

SUPREME COURT OF YUKON

Citation: *Braun Estate (Re)*,
2023 YKSC 32

Date: 20230607
S.C. No. 22-P0123
Registry: Whitehorse

ESTATE of Chris Braun, Deceased

Before Chief Justice S.M. Duncan

Appearing on his own behalf as
Proposed Administrator

Robby Braun (by videoconference)

Appearing on her own behalf as
Caveator

Angelika Raboud (by videoconference)

Appearing on her own behalf

Diana Braun (by videoconference)

This decision was delivered in the form of Oral Reasons on June 7, 2023. The reasons have since been edited for publication without changing the substance.

REASONS FOR DECISION

[1] DUNCAN C.J. (Oral): This is an application by Robby Braun, resident of Calgary, Alberta, to remove the caveat entered by his sister, Angelika Raboud (née Braun), in his application for letters of administration of the estate of Chris Braun, their brother who died in Whitehorse on June 29, 2022, at age 53. Robby Braun applied to the Supreme Court of Yukon in December 2022 to be the administrator of Chris' estate, in the absence of a will. The basis of his application is that he was Chris' only brother, close friend, and trusted emergency contact for personal and industry connections. Robby Braun is a certified public accountant (CPA/CMA) with over 30 years'

experience, and says he was requested verbally by Chris Braun to manage his estate. He has had past experience as an executor for his mother's estate and currently he is the executor for his father's estate.

[2] The reason for the caveat filed by Angelika Raboud is her lack of faith in Robby Braun's ability to perform his duties as an administrator of their brother's estate ethically, objectively, and competently. This is based largely on the ongoing disputes over the finalizing of the probate of the estate of their father, who died on May 16, 2020. As I said, Robby Braun is the executor of that estate.

[3] Angelika Raboud filed the caveat and two supporting affidavits in this matter with exhibits. In addition to the original notice of application, Robby Braun submitted two more affidavits with exhibits. Another sister, Diana Braun, also filed an affidavit for consideration on this application.

[4] A case management conference was held in March 2023 by telephone with all three siblings participating, in order to canvass the issues and determine next steps. Resolution at that time was not possible and so this application was heard on May 25, 2023, with all three siblings appearing by videoconference representing themselves. They were sworn or affirmed and gave evidence at the hearing. The following reasons are based on the filed material as well as the testimony provided on May 25, 2023.

[5] The issue to be determined is whether Angelika Raboud has provided sufficient evidence to show that Robby Braun is not suitable to be the administrator of Chris Braun's estate, and that an independent third-party licensed accountant or lawyer in Whitehorse should be appointed as administrator instead.

[6] The concerns about Robby Braun's suitability to be the administrator expressed by Angelika Raboud arise from his work as the executor of their father's estate.

[7] Angelika Raboud says Robby Braun has:

- a) unreasonably delayed the settling of their father's estate;
- b) failed to provide necessary information to the beneficiaries;
- c) issued an interim report with costs information redacted and unethically assigned legal costs to her, as well as arbitrary and inaccurate values to certain assets in the estate, thereby acting against the father's intention to distribute the estate equally among the four offspring;
- d) failed to secure market value in the sale of the father's house;
- e) proposed to pay himself an unreasonable 7% executor fee for the father's estate; and
- f) redacted or omitted key information in the notice of application and supporting documents for the letters of administration of Chris Braun's estate.

[8] Further, in her most recent affidavit with exhibits attached, Angelika Raboud claimed Robby Braun falsified a sales receipt for the sale of their father's Dodge Caravan in the interim report. The report says that Chris Braun sold the van for \$7,500, less \$928.61 for travelling and repair costs and less \$212.34 for cleaning and new mats — and bought two new tires as a condition of the sale. Angelika Raboud contacted the van purchaser in Yellowknife, who texted that she paid \$9,000 for the van and bought her own tires. Another receipt showing the purchase price of \$9,000 and signed

by the purchaser and Chris Braun is attached as an exhibit to Angelika Raboud's affidavit.

[9] Robby Braun responds to his sister's expressed concerns as follows:

- a) he has obtained the CRA clearance certificate in August 2022 for his father's estate and the delay in settling the estate is a result of Angelika Raboud bringing in lawyers, not providing a complete statement of account of the expenditures during the time she acted as their father's power of attorney, of which the siblings had no knowledge; it took time for the codicil to the father's will, initiated by Angelika Raboud, to be finalized through a witness affidavit; and finally, she took some family photos and historical documents that were part of the estate to be divided;
- b) Angelika Raboud requested in an email dated June 25, 2020, that there be no further communication with her until distributions were made and so Robby Braun provided his other sister Diana Braun and his brother Chris Braun with regular updates and understood that Diana Braun was passing on the information to Angelika Raboud;
- c) the interim statement of account and notice of this application were legible, complete, and contained redactions of personal information of Robby Braun, their father or the estate, or solicitor-client privileged information on the legal bills incurred by the estate in dealing with lawyers retained by Angelika Raboud; the assigned value of the costs of the photos and historical documents was done through averaging the values suggested by each of the three other beneficiaries, and assigning costs to

