COURT OF APPEAL FOR ONTARIO

CITATION: Schickedanz v. Schickedanz, 2026 ONCA 191
DATE: 20260313
DOCKET: COA-25-CV-0389

van Rensburg, Paciocco and Thorburn JJ.A.

IN THE MATTER OF the Estate of Elma Schickedanz

BETWEEN

Charlotte Schickedanz

Applicant
(Appellant)

and

Waldemar Schickedanz, Gerhard H. Schickedanz, Manfred Schickedanz, and Arthur Schickedanz

Respondents
(Respondents in Appeal)

Alexander Turner and Katie Morris, for the appellant

David Lobl, Anna Chen and Nina Fainman-Adelman, for the respondents

Heard: January 15, 2026

On appeal from the judgment of Justice Mario D. Faieta of the Superior Court of Justice, dated February 24, 2025.

By the Court:

OVERVIEW

[1] On May 9, 2016, Elma Schickedanz ("Elma"),[1] who died on December 12, 2019, executed a codicil in her own handwriting, purportedly leaving the most valuable asset from her estate, the "home farm", to her daughter, the appellant Charlotte Schickedanz ("Charlotte"). If valid, this purported codicil revoked terms of her 2007 will, which had been prepared with the assistance of a lawyer, Edward Heakes. That will, like an earlier will Elma executed with the assistance of a lawyer, would have resulted in an equal division of the equity in the home farm between Charlotte and her brothers.

[2] Those four brothers, Waldemar ("Wally"), Gerhard ("Garry"), Manfred ("Fred") and Arthur ("Arthur") Schickedanz (collectively, "the brothers") are the respondents in this appeal. After they disputed the purported codicil, Charlotte initiated an application to prove it. A trial was conducted. The trial judge found the purported codicil to have been made in circumstances of suspicion relating to Elma's knowledge and approval of its contents, and her capacity to execute it. These findings placed the burden on Charlotte of proving on the balance of probabilities that Elma knew and approved of the terms of the purported codicil and had the testamentary capacity needed to create a valid testamentary disposition. The trial judge concluded that Charlotte had failed to discharge her

[1] The primary parties share the same surname in this family dispute. We intend no disrespect by referring to them by their first names for clarity.

burden on either of the issues and therefore found the purported codicil to be invalid.

[3] Charlotte appealed this order. At the close of her oral argument, we dismissed her appeal for reasons to follow. These are our reasons.

MATERIAL FACTS

[4] Elma and her husband Gerhard Schickedanz ("Gerhard"), who died in 2011, raised their family on the home farm, where Gerhard, and later Charlotte, conducted a horse breeding business. Gerhard also operated an impressive land development, farming, and construction business with his brothers, amassing a considerable estate. Much of his wealth was distributed to his children during his life through a 1982 estate freeze of his holding company shares, and through discrete gifts. After his death, Charlotte continued to live on the home farm with Elma, and she continued to operate the horse breeding business.

[5] In 2007, Elma and Gerhard executed mirror wills with the assistance of a lawyer that provided for the equal division of their property, including the home farm, between their children after the death of the survivor. Although there was evidence that Gerhard made multiple comments during his life that he wanted Charlotte to have the home farm, he did not arrange for this in his 2007 will and he never acted on that expressed intention by executing a new will. Upon his death,

Elma received Gerhard's interest in the jointly-owned home farm through her survivorship right.

[6] Given nearby land development and the location of the home farm, the home farm appreciated considerably in value during Elma and Gerhard's marriage. Indeed, at the time of her death, it had an estimated value of $20,000,000 and represented most of Elma's wealth.

[7] In 2012 or 2013, Charlotte contacted Mr. Heakes, the lawyer who had prepared Elma's 2007 will. Charlotte asked Mr. Heakes if he would prepare a codicil to Elma's will leaving her the home farm. Mr. Heakes testified that Charlotte expressed the view that this was the appropriate outcome, given the monetary gifts that Gerhard had provided to her brothers. He declined, making it clear that he would require instructions from Elma to do so. Those instructions never came.

