

CANADA / JUDGMENT

Koshman Estate (Re)

2025 BCSC 2193

COURT

Supreme Court of British Columbia

DECIDED

5 November 2025

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2025 BCSC 2193 Koshman Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Koshman Estate (Re),

2025 BCSC 2193

Date: 20251105

Docket: 32178

Registry: Cranbrook

In the Matter of the Estate of David Maxim Koshman, Deceased

Before: The Honourable Justice Marzari

Reasons for Judgment

Counsel for the Applicant, Karmel Koshman:

A. Bird

The Respondent, appearing in person:

T. Koshman

No other appearances

Place and Date of Hearing:

Cranbrook, B.C.

September 18, 2025

Place and Date of Judgment:

Cranbrook, B.C.

November 5, 2025

Table of Contents

INTRODUCTION.. 3

BACKGROUND AND FACTUAL FINDINGS. 4

SHOULD TARA BE REMOVED AS EXECUTRIX?. 11

APPOINTMENT OF AN ALTERNATE EXECUTOR.. 16

ANCILLARY RELIEF. 17

CONCLUSION AND COSTS. 19

INTRODUCTION

- [1] Karmel Koshman, one of two daughters of the deceased David Koshman, applies to remove her sister, Tara Koshman, as executrix of their father's estate on several grounds. She also seeks ancillary relief, including the removal of Tara Koshman and her partner, Andrew Roberts, from the deceased's home and special costs against Tara Koshman personally.
- [2] Without intending any disrespect, I will refer to all of the Koshmans by their first names to avoid confusion.
- [3] Karmel has placed before this Court the correspondence she has had with her sister since their father died in March 2023 and Tara became executrix of his estate and moved into their father's home. Tara, for her part, has also filed several volumes of materials which include her correspondence with her sister, but also other materials, including information relating to her expenditures she says she has made on behalf of the estate.
- [4] In addition, I allowed additional materials to come before me by way of a memorandum to the parties on October 16, 2025. As set out in that memorandum, I allowed three further affidavits filed by Tara after the hearing because Tara missed the first half of the hearing of this matter. I do not accept that Tara did not or could not have known that the matter was proceeding at 10 am on September 18, 2025, after she confirmed with Supreme Court Scheduling her availability to proceed on that date. Besides confirming her own availability for that date, Tara also received Karmel's counsel's confirmation of availability for that date, and the indication that he was not prepared to adjourn that date. The matters being heard in any Registry, including the Cranbrook Registry, are also posted every day on the Court's website by 8am. Nevertheless, I felt it prudent to accept three further affidavits already filed by Tara providing which, on their face, provided further response to the application before me on September 18, including a systematic response to Karmel's affidavit materials that had been reviewed the morning that Tara had missed Court.

- [5] I also gave Karmel a right of reply to new information in these affidavits. The materials I received from the parties then included the affidavits prepared by the parties in advance of the hearing on September 18, 2025, as well as three additional affidavits prepared by Tara after the hearing, and three reply affidavits provided by Karmel. These further affidavits also included fresh evidence from both parties from their respective realtors about the marketability and potential listing price of the deceased's home obtained pursuant to my interim order on September 18, 2025.
- [6] I note that not all of the materials in the Court file are properly before me. For example, Tara has filed additional affidavits without leave, primarily relating to matters other than this application, such as the settlement of the interim orders I made on September 18, 2025. In her reply materials, Karmel also seeks to update me on events that have occurred since the hearing, not all of which are proper reply to Tara's affidavits. I am not prepared to grant any rights of sur-reply to Tara, and I have simply disregarded any submissions or materials from Karmel that go beyond proper reply.
- [7] I am satisfied of the fairness of proceeding on the basis of this final exchange of materials.
- [8] On all of the evidence properly before me, I am convinced that it is necessary to remove Tara as executrix of the deceased's will. I grant Karmel's application to be appointed executrix in Tara's place, together with the deceased's brother Robert, and I make the ancillary orders that follow from that appointment.
- [9] These are the reasons for that decision.

BACKGROUND AND FACTUAL FINDINGS

- [10] The deceased, David Koshman, died on March 23, 2023 at age 77, in Cranbrook, British Columbia. David was an electrician. He retired in or about 2016.
- [11] David lived for most of his life in the home he built on a five acre property located at 4125 33rd Street S., Cranbrook, British Columbia (the "Property").
- [12] David was survived by his two daughters Karmel and Tara, who were born in 1972 and 1974 respectively.
- [13] Karmel lives in Ottawa, Ontario and runs a hairdressing business out of her apartment. Her income is extremely modest. I accept her evidence that she remained close with her father and spoke with him at length by phone at least weekly, and often daily, when he was not working and after his retirement.
- [14] Tara lived in Victoria, British Columbia where she operated a flower business. Her affidavit evidence is contradictory as to whether she continues to operate a flower business, but it appears that she has not had a storefront for that business since February 2023 when she left Victoria and moved to the Property, where she has lived since her father's death. I accept her submissions that she was also very close to her father.

