

CANADA / JUDGMENT

Coyne Estate

2017 BCSC 493

COURT

Supreme Court of British Columbia

DECIDED

28 March 2017

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2017 BCSC 493 Coyne Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Coyne Estate,

2017 BCSC 493

Date: 20170328

Docket: S102580

Registry: Kelowna

Re: The Estate of Mavis Lorraine Coyne, also known as

Mavis Lorraine Engler, Deceased

Before: Master Wilson

Reasons for Judgment

Appearing on his own behalf:

J.E. Humphries

Appearing on her own behalf:

M.J. Coyne

Place and Date of Hearing:

Kelowna, B.C.

August 23, 2016;

October 18, 2016;

March 7 - 10, 2017

Place and Date of Judgment:

Kelowna, B.C.

March 28, 2017

- [1] This acrimonious matter concerns the estate of Mavis Lorraine Coyne who died on or about February 3, 2014.
- [2] The deceased's last will and testament was executed on February 5, 2010. The will was drafted by the deceased's solicitor, John Edward Humphries, pursuant to which he was appointed as the executor. The will provides that the estate be divided with 10 percent to be paid to each of Rebecca Jane Sutton and April Engler, who were two of the deceased's nieces, with the remaining 80 percent to be paid to one of her children, Moira Joan Coyne. The will includes a clause that refers to the Wills Variation Act, R.S.B.C. 1996, c. 490, and confirms that the deceased intentionally did not provide for her other children who, according to the will, are "all relatively well off".
- [3] There were no bequests under the will other than a provision that directed the trustee to send the deceased's animals to live with Ms. Sutton.
- [4] On February 7, 2014, four days after the death of her mother, Ms. Coyne met with Mr. Humphries at his office. Ms. Coyne and Mr. Humphries discussed a number of matters pertaining to the estate. Each believed, correctly, that the estate was comprised primarily of the deceased's mobile home plus some modest investments and accounts.
- [5] During the February 7, 2014, meeting, Ms. Coyne indicated that she wanted to assume ownership of the mobile home. Mr. Humphries as executor advised that if she wished to do so, she would need to pay to the estate the cost of the administration plus sufficient funds to compensate Ms. Engler and Ms. Sutton for their 10% entitlements. Mr. Humphries also advised Ms. Coyne that she could keep the contents of the home. The parties discussed that they would use the assessed value of the home for the calculation of the amounts payable to the other beneficiaries.
- [6] Based upon this discussion, Ms. Coyne moved in to the deceased's home where she remained until approximately October 28, 2014, when she packed up her car with some personal effects along with her mother's dog and two cats and returned to her home in Hodgeville, Saskatchewan.
- [7] By the time of her departure, the relationship between Ms. Coyne and Mr. Humphries was strained; she felt that she could not trust Mr. Humphries. Ms. Coyne subsequently provided Mr. Humphries with a claim for over \$30,000 of expenses for which she claims reimbursement from the estate.

- [8] Following Ms. Coyne's sudden departure from the home, Mr. Humphries took steps to prepare it for sale. The home was listed and ultimately sold on May 6, 2015, for \$45,000. The net proceeds to the estate after adjustments and conveyancing costs were \$40,462.36.
- [9] Ms. Coyne continued to express concerns regarding Mr. Humphries' administration of the estate and she made several requests for information. Formal demands pursuant to the provisions of the Trustee Act, R.S.B.C. 1996, c. 464, were made by Ms. Coyne through counsel, and Mr. Humphries provided responses within the time limit for response.
- [10] Final clearance was received from Canada Revenue Agency in November 2015, and, as such, the estate has been ready for final distribution since that time.
- [11] Mr. Humphries prepared a document entitled Accounting and Proposed Final Distribution for approval by the beneficiaries in the fall of 2015. Ms. Engler and Ms. Sutton provided consent but Ms. Coyne declined to do. As such, it became necessary for Mr. Humphries to make this application to pass his accounts.
- [12] The estate accounts for which Mr. Humphries sought approval included his account for legal services in the amount of \$5,000 plus GST and PST for a total of \$5,600 that was dated October 9, 2015, and was provided to Ms. Coyne's former counsel. Mr. Humphries paid the account around the time it was issued.
- [13] Mr. Humphries took the position that he was not looking for an executor's fee and sought only his legal fees. This matter was originally scheduled for one day but ultimately took six. Following the second day of this hearing for the passing of the estate accounts, I directed with the agreement of both parties that the issue of Mr. Humphries' entitlement to his legal fees should also be determined at the continuation of this hearing.
- [14] The issues for determination at this hearing are:
1. Does the estate owe money to Ms. Coyne for expenses;
 2. Has Mr. Humphries accounted for the assets of the estate; and
 3. Is Mr. Humphries entitled to remuneration?