[8] Evidence was presented at trial that when the purported codicil was executed on May 9, 2014, Elma, who was 85 years of age at the time, was experiencing health issues. In the year leading up to the signing of the purported codicil, she had a growth on her brain, had experienced fainting episodes, and had been diagnosed with congestive heart failure as well as sciatic pain in her hip from bursitis. She visited her family doctor frequently and wore a diagnostic heart monitor the day before executing the handwritten purported codicil. There was also evidence that Elma was experiencing what at times was uncontrollable anxiety

about her health, and that she was depressed, frustrated, and experiencing feelings of worthlessness. She was showing signs of memory loss and mild cognitive impairment nearly a year before the purported codicil was executed. On July 24, 2014, she was diagnosed by her family physician with "[e]arly dementia with repeating confusion".

[9] The trial judge found that Charlotte, who is the sole identified beneficiary in the purported codicil, played an "instrumental role" in its execution. According to Charlotte's own testimony, she discussed Elma's wishes with her before it was executed, retrieved the paper the purported codicil was written upon, absented herself while it was executed, and then reviewed it upon her return at Elma's request, telling her it "looked fine". She then accompanied Elma to the City of Markham's municipal office for the purported codicil to be notarized, and she arranged for a copy to be kept with Elma's 2007 will at the holding company's office. In her testimony about the execution of the purported codicil, Charlotte said, "[i]t was a big event, but it was like – it was done." The purported codicil was prepared without consulting Mr. Heakes, any other lawyer, or any of the family's advisors, and without notifying the brothers.

[10] Arthur presented evidence that the next day when he was visiting Elma, she said that "she did something yesterday" that she was "unsure about" and she showed him the document she had executed. When Arthur told Elma that the purported codicil made it look like, on her passing, the home farm would go to

Charlotte, Elma said words to the effect of, “[y]our father and I just want you all to get along, we love you all equally and want to treat you all equally.” Elma was becoming visibly emotional and teary-eyed, so no further discussion ensued. The remaining brothers learned about the purported codicil in the following days and months.

THE GENERAL LEGAL STANDARDS AND THE ISSUES

[11] There is no issue between the parties that the purported codicil complied with the formality requirements of a holograph will and contained a fixed or final expression of intention as to the disposal of property: see *Succession Law Reform Act*, R.S.O. 1990, c. S.26, s. 6; *Canada Permanent Trust v. Bowman*, [1962] S.C.R. 711, at p. 714. Nor is there any issue about the remaining general legal principles that apply, which can be stated simply for the purpose of these reasons:

- To prepare a valid testamentary disposition, a testator must: (1) know and approve of the contents of the will (the “knowledge and approval requirement”), and (2) have the capacity to execute a testamentary disposition (the “capacity requirement”). If there are circumstances of suspicion relating to either of these requirements, the burden is on the party relying on the testamentary disposition to establish, on the balance of probabilities, that the requirement is met: see *Vout v. Hay*,

[1995] 2 S.C.R. 876, at paras. 19-20, 26-27; *Stekar v. Wilcox*, 2017 ONCA 1010, 32 E.T.R. (4th) 199, at para. 8.

- Although the standard of proving the "knowledge and approval requirement" and the "capacity requirement" remains on the balance of probabilities where there are circumstances of suspicion, "[t]he evidence must … be scrutinized in accordance with the gravity of the suspicion": *Vout*, at para. 24; see also *Stekar*, at para. 24.

- The test for the "knowledge and approval requirement" is "whether the testator fully understood what was in the [testamentary document] and whether the [testamentary document] as written represented the testator's intentions": *Forde v. Dockery*, 2024 ONSC 5878, at para. 97, citing *Sikora Estate (Re),* 2015 ABQB 374, at para. 42 and *Garwood et al. v. Garwood et al.*, 2017 MBCA 67, [2017] 10 W.W.R. 158, at para. 18.

- The test for the "capacity requirement" was described by Gillese J.A. in *McGrath v. Joy*, 2022 ONCA 119, 471 D.L.R. (4th) 211, at para. 66:

> A testator has a sound disposing mind, if he or she: understands the nature and effect of a will; recollects the nature and extent of his or her property; understands the extent of what he or she was giving under the will; remembers the people that the testator might be expected to benefit under the will;

> and, understands the nature of the claims that might be brought by persons excluded from the will.

