Court of King's Bench of Alberta

Citation: Steele Estate v Prairie Bible Institute, 2025 ABKB 497

Date: 20250827
Docket: ES01 138636
Registry: Calgary

Between:

Shirley Steele as Co-Personal Representative of the Estate of Ronald Wilfred Steele

Applicant

- and –

Prairie Bible Institute, Living Truth, Insight For Living Canada, and In Touch Ministries Canada

Respondents

Reasons for Decision of the Honourable Justice O. Ho

I. Introduction and Background

[1] This case raises the issue of whether a testator had the requisite capacity to make the will in question. Some, but not all, of the personal representatives named in that will are the ones questioning the testator's capacity.

[2] Ronald Steele ("**Ronald**") died on August 1, 2020 at the age of 77. He had a will (the "**Will**") dated February 22, 2017 (the "**Execution Date**") that named three personal representatives: Shirley Steele ("**Shirley**"), Doug Hazelton ("**Doug**") and Donald Steele ("**Donald**"). As will be discussed later in these Reasons, on October 26, 2020, Donald renounced his role as personal representative, leaving only Shirley and Doug as personal representatives.

[3] Ronald was never married and had no children. He had a long-time girlfriend, Elayne Laine ("**Elayne**"), who predeceased him.

[4] Ronald was survived by four siblings: Shirley, Donald, Judy Steele ("**Judy**") and Vera Hazelton ("**Vera**"). Vera is married to Doug; they have three children. Donald is married to Donna Steele ("**Donna**"); they have two children. In total, Ronald had five nieces and nephews.

[5] Shirley has brought an application for advice and direction in respect of the Estate of Ronald Steele (the "**Estate**"). She is the only named applicant, but her counsel advised that Doug is in agreement with the application.

[6] Shirley filed this application on May 5, 2022 seeking the Court's advice and direction about whether the personal representatives should submit the Will for formal proof given their concern that there were suspicious circumstances surrounding Ronald's knowledge and approval of the Will and capacity to execute it.

[7] An Estate Case Conference was held on June 14, 2023 giving rise to an Order directing that the following issues be tried at a 10-day summary trial:

i. whether there were suspicious circumstances surrounding the preparation and execution of the Will;

ii. whether Ronald had knowledge and approval of the Will; and

iii. whether Ronald lacked the testamentary capacity to prepare the Will.

[8] Nine witnesses gave evidence in the summary trial about their interactions with Ronald. In addition, counsel helpfully jointly entered as exhibits an Agreed Book of Documents and an Agreed Statement of Facts. Counsel also compiled a "Summary Trial Record" containing, among other things, fourteen Affidavits, ten Questioning transcripts, and undertaking responses.

II. Law

[9] The primary question raised in this summary trial is whether there were suspicious circumstances surrounding the preparation and execution of the Will, particularly as it relates to whether Ronald had testamentary capacity.

[10] The Supreme Court of Canada discussed suspicious circumstances in detail in ***Vout v Hay***, [1995] 2 SCR 876 at paras 22-26 ("***Vout***"):

> Any discussion of the role of suspicious circumstances must start with the statement of Baron Parke in *Barry v. Butlin*, supra, at p. 1090 E.R.:
>
> > [F]irst... the *onus probandi* lies in every case upon the party propounding a Will; and he must satisfy the conscience of the Court that the instrument so propounded is the last Will of a free and capable Testator.

> [S]econd... if a party writes or prepares a Will, under which he takes a benefit, that is a circumstance that ought generally to excite the suspicion of the Court, and calls upon it to be vigilant and jealous in examining the evidence in support of the instrument, in favour of which it ought not to pronounce unless the suspicion is removed, and it is judicially satisfied that the paper propounded does express the true Will of the deceased.

At least two problems are raised by this statement:

> (1) whether suspicious circumstances impose a standard of proof that is higher than the ordinary civil standard; and
>
> (2) whether the reference to a free and capable testator requires the propounder of the will to disprove undue influence.

With respect to the first problem, in accordance with the general rule applicable in civil cases, it has now been established that the civil standard of proof on a balance of probabilities applies. The evidence must, however, be scrutinized in accordance with the gravity of the suspicion. As stated by Ritchie J. in *Re Martin; MacGregor v. Ryan*, [1965] S.C.R. 757 at p. 766:

> The extent of the proof required is proportionate to the gravity of the suspicion and the degree of suspicion varies with the circumstances of each case.

With respect to the second problem, although *Barry v. Butlin* and numerous other cases dealt with circumstances in which the procurer of the will obtained a benefit, it has been determined that the dictum in *Barry v. Butlin* extends to any "well-grounded suspicion" (*per* Davey L.J. in *Tyrrell v. Painton*, [1894] P. 151, at pp. 159-60). This was reaffirmed in this Court by Ritchie J. in *Re Martin*, *supra*. The suspicious circumstances may be raised by (1) circumstances surrounding the preparation of the will, (2) circumstances tending to call into question the capacity of the testator, or (3) circumstances tending to show that the free will of the testator was overborne by acts of coercion or fraud. Since the suspicious circumstances may relate to various issues, in order to properly assess what effect the obligation to dispel the suspicion has on the burden of proof, it is appropriate to ask the question "suspicion of what?" See Wright, *supra*, and *Macdonell, Sheard and Hull on Probate Practice* (3rd ed. 1981), at p. 33.