For the reasons set out below, I find that Ms. Coyne has not proven any of her expenses; that Mr. Humphries has fully accounted for the assets of the estate; that Mr. Humphries is entitled to remuneration by way of an executor's fee of \$2,400 plus taxes (less a small adjustment).

Issue 1 - Does the estate owe money to Ms. Coyne for expenses?

- [15] Ms. Coyne resided in the manufactured home from shortly after her mother's death until her departure at the end of October 2014. On February 4, 2015, Ms. Coyne sent a letter drafted by a lawyer in Saskatchewan that attached a claim for "expenses incurred in the maintenance of the property and in undertaking improvements to the property to prepare it for sale". The expenses claimed total \$30,580.67.

- [16] The expenses include 527.5 hours of Ms. Coyne's time that she values at \$20 per hour. She submitted a document that summarizes the various activities undertaken on a month by month basis, with a total of the time spent. The document that sets out the time spent would not appear to have been made contemporaneously -- each month has a list of items performed but there is no breakdown of time spent, either by date or by activity. The activities for which Ms. Coyne seeks compensation include cleaning, yard work, interactions with Mr. Humphries, sorting and packing of her mother's effects, and dealing with the animals.
- [17] A portion of the time and activities described by Ms. Coyne includes what she described as a "kidnapping" of her mother's dog which was residing with Ms. Coyne in her mother's home along with her mother's two cats. It was apparent that Ms. Coyne has a close emotional attachment to her mother's dog and two cats. Ms. Coyne describes what she says was an assault on her by Ms. Engler or Ms. Sutton with the dog having been taken from her by force. She gave evidence at length with regard to the animals and described how she was subsequently able to retrieve the dog.
- [18] Other expenses claimed by Ms. Coyne include all or substantially all of her living expenses while in her mother's home with her mother's animals: pad rent, utilities, pet care costs, groceries, fuel and insurance for her car, and cable bills. She also claims for costs incurred before her mother died such as arranging for and paying for her sister's flights to B.C. from Honduras, in addition to a claim for a telephone she bought for her sister, her sister's telephone bills, and a charge for \$500 for food that Ms. Coyne left behind in the home at the time of her departure.
- [19] Ms. Coyne says that she was told on February 7, 2014, to track her expenses and that she would be reimbursed. Mr. Humphries says he agreed only to compensate Ms. Coyne for estate expenses, and that the only reason she was in the home at all was because of the agreement whereby she was going to acquire it from the estate.
- [20] Ms. Coyne says that by her rough calculations, she expected that she would have needed to come up with something in the range of \$15,000 to purchase the home, which amount takes into account 10 percent for each of Ms. Sutton and Ms. Engler and \$3,000 for Mr. Humphries' administration of the estate. She arranged to borrow \$10,000 from the bank in the expectation of her purchase.
- [21] Ms. Coyne contends that Mr. Humphries never told her that probate had been granted, and had she known about the granting of probate, she would have purchased the home from the estate well before she moved out in October 2014. Her position is that none of the subsequent problems would have happened had Mr. Humphries told her about the granting of probate. Her contention that she was never aware that probate had been granted was a recurring theme throughout her evidence.

- [22] Ms. Coyne says she moved out at the end of October 2014 following a conversation with Mr. Humphries on October 17, 2014. Ms. Coyne's evidence of the telephone conversation of October 17, 2014, is that she raised with Mr. Humphries the issue of her expenses. She testified that he said that he would look at her claims for expenses, as opposed to agreeing to pay for them. She said this was the first time she was told that she might not be paid for her expenses; she felt that her position was not secure and that Mr. Humphries could evict her. She told Mr. Humphries that she could change her mind about buying the home and could move back to Hodgeville, Saskatchewan and Mr. Humphries agreed with her. Ms. Coyne also testified that Mr. Humphries told her in their October 17 telephone call that the estate would be completed by December 31, 2014. She said the entire conversation took less than ten minutes.
- [23] Mr. Humphries' position is that the estate is not liable for Ms. Coyne's expense claims as the sole reason she was residing in the home was because she had agreed she was going to buy it from the estate and that she breached the agreement by moving out.
- [24] Mr. Humphries denies that he ever told Ms. Coyne that the estate would be completed by the end of 2014. He testified that he was aware that the deceased's 2014 income tax return still needed to be prepared and that final clearance from Canada Revenue Agency could not be obtained until the notice of assessment was issued for the deceased's 2014 tax year.
- [25] Mr. Humphries agrees that he did not provide Ms. Coyne with a copy of probate at the time it was granted because, firstly, she never asked for it and, second, he says more importantly, the amount that she would have to pay in order to purchase the home from the estate could not be determined until the estate was completed; as such, the granting of probate was, in and of itself, not particularly important.

