c) is capable of reproduction in a visible form.
- (2) On application, the court may make an order under subsection (3) if the court determines that a record, document or writing or marking on a will or document represents
- (a) the testamentary intentions of a deceased person,
 - (b) the intention of a deceased person to revoke, alter or revive a will or testamentary disposition of the deceased person, or
 - (c) the intention of a deceased person to revoke, alter or revive a testamentary disposition contained in a document other than a will.
- (3) Even though the making, revocation, alteration or revival of a will does not comply with this Act, the court may, as the circumstances require, order that a record or document or writing or marking on a will or document be fully effective as though it had been made
- (a) as the will or part of the will of the deceased person,
 - (b) as a revocation, alteration or revival of a will of the deceased person, or
 - (c) as the testamentary intention of the deceased person.
- (4) If an alteration to a will makes a word or provision illegible and the court is satisfied that the alteration was not made in accordance with this Act, the court may reinstate the original word or provision if there is evidence to establish what the original word or provision was.
- [30] Accordingly, s. 58(3)(a) empowers the court to order that a document or other record is fully effective as the will of a deceased person if the court is satisfied that the document represents the testamentary intentions of that deceased person.

Evidence

[31] As a preliminary matter, the statements that Ms. Yaremkewich made to the various affiants and the other evidence of her intention in the affidavits are admissible evidence in this case.

- [32] The approach to evidence under Manitoba's Wills Act, R.S.M. 1988, c. W-150 was summarized by Philp, J.A. in *Langseth Estate v. Gardiner* (1990), 75 D.L.R. (4th) 25 at 33 (Man. C.A.)

The general rule that extrinsic evidence is not admissible in construing a will (the function of a court of construction) does not apply to the probate court whose duty is to determine whether a document is a valid will. Extrinsic evidence is admissible on the question of testamentary intent, and the Court is not limited to the evidence that an inspection of the document provides.

Testamentary Intent

- [33] The s. 58 curative provision was well summarized in *Estate of Young*, 2015 BCSC 182 [Young]. This provision is one of WESA's "most far-reaching remedial provisions", and it represents a marked departure from the traditional, formalistic approach to the creation of wills (at para. 16). It confers the court with a broad discretion to treat a testamentary record as valid even if it does not comply with the formalities of the statute. However, this provision can only be used to cure errors concerning formalities, and cannot cure substantive errors such as testamentary incapacity or undue influence (at para. 17).
- [34] To apply s. 58, the applicant must prove on the balance of probabilities that the record at issue is authentic and that it represents the testamentary intentions of the will-maker: *Young* at paras. 19, 36; and *Bunn Estate (Re)* (1992) 100 Sask. R. 231 at 237 (C.A.) [Bunn Estate]. This analysis asks whether the court is satisfied that the document records the will-maker's deliberate or fixed and final expression of intention as to the disposal of her property upon death. This was summarized in *Young* as follows:
- [34] As is apparent from the foregoing, a determination of whether to exercise the court's curative power with respect to a non-compliant document is inevitably and intensely fact-sensitive. Two principal issues for consideration emerge from the post-1995 Manitoba authorities. The first is an obvious threshold issue: is the document authentic? The second, and core, issue is whether the non-compliant document represents the deceased's testamentary intentions, as that concept was explained in *George*.
- [35] In *George* the court confirmed that testamentary intention means much more than the expression of how a person would like his or her property to be disposed of after death. The key question is whether the document records a deliberate or fixed and final expression of intention as to the disposal of the deceased's property on death. A deliberate or fixed and final intention is not the equivalent of an irrevocable intention, given that a will, by its nature, is revocable until the death of its maker. Rather, the intention must be fixed and final at the material time, which will vary depending on the circumstances.
- [35] In several other provinces, the legislation that governs wills has a similar curative provision that allows the court to remedy formal defects if it is satisfied that the document represents that deceased's testamentary intent. The leading case on Manitoba's curative provision is *George v. Daily* (1997), 143 D.L.R. (4th) 273 (Man. C.A.). In that case, the deceased advised his

accountant that he wanted to change his existing will. The accountant made notes and wrote to the deceased's lawyer detailing the deceased's instructions. The deceased met with the lawyer and confirmed his instructions. Based on the lawyer's instructions, rather than writing a new will during that meeting, the deceased agreed to get a medical certificate proving his competency before he executed a new will. The testator died soon afterwards without having gotten the medical certificate or executed a new will.

