***Estate of Goodzeck*, 2018 NWTSC 68 S-1-ES-2018-000058**

# IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

**IN THE MATTER OF:**

**The Estate of Alec Goodzeck,**

**late of the Town of Hay River, deceased**

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Transcript of the Decision delivered by The

Honourable Justice A.M. Mahar, sitting in Yellowknife, in the Northwest Territories, on the 19th day of October, 2018.

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**APPEARANCES:**

Mr. P. Tomic: Counsel for the Applicant, Lil Goodzeck

Mr. D. McNiven: Counsel for the Caveator,

J.D. Goodzeck

1. THE COURT: I will likely either
2. substantially edit or do a written version of my
3. reasons here this morning. In any event, the
4. final released version is my judgment. I do not
5. expect that it will diverge in any significant
6. way from what I am about to say.
7. We are here to deal with the matter of the
8. Estate of Goodzeck. A little bit of background:
9. Mr. Alec Goodzeck made a Will in 2010. In that
10. Will, he named his spouse, Lil Goodzeck, as his
11. primary executor as well as his sole beneficiary.
12. He made it clear that, in the event that
13. Lil Goodzeck was either unable or unwilling to
14. continue in her role as executor, that his three
15. children, the Applicant, J.D., and his two
16. sisters would share the role of executor, or in
17. the words of the Will, trustee.
18. There was also a term laying out what would
19. occur if Ms. Goodzeck or Mrs. Goodzeck was to
20. predecease Alec Goodzeck, in which event, the
21. three children would essentially share the estate
22. on an equal basis with a 34-percent share going
23. to the son, J.D., and 33 percent to each of the
24. sisters, which essentially, just made it simpler
25. than 33 and a third and appears to have been in
26. contemplation of some additional work that J.D.

27 may have had to do to wrap up the estate.

* 1. Mr. Goodzeck became very ill. In 2018, May
  2. the 7th, I believe, he passed away. Shortly
  3. before he passed away, on April the 23rd, he
  4. signed a Power of Attorney for his ongoing
  5. affairs to his son, J.D. That Power of Attorney
  6. was executed by a lawyer in Hay River, Michael
  7. Hansen.
  8. Mr. Hansen provided a very useful Affidavit
  9. in which he laid out his contact with
  10. Mr. Goodzeck in the brief time between the
  11. commencement of the Power of Attorney application
  12. and his death. He met with Mr. Goodzeck five
  13. times. They discussed the possibility of changes
  14. to the Will, and Mr. Goodzeck made it quite clear
  15. that he did not wish to change any of the terms
  16. of his Will.
  17. Upon his father's death, J.D. Goodzeck's
  18. mother, Lil Goodzeck, took over her role as
  19. executor and commenced dealing with the estate.
  20. I am going to refer to J.D. Goodzeck as
  21. J.D. Goodzeck because I do not want to confuse
  22. him with the Mr. Goodzeck who passed away.
  23. J.D. Goodzeck became very concerned about
  24. the conduct of the estate. He had had what he
  25. believes were discussions with his father
  26. indicating that his father wished him to take
  27. over as executor because his father was worried

1. about the mental state of his wife, Lil Goodzeck.
2. There were a number of Affidavits filed
3. primarily making comments, in an extremely
4. hearsay way, about potential concerns about
5. Mrs. Goodzeck; but basically, what the Affidavits
6. laid out was a troubling and unfortunate
7. breakdown in the relationship between
8. J.D. Goodzeck and his sisters and now, to a large
9. extent, his mother.
10. Mr. Goodzeck brought an application, which
11. was the originating document that started this
12. process. I am going to refer to the Supplemental
13. Notice of Motion because it does clarify what Mr.
14. Goodzeck is currently seeking.
15. Mr. Goodzeck is seeking that he be declared
16. to have standing in the matter as a person
17. interested in the estate, directing that the
18. caveat, which he filed on June the 26th, 2018, is
19. renewed for a further period of three months. On