- Angelika Raboud would be removed once the photos and documents were returned by her; the legal costs of the house sale were subtracted from the proceeds of the sale; and the legal bills incurred by the estate in responding to Angelika Raboud's lawyer were deducted from her share;
- d) he used the realtor recommended by Angelika Raboud for the sale of the father's house, listed it during the pandemic, rejected the first low offer, accepted the next offer which was recanted, and finally, on the realtor's recommendation, accepted a third offer within 10% of asking price, as winter months were approaching;
 - e) he proposed charging a 5% executor fee, not 7%, on the recommendation of estate counsel based on the regular executor duties he performed in addition to time and effort spent amending their father's taxes for the previous six years and communicating with the German government in German about his father's pension; and
 - f) the only redaction in the notice for this application were the Yukon and Alberta addresses — the form showing the addresses was filed with the Court as required.

[10] Diana Braun supports Robby Braun as administrator of their brother's estate.

She agrees with him as follows:

- a) the delay in finalizing the father's estate is due not to Robby Braun, who has done all that is required, but to Angelika Raboud who has not

- provided a complete and accurate accounting of her duties as power of attorney;
- b) Diana Braun understood from the email of June 25, 2020, that Angelika Raboud did not want to receive any communication from her siblings;
 - c) she understands why there were redactions for privacy and privilege in the interim account, which did not affect her understanding of the costs and agrees with the rationale for subtracting legal costs and the valuation of the photos and documents from Angelika Raboud's share;
 - d) the house sale was done appropriately and as agreed, with the proceeds deposited into the estate, and Diana Braun advised Angelika Raboud of the details;
 - e) the 5% executor fee is warranted; and
 - f) she understands why Robby Braun did not want to show the addresses on the notice of this application, which was to protect others from being contacted by Angelika Raboud, and states there was nothing misleading about the rest of the form.

[11] Finally, Diana Braun states that Robby Braun was not involved in the sale of the van; it was Chris Braun who conducted the sale. She confirmed that she and Robby Braun understood it was sold for \$7,500, based on the receipt they received and the e-Transfer to Robby from Chris. She says she knows nothing about the receipt for \$9,000. She also expresses dismay that Angelika Raboud's husband complained to the Certified Public Accountants Association of Alberta about Robby Braun's alleged forgery

of documents and that Angelika Raboud claimed wrongly that he was not a member in good standing of the Certified Public Accountants Association. Diana Braun has seen the evidence that he is in good standing as a certified public accountant, and she confirms her support of him as administrator of Chris Braun's estate.

[12] Generally, Diana Braun states that Angelika Raboud has incurred \$25,000 in legal costs for the estate by hiring a lawyer and requiring Robby Braun, in turn, to hire a lawyer on behalf of the estate.

[13] She concludes that Robby Braun should be the administrator of Chris Braun's estate because he has the professional designation and experience as an accountant and would serve the interests of the beneficiaries. She notes that Robby and Chris were close as brothers, spent Christmases and other vacations together, and visited each other often. She further states that Robby and Angelika have not truly spoken to one another for over 27 years and that Angelika Raboud's husband does not know Robby at all.

[14] There was an abundance of additional material in the affidavits, especially in Robby Braun's affidavit. Much of his affidavit evidence consisted of allegations of fraud, deceit, and unethical behaviour against his sister Angelika Raboud. All the affidavits contain personal accusations and recriminations. While some of those may have relevance to the credibility of the siblings, much of it is not relevant and will not be referenced. I assure the parties, however, that I have read all of the material provided more than once in order to understand the concerns and make my determination.

[15] I have focussed my analysis on the allegations in the caveat of Angelika Raboud, as well as on the sale of the van, and Robby Braun's responses to all of this.

[16] I also need to clarify that I am making no legal findings about the father's estate. That estate is being dealt with in Saskatchewan, where this Court has no jurisdiction. Litigation is in progress there and the outstanding legal issues must be resolved there. In addition, there may be more background and evidence relevant to that dispute that is not part of this application. But because the objections to the administration of Chris Braun's estate are based on issues arising in the father's estate, I need to refer to that evidence. But any conclusions or observations I make in relation to the evidence provided about the father's estate are only for the purpose of the determination of the administration of Chris Braun's estate.

[17] I will first review the legal principles applicable in this situation.