- [36] Ultimately, the Manitoba Court of Appeal in *George* held that the letter to the lawyer did not represent a fixed and final expression of his intention as to the disposal of his property upon his death (at 291, 294-295). There was no evidence that the deceased had seen the letter or affirmed its contents, and the court was not satisfied that the deceased intended for the plan to be completely fixed during the period when he was planning to get a medical certificate (at 293-294). In the circumstances, the Court of Appeal was satisfied that the letter was, at best, instructions for preparing his will, and it did not apply the curative provision (at 294-295).
- [37] As illustrated by the *George* decision, one of the central concerns when determining the deceased's testamentary intent is the finality of her decision. When the document only amounts to instructions to create a will, or the document is not completed, or there is some other circumstance that negates the finality of the document, then that document does not represent its creator's testamentary intent. See for example *Sawatzky v. Sawatzky Estate*, 2009 MBQB 222, in which Simonsen J. held that an unsigned, typewritten document drafted by the deceased's lawyer should not be treated as a valid will since there was evidence indicating that it was not intended to be the final draft of the will. The deceased in that case was a meticulous individual who did not likely believe that death was imminent. Given the large number of instructions previously given to his attorney and the large number of bequests in his previous holograph will, the court inferred there was a possibility that he had chosen not to sign the document immediately and give it more thought (at para. 31).
- [38] However, because wills can be revoked in the will-maker's lifetime, it is important to note that this analysis looks at whether the deceased had a deliberate or fixed intent at the time they created the document, not for evidence of an irrevocable intention. This was summarized in *Young* at para. 35:

A deliberate or fixed and final intention is not the equivalent of an irrevocable intention, given that a will, by its nature, is revocable until the death of its maker. Rather, the intention must be fixed and final at the material time, which will vary depending on the circumstances.

- [39] I find Ms. Yaremkewich's Will to be similar to the wills at issue in *Kuszak v. Smoley* (1986), 46 Man. R. (2d) 14 (Q.B.) and *McNeil v. Snidor Estate*, 2008 MBQB 187. In both of these cases, the court applied the curative provision in Manitoba's will legislation to treat standard-form will templates as valid wills even though the documents were not properly witnessed.

[40] In Kuszak, the deceased printed a blank will template and completed it entirely in his own handwriting, but did not obtain any witness signatures. Nonetheless, Glowacki J. found that the document represented the deceased's testamentary intentions and ordered that the document was fully effective as a will. Glowacki J. summarized the relevant circumstances that influenced his decision as follows:

6 In the present case, the testamentary document was signed by the deceased and therefore there has been some compliance. The lack of witnesses, although very important, does not prevent the court from admitting a testamentary document to probate if the court is satisfied that it embodies the testamentary intentions of the deceased.

7 The printed form was completed entirely by the deceased in his own handwriting and bears his signature in four places. The printed form identifies the document as a "will" and was completed properly by the deceased. The deceased was careful to deal with all of his estate and to appoint an executor. The date is inserted in four places. There is nothing before the court that suggests that the document does not embody the intent of the testator.

8 It is of concern to the court that the document in question does not bear the signature of any witnesses as this is one of the safeguards to ensure that the document is really the last will and testament of a testator. If the printed form of document had been completed by some other person, or had it been a typed document with the signature of a testator without any witnesses, it may be that the court would not be satisfied that it embodied the last will and testament of a testator. These are factors which must be considered in the circumstances of a particular case.