Suspicious circumstances in any of the three categories to which I refer above will affect the burden of proof with respect to knowledge and approval. The burden with respect to testamentary capacity will be affected as well if the circumstances reflect on the mental capacity of the testator to make a will. Although the propounder of the will has the legal burden with respect to due execution, knowledge and approval, and testamentary capacity, the propounder is aided by a rebuttable presumption. Upon proof that the will was duly executed with the

> requisite formalities, after having been read over to or by a testator who appeared to understand it, it will generally be presumed that the testator knew and approved of the contents and had the necessary testamentary capacity.

[11] In ***Beimler Estate v Beimler***, 2017 ABCA 117, there was evidence that the testator suffered from anxiety, had some cognition problems, may have had early dementia and was certainly slipping mentally. A lawyer who knew the testator met with him and was satisfied that he had capacity to make a will and was not being pressured or unduly influenced. Affidavits from a cousin and two close friends spoke positively of the testator's cognitive abilities. The chambers judge found that, while there was some medical evidence that the testator's cognitive abilities may have been diminishing, there was no evidence that he was delusional or suffered impairment to his general understanding of the world. Notwithstanding the observed aging process, none of the medical evidence suggested that the testator was incapable of making a will. The Court of Appeal upheld the chambers judge's conclusion that there was no evidentiary basis to support the appellants' suspicions that the testator lacked capacity or that there was undue influence.

[12] I take from this that evidence of some cognition problems does not necessarily obviate testamentary capacity.

[13] In addition, I take guidance from the comments of Goss J in ***Papp v From***, 2019 ABQB 988 at paras 121 and 129 ("***Papp***"):

> Testamentary capacity is a legal construct, medical evidence is not required: ***Stevens v Morrisroe***, 2001 ABCA 195 at paras 19 and 20, leave to appeal denied, [2001] SCCA No 483; ***Mah v Zukas Estate***, para 56. Whether a testator has the requisite capacity to make a will is a question of fact to be determined in all the circumstances. The assessment is a highly individualized and fact-specific inquiry.
> ...
>
> Testamentary capacity is time specific and task specific. The relevant time period to assess capacity, from all of the circumstances, is the time of giving instruction and the time of executing the will: ***O'Neil v Royal Trust Co***, [1946] SCR 622 at 627; ***Stevens v Morrisroe***, para 17; ***Mah v Zukas Estate***, paras 57 and 59. A deceased may have only temporary periods of rational and lucid behaviour, and in such moments, an individual may competently dispose of his or her estate: ***Re Weidenberger Estate***, 2002 ABQB 861, para 28. A person could also have capacity to instruct and execute a will, but not have capacity to undertake other tasks: ***Re Weidenberger Estate*** at para 30; ***Mah v Zukas Estate***, para 58.

[14] It is clear, then, that I must assess the evidence respecting Ronald's health with particular focus on the time of his giving instructions for and executing the Will. Therefore, the Execution Date is the most relevant time.

III. Evidence About Ronald's Health

[15] Accordingly, resolution of the issues in this matter requires me to consider the evidence pertaining to Ronald's health. As there is considerable contradiction in the evidence before me, I now set out a summary of the evidence, followed by which evidence I prefer and why.

[16] The following table sets out the individuals who gave evidence, and in what form:

		Witness at Trial	Affidavit	Questioning
1.	Shirley Steele	X	X	X
2.	Douglas Hazelton	X	X	X
3.	James Ablett	X	X	X
4.	Norman Tainsh	X	X	X
5.	Patty Fenton	X		
6.	Shirley Cullum	X	X	X
7.	Shirley Felker-Dunbar	X		
8.	Donna Steele	X	X	X
9.	Donald Steele	X	X	X
10.	Vera Hazelton		X	X
11.	Rob Aukema		X	
12.	Will Sherman		X	
13.	Tim Mackenzie		X[1]	X
14.	Colin Martin		X	
15.	Titus Wittman		X	X

A. Shirley Steele

[17] A good part of Shirley's evidence related to a stroke Ronald suffered in 2012 (the "**Stroke**"). Immediately after the Stroke, Shirley visited Ronald at the hospital every day for approximately one week before leaving on a pre-planned trip to Europe. When she returned approximately 5 weeks later, she noted that Ronald's mobility had improved. Her evidence is that Ronald wasn't very quick on his feet or in conversation, but nonetheless engaged her in conversation about her trip.

[18] Shirley formed the opinion that working on Ronald's brain functions would be helpful to him. She arranged for him to attend a program called Brain Awakening offered by Glenna Reid. She did not know Ms. Reid, but believed after doing some research that the electrodes used in the program would assist in understanding the brain issues she says Ronald was suffering from.

[19] Shirley also signed Ronald up for an Educational Kinesiology therapy called Brain Gym. One of the exhibits at trial was a letter signed by "Elizabeth Wroe, B.Ed, Educational Kinesiology

[1] Tim Mackenzie swore two Affidavits

Consultant Brain Gym Instructor". The letter is undated, and Ms. Wroe neither swore an affidavit nor was called as a witness. Her letter offers little helpful information.

[20] Shirley's evidence is that, after the Stroke, Ronald was not as engaged in his former activities, which included playing hockey, Ski-Dooing, and hunting. Further, she believed Ronald's sense of direction was lacking and says that he had difficulty operating a computer, a washing machine and a TV remote. She described Ronald as always sitting and doing nothing, even when they went for coffee and says that he complained about his brain being foggy. She also stated that after the Stroke, Ronald was always agitated and delusional.

