

MONCRIEFF V. HAYNE, 2013 ABQB 657

By Crista Osualdini, Estates, Trusts & Taxation



On November 5, 2013, the Court of Queen’s Bench of Alberta released the decision of the Honourable Justice Jerke in *Moncrieff v. Hayne*. Amongst other matters, this decision considers a claimant’s allegations of lack of testamentary capacity and undue influence in relation to the Will of her father. The facts of this particular matter are as follows, the deceased had three children, two daughters and a son. In his last Will the deceased left most of his estate to his son. The estate consisted mainly of a farming operation. The deceased had farmed with his son for most of his life. The executors in the last Will were the son and the solicitor who drew the Will. One of the daughters brought an application that, amongst other matters, claimed the deceased had lacked testamentary capacity when he executed the Will and that the co-executors had unduly influenced the contents of the Will. In response, the executors filed a summary judgment application, which forms the subject matter for this decision. In this particular application, the claim of undue influence was only considered as against the son.

In the year 2000, the deceased executed two Wills in short succession. The first Will left most of the farming operation and 160 acres of farmland to his son and the residue equally between his three children. The deceased notes in this Will that his daughter was not left more because she already had substantial assets. Less than two months after this Will was signed, the deceased executed another will that once again left most of the farming operation to his son, but only included the farmlands that comprised the “home site”. The home site included approximately 13 acres. The residue under this Will, which now included approximately 147 acres of farmland, was divided equally amongst the children.

At the time both of the 2000 Wills were executed, the deceased’s life was in turmoil. The deceased had recently suffered an injury in a farming accident and had to move into assisted living. Following his move into assisted living, some of his farmlands were sold. While in assisted living, the deceased’s spouse died. Following her death, the deceased moved back into their homestead and lived there, with his son, until his death.

Shortly after the deceased moved back home in 2001, he executed a new Will. The 2001 Will directs that the farming operation and all of the farmlands are to be transferred to his son and the residue to be divided equally amongst the three children. The 2001 Will specifically states that the estate was not divided equally because the deceased wanted to keep the farm intact and because his daughters had received funds from their mother’s estate. At the time the deceased signed this Will, he was 86 and suffering from Parkinson’s disease. Prior to executing the Will, the deceased obtained a medical opinion that found him to be of sound mind. The deceased passed away approximately two years after the Will was signed.

In considering the summary judgment application, the Court reviewed the test for summary judgment, which to state briefly, is whether there is no genuine issue of material fact requiring trial and whether there is a real chance of success.

The Court held that the executors had proven that there was no genuine issue requiring trial on the basis that:

1. The medical opinion and the evidence of the instructing solicitor deposed that there were not any capacity concerns;
2. The son was not present during the planning meetings with the solicitor;
3. The son deposed in cross examination that he had no idea that the 2001 Will was being drafted.

However, the Court held that the daughter had successfully shown that there was a real chance of success in her proving the invalidity of the Will. The Court made this ruling on the basis of the deceased's age, health conditions and that he was taking a hypnotic drug for his Parkinson's disease. The Court also noted that the deceased required considerable care from his son once he moved out of assisted living and that the son had provided inconsistent evidence in his cross examination on various matters. The Court was also concerned about the fact that the deceased had made significantly different Wills within a relatively short period of time.

The Court ruled that the matter was not appropriate for summary trial and directed a full trial of the issue.