

CITATION: Ekelschot-Kumelj v. Bradley, 2011 ONCA 554

DATE: 20110811

DOCKET: C53245

COURT OF APPEAL FOR ONTARIO

Goudge, J. and MacFarland J.J.A.

BETWEEN

Majda Ekelschot-Kumelj, Stanka Niedra and Veronika Bradley

Applicants/Appellants

and

Ivanka Bradley, personally in her capacity as Attorney for Property of the late Rozalija Kumelj and in her capacity as Estate Trustee of the Estate of Rozalija Kumelj

Respondent

Vesna Vojvodic, for the appellant

Lisbeth A. Hollaman, for the respondent

Heard: August 10, 2011

On appeal from the order of Justice Mark L. Edwards of the Superior Court of Justice dated January 7, 2011.

APPEAL BOOK ENDORSEMENT

[1] The appellants' motion to adjourn this appeal until after her motion concerning disclosure of certain documents in the estates case is hereby dismissed. We cannot see how these documents could be relevant to the case before us. Indeed, the appellants did not seek their disclosure in this case. The appeal will proceed.

[2] The judgment appealed from is founded on two factual findings:

- 1) that the mother was always of full mental capacity; and
- 2) the respondent simply effected the mother's instruction.

[3] On appeal the first finding is not challenged.

[4] The second is challenged on the basis that the mother's physical disability and the amounts of money involved require the inference that the respondent was not simply implementing the mother's instructions. We disagree. There was ample evidence from the records and the evidence of others with whom the mother dealt to sustain the trial judge's conclusion. The appellants' speculation is no basis for us to interfere with that finding.

[5] The appeal is dismissed. Nor is there any basis to interfere with the trial judge's discretion in awarding the costs below. Costs of the appeal to be paid jointly and severally by the appellants in the amount of \$15,000 inclusive of disbursements and applicable taxes.

“S.T. Goudge J.A.”