

**SUPREME COURT OF NOVA SCOTIA**

**Citation:** *Goucher v. McCulley*, 2025 NSSC 349

**Date:** 20251110

**Docket:** Ken No. 529605

**Registry:** Kentville

**Between:**

Ronda Lee Goucher and Laura Beth Blenus

*Applicants*

v.

Jenna McCulley, Katie (McCulley) Rivard, Joshua McCulley and Grace McCulley

*Respondents*

**Judge:** The Honourable Justice Gail L. Gatchalian

**Heard:** November 5, 2025, in Kentville, Nova Scotia

**Counsel:** Rebecca Hiltz LeBlanc, K.C., for the Applicants  
No one appearing for the Respondents

**By the Court:**

**Introduction**

[1] This is an uncontested application for proof in solemn form under s.31 of the *Probate Act*, S.N.S. 2000, c.31 for a declaration pursuant to s.8A of the *Wills Act*, 1989, c.505 that “a writing” is valid and fully effective even though it was not executed in compliance with the formal requirements of the *Wills Act*.

[2] Elizabeth Beatrice Blenus (“Mrs. Blenus”) died on September 14, 2022. She was predeceased by her husband, Gerald Beverly Blenus, who died on March 23, 2022. Mrs. and Mr. Blenus had three children: the Applicants, Ronda Lee Goucher and Laura Beth Blenus, and Heather McCulley. Heather McCulley died in 2006.

[3] Mrs. Blenus executed a will in 2014. The Applicants say that a draft will prepared by lawyer Ashley Skerry in 2022 is a valid will, even though it was not signed by Mrs. Blenus or witnessed. The Applicants say that the draft will revokes the prior 2014 will.

[4] In the 2014 will, Mrs. Blenus appointed her husband as executor, and her daughters Ronda Goucher and Laura Blenus jointly as alternate executors. The 2014 will provided that Mr. Blenus was the sole beneficiary, but if he predeceased

her, the residue of the estate was to be divided in three equal parts as follows: (1) one-third to Ronda Goucher, (2) one-third to Laura Blenus and (3) one-third to the surviving children of Heather McCulley.

[5] The draft will names Ronda Goucher as executor and Laura Blenus as alternate executor, and provides that they are to share equally in the residue of the Estate.

[6] The Application was served on all of the persons interested in the estate, in accordance with the *Probate Court Practice, Procedure and Forms Regulations*, N.S. Reg 119/2001.

[7] The Application was originally contested by the Respondents, Jenna McCulley, Katie (McCulley) Rivard, Joshua McCulley and Grace McCulley. The Respondents are the children of the late Heather McCulley. All objections were withdrawn prior to the hearing of the application.

[8] I heard the uncontested Application today. The Applicants relied on the following affidavits in support of the Application:

1. Affidavit of Ashley Skerry, lawyer, sworn on December 1, 2023, attaching the draft will as Exhibit “A”.
2. Affidavit of Ronda Goucher, sworn on January 2, 2024.

3. Affidavit of Laura Blenus, sworn on December 14, 2023.
4. Affidavit of Andrew Waterbury, sworn on June 28, 2024.
5. Affidavit of Erica Horton, a Licensed Practical Nurse who provided care to Mrs. Blenus in her home, sworn on July 2, 2024.
6. Affidavit of Wendy Spidle, Continuing Care Assistant, who provided care to Mrs. Blenus in her home, sworn on June 28, 2024.

[9] To the extent that the Application relies on the evidence of either Applicant about the acts or statements of Mrs. Blenus, I may not rely on that evidence unless it is corroborated by other material evidence, as required by s.45 of the *Evidence Act*, R.S.N.S. 1989, c.154.

[10] At the end of the hearing, I gave a brief oral decision, granting the Application and declaring that the draft will is a valid will pursuant to s.8A of the *Wills Act* that revokes the prior 2014 will, with detailed reasons to follow. These are my reasons.