- This test has been described as a “high one”: *Stekar*, at para. 17. That said, the inquiry into a testator’s knowledge of the nature and extent of their property does not require the testator to have an encyclopedic knowledge of their assets, or to know the precise makeup of their estate. They “only need to know in a general way the nature and extent of [their] property”: *Quaggiotto v. Quaggiotto,* 2019 ONCA 107, at para. 7, citing *Orfus Estate v. The Samuel and Bessie Orfus Family Foundation*, 2013 ONCA 225, 304 O.A.C. 349, at para. 60.

[12] The grounds of appeal challenged the trial judge’s findings that there were circumstances of suspicion relating to both the “knowledge and approval requirement” and the “capacity requirement”, and that Charlotte had failed to discharge her burden on either issue. Those grounds of appeal can be conveniently organized and analyzed as follows:

A. Did the trial judge err in assessing suspicious circumstances?

B. Did the trial judge err by applying the incorrect standard in determining whether Charlotte discharged her burden on the “knowledge and approval requirement”?

C. Did the trial judge err by placing undue reliance on Elma's family doctor's notes and by disregarding his testimony?

D. Did the trial judge err by providing insufficient reasons for his decision?

[13] To succeed on grounds of appeal A, B, or C, Charlotte needed to show that the trial judge applied an incorrect legal standard, committed other legal errors of principle, or made palpable and overriding errors in the assessment of the evidence: *Leonard v. Zychowicz*, 2022 ONCA 212, 75 E.T.R. (4th) 21, at paras. 13-14. We concluded after hearing her submissions that Charlotte had failed to demonstrate any such errors, and that, in substance, her appeal represented an attempt to reargue the merits of the issues the trial judge determined. As we will explain below, we also found the reasons for decision to be sufficient and rejected ground of appeal D.

DISCUSSION

A. DID THE TRIAL JUDGE ERR IN ASSESSING SUSPICIOUS CIRCUMSTANCES?

[14] Charlotte's appeal counsel ("appeal counsel") argued that the trial judge committed processing errors[2] by overlooking and failing to engage with evidence that should have allayed concerns about the presence of suspicious circumstances. Relatedly, he argued that even if there were circumstances of

[2] As described in *Waxman v. Waxman* (2004), 186 O.A.C. 201 (C.A.), at para. 334, these errors arise when a trial judge fails to appreciate or misapprehends evidence that leads to a finding of fact.

suspicion, the trial judge erred in failing to recognize that Charlotte had satisfied the onuses she bore.

[15] We were not persuaded that any such errors occurred.

The alleged "processing errors"

[16] Appeal counsel argued that the trial judge made three discrete processing errors when assessing suspicious circumstances.

[17] The first alleged processing error related to the trial judge's conclusion that it was suspicious that the purported codicil stated that the bequest of the home farm to Charlotte was "always the wish" of Gerhard, when "neither of Gerhard's earlier [wills] reflect any such wish". Appeal counsel argued that this finding is contradicted by the trial judge's findings elsewhere in his decision that Gerhard had expressed this wish. There is no contradiction. Even though Gerhard had expressed this wish, a fact the trial judge fully appreciated, Gerhard did not act upon it when his wills were prepared (both the 2007 will and a prior will), casting doubt on the accuracy of the claim that this was "always" the wish. This non-contradictory finding is a conclusion the trial judge was entitled to arrive at on the evidence before him.

[18] The second alleged processing error related to the trial judge's description of who drove to the municipal office in Markham. Earlier in his decision, he found that Elma drove, but when finding Charlotte's "instrumental role in procuring the

Purported Codicil" to be a circumstance of suspicion, the trial judge said that "Charlotte drove Elma to the City of Markham's municipal office". This is an inconsistency, but it is not an overriding error. The evidence of Charlotte's instrumental role in procuring the purported codicil had multiple components that would have led to the same conclusion, whether Charlotte drove or not, including: Charlotte discussing Elma's wishes with her immediately before the signing, obtaining the paper that was used, reviewing the document and expressing a view that it "looked fine", and not only accompanying Elma when it was notarized, but arranging for its placement with the 2007 will.

