



Legal Notes

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Caregiver/Companion Claims: Right or Wrong?

Increasingly, people who have assisted seniors in a voluntary way (i.e. not as salaried professionals) are making claims for financial compensation after the senior dies. For example, they socialize with the senior or help with errands or care giving and then, when the senior dies, they claim financial reward for “services provided,” becoming locked in court battles with beneficiaries and personal representatives of the senior’s estate. In this article I will look at 2 such cases. Perhaps caregivers, family members or seniors themselves will be able to recognize circumstances that could lead to a claim, and consider whether it is advisable to take protective steps.

In the case of Moropito v. Moropito Estate the claimant was a 63-year-old man, nephew of the deceased Mr. Moropito. The nephew claimant had very little to do with his uncle until Mr. Moropito's wife died. Then the nephew began visiting Mr. Moropito, and they became friends. The nephew took his uncle out shopping, visiting relatives, to picnics, and to the barbershop. He even cut Mr. Moropito's grass a few times, however his uncle paid him for this. The nephew later told the court his uncle had promised to remember him in his Will, and had promised to buy him a car. But in fact, the uncle left the claimant completely out of his Will and apparently never bought him a car.

There was no witness to confirm the nephew’s allegations about promises made. However, he had kept a meticulous diary. This he submitted to the court as evidence that he had made precisely 319 contacts with his uncle before he passed away. Many of these were telephone calls, however he had escorted Mr. Moropito on 8 to 10 outings per month, each outing lasting about 2 to 4 hours. The trial judge found as a fact that the claimant had not kept this diary for the purposes of making a claim, but that he had the practice of keeping a diary before Mr. Moropito died. (The trial judge did not say if this practice began before the claimant started visiting his uncle, however.) In the end, the court held the nephew had genuinely expected to receive a car and to be remembered in his uncle's Will and that he met the legal requirements to be entitled to

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compensation for the time he had spent with Mr. Moropito. The court ordered the estate to pay \$5,000.00 to the claimant.

In the case of Clarkson v. McCrossen, a 1995 case from the B.C. Court of Appeal, the facts seem to establish a more meritorious case for the claimant. She was a stepdaughter of the deceased, Mr. McCrossen. She provided Mr. McCrossen and her mother with significant personal care for some time, and both had promised she would inherit the family home. In order to care for them the claimant gave up employment opportunities and even a relationship with a man in Chicago. She did not buy her own home. After her mother died, she continued to care for Mr. McCrossen.

However, the elderly Mr. McCrossen remarried shortly before he passed away. This caused a falling out between him and the claimant. Then Mr. McCrossen reneged on his promise to give his stepdaughter the family home: in fact, he left her only \$1,000.00 in his Will. The court did not approve of this. The trial judge awarded the claimant \$125,000 (although this was only about half the value of the home), and this award was upheld by the B.C. appeal court.

These two cases demonstrate some of the problems and iniquities that result when people befriend or care for seniors with expectation of reward, justified or not. They demonstrate the problem of failing to clarify expectations and, where appropriate, taking steps to protect oneself. Sometimes caregivers are at risk, as in the Clarkson case, but at other times it is seniors and their heirs who are at risk. This is an area where the law is presently in a state of evolution.

Claimants in such cases can be anyone: neighbours, tenants, friends, housekeepers, children, stepchildren or more distant relatives. They provide enjoyable companionship, care, or assistance upon which the senior comes to depend. But if they expect a reward or inheritance in return and do not receive what they want, they can make a claim against the estate—right or wrong.

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