[21] Shirley described a number of incidents that made her question Ronald's mental functioning. At one point, Ronald accused Judy of stealing $300,000. After Judy took Ronald to the bank and the bank explained that the money had been used to purchase a GIC, Ronald was satisfied and dropped the matter. In another incident, Ronald ranted to Shirley about their uncle Harold, whom Ronald said had failed to pay him for some land that he had sold to him. Shirley told Ronald to call Donald, who would have the details about that transaction. It is unclear how Ronald's concern about Harold was ultimately resolved. I assume that Ronald was ultimately satisfied after having spoken with Donald about the issue. But in any event, even if that assumption is incorrect, failing any additional evidence I cannot conclude that Ronald's expression alone of a concern he had about whether Harold paid him for land is reflective of incapacity.

[22] Shirley noted generally that Ronald could remember things in the past, but less in his daily life. For example, she and Ronald had made plans for her to join him for lunch one day at the Golden Hills Lodge in Three Hills, where he was living. When she arrived, she discovered that Ronald had forgotten to tell the Golden Hills Lodge she would be there for lunch. She admitted that she didn't know if this was due to a lack of memory or a lack of interest.

[23] In February 2017, Ronald's treatment of a staff member at the Golden Hills Lodge resulted in his residency there being terminated. There is no evidence from the facility about what transpired. However, Ronald's siblings, including Shirley, testified that it had something to do with Ronald reacting adversely to being asked to take his medication, and subsequently treating a staff member in a manner that the Golden Hills Lodge management deemed to be sufficient grounds to terminate his residency.

[24] Within a day or two of that event, Ronald called Shirley and "ranted and raged" at her, in what she says was a very uncharacteristic manner. Eventually, Shirley was able to determine that Ronald was upset about Donald threatening to resign as Ronald's attorney if Shirley was appointed as well. However, when Shirley called Ronald later that evening, he did not remember the conversation.

[25] On March 12, 2017, Shirley emailed Ronald's lawyer, Norman Tainsh, to advise that she was surprised to hear that Ronald was allowed to sign any legal papers, given his mental state. She noted that Ronald had never previously raised his voice to her and that his rage was shocking and disturbing. At that time, Shirley had learned that Ronald had updated his power of attorney, but did not know about the Will. She did not see the Will until after Ronald's death.

[26] Shirley questions whether Ronald knew what he was signing when he executed the Will. She disagrees that the checklist at the end of the Will, titled "Acknowledgement", accurately reflects Ronald's condition at the time. She also notes that the Stroke caused Ronald to suffer peripheral vision problems; she says that this may have had an impact on his ability to read the Will. She points to spelling mistakes and a reference to Shirley having children in support of her position that Ronald did not read the Will.

B. Douglas Hazelton

[27] Doug testified that in the fall of 2016 he, Vera, and Judy attended the Golden Hills Lodge's Thanksgiving Tea with Ronald. At that visit, Doug says Ronald was engaged in conversation and participated in joking about Judy's hearing issues. Doug saw Ronald more often after that and describes Ronald during this subsequent period as unable to handle disruptions from his existing routines. As an example, when Doug proposed a bike route that he thought was safer than the one Ronald had been taking, Ronald could not figure out the new route despite Doug explaining it a couple of times.

[28] Doug stated that that Ronald was unable to operate the television remote. He testified that on one occasion, he preset the television to the channel broadcasting a Flames game. When he inquired about it a couple of days later, Ronald said the game hadn't been on.

[29] Doug also stated that Ronald's ability to operate his phone was limited. Doug testified that Ronald could make calls using the speed dial buttons, but could not troubleshoot problems and required the assistance of family or friends to fix his phone.

[30] Finally, Doug observed that Ronald had difficulty reading a restaurant menu. Ronald was slow to review menus and would often ask what the daily special was.

C. James Ablett

[31] James Ablett was Ronald's accountant. His evidence was generally that he had concerns that Ronald did not have capacity to make the Will.

[32] A significant part of Mr. Ablett's testimony was focussed on his recollection that Ronald initially did not know about a refund of RRSP premiums arising from Elayne's passing. Mr. Ablett became aware of such refund when he noted the related T4RSP on Ronald's online CRA file. His evidence was that Ronald had not told him about Elayne's death. After reviewing documents provided to him by the lawyer dealing with Elayne's estate, Mr. Ablett became aware of a T4RSP slip for a second RRSP account belonging to Elayne. Mr. Ablett noted that he was surprised that Ronald did not have that second T4RSP slip, although he acknowledged that it was not on the CRA file.

[33] Mr. Ablett specifically stated that while he hadn't actually talked to Ronald about it, he did not believe Ronald understood the value of his Three Hills farmlands. He stated that Ronald had in past years been quite good about bringing to Mr. Ablett information about his lease and farmland rental revenues. However, when Ronald brought in his 2016 tax information in 2017, some of the usual information was missing. Mr. Ablett said this was highly unusual and it contributed to his belief that Ronald's memory and comprehension had declined.

D. Vera Hazelton

[34] Vera did not give oral testimony at trial and her affidavit includes no date references for her observations about Ronald. Therefore, I do not know if the concerns she expresses are in or around the Execution Date.

[35] During her questioning, Vera made a number of acknowledgments about her affidavit evidence. For example, while she stated that she believed Ronald had difficulty reading, she acknowledged that she did not know if that difficulty was because Ronald couldn't understand the words or simply couldn't see them. While she stated that Ronald didn't cook for himself and in fact didn't have a working stove in his suite, she acknowledged that Ronald generally liked to eat out and had the financial means to do so.