[19] Moreover, the circumstances of suspicion the trial judge identified relating to whether Elma fully understood the purported codicil went well beyond Charlotte's immediate role in its execution, and included that: (1) it was prepared without a lawyer, unlike Elma's earlier wills; (2) it benefited only Charlotte; (3) the only instructions Mr. Heakes received when he was consulted were that Elma and Gerhard wanted an equal division; and (4) Charlotte had earlier asked Mr. Heakes to prepare a codicil for her mother giving her the home farm. Together, these factors, along with evidence of Charlotte's belief she was entitled to the home farm; her expression of relief after the purported codicil was executed that "it was done"; the lack of involvement by others in the execution of the purported codicil; and Elma's statement to Arthur the next day that "she did something yesterday" that

she was “unsure about”, provide an ample foundation for the circumstances of suspicion finding.

[20] Appeal counsel also argued generally that the trial judge misinterpreted testimony and failed to consider uncontested and relevant evidence. He tried to demonstrate this by identifying evidence capable of supporting Charlotte’s position, and by relying on select answers provided by witnesses who did not recant the testimony the trial judge featured in his reasoning. In substance, the arguments on appeal represented an attempt to reargue issues that were for the trial judge to decide. We were satisfied that there was ample evidence supporting the trial judge’s findings of suspicious circumstances, and no indication that the trial judge misunderstood or ignored evidence. As this court noted in *Waxman v. Waxman* (2004), 186 O.A.C. 201 (C.A.), at para. 343, “The mere absence of any reference to evidence in reasons for judgment does not establish that the trial judge failed to consider that evidence.”

B. DID THE TRIAL JUDGE ERR BY APPLYING THE INCORRECT STANDARD IN DETERMINING WHETHER CHARLOTTE DISCHARGED HER BURDEN ON THE “KNOWLEDGE AND APPROVAL REQUIREMENT”?

[21] Appeal counsel argued that the trial judge erred in law by basing his finding that “Charlotte [had] not discharged the onus of establishing that Elma knew and approved of the contents of the Purported Codicil” on his conclusion that “the evidence does not show that Elma was aware of the magnitude of the residue of

her estate". He argued that the British Columbia authority[3] the trial judge relied on in treating knowledge of the "magnitude" of the gift as a requirement is not the law in Ontario. He submitted that this court held as much in *Quaggiotto*, at paras. 5-6. We do not read *Quaggiotto* as holding that knowledge of the magnitude of a gift is an immaterial consideration. What the panel in *Quaggiotto* rejected was "the appellant's submission that the trial judge misapprehended the evidence": at para. 5.

[22] Relatedly, appeal counsel submitted that in finding that there was no evidence that Elma understood the magnitude of the gift, the trial judge "effectively required" proof that Elma knew the precise value of the home farm. He argued that this was an "unreasonable burden", contrary to this court's holdings in *Orfus Estate,* at para. 60, that "a competent testator does not have to know the precise makeup of her estate" and need only know "in a general way the nature and extent of her property", and contrary to the holding in *Quaggiotto*, at para. 7, that a testator need not have an "encyclopedic knowledge of her assets."

[23] We were not persuaded that the trial judge required evidence that Elma knew the precise value of the home farm. In the impugned passage, the trial judge observed that the evidence did not show "that Elma was aware of the magnitude of the residue of her estate nor … that she appreciated the effect of the disposition

[3] The trial judge relied upon *Geluch v. Geluch Estate*, 2019 BCSC 2203, at para. 127. See also *Russell v. Fraser* (1980), 118 D.L.R. (3d) 733, at para. 5 (B.C. C.A.); *Johnson v. Pelkey* (1997), 36 B.C.L.R. (3d) 40 (B.C. S.C.).

made in the Purported Codicil." When this passage is read in the context of the decision as a whole, it is evident that the trial judge's concern was that the evidence failed to show that Elma knew that the value of the home farm had appreciated to the point where it constituted the bulk of her estate, or that giving it to Charlotte would result in an unequal division of her assets, contrary to her expressed wish to treat her children equally. The "knowledge and approval requirement" includes an assessment of "whether the testator fully understood what was in the [testamentary document]": *Dockery*, at para. 97. The trial judge was entitled to find that since Charlotte had not shown that Elma fully understood that she was giving Charlotte the bulk of her estate and creating an unequal division of her property, Charlotte failed to establish that Elma fully understood what was in the purported codicil.

