

SUPREME COURT OF YUKON

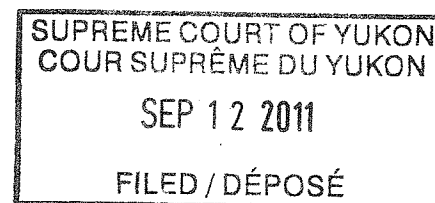
Citation: *In the matter of Dixon Charles Lutz*, 2011
YKSC 62

Date: 20110727
Docket S.C. No.: 11-B0013
11-B0033
Registry: Whitehorse

PURSUANT TO THE *DECISION MAKING, SUPPORT AND PROTECTION TO ADULTS ACT, S.Y. 2003, C.21 (the "Act")*; specifically *SCHEDULE A, THE ADULT PROTECTION AND DECISION MAKING ACT, PART 3, COURT APPOINTED GUARDIANS ("Part 3")*

IN THE MATTER OF THE APPLICATION FOR GUARDIANSHIP OF

DIXON CHARLES LUTZ



Before: Mr. Justice R.S. Veale

Appearances:
Tess Lawrence
Carrie Burbidge

Counsel for the Applicant, Verna Lutz
Counsel for the Applicants, Frank Lutz
and Georgina Lutz

RULING ON APPLICATION FOR GUARDIANSHIP DELIVERED FROM THE BENCH

- [1] VEALE J. (Oral): This is an application for the appointment of a guardian for Dixon Charles Lutz, age 71 years, the hereditary chief of Liard First Nation. There are two competing applications, Verna Lutz, the wife of Dixon Lutz, and previous common-law spouse of Dixon Lutz, applies for guardianship. Frank and Georgina Lutz, the son and daughter of Dixon Lutz from his former wife, also apply for guardianship.
- [2] The background is that Verna Lutz has lived with Dixon Lutz for approximately 35

years. They have resided in a residence, apparently built and owned by Dixon Lutz, but situate on Liard First Nation lands. There is no doubt that Dixon and Verna have had a long and loving relationship. Dixon Lutz, in particular, has had a vigorous and healthy life until recent years. He has held the position of hereditary chief of Liard First Nation, which, as I understand it, is a traditional position, and the First Nation is governed today by an elected chief and council. There are five sons and one daughter, and they indicate that son Frank has been designated by Dixon Lutz to carry on the hereditary chiefmanship.

[3] Dixon Lutz began to fail as early as the fall of 2007. Verna cared for him up until October 2010, when she needed some respite care and he was taken to the Copper Ridge facility, which is located in Whitehorse, and that is, for the record, some distance from Watson Lake. The reason that he was taken at that time relates to his Alzheimer's disease, which is a deteriorating one. But after a discussion with his doctors, as well as family, he was placed in a special unit, as he required 24-hour care. That occurred on a permanent basis, I believe, in March of 2011.

[4] It is at this point that the family divisions, unfortunately, became apparent, as the children, five of whom reside in Watson Lake, as I understand it, and one in Whitehorse, believe that Dixon Lutz's own request would be that he remain in Watson Lake at his home, or perhaps at Frank's home, and I have no doubt that that would be his wish. It is unfortunate that Frank and Georgina and the other children are now apparently completely estranged from Verna over the care of Dixon and the financial issues relating to his estate. As I indicated, he is now a permanent resident of the Copper Ridge facility in Whitehorse, which I suspect has been a great relief to Verna as she

was no longer able to care for him in the circumstances.

[5] The application of Frank and Georgina is that Dixon Lutz be placed in their care and live in Watson Lake, either in the family home with Verna Lutz or in the home of Frank. They believe that a homemaker and adequate care support can be arranged in Watson Lake, and they submit it would be in accordance with his wishes and, of course, be very culturally appropriate.