### **The *Wills Act***

[11] Section 6(1) of the *Wills Act* requires that a will be in writing, that it be signed at the end or foot thereof by the testator or by some other person in the

testator's presence and by the testator's direction, and that the testator's signature be made or acknowledged by the testator in the presence of two or more witnesses present at the same time. Section 6(1) also requires that the witnesses attest and subscribe the will in the presence of the testator. The draft will, being unsigned and unwitnessed, does not meet the formalities of execution required by the *Wills Act*.

[12] Section 8A of the *Wills Act* grants the court discretion to order that a writing is a valid and fully effective will even though it was not executed with the formal requirements imposed by the *Wills Act*. Section 8A provides as follows:

8A Where a court of competent jurisdiction is satisfied that a writing embodies

(a) the testamentary intentions of the deceased; or

(b) the intention of the deceased to revoke, alter or revive a will of the deceased or the testamentary intentions of the deceased embodied in a document other than a will,

the court may, notwithstanding that the writing was not executed in compliance with the formal requirements imposed by this Act, order that the writing is valid and fully effective as if it had been executed in compliance with the formal requirements imposed by this Act.

[13] The ultimate question is whether the “writing,” in this case the 2022 draft will, expresses a deliberate or fixed and final expression of the deceased's intention as to the disposal of her property upon her death: see *Robitaille v. Robitaille Estate*, 2011 NSSC 203 at paras.18 and 27; *Komonen v. Fong*, 2011 NSSC 315 at paras.22-23; *Peters Estate (Re)*, 2015 NSSC 292 at para.18; and *MacKinnon v. MacKinnon Estate*, 2021 NSSC 272 at para.45.

[14] The Honourable Justice Patrick Duncan, as he then was, in *Peters Estate* set out a non-exhaustive list of factors to consider in determining the deceased's testamentary intention:

- What is the degree of the formality of the language in the document?
- Is it dated?
- Is it signed?
- Has it been sealed?
- Was it delivered to a person, a specific person, with or without instructions as to what to do with it?
- Were there any statements made by the testatrix, either at the time of delivery, or in the document itself that speak to the anticipation of death; that the document was intended to reflect a disposition after death?
- Is there any indicia of when it was expected that the document would read?
- The certainty of the bequests set out in the document.
- Whether there are reasons offered for gifting as set out in the document.
- Whether there is a reference to an existing Will that might tie it back to a Will.
- How permanent was the document intended to be - was it written in ink, or in pencil? i.e., Was this just a penciled thought for erasing later or not? (You have heard me in my preliminary comments about looking at the originals today and noting that there are some deletions in Note 3 that I will speak to a little bit later. Having the original document here allows me to better assess that type of issue.)
- Whether the document was on a form or is it entirely, as in these notes, in the handwriting of the testatrix.

at para.19; see also *MacKinnon* at para.46

[15] The onus is on the Applicants to satisfy the requirements of Section 8A of the *Wills Act* on a balance of probabilities: *MacKinnon* at para.48. Discharging the

onus requires “substantial, complete and clear evidence relating the deceased’s testamentary intentions to the document in question”: *ibid.*

## **Analysis**

[16] The Applicants have discharged the onus on them of satisfying the requirements of s.8A of the *Wills Act*. Based on the wording of the draft will and the extrinsic evidence, I have no difficulty in finding that the draft will embodies a deliberate or fixed and final expression of Mrs. Blenus’ intention as to the disposal of her property upon her death. In particular, I rely on the following evidence.

### ***The Evidence of Ashley Skerry***

[17] I accept and rely on the following evidence of Ashley Skerry:

- She is not a person interested in the Estate.
- She is a partner at Kimball Law in Wolfville, Nova Scotia.
- She first met Mrs. Blenus on or about July 21, 2022, in person, to discuss Mrs. Blenus’ estate planning. It was a very short meeting, as Mrs. Blenus was in an electric wheelchair and was not able to navigate the entrance to the law firm’s Coldbrook office. They discussed setting up a further appointment, by telephone, to take her instructions. Ms.