[36] Vera further acknowledged that after Ronald became familiar with an area, he would be able to bicycle around that area most of the time without getting lost. While Ronald might veer off course or fall off his bike once in a while, he had always been able to get directions from a stranger to get back on course. Vera specifically noted that Ronald initially had trouble when he moved to Three Hills in October 2016, but after a few weeks was comfortable and able to navigate his way around town without difficulty.

[37] Vera described Ronald as being anxious around the Execution Date, but thought this was the result of the incident at the Golden Hills Lodge that resulted in termination of his residency there.

[38] Vera specifically stated that she believed Ronald to have had the mental capacity to sign the Will on the Execution Date. Vera specifically recalled that, immediately after Ronald left Mr. Tainsh's office, she asked him if he had remembered to include his nieces and nephews in the Will. Ronald responded that he had not remembered, so he turned around and went back Mr. Tainsh's office to give updated instructions. After leaving Mr. Tainsh's office for the second time, Ronald advised her that he had now included gifts to his nieces and nephews in the Will.

[39] In other words, Vera believed that Ronald had capacity to discuss his finances with her and to convey instructions about gifts to his nieces and nephews to Mr. Tainsh. She did not raise any concerns about Ronald's capacity with Mr. Tainsh, despite being present at his office on the Execution Date.

E. Shirley Cullum

[40] As with several other witnesses, Ms. Cullum's evidence describes events that are not necessarily reflective of Ronald's mental capacity in and around the Execution Date. In her testimony at trial, Ms. Cullum described a meeting she and her husband, Evan, had with Ronald in October 2017 at which they negotiated updated terms for the continuation of a land lease. Her testimony was that Ronald's conduct of those negotiations left her with no concerns about his mental capacity.

F. Donna Steele

[41] Donna's evidence does not include any personal knowledge of Ronald's mental capacity either at or immediately before or after the Execution Date.

[42] Her evidence is that during 2016 and 2017, Shirley and Vera were taking Ronald to appointments with Mr. Tainsh for the purpose of giving instructions about a power of attorney and a will. She states that neither of them raised with her any concerns about Ronald's capacity. I put limited weight on this statement, as there is no evidence about why she would have expected any family members to have raised such issues with her during Ronald's lifetime.

G. Donald Steele

[43] According to Donald, Ronald was a hard worker who achieved what he set out to do and rarely sought advice when pursuing his goals. Ronald's hobbies included hunting, playing hockey, biking, going for coffee, and playing cards; the pair did many of these activities together. Donald said Ronald was very good at the card game, Rook, which required keeping track of cards and doing mental math.

[44] Donald pointed out that while Ronald lived on his own, he did not do much cooking and would often eat out. Donald indicated that Ronald wasn't great with computers, but was quite skilled at truck maintenance. He stated that Ronald did not take public transit very often because he typically drove himself around.

[45] Donald's evidence was that Ronald was initially quite different after the Stroke, but slowly became his old self again. After the Stroke, Donald and Ronald were usually in touch every couple of weeks. Sometimes, there would be a month or more between visits, but it would be rare for the two of them not to see each other in person at least once every month or two. He acknowledges that he does not specifically recall whether he saw Ronald in February 2017.

[46] Donald said that after the Stroke, Ronald was still engaged in conversations, though not about sports or hunting as before. Instead, they talked about Ronald's new interests. They still had coffee, rode bikes, and played cards together and, just as before, Ronald usually won at Rook.

[47] Donald's evidence was clear that he did not have any concerns about Ronald's capacity in 2017 or 2018. While Donald did not know at the time that Ronald was preparing his will, in retrospect, he did not have any concerns about Ronald's ability to give instructions for and to execute the Will.

[48] Donald was aware that Ronald was handling his own financial affairs from 2016 to the end of 2017 and had no concerns about it. Furthermore, Donald had no concerns that Ronald coordinated the sale of Elayne's house and the probate of Elayne's will. Donald also knew that Ronald negotiated a farm lease agreement with his tenants, and that he arranged and completed the sale of some land in 2017. He had no concerns about Ronald's capacity to make these significant financial decisions.

[49] Nothing in the Will surprised Donald as it was consistent with what Ronald had communicated to him many years earlier. Donald explained that Ronald had always given to

charity and the Will was consistent with this propensity to give generously, specifically to religious charities. Ronald listened to Living Truth and Insight on the radio and on TV. He read articles and books from these and other religious institutions and kept many such publications in his basement and on his desk.

[50] As noted above, Donald renounced his role as executor of the Will. He stated this was because, while the other two executors questioned the validity of the Will, Donald believed that it was indeed Ronald's intention to give such money to charity.

H. Titus Wittman

[51] Titus Wittman ("**Titus**") did not testify at trial, but he was questioned on his affidavit. His evidence was that he and Ronald had been friends for approximately 25 years. In 2016 and 2017 they saw each other approximately once per month, though Titus does not specifically recall if he saw Ronald in February 2017.

[52] Titus believes Ronald had capacity to sign the Will in February of 2017. He stated that, in all his interactions with Ronald in 2016 and 2017, he never had any concerns about Ronald's capacity. He was specially questioned on this recollection and his evidence did not change.

[53] Titus acknowledged that it took some months for Ronald to recover after the Stroke, but asserted that, within a few months, Ronald's cognitive health was the same as prior to the Stroke.

[54] Titus stated that he was present at the meeting with Shirley and Evan Cullum because he was the one who drove Ronald to that meeting. Titus states that Ronald did not ask Titus for his advice and he did not offer any. Based on his observations, there was no doubt in his mind that Ronald knew what he was doing and that he had conducted sufficient background research to determine the value of his land and what constituted fair terms for the lease.