Credibility and reliability

- [26] Ms. Coyne's recollection of her evidence conversations with Mr. Humphries cannot be accepted, and to the extent that they differ on the content of those discussions, I prefer the evidence of Mr. Humphries.
- [27] By way of example, Ms. Coyne testified that she was twice told by Mr. Humphries that he did not have a copy of the will. Mr. Humphries had drafted the will and he retrieved it from his vault upon hearing of the deceased's death. On February 7, 2014, he provided Ms. Coyne and her sister with copies with his intention to apply for probate of the will. He later obtained an order for probate. There can be no doubt that Mr. Humphries had a copy of the will at all material times, and it would make no sense for him to tell Ms. Coyne otherwise.

- [28] I also do not accept that Mr. Humphries told Ms. Coyne during their conversation of October 17 that the estate would be completed by the end of 2014. He knew the deceased's 2014 income tax return still needed to be prepared and that final clearance from Canada Revenue Agency could not be obtained until after the notice of assessment was issued for the 2014 taxation year. I accept Mr. Humphries' evidence that he would not have told Ms. Coyne something that he knew could not be done.
- [29] Moreover, Ms. Coyne's evidence in this regard does not help her -- if Mr. Humphries had told her that the estate would be completed by the end of 2014, it would have made even less sense for her to move out if her purchase could be completed within two months, given that she had already been waiting for over six months.
- [30] It was clear from Ms. Coyne's evidence throughout this matter that there is significant animosity between her and Ms. Engler and Ms. Sutton.

Findings

- [31] If it were not for the fact that Ms. Coyne was intending to buy the mobile home from the estate, she would not have occupied it from February to October 2014. While both parties referred to an "agreement", it likely was not a binding agreement as there was no meeting of the minds on some essential terms. However, even if there were aspects of the arrangement to which the parties had not turned their minds, there is no dispute as to Ms. Coyne's intention to purchase on the one hand and Mr. Humphries' willingness to sell on behalf of the estate on the other.
- [32] I find that on February 7, 2014, Mr. Humphries agreed to reimburse Ms. Coyne for estate expenses she may have incurred. It may be that Ms. Coyne misunderstood what would constitute estate expenses; however, Mr. Humphries did not tell Ms. Coyne that the estate would pay for her living expenses for the period when she was living in the home. If Ms. Coyne were entitled to be reimbursed by the estate for all of her living expenses, the amount she would need to pay to the executor at the time of her purchase for the costs associated with the administration would have been higher by the amount of the expenses paid to her, which have been a pointless exercise.
- [33] It is not clear why Mr. Humphries did not tell Ms. Coyne that probate had been obtained in April 2014. While the precise amount of how much Ms. Coyne would have to pay may have had to wait until after final clearance from CRA, the amount could presumably have been estimated and the transfer effected subject to a final accounting.
- [34] However, I cannot accept Ms. Coyne's contention that she moved out of the home because she was not aware that probate had been granted.

- [35] First, she agreed on cross-examination that she left because she found out Ms. Engler and Ms. Sutton were moving in to the neighbourhood. This is confirmed by her timesheet entry during October which reads, "After finding out girls moving in Nov. 1 to #26 and Johns phone call Oct 17 I left quickly so as not to pay for Nov."
- [36] Second, at no time did Mr. Humphries tell Ms. Coyne that she would not be allowed to purchase the property. Had the timing of the transfer been important to Ms. Coyne, it would only make sense for her to have questioned Mr. Humphries on the point before deciding to pack up and return to Saskatchewan. She could have asked Mr. Humphries during the October 17 conversation or indeed earlier, but she did not do so. That entire conversation took less than 10 minutes. Until her sudden departure, both parties were proceeding on the basis that Ms. Coyne would buy the home from the estate, and Mr. Humphries only became aware that Ms. Coyne had left when he received a letter from her in early November.
- [37] I find that Ms. Coyne moved out of the home because she changed her mind when she discovered that Ms. Engler and Ms. Sutton were moving in to the neighborhood and not because of any delay in Mr. Humphries' administration of the estate or any failure on his part to provide her with information about probate.
- [38] I turn now to the expenses for which Ms. Coyne claims reimbursement.
- [39] The summary of the time spent by Ms. Coyne includes a lot of yard work and other sorting and clean-up types of activities. Included in this work were improvements and renovations to the yard, which she considers were necessary. The cover letter that accompanied the claim for expenses refers to preparing the property for sale, but that was never Ms. Coyne's intention because until just before her departure on October 28, 2014, Ms. Coyne was intending to buy the home from the estate.
- [40] Mr. Humphries testified that upon Ms. Coyne's departure there was a significant amount of clean-up required. There was garbage throughout the home and rotting food in the fridge that needed to be cleaned out. His evidence was that he spent at least 80 hours of his own time effecting clean-up, both inside the home and in the yard. There were trips to the dump and yard work required. In addition to Mr. Humphries' own labours, he hired others to assist in preparing the property for sale.
- [41] The best argument for Ms. Coyne would perhaps be a claim for compensation or for repayment of any expenses that she incurred that would otherwise have been incurred by the executor.
- [42] There is no evidence of how much time Ms. Coyne spent on each of the various activities - the only evidence was by way of a list of activities and a monthly total of hours claimed. There is no evidence that would enable me to distinguish between what was necessary from changes she wished to make as the intended owner of the home. Further, it can be presumed that at least some yard work would have been required to ready the home for sale in 2015 regardless of whether Ms. Coyne had done some yard work in 2014. I note that she