- [15] Tara and Karmel do not have a close relationship. Based on the material before me, I think it is fair to say they do not like or trust each other. Even when Karmel flew from Ontario to visit their father in hospital in March 2023 before his death, the sisters could not cooperate on hospital shifts or sleeping arrangements at the Property, and Tara made it clear that Karmel would not be welcome at the Property after David's death. Despite this, both Karmel and Tara say they have tried to have a good relationship with their sibling. This has clearly not worked out for them.
- [16] On March 21, 2023, just two days before his death, David made a handwritten will (the "Will"). The Will appoints Tara as executrix of the estate and distributes the estate equally to Tara and Karmel and no others. It is common ground that this is David's last will and testament.
- [17] David initially did not want to have to choose between his daughters in appointing an executor, and it appears that he tried to appoint a friend instead, but thought he could not. That friend has since been approached about acting as executor and has firmly declined.
- [18] The Will appoints Tara as David's executor.
- [19] On July 13, 2023, Tara filed a Submission for Estate Grant.
- [20] On October 6, 2023, the Court issued a grant of probate to Tara.
- [21] The Affidavit of Assets and Liabilities sworn by Tara on July 13, 2023 lists the following assets and values rounded to the nearest dollar:

The Property-net of small mortgage

\$

760,449

Personal Effects

\$

1,000

CIBC Account

\$

143

CIBC Account

\$

18,402

CIBC Account

\$

54,796

Value of Assets-net of mortgage

\$

834,790

- [22] The Affidavit of Assets and Liabilities does not list any of David's vehicles, which are known to include his Jeep Cherokee, vintage Ford Mustang, vintage Lincoln Town Car, vintage Caterpillar TD6 that David rebuilt and actively used, and his extensive collection of tools and vintage high-quality stereo equipment. Karmel has asked for further information about these assets. Tara's responses have been incomplete and unclear.
- [23] In March 2024, a year after David's death, Karmel had not received any distribution from the estate, and she asked Tara for information about the estate and for an accounting. She asked, for example, where Tara was living and with whom. Tara's response was that these questions were intrusive and none of Karmel's business, which would have been the case had Tara not been living with her partner in the estate Property. Tara has since conceded in Court before me that she has been living at the Property since her father's death with Mr. Andrew Roberts, who she describes as someone she is committed to for life. I find that Tara was evasive in her correspondence to Karmel about her occupation and use of the estate Property in March 2024, and throughout much of 2025 up to the date of this hearing. It also appears from Tara's recently filed accounting materials that Tara has also been accessing the estate's liquid assets, and has now exhausted them.
- [24] In addition to exhausting David's accounts, Tara states she has expended her own money for estate purposes, which she seeks to recover from the estate and against Karmel's interest in the Property. In September 2025, in response to this application, Tara sought to pass her accounts in this regard. Although the passing of accounts is not before me, and is now scheduled to be heard by the Registrar over three days in 2026, Tara relies on her application to pass her accounts to resist the application to remove her as executrix.
- [25] On July 29, 2024, a year after Tara submitted the grant of Probate and filed the Affidavit of Assets and Liabilities, Karmel, through counsel she retained, sent a formal demand to Tara for an accounting and documentation, including for disclosure of information regarding David's bank accounts. This letter included:
- a) an explanation of the form and content of the information required for Tara to pass her accounts;
 - b) a Notice to Pass Accounts pursuant to s. 99(4) of the Trustee Act, R.S.B.C. 1996, c. 464, requiring Tara to pass her accounts by November 6, 2024, and an explanation of the requirements for an accounting and supporting documentation;