[55] Titus' evidence was that he observed Ronald looking distraught when Shirley's name came up. On cross-examination on his affidavit, Titus maintained that Ronald had a "more contentious" relationship with Shirley than with Vera or Judy, but was unable to give specific examples.

I. Norman Tainsh

[56] Mr. Tainsh's evidence was that he had been a lawyer for over 49 years, practicing in large part in the area of wills and estates, and that he had prepared thousands of wills during his career. He testified that he knew Ronald and had opened several files for him over the years.

[57] Mr. Tainsh testified that he had during his career encountered situations where he was concerned about a client's capacity to execute a will, but Ronald's was not one of them. Between November 2016 and February 2017, Mr. Tainsh and Ronald had multiple interactions about the preparation of a power of attorney and a will, some in-person and some over the telephone. While Mr. Tainsh thought that Ronald might have taken more time to communicate his thoughts than he previously had, this observation did not lead him to believe that Ronald lacked capacity to give instructions for and execute the Will. He acknowledged that he did not have a specific memory of his conversations with Ronald during that time but, based on his review of his notes and file materials, he was reasonably certain about his recollection of events. In particular, Mr. Tainsh

remembers with certainty that he had no discussions with Ronald, or with Judy or Vera, who both drove Ronald to his office, about Ronald completing a cognitive assessment.

[58] Mr. Tainsh's evidence is that he discussed with Ronald the value of at least one parcel of land, the list of charities Ronald desired to include in the Will, and the potential tax implications of making gifts to Canadian versus American charities. These discussions did not lead Mr. Tainsh to have any concerns about Ronald's capacity.

[59] Mr. Tainsh described the general events of the Execution Date in much the same way as Vera did. Ronald reviewed and executed a will Mr. Tainsh had been prepared, only to return to the office approximately 10 minutes later, expressing a desire to include specific gifts to his five nieces and nephews. As a result, Mr. Tainsh made the necessary revisions and Ronald executed the revised version, being the Will. Mr. Tainsh stated that when he asked why Ronald wanted to make these changes already, Ronald said these additional gifts would stop the fighting and that it was only $125,000 anyway.

J. Patty Fenton

[60] Ms. Fenton was a legal assistant working in Mr. Tainsh's office. She had some dealings with Ronald and with the preparation of his documents. From her desk, she could see into the conference room where Ronald and Mr. Tainsh would meet. She generally would enter the conference room after meetings to witness or commission signatures.

[61] She not only witnessed Ronald's signature twice on the Execution Date (once for the first will version and again for the Will once revised), she was also involved in coordinating communication with Mr. Ablett to facilitate tax efficiencies for Ronald's estate. Ms. Fenton's evidence is that she emailed Mr. Ablett about a number of matters, including making gifts to Canadian rather than American charities for tax reasons. Ms. Fenton's evidence is that she might have spoken directly to Ronald about Mr. Ablett's advice to keep gifts to Canadian based charities, but she does not remember whether she told Ronald personally, or whether she told Mr. Tainsh who would have passed the message on to Ronald.

[62] Ms. Fenton's evidence was that if she had any concerns about a client's capacity, she would have brought it to Mr. Tainsh's attention. She testified that she did not observe or otherwise have any concerns about Ronald's capacity. She also knows that Mr. Tainsh did not have any such concerns because if he did, his practice was to ask her to prepare a letter to a physician inquiring about the client's capacity. She was not asked to prepare such a letter for Ronald.

K. Shirley Felker-Dunbar

[63] Ms. Felker-Dunbar gave evidence at trial. She is a retired lawyer whose practice was approximately 30% in the area of wills and estates. In 2016, she was retained to assist in the probate of Elayne's will. She met with Ronald, in his capacity as executor of Elayne's will, multiple times in the spring and summer of 2016.

[64] Ms. Felker-Dunbar remembered Ronald in part because he didn't have a driver's licence and always rode his bike. Her evidence was unequivocal in that she believed Ronald was competent and that she had no concerns about his capacity. If she had had any concern that he

would not be able to handle Elayne's estate, she would have asked him to renounce his role as executor. In addition to her specific recollection of Ronald, Ms. Felker-Dunbar stated that her notes would have reflected any concern she had about his capacity.

[65] Further, Ms. Felker-Dunbar recalls that Ronald carefully read the grant application she had prepared and she believed that he understood it. She testified that Ronald would always answer her questions and get any information she requested. She acknowledged that the information she requested was reasonably straightforward; nonetheless, it included information about bank accounts, insurance policies, personal and real property, all of which would have required some effort on Ronald's part to obtain. In none of her interactions with Ronald did she develop any concern about his capacity.

L. Rob Aukema, Will Sherman, Colin Martin, and Tim Mackenzie

[66] The affidavits sworn by each of Rob Aukema, Will Sherman, Colin Martin, and Tim MacKenzie in November 2021 set out the amounts Ronald had donated to Insight for Living Ministries Canada ("**Insight**"), Living Truth Canada ("**Living Truth**"), In Touch Ministries Canada ("**In Touch**"), and Prairie Bible Institute ("**PBI**"). Each of these four individuals swore affidavits as representatives of their respective institutions.

[67] Mr. MacKenzie swore a second affidavit in May 2022, which I will discuss later, and was questioned on this second affidavit. None of Mr. Aukema, Mr. Sherman, or Mr. Martin swore additional affidavits or were questioned.