[18] There are no cases in the Yukon Territory which address the issue of setting aside a proposed administrator for allegations of incompetence and dishonesty, so I will refer to cases from other jurisdictions and rely on them.

[19] There is one case, however, from the Yukon (*Miller Estate (Re)*, 2012 YKSC 66) that sets out the obligations of an administrator of an estate.

[20] At paras. 8 and 9, the Court said those obligations are:

[8] ...

1. To make a complete and true inventory of the estate of the deceased;
2. To administer the estate including the payment of all debts and the realization of all assets;
3. To make an accounting of the administration when required to do so; and
4. To pay the residue of the estate to the persons entitled to it.

[9] An administrator must act responsibly and diligently, being sure to avoid putting their personal interest in conflict with the interests of all of the beneficiaries. It is the duty of all estate administrators to keep proper books of account and to be ready to account for the estate property which they are bound to administer. Section 55 of the *Yukon Trustee Act*, R.S.Y. 2002, c. 223, directs that, unless their accounts are approved and consented to by all beneficiaries, an administrator must pass their accounts and if their accounts are incomplete or inaccurate, they may be required to attend before the Court to show cause why the accounts have not been passed.

[21] If there is a disagreement between two or more next of kin about who should take out letters of administration, this is not a reason in and of itself to appoint a third-party stranger, such as a trust company or other professional administrator (see *Arksey v Arksey*, (1998) 127 ManR (2d) 30; and *Sluchinski (Re)*, [1979] 4 WWR 345 (Sask QB)). Unless there is doubt about the proposed administrator's competence, honesty, or ability to act in the best interests of the estate beneficiaries and not his own personal interest, the proposed administrator's application should be considered (*Arksey*, para. 10); and when there is no reason for preference, the Court should exercise its discretion in favour of the person who has the majority of the support (*Arksey*, para. 9).

[22] As a general observation, there is clearly significant hostility between Robby Braun and Angelika Raboud, originating many years ago. That hostility has led to the imputation of improper motives by each of them against the other and a characterization of each other's actions in a negative light. Misunderstanding and miscommunication have resulted and reality is clouded by the animosity.

[23] Turning to the allegations in the caveat and the subsequent affidavit, I will address each of them in turn.

a) Delay in finalizing the father's estate

[24] It appears from the evidence that Robby Braun has completed his executor's work, as he obtained the CRA clearance certificate in August 2022, and the house and vehicle have been sold. Angelika Raboud does not set out any reason in her caveat or the affidavits as to why there is no final accounting and distribution of the estate.

Robby Braun's evidence is that they are waiting for a complete and accurate accounting from the power of attorney for property held by Angelika Raboud before their father's death. Now, of course, there will need to be an adjustment to account for the distribution of Chris Braun's share of the estate. Diana Braun supports Robby Braun's statement in this regard.

[25] Without determining the current reason for the delay in finalizing the father's estate, I find there is no evidence in the material before me that Robby Braun is the cause of the current delay in finalizing the estate.

b) Failure to report

[26] Both Robby Braun and Diana Braun have interpreted Angelika Raboud's email of June 25, 2020 as her request not to receive any communication about the estate from the family. Angelika Raboud appears to interpret that email to mean that she would not be responding to communications from them, not that they should cease communications with her. The actual wording of the email from Angelika is:

Given your stated intent to initiate legal action, I will no longer respond to any further communication. As a beneficiary, I will await the closing of the estate.

[27] Robby Braun's response in part was:

I did not say anything about legal intent or action toward you. I asked you what your legal intent was toward me since you mentioned the courts.

[28] In his earlier email, to which Angelika Raboud had responded, he had written:

I don't know what you are trying to prove with your questions. It appears you are trying to shift blame for your actions onto me. If this [is] your game plan, I will have no choice but to seek legal counsel [sic] to protect myself from you. Also, you will be responsible for legal fees associated with holding up probate or anything else you choose to try.

[29] This is a small example of the difficult communication among the siblings. Their fractured relationship has caused misunderstandings and miscommunication.

[30] Although Robby Braun stopped communicating with Angelika Raboud about the estate, based on his understanding of her June 25, 2020 email that she did not want to be communicated with, he did provide her with an interim accounting statement. As well, he was assured by Diana Braun that information about the house sale was communicated to Angelika Raboud.

[31] I find that Robby Braun's interpretation of Angelika Raboud's statement that she would not respond to further communication and would await the distribution of the estate as a beneficiary, was reasonable in the context of their relationship. He has not appeared to compromise his duties as an executor in any event, as Angelika has received the necessary documents and information — although she does complain that they are altered or redacted.

c) Redactions of the documents and unequal distribution among the beneficiaries

[32] I cannot make definitive findings on these issues as I do not have all of the evidence — and this is a significant part of the estate dispute in Saskatchewan.

