NOVA SCOTIA COURT OF APPEAL
Citation: *Keddy v. Keddy Estate*, 2017 NSCA 78

Date: 20170921
Docket: CA 456902
Registry: Halifax

Between:

Brad Keddy

Appellant

and

Troy Keddy, Executor of the Estate of Henry Robert Keddy

Respondent

Judges:	Bryson, Oland and Bourgeois, JJ.A.
Appeal Heard:	September 21, 2017, in Halifax, Nova Scotia
Written Release	September 26, 2017
Held:	Appeal dismissed with costs, per reasons for judgment of the Court
Counsel:	Jonathan G. Cuming, for the appellant Troy Keddy, respondent in person

By the Court (Orally):

[1] After the late Henry Robert Keddy died, age 92, in the spring of 2014, his family searched for a will. His son Troy Keddy testified that in 1988, the late Henry Keddy had given him a will. It left everything to Troy Keddy except for one cash bequest and one specific bequest. Troy Keddy could not recall if the 1988 will was signed by Henry Keddy, and he could not find it after his father's passing. He later found an earlier will, which appointed him as executor and left him Henry Keddy's entire estate. Troy Keddy was granted probate of that 1974 will.

[2] Another of Henry Keddy's children, Brad Keddy, brought an application to Probate Court to revoke that grant of probate. After considering affidavit evidence, including that of the lawyer who drew the 1988 will, cross-examination evidence and submissions, the judge dismissed the application. He rejected the argument that the 1988 will had been validly executed and that, if executed, it revoked the 1974 will, leaving an intestacy. In his view, the application had had no chance of success; moreover, in the particular circumstances of this case, equity was entirely on the side of Troy Keddy. He ordered the applicant to pay costs of $5,000.

[3] Brad Keddy appeals the Order dated September 19, 2016 which followed the oral decision on the merits and the decision on costs (2016 NSSC 194). He argues that the judge failed to make certain inferences from the evidence before him, including an inference that the 1988 will had been executed in accordance with the requirements of the *Wills Act*, R.S.N.S. 1967, c. 340, and that he also erred in finding that the requirements of s. 45 of the *Evidence Act*, R.S.N.S. 1989, c. 154, had been satisfied. The appellant further submits that the judge erred finding, in the alternative, that the doctrine of dependent relative revocation was applicable. With respect to the costs award, his position is that the judge erred in awarding costs against him, rather than finding exceptional circumstances and awarding him party and party costs from the estate.

[4] Whether Henry Keddy signed the 1988 will and whether it was signed in accordance with the *Wills Act* are questions of fact or inferences from fact, for which the standard of review is palpable and overriding error. Whether the requirements of s. 45 of the *Evidence Act* were satisfied, and whether the doctrine of dependent relative revocation was applicable, are questions of mixed fact and

law for which the standard of review is also palpable and overriding error. A judge's award of costs is a discretionary decision, and this court will not interfere unless the wrong principles of law have been applied, or the decision is so clearly wrong as to amount to a manifest injustice.

[5] We are unable to discern any palpable and overriding error by the judge in his decision on the merits, which would justify inference by this court. The judge considered the evidence with respect to the 1988 will in detail, and determined that it was insufficient to support a finding on the balance of probabilities that Henry Keddy had signed it as required by law. He addressed the requirement in s. 45 of the *Evidence Act* for "other material evidence," and found that there was the necessary corroboration of Troy Keddy's evidence regarding the 1988 will.

[6] Nor is there any justification for us to interfere with the judge's discretion to award costs as he did. The issue of costs was addressed through fulsome written submissions following his decision on the merits. Nothing in his costs decision indicates that the judge applied wrong principles of law or that his costs award resulted in manifest injustice.

[7] We would dismiss the appeal. The appellant shall pay costs of $2,000. inclusive of disbursements to the estate of the late Henry Robert Keddy.

Bryson, J.A.

Oland, J.A.

Bourgeois, J.A.