did not seek or obtain permission from Mr. Humphries to effect changes to the property and absent some evidence that value was obtained, either because the property was worth more or because the estate would have incurred the cost anyway, the estate cannot be liable to compensate Ms. Coyne for her time.

- [43] The out of pocket expenses associated with Ms. Coyne's occupation of the home are her costs and not those of the estate. But for her stated intention to buy the home from the estate, the executor would have readied the home for sale shortly after the death of the deceased and would have listed the property for sale upon receipt of the grant of probate. While the estate would have incurred certain costs for some months - pad rent, minimal utilities etc. - there is no benefit to the estate because it incurred those same costs from when Ms. Coyne left in October 2014 until the home was sold in May 2015. The fact that Ms. Coyne had the right to change her mind about buying the home does not render her expenses to be estate obligations.
- [44] I was provided with no good reason as to why the cost of Ms. Coyne's sister's return from Honduras or her sister's telephone would be an expense of the estate.
- [45] Finally I will deal with the expenses associated with Ms. Coyne's mother's animals. All three animals (one dog, two cats) are now at Ms. Coyne's home in Saskatchewan even though the deceased's will left the animals to Ms. Sutton.
- [46] I have no doubt that Ms. Coyne is providing the animals with a good home. However, since Ms. Coyne was adamant that her mother's animals would not be going to Ms. Sutton notwithstanding the will, it makes no sense that the estate is obligated to reimburse Ms. Coyne for any of those expenses.
- [47] If Ms. Coyne's expenses are allowed, the estate would be substantially reduced, the primary effect of which would be to reduce the 10% interests of Ms. Engler and Ms. Sutton on the one hand and increase Ms. Coyne's recovery on the other. Mr. Humphries submits that this is Ms. Coyne's primary motivation regarding the expense claim. Regardless of motivations, I find that Ms. Coyne has established neither that the estate agreed to repay her for any of the expenses she claims, nor that any of the expenses would have been incurred in any event such that the estate would receive a benefit at Ms. Coyne's expense.
- [48] It follows that Ms. Coyne's claim for expenses is dismissed.

Issue 2 - Has Mr. Humphries accounted for the assets of the estate?

- [49] An executor has an obligation to take reasonable steps to ensure that the value of the estate is realized prior to distribution to beneficiaries. The personal representative is also obligated to keep adequate and complete accounts and to provide that accounting to the beneficiaries, including receipts, often known as "vouchers", upon request. Mr. Humphries has prepared an accounting and proposed final distribution which is attached to his affidavit in support of application to pass accounts, together with a statement of account that includes transactions incurred on behalf of the estate. The statements have been approved by the beneficiaries,

Ms. Engler and Ms. Sutton, but not by Ms. Coyne, thus necessitating this application to pass the accounts.

- [50] Ms. Coyne says that the accounting is incomplete, contains errors and is not transparent. She also says that Mr. Humphries failed to realize upon the assets of the estate and she believes that Mr. Humphries allowed Ms. Engler and Ms. Sutton unfettered access to the deceased's property after Ms. Coyne left in October 2014, and that by allowing such access, valuable chattels were lost. She complains that a television was exchanged for cleaning services at much less than its fair market value and that the mobile home was also sold for less than its value.
- [51] Ms. Coyne says that Mr. Humphries refused to provide her with information to which she was entitled as a beneficiary, and only provided responses when she retained an estate lawyer, Ms. Metherell, to demand information pursuant to s. 99 of the Trustee Act.
- [52] Mr. Humphries testified that he was subjected to numerous abusive telephone calls from Ms. Coyne that often ended in his having to terminate the call abruptly. He says that he provided Ms. Coyne with ample information as evidenced by his prompt response to Ms. Metherell, and that other information was provided in a timely basis as the file progressed.
- [53] As to the chattels in the home, he says they were of no real value.
- [54] He says that his accounting is complete and appropriate and is materially correct.