[6] There are a number of issues that have been raised in the application, but let me first deal with Dixon's condition. There is no dispute that his condition at the present time meets the requirements of s. 32(1)(a) and (b) of the *Decision Making, Support and Protection to Adults Act*, S.Y. 2003, so I therefore find that he is incapable of managing all of his affairs and he needs the care, assistance, and protection of a guardian. What remains in dispute is s. 32(1)(c) which deals with whether or not I am satisfied that "forms of available support and assistance less intrusive than guardianship have been tried or carefully considered." Now, this s. 32(1)(c) was in dispute to the extent that the application of Frank and Georgina would involve a less intrusive guardianship to the extent it could be achieved at his home in Watson Lake or at Frank's home.

[7] There are two incapability assessment reports that have been prepared. The first was prepared by Mr. Scoffin, dated December 20, 2010. I think all are in agreement that it is clear that he has deteriorated substantially since that time, but the report has some comments that are worth considering and I am going to quote from the report as follows:

Mr. Lutz has a primary care provider who is well versed with what his values, priorities and needs are. There is information that has been discussed from all of the collateral sources contacted where

pressure may be applied by family members to Mr. Lutz in order to gain benefit and privileges from him. Mr. Lutz has resisted such efforts in the past, but his capabilities to be consistent in upholding these values and resisting these pressures as a result of his declining cognitive health status is less than in the past. Ms. Lutz is Mr. Lutz's spouse and partner for more than thirty years, and is in a strong position to be able to support, assist and when necessary make decisions on behalf of Mr. Lutz when the circumstances require it to occur.

I add that the children were not consulted in any full way by Mr. Scoffin when he prepared this report. Mr. Scoffin further states:

Mr. Lutz clearly indicated that he trusts Ms. Lutz with taking care of and managing everything for him. Their relationship is one that is based on mutual trust. Mr. Lutz has always expected Ms. Lutz to take care and manage the affairs of the home when he has not been available. A guardianship application is intended in Ms. Lutz's mind to formally recognize who will be the individual who should make decisions on behalf of Mr. Lutz.

Under the section about whether the adult expressed any wishes regarding who he would like to act as guardian, he indicated that:

He loves and trusts Verna. They are married, and she has always helped him and been involved in all aspects of his [life].

I say that subject to the fact that the children were not consulted in that respect.

[8] The more recent and helpful Incapability and Assessment Report was prepared by Joy Vall, it is V-a-l-l, and she is an occupational therapist. This report was requested by Frank and Georgina Lutz and it is dated June 21, 2011, and I am going to make a number of quotes from it, as follows:

Mr. Lutz is a 71-year-old First Nations male residing in the Special Care Unit of Copper Ridge Place in Whitehorse, Yukon. Mr. Lutz has advanced dementia and is completely dependent on others for

all of his basic activities of daily living, including feeding, toileting and dressing. Mr. Lutz requires a lift for all transfers and is wheelchair dependent. Mr. Lutz is dependent for all instrumental activities of daily living; this includes banking, driving and shopping.

The next paragraph:

Mr. Lutz was diagnosed with dementia approximately two years ago and has had a rapid progression. He was managed in the community with the assistance of Home care; however, Mrs. Lutz reports that she was no longer able to manage his needs and arranged for a respite at Copper Ridge in November of 2010. He then became a permanent resident in March of 2011. Mr. Lutz's children have wanted to move him home since his admission in March of 2011.

The next paragraph:

Mrs. Lutz is currently managing Mr. Lutz's financial affairs; however, the family believes that she is depleting the estate. The Adult Protection Unit has not initiated an investigation although Georgina Lutz has spoken to a representative at the Adult Protection Unit regarding his admission to Copper Ridge Place.

The next paragraph I am quoting from:

The manager of Special Care reports that he believes that Mr. Lutz has no unmet needs that he is aware of. He reports that there is conflict between Verna Lutz and the children of Mr. Lutz. He was informed by Watson Lake Homecare that Verna has been the primary support for Mr. Lutz and they had no concerns about Verna abusing Mr. Lutz.

