

# COURT OF APPEAL FOR ONTARIO

CITATION: Abbruzzese v. Tucci, 2025 ONCA 70

DATE: 20250128

DOCKET: COA-24-CV-0316

Gillese, Roberts and Coroza JJ.A.

BETWEEN

Angela Abbruzzese

Applicant (Respondent)

and

Bernadette Tucci, a.k.a. Benedetta Iannarelli, personally and as Estate  
Trustee of the Estate of Assunta Maria Iannarelli\*,  
Joseph Sandro Nazzicone, and  
The Office of the Public Guardian and Trustee

Respondents (Appellant\*)

Jonathan M. Friedman and Rachel L. Jennings, for the appellant

David N. Delagran and Genevieve Madill, for the respondent

Heard: January 24, 2025

On appeal from the judgment of Justice Cory A. Gilmore of the Superior Court of Justice, dated February 15, 2024, with reasons reported at 2024 ONSC 957.

## REASONS FOR DECISION

[1] This is an appeal from the judgment dated February 15, 2024 (the “Judgment”), in which Assunta Maria Iannarelli’s will, made in April 2016 (the “2016 Will”), and the property transfer she made that same day (the “Property Transfer”) were set aside.

[2] At the oral hearing of the appeal, after hearing the submissions of Bernadette Tucci (“Bernadette” or the “Appellant”), the court advised the parties it was unnecessary to hear from Angela Abbruzzese (“Angela” or the “Respondent”) and dismissed the appeal with reasons to follow. These are the promised reasons.

### **Background**

[3] Mrs. Iannarelli and her husband had two daughters: Angela and Bernadette. Mr. and Mrs. Iannarelli lived in their jointly owned home (the “McLeod House”). After her husband died in 2005, Mrs. Iannarelli continued to live in the McLeod House until her death in 2018.

[4] Bernadette moved in with her mother in 2009 and continues to live in the McLeod House. Angela lived nearby with her husband and three children.

[5] Mrs. Iannarelli had only two assets of any significance: the McLeod House and a bank account that held her life savings (the “Bank Account”).

[6] In a will that she made in 2007, Mrs. Iannarelli named her daughters Angela and Bernadette as her executors and left her estate to them equally.

[7] In the 2016 Will, Mrs. Iannarelli: (i) named Bernadette as executor; (ii) stated that if she had not done so already, she made a gift of the McLeod House and its contents to Bernadette; and (iii) directed that the residue of her estate be distributed equally to Angela and Bernadette.

[8] After Mrs. Iannarelli died on March 5, 2018, Angela challenged the validity of the 2016 Will and the Property Transfer, in which her mother transferred title to the McLeod Home into the joint names of herself and Bernadette. Angela alleged that her mother lacked capacity when she did both things and, further, that her mother took those actions as a result of Bernadette's undue influence. Bernadette contended that her mother had capacity at the time she signed the 2016 Will and executed the Property Transfer, and that her mother wanted to compensate Bernadette for the caregiving that Bernadette had given her.

[9] Before the trial of this matter, Bernadette was ordered to make an application to pass accounts for her mother's estate for the period January 1, 2015, to March 5, 2018 (the "Application"). Mrs. Iannarelli's Bank Account was carefully scrutinized during the Application. At the beginning of March 2016, there was over \$80,000 in the Bank Account. At that time, Mrs. Iannarelli executed a power of attorney in Bernadette's favour over the Bank Account. By the end of May 2016, as a result of withdrawals by Bernadette, the balance in the Bank Account had been reduced to approximately \$2,500.

[10] The trial judge heard and decided the Application. Before deducting the permitted estate expenses and compensation, Bernadette was ordered to repay \$62,500 to her mother's estate because the court found that Bernadette was unable to satisfactorily explain why she had withdrawn almost all of her mother's savings from the Bank Account.

[11] This matter proceeded to an in-person trial, concluding in early 2024. The trial ran over seven days. It involved many witnesses and much medical evidence – including that of experts – about Mrs. Iannarelli’s capacity over a lengthy period, including before, during, and after the making of the 2016 Will and Property Transfer. The trial judge found that Angela’s evidence was more credible than that of Bernadette.

[12] After an extensive review of the evidence, the trial judge concluded that Mrs. Iannarelli had been subject to undue influence by Bernadette and, when she signed the 2016 Will and made the Property Transfer, she was particularly vulnerable due to diminished mental capacity. Having found that Mrs. Iannarelli’s intentions were not her own when she executed the 2016 Will, the trial judge ordered that the 2016 Will be set aside.

[13] The trial judge then considered the Property Transfer and explained why the presumption of undue influence was triggered in respect of it. She went on to find that Bernadette had not adduced sufficient evidence to rebut that presumption on a balance of probabilities.

[14] Following trial, the trial judge made a costs order dated March 22, 2024 (the “Costs Order”). The Costs Order requires Bernadette to pay Angela costs of \$100,000, all-inclusive, from Bernadette’s share of the sale proceeds of the McLeod House. The costs endorsement which underlies the Costs Order is

extremely well-crafted. It thoroughly addresses the parties' submissions, correctly articulates and applies the legal principles governing costs awards in estate matters, accurately sets out what had transpired in the trial process – including the parties' various settlement offers – and justly reflects the result at trial.

[15] Bernadette appeals the Judgment. She challenges the trial judge's factual findings on Mrs. Iannarelli's capacity and undue influence. If successful on appeal, Bernadette also asks that the Costs Order be set aside and an order be made requiring that Angela's costs be paid from the estate.

### **Analysis**

[16] The Appellant quite properly acknowledges that the trial judge set out the correct legal principles governing the various determinations she was required to make to resolve this matter. However, she submits that the trial judge erred in the factual findings she made and the way in which she applied the legal principles to those findings.

[17] We do not accept this submission. On the record, the trial judge's factual findings were fully open to her and we see no error in the way in which she applied the law to them. On the contrary, we commend the trial judge for having correctly articulated the relevant legal principles governing each issue, for explaining the basis for her factual findings, and for her careful application of the legal principles to the facts as found.

## **Disposition**

[18] Accordingly, the appeal is dismissed with costs to Angela, fixed at the agreed upon sum of \$25,000, all inclusive, such costs to be paid from Bernadette's share of the sale proceeds of the McLeod House or the estate.

"E.E. Gillese J.A."  
"L.B. Roberts J.A."  
"S. Coroza J.A."