Chattels

- [55] Although Ms. Coyne provided a list of chattels that she says remained at the home upon her departure and her estimates of the values of those items, there is no evidence to substantiate those values. Ms. Coyne has not established that the chattels were of sufficient value such that there was an obligation on the part of Mr. Humphries to take steps to sell them as opposed to simply disposing of them, nor indeed that they had much value at all.
- [56] Although it would appear that Ms. Engler and Ms. Sutton are now in possession of some large clay pots that were outside in the deceased's back yard, there is no evidence that Ms. Sutton, Ms. Engler or indeed anyone else took anything of any value. When Mr. Humphries and Ms. Coyne discussed Ms. Coyne acquiring the home from the estate, Ms. Coyne was also to keep the contents of the home. There was no discussion about valuing the contents for the purpose of determining the value of Ms. Sutton's and Ms. Engler's interests in the estate.
- [57] Following her departure, Mr. Humphries had to ready the home for sale. If someone were prepared to take away some of the contents at no cost, this would represent a benefit to the estate to the extent that it would not need to pay to dispose of them in some other manner.

- [58] The only evidence of any value having been obtained was the television that Mr. Humphries says he exchanged for some cleaning work undertaken by someone not associated with the estate. His evidence was that he tried to obtain \$100 worth of cleaning services for the television but was only able to negotiate \$60; the cleaning work undertaken was to clean-out the refrigerator which was filled with food left rot by Ms. Coyne. This is not unreasonable.
- [59] I am satisfied that Mr. Humphries complied with his obligations as executor of the estate regarding any chattels that remained in the home upon Ms. Coyne's departure.

Sale of the home

- [60] Ms. Coyne attempted to argue that Mr. Humphries had failed to take steps to obtain proper value for the home and suggested that the home was subsequently resold for much more than the price of \$45,000 obtained by Mr. Humphries. However, there was no admissible evidence to show that Mr. Humphries sold the home for less than fair market value, nor was there any evidence of a subsequent sale. I am satisfied that Mr. Humphries disposed of the home in a prudent manner.
- [61] Ms. Coyne contends that Mr. Humphries failed to properly account for the proceeds of sale from the home. The home was listed for sale in early 2015. Ms. Coyne's view was the entire sale proceeds from the home ought to have been reflected in the accounting when in fact Mr. Humphries had only accounted for the net sale proceeds after payment of commissions and closing costs and some other adjustments.
- [62] Ms. Coyne questioned whether the commission was truly ten percent when the listing indicated it was five percent and also whether the commission charged by the realtor ought to have been set at a lower percentage. Mr. Humphries' uncontroverted evidence was that ten percent is the normal charge on manufactured homes. During the hearing, Ms. Coyne had Mr. Humphries review his entire file in order to locate the original listing agreement which indeed showed the ten percent commission. The listing information from the Multiple Listing Service system indicates a commission of five percent but this simply reflects the commission that is available to a realtor who finds a purchaser.
- [63] Finally, Ms. Coyne was critical of Mr. Humphries with regard to the statement of adjustments that assumed a five percent increase in the property taxes over the previous year's amount. Mr. Humphries testified that this is standard practice when a sale completes before tax notices are issued.
- [64] Ms. Coyne did not understand normal conveyancing practice and was unaware of how statements of adjustments are prepared, which is understandable. However, Mr. Humphries is only required to account for the funds he received, assuming that he gave due consideration to the adjustments proposed on the vendor's statement of adjustments. I am satisfied that he did so. The statement of adjustments was in evidence.

- [65] Her misunderstanding of the conveyancing process led Ms. Coyne to incorrectly assume dishonesty or incompetence on the part of Mr. Humphries. This was a recurring theme throughout the hearing on matters relating to the accounting.