Georgina Lutz reports that she is worried about Mrs. Lutz selling the trap line and truck. She is also concerned that Mrs. Lutz has taken away Mr. Lutz's bankcards. She claims that Mrs. Lutz has verbally abused Mr. Lutz and locked him in the truck. This was reported to her from an aunt, Mrs. Mida Donnessey, who allegedly saw Mr. Lutz in the vehicle parked in Teslin. Mrs. Lutz apparently was inside playing "Keno".

Frank Lutz report is very similar to Georgina's. He states that in First Nations culture, an individual's belongings are packed up for

one year after death and then distributed by the oldest son at a Potlatch. He is concerned that he will not be able to carry out that tradition for his father.

[9] Ms. Vall goes on to say:

I had the opportunity to visit with Mr. Lutz, Georgina, George, and some grandchildren, and cousins on June 11. There was no evidence of conflict and Mr. Lutz was enjoying the company of his extended family. From my observations, the family seemed genuine in their affection towards Mr. Lutz.

Verna Lutz has been with Mr. Lutz for 35 years and they are legally married. I had the opportunity to observe and sit with Mr. and Mrs. Lutz together on June 10, 2011. Mr. Lutz sat quietly together with Mrs. Lutz and frequently reached for her hand. There was no evidence of conflict, nor has any been reported to me.

I have received no evidence Mrs. Lutz is depleting the estate or making decisions with regards to personal and health care for Mr. Lutz that would put him at risk.

The next paragraph:

When I interviewed Mr. Lutz, I asked him if he would like to live with his children in Watson Lake, he stated, "That would not be a good idea." He also stated that "this is a good place", referring to Copper Ridge Place. When asked if he would like Verna "look after his money" he stated, "yes."

When his children were present, I asked the same questions. He did respond, "yes," to question "do you want to go home", but he did not respond the questions of who would he like to live with. He also did not respond to the question "who would like to be your guardian".

The Lutz children maintain that Mr. Lutz's care needs could be managed in Watson Lake using a schedule they have put together. The manager of Copper Ridge Staff reports that this would not be possible due to his high care needs.

I add that there has been no schedule filed in the application.

[10] Under the section Adult Wishes, Ms. Vall says:

On my first assessment, when I asked Mr. Lutz who he would like to be his guardian, he stated "Eileen", but he could not recall her last name. Later, with Mrs. Lutz present he stated that Verna could manage his finances. On a third visit with the Lutz family present, Mr. Lutz would not answer the question, "who would like to be your guardian". Therefore, I cannot make a conclusive statement about whom Mr. Lutz would prefer as a guardian.

[11] I am satisfied that s. 32(1)(c) has been dealt with in this case in the sense that forms of available support and assistance that are less intrusive have been tried and carefully considered by Verna in Watson Lake, as well as the individuals that have been involved in his care in Watson Lake.

[12] In my view, just from reading the report of Joy Vall, it would be a huge and perhaps impossible burden to care for Dixon in Watson Lake, whether it be with Verna or with the children. It would be extremely difficult, from the report that she has given, for private citizens to deal with all the transfers from the wheelchair, the feeding, the toileting, the dressing, and all the activities of daily living. Whether family members or not, it would simply be too difficult to accommodate. It is unfortunate because, obviously, if Watson Lake had a facility like Copper Ridge, then he could be placed in that facility. I should say that if that occurs, that there is a facility in Watson Lake, then obviously that should be considered and it would be open to either party to come back to Court if that became an issue later on.

[13] I have no doubt that Verna and the children all have Dixon's best interests at heart but, nevertheless, I am satisfied that the best place in his condition is to be at the Copper Ridge facility that he is presently at. I am satisfied, therefore, that Verna would

be the appropriate guardian. She has lived with Dixon as her partner for 35 years. She knows his values, his beliefs, his wishes, and cultural norms, and the traditions that he has lived by, and I believe that she will be respectful of them. My hope is that once this matter is resolved by this decision, that the family will be able to start communicating again because that would be Dixon Lutz's wish, that the members of his family, which include his wife and his children, would all be able to communicate again.