[68] The four affidavits sworn in November 2021 set out Ronald's lengthy donation history with these organizations. Ronald began donating to PBI prior to 1996, PBI did not track donations prior to that; from 1996 through June 2018, Ronald donated $24,300 to PBI. From 2013 through May 2018, Ronald donated $19,816 to Living Truth. From 2013 through May 2018, Ronald donated $38,691 to In Touch. From 2017 through June 2018, Ronald donated $9,300 to Insight. These affidavits do not provide any evidence about Ronald's mental capacity.

[69] In an undertaking response, Mr. MacKenzie acknowledged that between July 2018 and December 2019, vastly greater sums were donated in four tranches to PBI on Ronald's behalf by Donald acting under a power of attorney. The sum of these four tranches was $597,500.

[70] Mr. MacKenzie's second affidavit provides a summary of events after Ronald passed away and attaches as exhibits a number of communications related to these events. However, none of those exhibits provides personal knowledge about Ronald's mental capacity at the Execution Date.

[71] Mr. MacKenzie's second affidavit does describe a meeting he had with Ronald on April 4, 2018 at which Vera, Doug, and Donald were also present. The purpose of the discussion was to address how to fulfil Ronald's wishes for his estate anticipating that Shirley would contest it. Mr. MacKenzie commented that it was clear to him that Donald was a trusted brother, friend and confidant and that Donald and Ronald had a close brotherly bond. Significantly, Mr. MacKenzie's evidence was that he did not note Ronald to have any dementia, confusion or memory deficits. Mr. MacKenzie noted that he was not alone with Ronald when this was discussed, and that Ronald did not do a lot of talking at that meeting.

IV. Analysis

[72] The Will was provided as an exhibit in the summary trial. It is signed by Ronald and witnessed by both Mr. Tainsh and Ms. Fenton. Immediately behind the Will is a one-page document titled "Acknowledgement", signed by Ronald and witnessed by Mr. Tainsh. The "Acknowledgment" contains ten statements, each of which was initialed by Ronald. Ronald expressly acknowledges, *inter alia*, that he read over the Will, knew its contents, knew that it was a testamentary document, was aware of the extent and value of the assets comprising his estate, signed the Will before two witnesses who were present when he signed it, and was present when the two witnesses signed it.

[73] As noted above, the Supreme Court of Canada held in ***Vout*** at para 26 that the propounder of a will has the legal burden to prove that the will was duly executed with the required formalities. The propounder then benefits from a rebuttable presumption that the testator knew and approved of the contents of the will and had testamentary capacity. Naturally, the mere existence of a testator's signature and initials on a document containing statements consistent with the testator having testamentary capacity is not irrefutable; a person without capacity might not know what they are being asked to sign and initial. If a party challenging a will can raise suspicious circumstances, the rebuttable presumption is spent and the propounder of the will resumes the burden of proving both testamentary capacity and knowledge and approval.

[74] On its face and with the Acknowledgement, the Will appears to have been executed with the requisite formalities. However, Shirley and Doug take the position that the circumstances surrounding Ronald's execution of the Will are sufficiently suspicious to rebut the presumption and require proof of testamentary capacity. I must make this determination based on the evidence before me.

[75] As Justice Goss noted in ***Papp v From***, testamentary capacity is both time and task specific.

[76] Accordingly, from a temporal perspective, the evidence of Mr. Tainsh and Ms. Fenton is the best evidence available because they were present when Ronald executed the Will. Though Vera was not present with Ronald at that moment, she did spend time with Ronald on the Execution Date and spoke to him specifically about the Will. In contrast, the other witnesses either did not give evidence about Ronald's capacity or spoke to Ronald's capacity weeks or months before or after the Execution Date.

[77] Moreover, I find that from a task perspective, the most relevant evidence comes from Mr. Tainsh and, to a lesser extent, Ms. Fenton. Mr. Tainsh was the solicitor who took Ronald's instructions and was one of the witnesses to the Will. He also prepared and witnessed the "Acknowledgment". Ms. Fenton, Mr. Tainsh's legal assistant, also interacted with Ronald in respect of the Will. Neither of them had any concerns about Ronald's capacity on the Execution Date or in the days prior when they obtained Ronald's instructions for the preparation of his power of attorney and the Will.

[78] This Court has noted repeatedly that a lawyer's evidence may carry significant weight, and further, that the test for determining testamentary capacity may be answered if there is clear and convincing evidence from the deceased's solicitor's judgment that the deceased had testamentary

capacity at the time the will was made: ***Scramstad v Stannard***, 1996 CanLII 10408 (ABKB) at para 139 ("***Scramstad***"), cited **in *McAndrew Estate (Re),*** 2020 ABQB 614 at para 36 ("***McAndrew***") and ***Morin Estate (Re)***, 2020 ABQB 725 at para 24 ("***Morin***").

[79] Ms. Felker-Dunbar was also a lawyer. Her evidence was that her interactions with Ronald during the spring and summer of 2016 with respect to Elayne's estate did not leave her with any concerns about his capacity. Granted, Ms. Felker-Dunbar's evidence relates to a time period that pre-dates the Execution Date by several months.