The shed

- [66] There was a shed on the property and on December 17, 2014, Mr. Humphries sent a letter to Ms. Coyne, enclosed in a Christmas card, which said that the shed was full and would need to be emptied prior to listing the property for sale. He inquired if any of the items in the shed were Ms. Coyne's, a concern that arose because Mr. Humphries was aware from discussions with the deceased before she died that Ms. Coyne had items stored in a shed on the property.
- [67] By January 2, 2015, the shed had been emptied of anything of value. He reported the matter to the police as he was concerned that the shed had been broken into and the contents stolen. Ms. Coyne complained that Mr. Humphries had failed to take an inventory of the shed and points to his inquiry to her for an inventory as she had prepared one before she left.
- [68] Ms. Coyne's position is that the shed must have been emptied by Ms. Engler and Ms. Sutton because Mr. Humphries had allowed them free run of the place and since they had just acquired a larger property with more yard, the contents of the shed would have been of value to them.
- [69] However, there was no evidence at all to suggest that Ms. Sutton and Ms. Engler were responsible for emptying the shed; Mr. Humphries testified that he does not know who emptied it and simply pointed out that a police report was made.
- [70] I was asked to infer that Ms. Sutton and Ms. Engler must have the contents of the shed and that Mr. Humphries allowed it to happen. Mr. Humphries would not make a report to the police if he had authorized Ms. Sutton and Ms. Engler, or indeed anyone else, to clear out the shed. Neither Ms. Sutton nor Ms. Engler was called to testify. I cannot draw the inference sought. In the absence of any evidence to the contrary, I can only conclude that Mr. Humphries had left the shed locked as he said, and that his conduct was entirely appropriate when he reported to the police that the lock had been cut off and the shed emptied.

The Estate accounting

- [71] Much time was spent on the issue of Mr. Humphries' method of accounting. Ms. Coyne says that the accounting and proposed final distribution which is attached to Mr. Humphries' affidavit in support to pass accounts (Form P38) and the statement of account (Form P40) are inconsistent, and that she is convinced that Mr. Humphries took money from the estate.

- [72] Mr. Humphries is a sole practitioner and does not have an assistant. His accounting for the assets of the estate is handwritten on a two-page client ledger card that was entered into evidence. Ms. Coyne's expectation was that there would be a bank statement that reflects the various transactions in and out of an estate account. However, Mr. Humphries has a pooled trust account and therefore there is no separate bank account.
- [73] The fact that the accounting is handwritten on a client ledger card as opposed to being typewritten in a format closer to a bank account does not render it invalid or improper, notwithstanding Ms. Coyne's comments.
- [74] Although Ms. Coyne was of the view that there were discrepancies between the accounting and proposed final distribution on the one hand and the statement of income and expenses on the other, I am satisfied that there are no material discrepancies between them. The accounting and final distribution was initially provided on October 9, 2015, in response to the s. 99(1) demand from Ms. Metherell. By the time the statement of income and expenses was prepared, Mr. Humphries had noted a \$50.00 discrepancy whereby more than one cheque was received in a single day and the deposit was inaccurately allocated even though the amount was correct. This was corrected on the statement of income and expenses, and Mr. Humphries brought this to the court's attention in his direct evidence.
- [75] One of the major causes for concern for Ms. Coyne was that some expenses were paid directly by the estate to third parties, whereas other expenses were shown as having been paid to Mr. Humphries. Mr. Humphries explained that he used estate assets to pay for estate liabilities to the extent he was able to do so, but there were times when there were insufficient funds in the estate to pay estate expenses. He used his own funds to cover those estate costs and then reimbursed himself from the estate when funds became available. As such, there are instances whereby the same type of expense occurs as an estate expense and others where it occurs as a disbursement of Mr. Humphries' law corporation. However, I am satisfied that all of the required receipts have been provided and there has been no double recovery.
- [76] Another source of confusion for Ms. Coyne is that the accounting and proposed final distribution grouped certain of the expenses together by category, whereas the income and expense statement records each transaction individually.
- [77] As an example, there were four accounts rendered by Mr. Humphries which are described in the statement of income and expenses as "legal account for disbursements only". These are dated April 19, May 13 and December 4, 2014 and May 6, 2015, and are in the amounts of \$402.99, \$1,932.03, \$296.29 and \$2,838.64, respectively. The accounting and proposed final distribution includes under the heading "Liabilities", "Reimburse John E Humphries Law Corporation -- disbursements only \$5,469.95". Ms. Coyne was of the understanding that Mr. Humphries paid himself \$5,469.95 at a time when \$2,631.31 had already been paid to Mr. Humphries on account of his disbursements.

- [78] Ms. Coyne is correct that \$2,631.31 had already been paid by the estate to Mr. Humphries before the sale of the home, but she is incorrect that he had then paid himself a further \$5,469.95 upon sale; rather, the amount paid upon sale was \$2,838.64, resulting in a total amount of the four disbursement bills, when added together of \$5,469.95. This is but one example where Ms. Coyne appears to have misunderstood the accounting, leading her to conclude incorrectly that Mr. Humphries was either dishonest or incompetent.
- [79] I am satisfied that Mr. Humphries has complied with the requirements of the Trustee Act, and that the statement of income and expenses has been prepared in compliance with the requirements of Rule 25-13(6) of the Supreme Court Civil Rules.
- [80] I am also satisfied that the statement of income and expenses is materially accurate and Mr. Humphries' accounts are hereby approved.