Skerry spoke to Mrs. Blenus long enough to confirm her identity, and establish that there were no reasons to question her capacity.

- She spoke to Mrs. Blenus on the phone on July 25, 2022. She recognized Mrs. Blenus' voice based on their first in-person meeting. Her understanding was that Mrs. Blenus was alone when speaking to her.
- During the July 25, 2022 phone call, Ms. Skerry received instructions from Mrs. Blenus with respect to her estate planning. Ms. Skerry had no concerns whatsoever about Mrs. Blenus' capacity: she was fully capable of providing instructions, gave clear instructions, and seemed to be confident in these instructions.
- Ms. Skerry's understanding was that Mrs. Blenus wanted to draft a will because she did not have one and she was not in the best of health.
- They spoke again on the phone on August 8, 2022 to confirm instructions. The call was brief, as Mrs. Blenus had people in her home. Ms. Skerry confirmed her instructions as to distribution, as well as verifying that they would schedule a signing appointment at her home once she had approved a draft.

- Ms. Skerry’s understanding is that, sometime following this phone call, Ms. Skerry’s assistant provided Mrs. Blenus with a draft will for her review as follows: the will was picked up in person by one of Mrs. Blenus’ daughters. The draft will provided to Mrs. Blenus is attached as Exhibit “A” to Ms. Skerry’s affidavit.
- Ms. Skerry’s understanding is that Mrs. Blenus contacted Ms. Skerry’s office on August 30, 2022 to request minor revisions to the draft will as follows: Mrs. Blenus spoke to Ms. Skerry’s assistant, who passed her instructions and questions on to Ms. Skerry in writing directly following the phone call.
- Ms. Skerry understood that Mrs. Blenus was seeking minor revisions to the draft will pertaining to issues such as the appointment of her executors. In particular, she was unsure whether her daughters should be joint executors or whether one should be an alternate executor. The revisions did not pertain to distribution.
- Between August 30 and September 8, 2022, Ms. Skerry and her assistant “played phone tag” with Mrs. Blenus. Ms. Skerry and her assistant only reached voice mail for Mrs. Blenus on a number of occasions, and Mrs. Blenus’ calls similarly went to voice mail.

- Ms. Skerry's understanding is that her assistant was able to speak to Mrs. Blenus on September 8, 2023, and arranged a phone call to take place with Ms. Skerry and Mrs. Blenus. Ms. Skerry's understanding was that Mrs. Blenus wanted to discuss the question of executors again.
- Ms. Skerry and Mrs. Blenus were scheduled to speak by phone on September 12, 2023, to finalize her instructions on her executors and to book a signing appointment. On that date, Ms. Skerry called Mrs. Blenus at the scheduled time, but was directed to voice mail, which was full. Mrs. Blenus passed away two days later.
- With respect to distribution, Mrs. Blenus' instructions to Ms. Skerry were clear and consistent from the first meeting and remained unchanged throughout the period of the retainer.
- Specifically, Mrs. Blenus was very clear that she wished for her surviving daughters, Ronda and Laura, to share in the residue of her estate. She had no wish for any of her grandchildren, including Joshua McCulley, Gracie McCulley, Jenna McCulley and Katie McCully, or the children of Ronda or Laura, to inherit from her estate in the first instance, but only if both of her daughters, Ronda and Laura, predeceased her.

- Ms. Skerry canvassed other distribution alternatives with Mrs. Blenus, especially in relation to the McCulley grandchildren. Mrs. Blenus instructed Ms. Skerry that the McCulleys were not to share in the distribution of her Estate in the first instance because they did not visit or otherwise have a strong relationship with her. Mrs. Blenus advised Ms. Skerry that she felt it was best for Ronda and Laura, or the survivor of them, to receive the entirety of the value of her Estate as she had a close relationship with both of her daughters.