[41] In McNeil, the deceased's will was a template will on which he added handwritten comments. The two witnesses signed separately. One witnesses stated that the will was blank when he signed, and the other stated that she could not recall how much handwriting was on the document when she signed it and she did not read the document. Following George and Kuszak, McCawley J. applied Manitoba's curative provision and admitted the will to probate. Some details which McCawley J. found to be significant were:

- the document revoked prior wills and expressed specific intentions of who should and should not receive the proceeds of estate;
- the document appointed an executor and provided him instructions for managing the estate and funeral arrangements;
- the document was entitled "Will" on the first page;
- all blank spaces in the will except for two were filled in with the deceased's handwriting;
- the deceased signed the second and third pages of the will;
- the deceased had obtained witness signatures, although he did not comply with the proper formalities for witnessing a will;

- there was no evidence that the will did not indicate the deceased's testamentary intention or that he lacked capacity to make a will; and
- the will demonstrated a reasonable explanation for the differences between it and the previous wills (at paras. 21-23).

The Incorporation of Documents into a Will

- [42] Ms. Yaremkewich's Will refers to the bequest lists and the care instructions for the dog. Where a will refers to a separate document, that document must meet certain requirements to be incorporated into the will.
- [43] The requirements for incorporating a document into a will are set out in *Mihalopulos (Re)* (1956), 5 D.L.R. (2d) 628 at 630 (Alta. S.C.): (i) it must be clear that the will referred to some document in existence at the time the will was executed; and (ii) the document in question must be beyond doubt the document referred to in the will.
- [44] It is impossible to discern from the evidence whether or not the requirements for incorporation were met, but even if they were met, there is no valid will into which the documents could be incorporated.
- [45] Section 58(3)(a) provides that where the court is satisfied that a document represents the testamentary intentions of the deceased, the court may order that the document "be fully effective as though it had been made as the will or part of the will of the deceased person" [emphasis added]. This wording indicates that where a person has not complied with formal requirements to incorporate a document into a will, s. 58 can still be used to cure the defect if the document represents the testamentary intentions of the deceased.
- [46] Therefore, for purposes of this s. 58 analysis, the proper inquiry is not whether the documents are validly incorporated but whether each of the documents represents the testamentary intentions of the deceased.
- [47] This was the approach taken by the Saskatchewan Court of Appeal in *Bunn Estate*. In that case, the testatrix created three testamentary documents. One was a printed will-template form that was signed and dated. This document named an executor and revoked all prior wills but did not contain directions disposing of her estate. The second document was an unsigned, handwritten sheet of paper that had the same date as the will form but was not signed. This document contained instructions for her funeral and made several bequests. The third document was another will form that was identical to the first document except it was unsigned. All of these documents were placed in a sealed envelope that was labelled as the testatrix's will.
- [48] Without reference to the doctrine of incorporation, the Saskatchewan Court of Appeal applied the curative provision in s. 35.1 of that province's Wills Act, R.S.S. 1978, c. W-14 (since repealed), and held that the first and second documents should be admitted to probate even though they did not comply with the execution formalities imposed by the

statute. The trial judge found that these documents set out the deceased's testamentary intentions, even though these intentions were recorded in two documents instead of one (at 234). The Court of Appeal agreed and found that "[i]f the two documents are read together, a complete will is the result" (at 239). Accordingly, the Court of Appeal upheld the trial court's decision that the two documents should be admitted into probate as a valid will.

ANALYSIS

- [49] The types of evidence that are relevant to prove testamentary intent will vary from case to case. In this case, the contents, the detailed wording of the Will and its attachments, and the circumstances in which they were found militate in favour of finding that the will and two of the accompanying documents, the bequest lists, represent Ms. Yaremkewich's testamentary intentions meaning that they represent her fixed and final expression of intention as to the disposal of her property on death.
- [50] Other evidence is also of assistance. For example, her statements to the witnesses Mr. and Mrs. Bepalko indicate that she was contemplating specific bequests at the time that she arranged for witnesses to the Will. Ms. Yaremkewich was ill at this time, and I infer from her actions that she wanted to put her affairs in order. She used a will template rather than an ordinary piece of paper. The four documents were treated as important by being placed in an envelope and marked as her will.
- [51] It is relevant that Ms. Yaremkewich attempted to comply with the formalities of making a will, including signing and dating the Will at the end and initialling many of the pages. Attempts were made to comply with the formalities of execution by having two witnesses sign. Executors were appointed. Finally, many of the provisions are detailed and indicate a great deal of thought, such as the appointment of a lawyer as an alternate executor, the making of alternative gifts if certain beneficiaries predeceased her, and bequests to minors not being made until they reach the age of 21.
- [52] Further, it is worth noting that there are no changes or markings in Ms. Yaremkewich's Will or the accompanying documents that indicate that they were only draft documents or were not meant to be fully effective. I am also satisfied that the documents are authentic, and that they were written by Ms. Yaremkewich.
- [53] Finally, there is no evidence to the contrary or suspicious circumstances that indicate the Will does not represent Ms. Yaremkewich's testamentary intent.
- [54] In the circumstances, I find that the Will represents Ms. Yaremkewich's testamentary intentions.
- [55] Concerning the other documents in the envelope, the circumstances surrounding the creation of the Will are a key factor in determining Ms. Yaremkewich's intentions. Although it is not possible to determine exactly when all of the documents were completed, it is likely that they were created at approximately the same time and I so find. The will form that Ms.