Issue 3 - Is Mr. Humphries entitled to remuneration?

- [81] At the beginning of the hearing, Mr. Humphries advised that he was not seeking an executor's fee and sought only his legal fees. As indicated earlier, Mr. Humphries only rendered one legal account, dated October 9, 2015, in the amount of \$5,000 plus taxes. There were other accounts from Mr. Humphries, but these were all disbursements that were comprised mainly of reimbursement of expenses he incurred on behalf of the estate that were discussed in the section dealing with the passing of accounts.
- [82] Ms. Coyne was most adamant in her evidence that in the meeting of February 7, 2014, Mr. Humphries said that he would waive the executor's fee and would charge only a trustee's fee and said he was being untruthful when he testified that he said that their conversation was that he would charge legal fees but not an executor fee. However, I accept Mr. Humphries' evidence in this regard because it would make no sense for there to be a trustee fee but not an executor fee when the two are the same thing.
- [83] Mr. Humphries gave evidence about the time he spent on legal matters, and he went through his handwritten time sheets for the purpose of identifying those matters that he considered to be legal functions as distinct from executor functions.
- [84] During his submissions of March 9, 2016, Mr. Humphries provided me with Mr. Justice Burnyeat's decision in *Jackson v. King*, 2003 BCSC 328, and the Court of Appeal's decision in the same case that can be found at 2006 BCCA 563, which he submitted were authority for the proposition that both legal fees and an executor's fee may be charged even in the absence of a charging clause.
- [85] However, following some of my questions and his review of some of the authorities prepared by Ms. Coyne led to a change of his position. These authorities include portions of the *British Columbia Probate & Estate Administration Practice Manual*, 2nd ed. (Vancouver: The Continuing Legal Education Society of British Columbia, 2007) (Loose-leaf updated 2015), which says the following at paragraph 17.5:

A lawyer who is a personal representative can, like any other personal representative, receive remuneration for acting as a personal representative. Neither the lawyer who is the personal representative nor his or her firm can, however, be paid for the usual legal services rendered in the administration of the estate unless a "charging clause" in the will authorizes such payment.

- [86] In the result, Mr. Humphries returned to court on March 10 and asked that the court approve an executor's fee in the amount of \$2,500, plus PST and GST, but no legal fee. This amount is close to but slightly less than the maximum allowable executor's fee which is 5% of the gross value of the estate as set out in s. 88(1) of the Trustee Act.
- [87] The gross value of the estate, according to Mr. Humphries, should be calculated by adding the realtor's fee of \$4,725.00 to the gross value of the estate indicated in the accounting and proposed final distribution attached to the affidavit in support of application to pass accounts in Form P38 in the amount of \$49,467.76, as the gross value of the estate on that document reflects the net sale proceeds from the sale of the home as taken from the statement of adjustments from the sale. He says the gross value of the estate for the purposes of s. 88(1) of the Trustee Act is therefore \$54,192.76, 5% of which would be \$2,709.63. His request for \$2,500 represents 4.61% of the gross value of the estate and is one half of the amount he had previously sought for his legal fees.
- [88] Ms. Coyne does not dispute that Mr. Humphries is entitled to some compensation for his efforts, but says that \$1,000 would be more than enough in the circumstances.
- [89] The evidence of the time spent by Mr. Humphries in the administration of the estate is set out in part in his time sheets. The time sheets total in excess of 40 hours and include both legal services and executor services up to October 2015, when Mr. Humphries issued his legal account.
- [90] The reason the evidence of the time spent is only shown in part by the time sheets is that Mr. Humphries stopped recording any time around October 2015, and has not included his subsequent communications with Ms. Metherell, dealing with the final clearance from Canada Revenue Agency, or indeed any other matters after October 2015, which would include this six day hearing. Mr. Humphries' time sheets also do not include what he described as 80 hours of work cleaning up the manufactured home after Ms. Coyne's departure and prior to it being listed for sale. Additionally, there are matters that were not recorded at all -- for example, the conversation of October 17, 2014, that Ms. Coyne considered pivotal in her decision to leave is not in Mr. Humphries' time sheets.
- [91] In the circumstances, I am satisfied that Mr. Humphries spent well in excess of 120 hours administering this estate, which does not take into account any time associated with this application to pass accounts.