[80] Mr. Ablett's evidence, in my view, has a number of frailties. Mr. Ablett expressed surprise that Ronald had not advised him of Elayne's death and that Ronald did not possess the T4RSP slip for the smaller of Elayne's two RRSP accounts. I place little weight on this. First, I do not see how Ronald's failure to advise his accountant, Mr. Ablett, of Elayne's death is indicative of incapacity. Second, as noted above, Mr. Ablett acknowledged that the T4RSP slip in question also was not on the electronic CRA file. Mr. Ablett stated that Ronald should have known not only about the T4RSP slips because they were for significant refunds of premiums, which were deposited into Ronald's bank account. However, there is no evidence before me that Ronald was even aware of such deposits. It is unclear what role, if any, Ronald played in the deposit of such funds; they may have been deposited electronically by the issuing institution. Moreover, I do not accept that a layperson's lack of understanding of what is to happen with a deceased person's RRSP indicates a lack of testamentary capacity, especially as such events typically arise rarely, if at all, in one's lifetime. Equally, even if Ronald failed to provide Mr. Ablett with all of the information necessary to complete his 2016 tax return, I am not satisfied that this is indicative of cognitive incapacity.

[81] In fairness to Mr. Ablett, he was at a disadvantage when he swore his affidavit. Not only was he asked to prepare his affidavit five years after his retirement, but he was on vacation out of the country when the request was made of him, the effect of which was that his affidavit was sworn with a reliance on his memory of events which occurred five years earlier and without having had an opportunity to review his file materials. It is not entirely surprising therefore that there is some inconsistency between Mr. Ablett's affidavit and his evidence at trial. For example, he swore in his affidavit that Ronald implied that Mr. Ablett prepared Elayne's terminal tax return whereas at trial, his evidence was that Ronald expressly told Mr. Ablett of his belief that Mr. Ablett had prepared Elayne's terminal tax return.

[82] A further example is when Mr. Ablett swore in his affidavit that he regrets, when was contacted by Mr. Tainsh's office in January 2017 that he didn't at that time "put two and two together" that Mr. Tainsh had contacted him to gather information in order to prepare Ronald's will. Mr. Ablett swore that if he had known at that time that Mr. Tainsh was working on Ronald's will, he would have articulated his concerns about Ronald's state of mind to Mr. Tainsh. However, at trial, Mr. Ablett acknowledged that Mr. Tainsh reached out to him in writing in 2017 and expressly stated that the reason was "to discuss some estate planning and to take instructions to prepare [Ronald's] Will". In other words, the statement in Mr. Ablett's affidavit about desiring to "put two and two together" was incorrect.

[83] Mr. Ablett communicated with Ronald in the summer of 2016 and again in April of 2017. These periods of time, while surrounding the Execution Date, do not provide detailed insight into

Ronald's mental capacity on the Execution Date. For this reason, and the reasons set out above, Mr. Ablett's evidence is less helpful than that of Mr. Tainsh, Ms. Fenton, and Vera.

[84] Both Shirley and Doug swore affidavits and gave evidence at trial respecting their observations of Ronald. As set out above, Doug's evidence included that Ronald was not able to operate a television remote. It is not clear to me from Doug's evidence whether Ronald couldn't operate the television remote, didn't watch the Flames game, or changed the television station to something else. I know nothing about the television remote in question, and even if I did, I am not satisfied that inability to operate a television remote indicates a deficit of any mental capacity, let alone testamentary capacity.

[85] I view the evidence about Ronald's difficulties with his cell phone in much the same way. There is insufficient evidence for me to know what kind of phone Ronald had and again, even if I had such evidence, I do not see how an inability to troubleshoot problems with one's phone indicates a lack of mental capacity. In particular, I do not see how it relates to the test for testamentary capacity. Again, it is important to bear in mind that capacity is a task specific inquiry. It does not stretch belief to suggest that many people who struggle with their phones are nevertheless capable of making decisions about the disposition of their estates on death.

[86] I decline to infer that Doug's observation that Ronald was slow to read a menu is a suspicious circumstance calling into question his capacity to execute the Will. In the present case, the only evidence is that Ronald read menus slowly. While slow reading might be a suspicious circumstance in some cases, there would need to be evidence of the person's previous reading speed, or of a lack of comprehension, or some other link between reading slowly and capacity. In the present case, there is none.

[87] Doug's evidence was that at times Ronald failed to recall details of what he had been doing in the past and even didn't recognize Doug. While a failed memory, to the point of not recognizing friends or family, is significant, it is not clear when these events occurred. There is some indication that they were in the summer of 2017. Again, capacity is a time-specific issue and without more, I am not prepared to conclude that Ronald's mental state in the summer of 2017 reflects his testamentary capacity on the Execution Date.

[88] Both Doug and Shirley suggest that it is unusual that Ronald did not notice that Donald's and Shirley's last names are at times spelt incorrectly in the Will, even though they share the same last name as Ronald. These were clearly typographical errors. The Will was not prepared by Ronald, but by Mr. Tainsh and I am not prepared conclude that Ronald's failure to notice them indicates a lack of capacity.

[89] The Will also makes references to beneficiaries' surviving children; this reference follows each instance where a beneficiary is named in paragraphs 7-14 of the Will. Shirley argues that Ronald failed to point out that Shirley does not have any children. This, she argues, indicates a lack of testamentary capacity. For reasons similar to above, I do not put any weight on Ronald's failure to point out to Mr. Tainsh the inclusion of words that were possibly superfluous. In any event, the reference to surviving children is not inaccurate since the reference also includes the words "if any". Finally, I do not know whether or not Ronald pointed out such words to Mr. Tainsh, and if so, what Mr. Tainsh's response might have been.

