

In the Court of Appeal for the Northwest Territories

Citation: *Beaulieu v Goulet*, 2022 NWTCA 2

Date: 2022 05 18
Docket: A1-AP-2020-000001
Registry: Yellowknife

Between:

Lawrence Beaulieu

Appellant

- and -

Crystal Marie Goulet

Respondent

- and -

Yellowknives Dene First Nation

Intervenor

The Court:

**The Honourable Justice Frederica Schutz
The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Dawn Pentelchuk**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice K.M. Shaner
Dated the 21st day of February, 2020
Filed the 24th day of February, 2020
(Docket: S-1-CV-2015-000215)

Memorandum of Judgment

The Court:

Introduction

[1] Lawrence Beaulieu appeals an order evicting him from the home owned by his late mother, Alice, located in Ndilo, Northwest Territories. The appeal is rooted in a dispute between Lawrence, who claims entitlement to the home under his mother's 2007 will, and the respondent, Crystal Goulet, who claims entitlement under Alice's later will from 2013. Crystal is Alice's granddaughter and Lawrence's niece.

[2] The appeal is dismissed for the reasons that follow.

Background

[3] Alice was authorized by Band Council Resolution of the Yellowknives Dene First Nation to construct the home on a plot of land in Ndilo. She lived in the home until she moved into an assisted care facility in about January 2013. She died on August 24, 2013.

[4] Alice executed a will dated April 18, 2007, which left her home to Lawrence. A later will, executed on January 22, 2013, revoked the first will and left all Alice's property, including the home, to Crystal, who was also named executrix. Crystal was granted letters probate with respect to the 2013 will on October 15, 2015. Shortly thereafter, Crystal filed an application with the court for an order requiring Lawrence, who had moved into the home in 2012, to vacate the premises. That application did not proceed, however.

[5] Crystal was granted permission to use the home by a Band Council Resolution of the First Nation dated August 23, 2019. She applied for an order requiring Lawrence to vacate the home, which was heard by the court on February 21, 2020. Lawrence was not present when the application was heard, although the documents had been sent to him by registered mail. A judge issued an eviction order directing Lawrence to vacate the home by March 6, 2020. This is the order under appeal. A writ of possession was executed on March 13, 2020, and Lawrence vacated the home.

Analysis

[6] Lawrence has appealed the eviction order. He argues that the 2013 will was not valid because Alice lacked capacity when it was executed, Alice had gifted the home to him prior to her death, and the First Nation has no authority over the lands on which the home is located.

[7] A relative, Noeline Villebrun, who participated in the making of the 2007 will, made submissions on Lawrence's behalf challenging Alice's capacity and comprehension when the 2013 will was made, and challenging the authority and jurisdiction of the First Nation to grant a Band Council Resolution permitting Crystal to use the home. In eloquent and detailed submissions, Noeline outlined the Dene values, systems and beliefs that she says support Lawrence having possession of the home. While we appreciate having heard Noeline's submissions on behalf of Lawrence, we will explain why Lawrence's appeal must nevertheless be dismissed.

[8] First, we must determine appeals based on the evidentiary record before us. This is fundamental to a fair proceeding. Generally, an appeal proceeding is not the place to make new arguments, raise new issues or refer to new evidence. Unfortunately, many of Noeline's submissions are not in evidence and engage issues beyond this narrow appeal. To the extent the evidence and issues were not before the chambers judge, they must not be considered on the appeal.

[9] Second, Letters Probate for the 2013 will were granted to Crystal in October 2015. Shortly after, she applied for an order requiring Lawrence to vacate the home. Although the application was adjourned, Lawrence attended the application and was represented by counsel. If he wished to challenge his mother's capacity, the validity of the 2013 will, and ownership of the home, that was the time to do it. Lawrence cannot raise those issues now. The rule against collateral attack holds that "a court order, made by a court having jurisdiction to make it, may not be attacked in proceedings other than those whose specific object is the reversal, variation or nullification of the order or judgment: *R v Litchfield*, [1993] 4 S.C.R. 333.": *R v Marlowe*, 2006 NWTCA 5 (CanLII). This rule is also based in procedural fairness and the goal of achieving certainty through court actions.

[10] Third, the First Nation was granted leave to intervene on this appeal as a result of Lawrence's submissions regarding the First Nation's status and jurisdiction to make residential housing decisions on the lands where the home is located. This appeal does not require us to decide issues dealing with the status of the First Nation or its ability to deal with the lands in Ndilq. Those are complex issues that should be dealt with on a fuller factual record with the benefit of legal argument: *R v Desautel*, 2021 SCC 17 at para 49.

[11] The important points for this appeal are these: Lawrence claims his interest in the home through Alice. Alice acquired the interest in her home through the First Nation, which provided her with a form of license to construct and use the home. Alice then passed this interest to Crystal in her 2013 will. The First Nation has approved Crystal's use of the home by passing a further Band Council Resolution. Lawrence has never been authorized by the First Nation to use the home. Since entitlement to the use of the home flowed from the First Nation through Alice, and Alice was free to pass her interest on to Crystal, Lawrence is unable to establish any independent legal or equitable right to possess the home, other than through the First Nation. As a result, there is no need to decide these issues.

Conclusion

[12] For these reasons, the appeal is dismissed.

Appeal heard on April 26, 2022

Memorandum filed at Yellowknife, NWT

This 18th day of May, 2022

Authorized to sign for: Schutz J.A.

Strekaf J.A.

Authorized to sign for: Pentelechuk J.A.

Appearances:

Appellant L. Beaulieu

D.G. McNiven
For the Respondent

Gavin Gardiner
For the Intervenor

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- and -

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