[14] So I am making the guardianship order to Verna on the following conditions:

1. That she provide or file an inventory and accounting within six months, and that a copy of that be delivered to Georgina and Frank Lutz;
2. That the trap line and all the accessories to it be preserved on the understanding that it will continue to be used by the boys, as it has been used in the past, and transferred to them on Dixon Lutz's death;
3. That the family home built by Dixon Lutz be preserved until such time as it can be transferred to Georgina;

I am assuming that that is the wish of all the children.

4. That the personal effects of Dixon Lutz, such as his rifles, gifts that he has received as hereditary chief, his hereditary chief headdress and moose skin jacket, be preserved for appropriate cultural use and distribution in accordance with the cultural traditions of Liard First Nation;
5. That the children of Dixon Lutz be entitled to visit him at the Copper Ridge facility and take him out for drives, so long as the supervisor of the facility is satisfied that his safety and wellbeing is met;

6. I specifically order that Frank and Georgina are entitled to contact the caregivers at Copper Ridge and any other support people or medical professionals to receive information and receive reports, including medical reports, in the same fashion that Verna would be entitled to as his guardian;
7. The 2004 Ford Ranger and ATV may be sold for payment of debts, and I include in that debt the credit card debt which I believe to be in the amount of \$1,400, and the \$1,750 debt for Joy Vall's report, and that might involve a reimbursement if it has not been paid. Both of these debts should be satisfied from the sale of the truck and the ATV or, if necessary, from the estate as funds are available.

[15] Because there has been an issue about depletion of assets, in terms of the monthly cheques that Dixon Lutz receives, I want to make it clear that Verna has control of the estate of Dixon Lutz for reasonable and appropriate use for Dixon's wellbeing, as well as her reasonable requirements as his wife.

[16] There has been a request from counsel for Verna Lutz that her legal expenses in the sum of \$3,000 be paid by Frank and Georgina Lutz. I am not going to make that order. I am going to say that each party will be responsible for their own legal fees and there will be no order as to costs.

[17] Now, counsel, there may be some things arising that I have not covered off. As I indicated at the outset, the draft order prepared by Ms. Lawrence appears to be an

appropriate order in terms of its form, subject to the changes, obviously, that need to be from the order that I have just made.

[18] Is there anything outstanding, Ms. Burbidge or Ms. Lawrence?

[19] MS. BURBIDGE: I don't believe so.

[20] MS. LAWRENCE: I just want to clarify the third point that you mentioned, the home preserved until it can be transferred to Georgina.

[21] THE COURT: That should say contents too.

[22] MS. LAWRENCE: Could we clarify -- pardon me?

[23] THE COURT: Contents too.

[24] MS. LAWRENCE: Home and contents. And just to clarify that -- that does provide Verna Lutz a life estate?

[25] THE COURT: It is, in effect, a life estate, yes.

[26] MS. LAWRENCE: Okay.

[27] THE COURT: You can put in it, effectively, a life estate.

[28] MS. LAWRENCE: Okay.

[29] THE COURT: Obviously, if Verna moves to Whitehorse on a permanent basis and the house is sitting vacant, it seems to me it would be appropriate to transfer it to Georgina if that is the wish of the children.

[30] I say also, the other way, if issues come up that arise, as your lawyers will tell you, you can always deal with these matters in what we call a settlement conference, where we sit around a boardroom table and discuss the issues, if there are any issues that do arise, because there may be subsequent issues that arise, particularly on Dixon's death, in terms of how you would deal with appropriate cultural traditions, because my view is that those cultural traditions must be respected. Thank you everyone.

[31] MS. LAWRENCE: I just have one quick question, Your Honour.

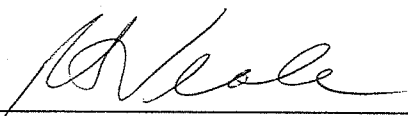
[32] THE COURT: Yes.

[33] MS. LAWRENCE: In regard to the affidavit that you have requested that I file regarding the trap line and house, is that still required now that it will be included in the order?

[34] THE COURT: It is. We need that for the record.

[35] MS. LAWRENCE: Okay. Thank you, Your Honour.

[36] THE COURT: Thank you.



VEALE J.