[90] As already noted, the most significant issue with Shirley and Doug's observations is that they are not particular to the Execution Date. For this reason, I prefer the evidence of Mr. Tainsh, Ms. Fenton, and Vera. The evidence is that the Will was duly executed by Ronald with the requisite formalities. As contemplated by ***McAndrew*** and ***Morin,*** there is clear and convincing evidence from Ronald's solicitor, Mr. Tainsh, that in his judgment, Ronald had testamentary capacity when he executed the Will.

[91] I note the finding in ***Scramstad***, cited in ***McAndrew*** at para 36 and ***Morin*** at para 24, that "Medical evidence is not required, not necessary nor necessarily conclusive when given". In the present case, no expert evidence was tendered. Some medical documentation was included in the Agreed Book of Exhibits, though the parties agreed that such medical records were being tendered only as proof of the fact that the records, diagnosis, and opinions contained therein were made, not for their truth. The medical records include some commentary about Ronald's cognitive state at various times, but none of them provide a diagnosis or opinion in respect of the Execution Date. There are some medical records around the Execution Date, but the substance of the notes is not consistent. Without an expert opinion about how the differing medical findings should be interpreted, I am left with inconsistent and changing comments by health care providers who have varying qualifications, and which use varying language/terminology. These are of limited assistance.

[92] I note that Mr. Tainsh is a lawyer with nearly 50 years of experience who has practiced significantly in the area of wills and estates, has prepared thousands of wills during his career, and was, as are all members of the Alberta Bar, bound by the Law Society of Alberta Code of Conduct which imposes obligations on lawyers vis-à-vis client capacity. I accept Mr. Tainsh's evidence that he had no reason to question Ronald's capacity.

[93] Based on this and my assessment of the other evidence before me, I conclude that Ronald did have testamentary capacity on the Execution Date. It follows that I reject the argument that there were suspicious circumstances tending to negative testamentary capacity, and that Ronald knew and approved of the contents of the Will.

V. Conclusion and Remedy

[94] As a result of my finding that Ronald had testamentary capacity, that he knew and approved of the contents of the Will, and that there were no suspicious circumstances surrounding his preparation or execution of the Will, I direct that the co-personal representatives of the Estate proceed to probate the Will in the normal course and without further delay.

[95] This direction begs the question of whether this application for advice and direction was necessary in the first instance. Put another way, who should bear the cost of this summary trial given my conclusion is that there were no suspicious circumstances in respect of Ronald's capacity?

[96] Notwithstanding that Shirley brought this application in her capacity as Personal Representative of the Estate and characterized the application as an application for advice and direction, she was nonetheless an individual who stood to benefit financially if indeed the Will had been set aside. I would have been prepared to direct that the costs of this summary trial (which

was scheduled for 8 days but was completed in 6 days) if the application for advice and directions arose as a result of Ronald's actions. However, in the present circumstances, from a temporal perspective, I have generally preferred the evidence of Mr. Tainsh, Ms. Fenton and Vera; and from a task perspective, I have generally preferred to evidence of Mr. Tainsh, and to a lesser extent both Ms. Fenton and Ms. Felker-Dunbar. While Shirley may not have always been aware of the evidence of Mr. Tainsh, Ms. Fenton, Ms. Felker-Dunbar and Vera, she certainly knew of their evidence prior to the commencement of the summary trial. While there might have been some issues of credibility, the evidence of these individuals, excepting Ms. Felker-Dunbar, for the most part surrounded the question of Ronald's capacity in and around the time he made the Will.

[97] Even if Shirley had personal reasons to disbelieve the opinions of strangers, such as Mr. Tainsh, about Ronald having capacity, Shirley knew that her sister, Vera, had specifically driven Ronald to Mr. Tainsh's office to execute the Will, and expressed no concerns about Ronald's capacity on that day. Similarly, Shirley knew that her brother, Donald, had specifically renounced his role as personal representative of the Estate on the basis that he believed Ronald to have had capacity to execute the Will and that the Will ought to be probated in the normal course and as it was written. Like Shirley, both of them stood to benefit if the Will was invalid. Nevertheless, they took the position that Ronald had capacity.

[98] If this had been an application by Shirley in her personal capacity to challenge the Will, I would have awarded costs against her. This application is, however, an application for advice and direction. Even still, I do not characterize this application for advice and direction as having been necessary given the totality of the evidence available to the personal representatives. Furthermore, I do not believe that an individual wearing two hats, namely that of beneficiary and personal representative, ought to avoid a costs award being made against them simply because an application is characterized as being for advice and direction. However, I am cognizant that the Will provides specific bequests to a number of individuals, and that the residue be paid to the Respondents. I do not have evidence about the quantum of the current assets held by the Estate; it is conceivable that a costs award paid by the Estate will cannibalize the value of the Estate and affect the amounts distributed to not only the Respondents who are the residuary beneficiaries, but also possibly to the named beneficiaries, most of whom were not parties to this application.

[99] Therefore, I am not making an award of costs for this summary trial. However, if the personal representatives seek to have the expenses associated with this summary trial paid by the Estate in the course of passing their accounts, the Respondents may wish to bring these Reasons for Decision to the attention of the Court at such passing of accounts application.

Heard on May 5-14, 2025.
Dated at the City of Calgary, Alberta this 27th day of August, 2025.

O. Ho
J.C.K.B.A.

Appearances:

Predrag Tomic/Amanda Baker, Field LLP
for the Applicant, Shirley Steele, as Co-Personal Representative of the Estate of Ronald Wilfred Steel

Ivon Chauhan/Matthew Davis, Snyder & Associates LLP
for the Respondents, Prairie Bible Institute, Living Truth, Insight for Living Canada, and In Touch Ministries Canada