- [92] I am satisfied that the estate has been fully and properly administered by Mr. Humphries, and that the administration was accomplished in a timely manner. Mr. Humphries was prepared to allow Ms. Coyne to purchase the home which was the main asset in the estate, and was prepared to do so until Ms. Coyne changed her mind and decided to leave. Upon her departure, Mr. Humphries took possession of the asset, prepared it for sale and subsequently sold it via a realtor.
- [93] Ms. Coyne, dissatisfied with the level of information she was receiving, issued notice pursuant to s. 99(1) of the Trustee Act to Mr. Humphries through her counsel. Mr. Humphries says he has administered hundreds of estates and this was the first time he has ever received a demand under s. 99(1). Regardless, Mr. Humphries was obligated under the Trustee Act to respond within 60 days, and he did so within five weeks. A subsequent follow-up question from Ms. Metherell was answered the same day.
- [94] While it appeared that Ms. Coyne's level of understanding of the accounting improved over the course of the hearing, she nonetheless maintained in her final argument that Mr. Humphries had not been transparent and had failed to provide information to her as the major beneficiary as he was obligated to do.
- [95] I am satisfied that this estate was made considerably more difficult to administer by Ms. Coyne's frequent demands for information and hostile demeanor, including the numerous telephone calls that were described by Mr. Humphries as abusive. While it is clear on the authorities that a beneficiary is entitled to a full accounting with regard to the estate, there is no obligation on the executor to provide a running commentary of events.
- [96] Ms. Coyne referred me to authorities where the court found the trustee had failed to meet their obligations (e.g. *Re: Munroe Estate* (1999), 30 E.T.R. (3d) 270 (B.C.S.C.) and *Zimmerman v. McMichael Estate* 2010 ONSC 2947). In *Munroe* the trustee had taken no steps to pass accounts for nine years and only took steps after legal proceedings were commenced to compel him to do so; even then the information he provided was found to be insufficient. Mr. Humphries responded appropriately upon receipt of the demand under s. 99 of the Trustee Act and initiated this proceeding in a timely manner. *Munroe* is distinguishable on its facts.
- [97] *Zimmerman v. McMichael Estate* is a case where there were tens of thousands of dollars of unexplained disbursements that the Court described as 'staggering' - the trustee had charged the trust for clothing, meals, and a trip overseas amongst other things. The trustee failed to pass his accounts when he was ordered to do so and twice failed to attend court for his own application. His accounts, once provided, were described by the court as 'inadequate, incomplete and in many respects false' (para. 38). I have found that Mr. Humphries has fully and properly administered the estate, and his accounts have been approved as presented. He has fulfilled his obligations to the estate. The *Zimmerman* case is also distinguishable on its facts and does not assist Ms. Coyne's arguments.

- [98] In the circumstances, I find that this was a difficult estate to administer, primarily due to the personalities involved rather than there being any complex legal issues. The estate is a modest one and an executor's fee of \$2,400 is appropriate in the circumstances.
- [99] Ms. Coyne raised the issue of pre-taking in her submissions. Pre-taking is when an executor pays him or herself a fee out of the estate before the remuneration has been approved. Because Mr. Humphries paid his legal fees in October 2015, and since he now has conceded that any remuneration is to be by way of an executor's fee, Ms. Coyne is correct that an accounting is appropriate. Based upon the prevailing pre-judgment interest rate in place in British Columbia, interest on \$5,000 is \$35 per year, which amounts to approximately \$50 between October 2015 and the present.
- [100] In the circumstances, Mr. Humphries' claim for an executor fee is approved in the amount of \$2,400 plus applicable taxes. Mr. Humphries will be required to reimburse the estate for any amount taken in addition to the executor's fee, plus an additional \$50 on account of interest.

Summary of orders made

[101] The following are my orders:

- a) Ms. Coyne's application for reimbursement of expenses is dismissed;
- b) the executor's accounts are hereby approved as presented, subject to the adjustment for Mr. Humphries' fees below; and
- c) Mr. Humphries will be allowed an executor's fee of \$2,400 plus applicable taxes, and will refund any additional monies taken by him from the estate, plus \$50 for interest.

[102] As to the issue of costs of this hearing, Mr. Humphries was the successful party regarding Ms. Coyne's claim for expenses and the passing of his accounts. Although an executor's fee was allowed in an amount approximating the amount sought by Mr. Humphries, I consider Ms. Coyne to have been largely successful on this issue given that the concession occurred on the last day of hearing and Mr. Humphries conceded to Ms. Coyne's position as to his entitlement to charge legal fees to the estate.

[103] If either party wishes to make submissions on the issue of costs, they are to advise the registry within 14 days of the date of release of these reasons.

"Master Wilson"

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