Yaremkewich filled in was only three pages long, and she filled in nearly all the blank space provided for gifts under heading number four of the template. To be able to include detailed gifts and instructions, it was necessary for her to include additional pages. Accordingly, in provisions three and six of the Will Ms. Yaremkewich referred to attachments and then placed the documents together in an envelope which was marked "Will of Denise Lynn Bevan Yaremkewich". Given the amount of detail and consistency in the additional 18 pages, I am satisfied that the additional three documents were created at approximately the same time as the main body of the Will, and that she intended for these to operate alongside the Will.

- [56] Based on the foregoing, including the factors I have referred to that support the finding that the Will represents Ms. Yaremkewich's testamentary intention, as required by s. 58(2)(a) of WESA and as explained in *George*, I find that I find that the two bequest lists enclosed in the envelope also represent the testamentary intentions of the deceased and are therefore part of the Will. Each of the documents in substance contemplates gifts on her death and in that sense is testamentary in nature.
- [57] The personal bequest list is 12 pages long and entirely in Ms. Yaremkewich's handwriting. It sets out a large amount of her personal property using detailed descriptions, and grants highly personalized gifts to 19 beneficiaries, including friends, family, and extended relationships. Many of the gifts are small personal items. It is obvious that Ms. Yaremkewich spent a great deal of time considering which gifts to give to each beneficiary. I have no doubt that this represents her carefully-considered testamentary intentions.
- [58] For similar reasons, I find that the charitable bequest list also represents Ms. Yaremkewich's testamentary intent. This document distributes the remainder of the estate to 12 named charities with various charitable goals, but the charities seem to predominantly deal with animal welfare and medical services. Since Ms. Yaremkewich's testamentary documents are detailed and there is no other provision outlining the remainder of the estate, and in the absence of any evidence to the contrary, I find that this represents her intention to dispose of the remainder of her estate after the other gifts are made.
- [59] The only exception is the document by which Ms. Yaremkewich left instructions for the care of her beloved dog Jake. It does not contain funeral instructions for her or a disposition of her property on death. The bequest for Jake's care is made in the Will which I have found to be valid. Although the care instructions indicate Ms. Yaremkewich's wishes for Jake's care after her death, which is an admirable concern, they are not testamentary intentions. As such, that document does not have testamentary status and is not within the curative power of s. 58.
- [60] After considering all of the evidence, I am satisfied that the Will and the two accompanying bequest lists collectively represent Ms. Yaremkewich's testamentary intentions. They represent her fixed and final expression of intention as to the disposal of her property on death.

[61] I am therefore satisfied that the Will and the two bequest lists which were placed in the envelope should be treated collectively as a fully effective will pursuant to s. 58.

CONCLUSION

[62] For the reasons set out above, the application is granted. I order that the Will, the personal bequest list, and the charitable bequest list included in the envelope are fully effective as Ms. Yaremkewich's will pursuant to s. 58 of WESA.

[63] Accordingly, I order that a Grant of Probate of the Will and two foregoing documents be issued to Ms. Beirness as executor.

[64] Ms. Beirness is entitled to recover her costs of and incidental to this application, to be assessed as special costs on a full indemnity basis and paid out of the Estate of Denise Lynn Bevan Yaremkewich.

"The Honourable Madam Justice Watchuk"

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