C. DID THE TRIAL JUDGE ERR BY PLACING UNDUE RELIANCE ON ELMA'S FAMILY DOCTOR'S NOTES AND BY DISREGARDING HIS TESTIMONY?

[24] Appeal counsel argued that the trial judge ignored the family doctor's testimony by focusing on his clinical notes when describing Elma's health challenges. We rejected this ground of appeal because we were not persuaded that the trial judge did so. The family doctor did not recant the observations and conclusions expressed in his notes but explained and elaborated on them in his testimony. The trial judge was entitled to use the words contained in the notes in explaining his decision and did not distort the family doctor's evidence by doing so.

[25] Nor is there any basis for finding that the trial judge relied on the notes alone as opinion evidence, contrary to the agreement between the parties that those notes were not to be used for this purpose, and contrary to the sensible admonition made by Corbett J. in *Johnson v. Huchkewich,* 2010 ONSC 6002, at para. 46, that "[c]are must be taken in reading [a physician's] clinical notes or in interpreting their diagnosis". In his testimony, the doctor was questioned about the opinions that his clinical notes contained, and as indicated, he did not recant them. His testimony effectively incorporated the material opinions expressed in his notes.

[26] We also rejected the related submission that the trial judge erred by relying, without the benefit of expert evidence, on irrelevant physical maladies that Elma suffered from, and on her anxiety. The family doctor expressed concern that Elma's anxiety could be contributing to her memory issues, and there was evidence that although lifelong, her anxiety was worse after Gerhard died, was linked to her health concerns, and at times could not be controlled. This evidence provided the trial judge with an ample basis, without the need for expert evidence, for concluding that Elma had a host of maladies that affected both her physical and mental wellbeing and that were relevant to her testamentary capacity at the time of execution.

[27] Finally, we were not persuaded by appeal counsel's submission that Elma's cognitive impairment was too mild to undermine her capacity. It is important to remember that the trial judge was not making an affirmative finding of incapacity.

The material issue before him was whether the evidence, viewed as a whole, created circumstances of suspicion relating to Elma's capacity and, if so, whether Charlotte could affirmatively establish capacity. It is not disputed that at the time the purported codicil was executed, Elma had mild cognitive impairment, and dementia, and periods of confusion. Moreover, evidence of both her demeanour and the comment she made to Arthur the day after signing the purported codicil suggest that she may have been confused about what she did. This was enough in the context of the evidence as a whole to give rise to circumstances of suspicion, shift the onus to Charlotte, and to support a finding that she had failed to meet her onus.

D. DID THE TRIAL JUDGE ERR BY PROVIDING INSUFFICIENT REASONS FOR HIS DECISION?

[28] The overarching question where the sufficiency of the reasons is offered as a basis for appeal is "whether the reasons functionally permit meaningful appellate review", when considered contextually: *Canada Forgings Inc. v. Atomic Energy of Canada Limited,* 2024 ONCA 677, at para. 22, leave to appeal refused, [2024] S.C.C.A. No. 493. As the foregoing analysis shows, we were persuaded that it is entirely possible to understand the basis for the trial judge's decision. The trial judge's reasons are not only extensive but clear.

[29] We did not accept the argument that the trial judge's reasons were insufficient because he failed to distinguish between his recitation of submissions

and the findings he made. His factual conclusions were clear from the decision. We also rejected the suggestion that the trial judge erred by not making explicit credibility findings. This was not a credibility case requiring close attention to material evidentiary controversies. The central circumstances were not in dispute and the findings the trial judge made in those areas where controversy existed were clear.

CONCLUSION

[30] For these reasons, we dismissed the appeal without calling upon the brothers to respond.

COSTS

[31] Although the parties agreed on the quantum of costs that would be payable to the brothers on this appeal, in our view, the agreed-upon amount is excessive. Charlotte shall pay $100,000 to the brothers, personally, inclusive of disbursements and applicable taxes.

Released: March 13, 2026 “K.M.v.R.”

“K. van Rensburg J.A.”
“David M. Paciocco J.A.”
“Thorburn J.A.”