### ***The Provisions of the Draft Will***

[18] The draft will is professionally drafted and provides as follows, amongst other things:

- At the top of the first page, it reads “THIS IS THE LAST WILL AND TESTAMENT of me, Elizabeth Beatric Blenus of 25 Wade Street, Kentville, in the County of Kings and Province of Nova Scotia.”.
- Clause 1 revokes all former wills and other testamentary dispositions.
- Clause 2 names Ronda Goucher as the Executor and Laura Blenus as the alternate executor.

- Clause 3 directs the executor to pay all of the deceased’s debts, taxes and funeral and testamentary expenses.
- Clause 4, entitled “Disposition of Estate,” gives all of the Estate to Ronda Goucher and Laura Blenus in equal shares, provided that should either of them die or leave surviving no children, then the deceased child’s share would go to her other surviving child, and provided further that if both of her children predecease Mrs. Blenus, the Estate shall pass to those of her grandchildren surviving in equal shares.
- Clause 4 gives Ronda Goucher first option to purchase the home, failing which Laura Blenus has the same option.
- Clause 5 contains typical language regarding the power of the executor to administer the Estate.
- At the end of the draft will are spaces for the testator to sign and date the will, and the Affidavit of Execution.

***The Evidence of Erica Horton***

[19] I accept and rely on the following evidence of Erica Horton, Licensed Practical Nurse:

- Ms. Horton is not a person interested in the Estate.
- Ms. Horton knew Mrs. Blenus since Ms. Horton was a child. Ms. Horton went to grade school with Laura Blenus. She considers herself to be a friend of the Blenus family.
- Ms. Horton worked as a private personal care worker for Mrs. Blenus for 11 months, until Mrs. Blenus passed away in September of 2022. During those 11 months, starting in the fall of 2021, Ms. Horton provided Mrs. Blenus with private care in her home. As part of her employment, Ms. Horton visited Mrs. Blenus twice a week, typically for three or four hours at a time. She assisted Mrs. Blenus with showering, washing her hair and light chores around the house. Some of the light chores included sweeping, mopping and occasionally laundry.
- Mrs. Blenus would instruct Ms. Horton to help her do things if she could not reach. Mrs. Blenus prepared her own meals, and frequently baked;
- Shortly after Mr. Blenus' death in the early winter of 2022, Mrs. Blenus began asking Ms. Horton to take her out of the house and drive her to do errands. Eventually, and for several months, it was typical for Ms. Horton to take Mrs. Blenus out nearly every shift.

- When they went out, Mrs. Blenus would get “dolloed up.” She could get herself dressed, but Ms. Horton would assist if asked.
- While running errands, Ms. Horton often drove Mrs. Blenus to at least one of the three banks where Mrs. Blenus did her banking. Mrs. Blenus used her power wheelchair to go into the bank each time.
- While running errands, Mrs. Blenus often instructed Ms. Horton to take her shopping at Winners, or grocery shopping.
- During these outings, at Mrs. Blenus’ request, they nearly always went out for lunch in New Minas.
- In or about the spring of 2022, Mrs. Blenus asked Ms. Horton to drive her to a lawyer’s office in Coldbrook. When they arrived, Mrs. Blenus could not enter the law office because of her wheelchair. Ms. Horton does not know what business she intended to conduct at the office, and they never spoke about it.
- Ms. Horton described Mrs. Blenus as a very “particular” person, someone who knew what she wanted, knew what she liked, and how she wanted things done; for example, she was particular about her bed being

made a certain way and how much cleaner to use when mopping the floors.

- For the entire time Ms. Horton cared for Mrs. Blenus, with the exception of her mobility, Mrs. Blenus was independent, articulate and not shy about vocalizing her wishes.
- Mrs. Blenus informed Ms. Horton that Heather McCulley's children did not have much to do with her and that she did not see them often. Mrs. Blenus informed Ms. Horton that Heather McCulley's children seldom visited her since their father had remarried, and that Mrs. Blenus thought that was wrong. In the time that she worked for Mrs. Blenus, Ms. Horton recalls one occasion when two or three of Heather McCulley's children visited Mrs. Blenus.