20 June 26, 2018, Mr. Goodzeck filed a caveat

1. requiring that he be notified of any dealings
2. with the estate. He is also asking for an order
3. restraining Lil Goodzeck in her capacity as
4. personal representative of the deceased and in
5. the distribution of the estate property,
6. dismissing the cross-application for summary
7. judgment by the Respondent, and directing a trial
8. of the issue as to whether Jonathan Goodzeck
9. shall replace Lil Goodzeck as the personal
10. representative of Alec Goodzeck and directing
11. costs.
12. There was a cross-application, which is
13. essentially an application for summary judgment.
14. The cross-application asks for the following: a
15. declaration that the caveat filed by the
16. Cross-Respondent, Jonathan Goodzeck, be declared
17. to be frivolous and vexatious; ordering the
18. caveat to be removed, and the Notice of Motion to
19. be dismissed or struck for disclosing no
20. reasonable cause of action or, alternatively, on
21. the basis that they form an abuse of process;
22. declaring the Cross-Respondent to be a vexatious
23. litigant in the context of this court file; and
24. prohibiting the Cross-Respondent from any filing
25. further with respect to this matter without leave
26. of the Court; and asking for costs on a
27. substantial indemnity basis.
28. Mr. McNiven, on behalf of his client, asks
29. me to make two potential rulings with a view to
30. allowing J.D. Goodzeck to have standing in this
31. matter. The first involves the interpretation of
32. Section 74 of the Estate Administration Rules,
33. which also involves interpretation of Section 71;
34. the second, asking me to exercise my equitable
35. jurisdiction under Section 2 of the Rules, to
36. allow me to expand what would otherwise be the
37. normal application of the Rules.
38. Looking at Section 71, which is the section
39. that J.D. Goodzeck is relying on to establish
40. standing, Section 71(1) of the Rules reads as
41. follows: 71(1):
42. A personal representative or a person interested in the estate may apply to
43. the Court(a) to obtain formal proof of a will, whether or not an
44. application for a grant has been made under Part 1; (b) to set aside a
45. grant issued under Part 1 and require formal proof of a will; (c) to
46. prevent the issue of a grant under Part 1 and require formal proof of a
47. will; (d) to obtain an order that the deceased died intestate; (e) to
48. request the appointment of a personal representative; (f) to request the
49. appointment of a personal representative other than the one
50. appointed by a grant issued under Part 1; (g) to restrain a personal
51. representative from exercising any powers during an application under
52. this subrule; or (h) to appoint a special personal representative to
53. conduct an application under this subrule.
54. The basis for any standing
55. which may be granted under Section 74, which
56. would include an adult child, which J.D. Goodzeck
57. is, is an application to seek formal proof of a
58. Will. In his Supplemental Notice of Motion,
59. J.D. Goodzeck, through Mr. McNiven, has
60. characterized his application in this way.
61. During submissions, it became clear that the
62. argument is that, by challenging the appointment
63. of Lil Goodzeck as executor, J.D. Goodzeck is
64. challenging the formal proof of the Will.
65. I am not convinced by this argument. It
66. appears clear to me that that would require me to
67. fundamentally disregard the clear meaning of the
68. section.
69. There is no dispute that in 2010,
70. Alec Goodzeck entered into a perfectly valid
71. Will. There was no dispute about the validity of
72. the Will during the time between the beginning of

12 April and May the 7th, his death, when Mr. Hansen

1. was involved in producing a Power of Attorney. I
2. find that this argument does not convince me to
3. expand what would otherwise be the clear and
4. ordinary meaning of Section 71.
5. Section 71 deals with persons who are
6. challenging whether or not a Will was even made
7. and, if that Will was made, whether it was
8. properly executed. That is not the issue in this
9. case.
10. J.D. Goodzeck is worried that his mother is
11. being taken advantage of by his sisters, and he
12. is concerned that the estate is being mishandled
13. by his mother -- reading between the lines -- to
14. his sisters' benefit. His worry appears to be
15. that his mother may not be able to properly take
16. care of herself, and he wishes to act as
17. executor. While these sentiments, on their face,
18. are perhaps laudable, they are not sufficient to
19. allow me to ignore the clear meaning of the
20. section.
21. The other section which would allow
22. J.D. Goodzeck to potentially bring an application
23. is Section 54, which is under Part 2 dealing with
24. contentious matters. Section 54 is subject to
25. Rule 74, which, as I have already indicated, does
26. not apply in this case because it deals with the
27. formal proof of a Will.
28. Subject to Rule 74, the following classes of
29. persons may be interested in a particular estate;
30. and I am now reading the Rule:
31. (a) personal representatives;