[33] What I will say is that the explanations of the redactions provided by Robby Braun (privacy, personal information, and solicitor-client privileged material) and supported by Diana are reasonable. A review of the interim accounting document

attached as Exhibit 2 to Robby Braun's May 15, 2023 affidavit shows clear explanations for the interim distribution. While Angelika Raboud may not agree with what Robby has done, whether or not she is correct in fact or at law, is not for me to decide. Given the reasonableness of the explanations provided by Robby Braun, I do not find evidence of fraud, deceit, or other illegal behaviour by Robby Braun.

d) Sale of house

[34] The explanation provided by Robby Braun and supported by Diana Braun of the listing price of the house, the offers received, rejected, recanted, and finally accepted, in the context of the pandemic, the timing, and Robby Braun's residence in Calgary is reasonable. He was receiving advice throughout from a highly competent realtor recommended by Angelika Raboud. The legal fees were deducted from the sale price. Angelika Raboud provided no evidence of why she claims the final sale price was below market rate at that time and in that context.

e) Executor fee

[35] Other than Angelika Raboud's assertion, there is no evidence that Robby Braun intended to charge an executor's fee of 7% of the father's estate. Exhibit A to Exhibit 2 to his affidavit of May 15, 2023, shows a proposed fee of 5%. The proposed fee of 5% is reasonable in the circumstances, especially given the tax arrears and the complication of the German pension.

f) Redaction of addresses on Yukon application

[36] These address redactions were Robby Braun's attempt to protect the individual in the Yukon and himself from being contacted by Angelika Raboud. The animosity between the siblings and the concern that Angelika Raboud would send numerous

emails and make numerous calls, explains why he may have done this, although it is unusual. An unredacted version, however, was filed with the Court. There was no redaction of the essential information.

g) Sale price of van

[37] I can make no finding as to whether the van was sold for \$7,500 or \$9,000. There are two receipts sent by email that are virtually identical except for the amount. There is no way for me to tell by looking at them whether one is real and the other is not.

Although there are some text messages ostensibly from the purchaser, they are hearsay and cannot be given much weight in the absence of an affidavit or in person testimony from her. The text messages and the two receipts raise questions. Further, both Robby Braun and Diana Braun are clear that Chris Braun was responsible for the sale of the van, not Robby. There is evidence to support this. Angelika Raboud does not dispute this but says as executor, Robby Braun is ultimately responsible for the proceeds.

[38] Chris Braun is not here to provide evidence on the amount that Robby Braun and Diana Braun say was deposited in the account. Robby Braun has provided receipts for the cleaning, the mats, and the tires.

[39] There is no evidence provided by Angelika Raboud to support her accusation that Robby Braun took an additional \$1,500. Robby Braun did not sell the van to the purchaser, Chris Braun did, as agreed by the siblings. Robby Braun provided evidence of the email to him from Chris Braun dated October 18, 2020, with the PDF attachment of the receipt showing \$7,500. The existence of the other receipt for \$9,000 is an

unexplained mystery, and there is insufficient evidence that Robby Braun deceitfully and fraudulently took any money.

[40] Finally, Robby Braun has provided evidence that he is a member in good standing as a certified public accountant in Alberta. This contributes to my assessment of his suitability as an administrator of the brother's estate.

Conclusion

[41] The long-standing animosity among the family members, some of which has crystallized over the administration of their father's estate, has created the misunderstandings, misinterpretations, and miscommunications that have led to this application.

[42] I have found insufficient evidence on all the points raised by Angelika Raboud to conclude that Robby Braun is unethical, incompetent, dishonest, and thus unsuitable as an administrator of Chris Braun's estate. While there are some aspects of the father's estate that raise questions, the explanations provided by Robby Braun, corroborated by Diana Braun, are sufficient at this point for my purposes to answer the accusations of fraud, dishonesty, and deceit. It is not my role to make definitive findings in that matter, in any event, but only to be assured that there is no valid reason to dismiss Robby Braun's application to be the administrator here.

[43] The estate of Chris Braun is relatively small, estimated at approximately \$50,000. This size does not justify the appointment of a third party who would charge a fee, unless there are no family members suitable to be the administrator. Hostility among family members is not a sufficient reason at law to appoint a third-party administrator. Robby Braun was Chris Braun's close friend, brother, and emergency contact.

Robby Braun says he was asked by Chris to manage his estate and considers it is his obligation to do so. He has the professional qualifications to do so competently. His other sister Diana Braun supports his appointment as administrator.

[44] The caveat is dismissed and the application to appoint Robby Braun as administrator will be reviewed and approved if complete.

DUNCAN C.J.