*The Evidence of Wendy Spidle*

[20] I accept and rely on the following evidence of Wendy Spidle, Continuing Care Assistant:

- Ms. Spidle is not a person interested in the Estate.
- Ms. Spidle first met Mrs. Blenus in mid-2021, when she attended at her house to provide her with private care.

- Mrs. Blenus had an amputated leg, and she used a wheelchair.
- Ms. Spidle provided personal care to Mrs. Blenus for about three or four weeks in the fall of 2021.
- Ms. Spidle was hired to assist Mrs. Blenus with personal care tasks such as showering, washing, grooming and generally hygiene.
- Ms. Spidle attended Mrs. Blenus' home a few times a week, for a couple of hours at a time, for the weeks she worked there.
- Very soon after they met, Mrs. Blenus began instructing Ms. Spidle to do housework chores. Their arrangement ended when it became apparent to her that Mrs. Blenus preferred her to assist with housekeeping, which was out of her scope as a Continuing Care Assistant.
- Ms. Spidle did not know Mrs. Blenus for a long time, but she was “stubborn,” appeared to be of sound mind, and appeared to be very particular about what she wanted. Mrs. Blenus was someone who was adamant about what she wanted done and how she wanted it done.
- When Ms. Spidle was at her house, Mrs. Blenus conversed with her, gave her clear instructions, and was alert.

- In all ways other than mobility, Ms. Spidle considered Mrs. Blenus to be independent and in charge of her daily business.
- When Ms. Spidle attended her home, she often saw Ronda Goucher and Laura Blenus. They are the only people she ever saw at Mrs. Blenus' house, except for Mr. Blenus, when he was still alive.
- Ms. Spidle observed Ronda Goucher and Laura Blenus assisting Mrs. Blenus with groceries, going to appointments, and doing things around the house for her.

***The Evidence of Ronda Goucher and Laura Blenus***

[21] The relevant evidence of Ronda Goucher and Laura Blenus is corroborated by the material evidence of Ms. Skerry, Ms. Spidle and Ms. Horton.

[22] I accept the following evidence of Ronda Goucher:

- When Mr. Blenus entered palliative care in 2021, Mr. and Mrs. Blenus held a family meeting with Ronda Goucher and Laura Blenus. At the meeting, Mr. and Mrs. Blenus informed Ronda Goucher that they both wished to make changes to their will, for various reasons, including because Mr. and Mrs. Blenus had an estranged relationship with Heather McCulley for several years.

- Mrs. Blenus did not have a close relationship with Heather McCulley, her husband or her children.
- Mrs. Blenus informed Ronda Goucher that she did not wish for Heather McCulley's children to inherit under her will.
- Mr. and Mrs. Blenus were unable to update their wills together before Mr. Blenus passed away.
- In or about March of 2022, after Mr. Blenus passed away, Mrs. Blenus informed Ronda Goucher that she felt it was important to make a new will for herself, and that she understood that the will she and Mr. Blenus had made together was no longer valid and was voided by Mr. Blenus' death.
- In the months following Mr. Blenus' death, Mrs. Blenus told Ronda Goucher numerous times that she believed that his death voided the 2014 will and that she needed to have a new will prepared.
- Shortly thereafter, Mrs. Blenus informed Ronda Goucher that she had gone to Ashley Skerry of Kimball Law to have a new will made.
- The draft will reflects conversations that Ronda Goucher had with Mrs. Blenus about the latter's intentions for her Estate.

