

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Leslie Estate (Re), 2008 NSSC 383

Date: 20081216

Docket: SH No. 206478

Registry: Halifax

IN THE MATTER OF: The Incompetent Persons Act, being Chapter 218
of the Revised Statutes of Nova Scotia, 1989, as
amended

- and -

IN THE MATTER OF: An application of Loreen Augusta MacDonald,
Guardian of the person and estate of **Wilbur
Claire Leslie** for a final accounting

Judge: The Honourable Justice Frank Edwards

Heard: December 9, 2008, in Halifax, Nova Scotia

Counsel: Michael S. Taylor, for the applicant
Tim Gabriel, Counsel for Deborah Kasperson

By the Court:

[1] This is an application to pass the final accounts of the estate of Wilbur Claire Leslie.

[2] At issue are the Attendance Allowance provided by Veterans Affairs Canada and the laundry costs.

[3] *(1) Attendance Allowance:* By letter dated October 28, 2003, Veterans Affairs granted Mr. Leslie this monthly allowance because he needed “... significant supervision or assistance...”. At the time Mr. Leslie was living with his guardian daughter, Ms. MacDonald.

[4] Mr. Leslie was admitted to the Camp Hill Veterans’ Hospital on November 13, 2003. As of that date, Camp Hill would have provided most of the “significant supervision or assistance” required by Mr. Leslie. For his accommodation and meal fees (including laundry), Camp Hill charged a monthly fee effective November 13, 2003.

[5] Ms. MacDonald apparently then became concerned about what she should do with the Attendance Allowance after her father became hospitalized. She made an application for directions to this Court on November 23, 2004. Chief Justice Kennedy issued an Order dated February 4, 2005; the operative paragraph reads:

“IT IS FURTHER ORDERED that the Attendance allowance which is provided by Veterans Affairs Canada *to* the Guardian, Loreen Augusta MacDonald, is for her personal use *in the care of her incompetent father Wilbur Claire Leslie* and is not to be included as part of the revenue she administers for the estate of the incompetent person;” (emphasis added).

[6] It is clear from the evidence that Ms. MacDonald, prior to her Court application, was concerned only with that portion of the Attendance Allowance which remained after Camp Hill’s monthly charge was paid. The Attendance Allowance in 2004 was \$1,187.08 per month. The Camp Hill charge to September 30, 2004 was \$778.00 per month and \$786.56 per month from October 1 to December 31, 2004. The difference for 2004 was \$4,082.24.

[7] In 2005, the Attendance Allowance increased to \$1,207.26 per month. The Camp Hill charge was \$786.56 for the first nine months and \$803.86 for the last three months. The difference for 2005 was \$4,189.70.

[8] In 2006, the Attendance Allowance was \$1,293.15. The Camp Hill charge for nine months was \$803.86 and \$835.21 for the last three months. The difference for 2006 was \$5,777.43.

[9] In 2007, the Attendance Allowance was \$1,322.79. The Camp Hill charge for the first nine months was \$835.21. I do not have the figure for the last three months. Nor do I have the Camp Hill figure for 2008. The Attendance Allowance increased to \$1,349.25 effective January 1, 2008. Counsel should consult and agree on the missing figures so that they can calculate the difference between the Attendance Allowance and Camp Hill totals for 2007 and 2008.

[10] In short, I am satisfied that Ms. MacDonald was obliged to pay the Camp Hill charges out of the Attendance Allowance. Ms. MacDonald was not entitled to pay the Camp Hill charges out of estate funds. I will give her the benefit of the doubt that she was entitled to keep the balance of the Attendance Allowance (after payment of the Camp Hill charges) for herself. That would leave her with \$4,082.24 for 2004; \$4,189.70 in 2005 and \$5,777.43 in 2006. She is also entitled to keep similar amounts (to be calculated by Counsel) in 2007 and 2008. This will

more than adequately compensate her for time she says she spent with her father in Camp Hill, including doing his laundry.

[11] I am satisfied that this ruling is consistent with the Chief Justice's Order that the Attendance Allowance is "for her personal use *in the care of her incompetent father ...*". (Emphasis mine) Ms. MacDonald was clearly not permitted to keep the entire Attendance Allowance pursuant to the Chief Justice's Order. I am further satisfied that she *knew* or was wilfully blind to the fact that she was not entitled to keep the whole amount. Ms. MacDonald will reimburse the estate for the Camp Hill charges she kept.

November 13 to November 30, 2003:	466.74
December 1 to December 31, 2003:	778.00
January 1 to September 30, 2004:	778.00 x 9 = 7,002.00
October 1 to December 31, 2004:	786.56 x 3 = 2,359.68
January 1 to September 30, 2005:	786.56 x 9 = 7,079.04
October 1 to December 31, 2005:	803.86 x 3 = 2,411.58
January 1 to September 30, 2006:	803.86 x 9 = 7,234.74
October 1 to December 31, 2006:	835.21 x 3 = 2,505.63
January 1 to September 30, 2007:	835.21 x 9 = 7,516.09
October 1 to December 31, 2007:	_____ x 3 = _____
*January 1 to September 30, 2008:	_____ x 9 = _____
*October 1 to December 31, 2008:	_____ x 3 = _____

*or until date payments stopped. Counsel will supply figures and do math for dates indicated.

[12] *Laundry:* As I noted, I have found that Ms. MacDonald was compensated for doing her father's laundry with the portion of the Attendance Allowance she retained. Laundry was included in the Camp Hill monthly charge. Strictly speaking, there was no need for any laundry to be done outside the hospital. Ms. MacDonald will therefore reimburse the estate for the approximately \$9,000.00 she charged for doing her father's laundry. (Counsel can agree upon the precise figure.)

[13] I am declining to make an order with respect to the calculation of the Guardian's fees as that matter was not pursued before me.

[14] In addition, Ms. MacDonald will pay Ms. Kasperson \$1,000.00 in costs.
Order accordingly.

J.