(b) residuary beneficiaries; (c) life

1. tenants; d) specific beneficiaries who have not received their
2. entitlement under the will; e) heirs on intestacy; f) dependants; g)
3. guardians or trustees as defined in subsection 1(1) of the *Guardianship*
4. *and Trustee Act*; h) attorneys appointed under the *Powers of*
5. *Attorney Act*; i) minors; j) missing persons as defined in the *Public*
6. *Trustee Act*; k) unpaid claimants; l) bonding companies; m) a group of
7. persons ordered by the Court to be a class of persons interested in the
8. estate.
9. I am asked to find that
10. J.D. Goodzeck would fall into this category of
11. persons based on (h), that he was an attorney
12. appointed under the *Powers of Attorney Act*.
13. The Power of Attorney that was granted to
14. J.D. Goodzeck expired upon the death of
15. Alec Goodzeck on May the 7th, 2018. It would
16. require, in my view, a far more creative
17. interpretation of Section 54 than was
18. contemplated. The drafters obviously intended
19. that an attorney appointed under the *Powers of*
20. *Attorney Act* should contemplate strictly an
21. attorney who has currently existing attorney
22. powers. I find that that subsection does not
23. apply to J.D. Goodzeck in this application.
24. I am also asked to find that Mr. Goodzeck
25. has standing on the basis that he is listed as an
26. alternate executor under the Will. That is not a
27. class of persons contemplated by Section 54.
28. J.D. Goodzeck appears to be under a
29. misapprehension that the interests in the Will
30. which would have applied had Lil Goodzeck
31. predeceased Alec Goodzeck are somehow still
32. alive. He makes reference to his father's
33. intention that his mother be taken care of,
34. essentially, by way of a trust and that any
35. remaining assets after her death would then be
36. split between the children on the basis that I
37. have earlier referred to.
38. This is simply not the way the law of Wills
    1. works. Mrs. Goodzeck is the sole beneficiary of
    2. the Estate of Alec Goodzeck. Once he is deceased
    3. and she is not deceased and the Will is executed,
    4. those assets become hers. She is under no
    5. obligation to honour any terms of Mr. Goodzeck's
    6. Will beyond what she is required to do as
    7. executor with herself as the sole beneficiary.
    8. Whatever she decides to do with the estate funds,
    9. once they are hers, is her affair.
    10. I do not see a route to standing in either
    11. Section 74, as contemplated within Section 71, or
    12. Section 54. I am left to consider whether I
    13. should use my equitable jurisdiction, as
    14. contemplated in Section 2, to define an expansion
    15. to the standing issues and allow Mr. Goodzeck to
    16. apply. This would be an extraordinary ruling.
    17. There are divergent views of what the
    18. underlying circumstances are between the parties
    19. in this case. I note, and it was something that
    20. I took into account substantially, that
    21. Mrs. Goodzeck is represented by Mr. Tomic. She
    22. has formal, legal representation in her
    23. activities as executor of the Will and as
    24. beneficiary.
    25. This is not a situation where J.D. Goodzeck
    26. is challenging his sisters through counsel. He
    27. is challenging his mother, the beneficiary and
39. executor of his father's estate. This is not a
40. situation in which it would be appropriate for me
41. to expand what is otherwise my jurisdiction under
42. the Estate Administration Rules.
43. I should note that I am sympathetic to
44. J.D. Goodzeck's concerns. I take them at face
45. value as honest concerns for his mother's
46. welfare, but he is simply not in a position to
47. control what his mother does in terms of who she
48. speaks to; what sort of information she gives
49. him; whether she even talks to him; and frankly,
50. what she does with the estate of his father.
51. On that basis, I make the following
52. findings: that J.D. Goodzeck is not a person
53. with an interest in the estate of his father,
54. Alec Goodzeck; that the caveat filed on June the
55. 26th should cease immediately; that the Notice of
56. Motion which commenced this proceeding should be
57. dismissed as disclosing no reasonable cause of
58. action; and I am going to order costs on a party
59. and party basis.
60. I am not, at this point, going to declare
61. J.D. Goodzeck to be a vexatious litigant in the
62. context of this Court file. As I have indicated,
63. I take his assertion of concern for his mother's
64. well-being at face value. Nor am I going to
65. order that he obtain prior permission of the
66. Court or leave of the Court before filing any
67. further materials. This is a matter that has
68. been ongoing for a very short period of time.
69. There is nothing to indicate to me that
70. J.D. Goodzeck is going to carry on in the face of
71. clear court rulings; nor is there any indication
72. that this application was vexatious or so lacking
73. in merit that I would be tempted to order costs
74. on a greater basis than the basis on which I have
75. already ordered it.
76. Mr. McNiven, I will ask you first: Are
77. there any -- is there any lack of clarity in
78. terms of what I have ordered?
79. MR. MCNIVEN: No.
80. THE COURT: Thank you.
81. MR. TOMIC: No, Sir.
82. THE COURT: Mr. Tomic, thank you.
83. Mr. Tomic, if I can impose on you to take out the
84. order?
85. MR. TOMIC: Certainly.
86. THE COURT: Thank you.
87. MR. TOMIC: Thank you, Sir.
88. THE COURT: Thank you. Typically,
89. comments from the Bench are about as valuable as
90. comments from anybody else, but I really hope
91. that this family can get their affairs in order
92. and stop this. I am not pointing the finger at
93. anybody, Mr. McNiven, when I say that. It is
94. just an unfortunate circumstance.
95. All right. I don't think you are on the
96. last file, Mr. Tomic?
97. MR. TOMIC: Thank you, Sir. That is it
98. for me.
99. THE COURT: Thank you. And I want to
100. thank you both for your very capable submissions
101. and materials on the file. I will order a
102. transcript, please, for my review.
103. THE COURT CLERK: Yes.
104. THE COURT: Thank you.

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# 15 CERTIFICATE OF TRANSCRIPT

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1. I, the undersigned, hereby certify that the foregoing transcribed pages are a complete and
2. accurate transcript of the digitally recorded proceedings taken herein to the best of my skill and.
3. ability.

Dated at the City of Edmonton, Province of

1. Alberta, this 23rd day of November, 2018.
2. Certified Pursuant to Rule 723 Of the Rules of Court

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24 Janet Belma, CSR(A), B.Ed.

Court Transcriber

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