[23] I accept the following evidence of Laura Blenus:

- In 2022, Mrs. Blenus informed Laura Blenus that she wanted to update her will after Mr. Blenus' death.
- On numerous occasions in 2021 and 2022, Mrs. Blenus told Laura Blenus that one of the main reasons she made changes to her estate planning in 2022 was because Ronda Goucher and Laura Blenus were the ones who cared for Mr. and Mrs. Blenus, whereas she felt excluded from the lives of Heather McCulley's children.
- During the holiday season in 2021 and again in 2022, Mrs. Blenus informed Laura Blenus that she attempted to buy each of Heather McCulley's children a gift, and that only one of the four children accepted her offer.
- Mrs. Blenus was uninvited to Katie Rivard's wedding.
- In or about 2021, during a conversation about updating her estate planning, Mrs. Blenus informed Laura Blenus that, due to a settlement following Heather McCulley's death, Mrs. Blenus understood and believed that Heather McCulley's children would be taken care of financially and would not need to benefit from her estate.

- Mrs. Blenus informed Laura Blenus that she wanted to finalize and sign the will drafted for her by Ashley Skerry in 2022.
- Mrs. Blenus attempted to make an appointment with Ms. Skerry to sign the draft will, but Ms. Skerry was not available to meet with her before she passed away.
- In the few days before Mrs. Blenus died, she was in hospital in Kentville and then transferred to a hospital in Halifax.
- On or about the day Mrs. Blenus died, she expressed to Laura Blenus in person at the hospital that she was upset that she had not been able to sign the draft will.
- The draft will reflects conversations that Laura Blenus had with Mrs. Blenus about the latter's intentions for her Estate.

## **Conclusion**

[24] The wording of the draft will and the evidence of Ms. Skerry, Ms. Spidle Ms. Horton and the Applicants is substantial, complete and clear evidence that the draft will expresses a deliberate or fixed and final expression of Mrs. Blenus' intention as to the disposal of her property upon her death. I made the following findings:

- I have no concerns about Mrs. Blenus' capacity to give instructions to Ms. Skerry or that she was unduly influenced at the time she gave instructions to Ms. Skerry. Mrs. Blenus was competent and acted independently when giving instructions to Ms. Skerry.
- Mrs. Blenus gave Ms. Skerry clear instructions about how she wanted her Estate to be distributed upon her death, and those instructions did not change during the course of her interactions with Ms. Skerry.
- Mrs. Blenus gave clear reasons to Ms. Skerry and her daughters about why she wanted her daughters to inherit equally, and why she did not want her grandchildren, in particular the children of Heather McCulley, to inherit under her will in the first instance.
- The language in the draft will is formal and consistent with what one would expect to be in a professionally-drafted will and provides, amongst other things, clear direction as to the disposition of the Estate.
- While not dated or signed, the draft will was provided to Mrs. Blenus between August 8 and August 30, 2022, she reviewed the draft on or before August 30, 2022, she was unsure whether her

daughters should be joint executors or whether one should be an alternate executor, and a meeting was scheduled to take place with Ms. Skerry on September 12, 2022 during which she would finalize her instructions with respect to the executors and schedule a signing appointment.

- The draft will was clearly intended to reflect a disposition after death.
- The bequests set out in the draft will are worded clearly and with certainty.
- The draft will contains a revocation clause.
- The document was intended to be permanent. It was professionally drafted by a lawyer. It reflected the instructions that Mrs. Blenus gave Ms. Skerry on July 25 and August 8, 2022. All that remained was to finalize Mrs. Blenus' instructions with respect to whether her daughters should be named joint or alternate executors.
- Mrs. Blenus intended to formally execute her will and would have done so had she not died unexpectedly.

**Conclusion**

[25] The Application is granted. I am satisfied that the draft will, attached as Exhibit “A” to the affidavit of Ashley Skerry, and drafted by Ashley Skerry on the instructions of Mrs. Blenus, embodies the testamentary intentions of Mrs. Blenus, and I order that the draft will is valid and fully effective pursuant to s.8A of the *Wills Act* as if it had been executed in compliance with the formal requirements of the *Wills Act*, The draft will revokes the 2014 will.

Gatchalian, J.