- c) Karmel's position that Tara was required to pay occupational rent to the estate while she was occupying it;
 - d) a request that Tara advise of her plans for the listing and sale of the Property; and
 - e) requested Tara's cooperation in burying their father's ashes at the family grave in Revelstoke.
- [26] Rather than invite Karmel to participate in the burial of their father's ashes, Tara directed Karmel to look into internment costs and a headstone at Karmel's own expense, and ultimately sent Karmel a box, without prior explanation or arrangement, apparently containing half of their father's ashes. She has also threatened to ship to Karmel half of the household items without regard to their value. More recently she threatened to send Karmel a pile of garbage bags at the expense of the estate.
- [27] Tara did not pass her accounts in November 2024 as required by Karmel's Notice to Pass Accounts. Tara continued to occupy the Property with her partner, Mr. Roberts, without either one paying occupational rent to the estate.
- [28] On November 8, 2024, Karmel's counsel wrote a letter to Tara's then counsel:
- a) outlining the absurdity of Tara's plan to ship half of the household items to Karmel in Ontario regardless of value;
 - b) requesting specific sentimental items;
 - c) outlining the reasons the documents provided to that point by Tara did not satisfy the requirements for an accounting, and reminding her the deadline for passing her accounts had come and gone; and
 - d) informing Tara of Karmel's intention to apply to remove her as executrix, including a list of reasons for that intention. I agree with Karmel that this letter as a whole sets out Karmel's primary concerns, including the sale of the Property (or Tara's purchase of it on appropriate terms), that could have been addressed by Tara before this application was then brought in July 2025 and heard in September 2025.
- [29] Before me, Tara explains that she was unable to understand what was involved in providing an accounting or the forms used to do so, that Karmel has continued to insist that she provide information she is unable to provide or organize, and that Karmel has refused to simply state what she wants from the estate, despite Tara's repeated requests that Karmel do so.
- [30] Tara also explained that since she took occupancy of the Property, she has disconnected the electric heat to the house because her father (who was an electrician and had built the home) had done some electrical work without permit. The house on the Property therefore lacks any electric heat, and the fireplace is her and Mr. Robert's only source of heat at the Property. Because of this, Tara also explained that she has not been able to secure insurance

for the house on the Property, though she also said that she is required to occupy the Property to satisfy insurance requirements.

- [31] Tara has not listed the Property for sale. In August 2024, in response to Karmel's demands for occupational rent and the prompt listing and sale of the Property, she told Karmel that she would like to purchase the Property herself. Before me, however, Tara seeks a substantially discounted purchase price, below 50 percent of the appraised or assessed value of the Property, on the basis of her stated maintenance and other contributions to the Property and the estate, which she now seeks to prove through the passing of her accounts.
- [32] Before me, Tara advised that she is able to qualify for a mortgage, but was unsure how much of a mortgage she really required because of her substantial claims against the estate for her expenses to date. As an interim order while this decision was under reserve, I directed that Tara seek to obtain pre-approval of a mortgage of just over \$300,000, or approximately one half of the value of the Property as determined by a professional assessor in January 2024, who assessed the Property at \$615,000 (after a substantial deduction for its then poor condition).
- [33] In accordance with my direction, Tara provided the results of her attempts to secure a mortgage pre-approval for her purchase of the Property in the form of a brief letter from an online mortgage broker, Nesto Inc., congratulating her (and an unrelated third party) on being pre-qualified for the purchase of an unidentified \$700,000 property with a mortgage in the amount of \$445,000. In fine print, the one page letter goes on to state that final approval of the mortgage is "conditional" and will be "based on the underwriting criteria imposed by the elected lender" and on "loan eligibility criteria" including credit history (which may be of some concern given Tara's previous bankruptcy), employment status, income and down payment verification and approval of mortgage loan insurance if applicable. Only upon a final approval would a signed commitment letter be provided detailing the terms of the loan and the steps and conditions for its disbursement, which itself would be subject to "a variety of factors" including an appraisal of the land purchased, heating costs and interest rates.
- [34] This letter falls far short of reassuring the Court that Tara is in a position to secure a mortgage for half the value of the Property at any amount. Furthermore, it is based on a property value neither party suggests is realistic (\$700,000), and provides no assurance that Tara is in a position to finance such a mortgage. The critical information in this regard has not been provided to, or evaluated by, a lender.
- [35] In her late affidavits, which I accepted by way of memorandum, Tara also claims that the value of the Property has increased as a result of her work on the Property since March 2023. I find that this claim is not supported by the evidence as a whole, including a home inspection performed shortly after David's death in 2023 indicating a heated and rentable home, the formal appraisal of the Property performed in January 2024, and the real estate assessments prepared by the realtors of each of the parties in September 2025. To the contrary, the photographs taken during the real estate inspection of the Property in late

September 2025 show a home that has been strangely stripped, including of some appliances, plumbing, and cabinet doors, and much of its furniture, with walls and ceilings in disrepair, and a yard and vehicles that appear neglected.

[36] At the end of the hearing on September 18, I also directed Tara to provide to Karmel's counsel information about a number of TD investment accounts not listed in Tara's 2023 Affidavit of Assets and Liabilities, which Tara stated before me were immediately available to Karmel outside of David's estate. That information was provided by further affidavits sworn by Tara, with Tara indicating that both she and Karmel were 50/50 named beneficiaries for one of these investment accounts, and that Tara had already claimed her 50 percent and formally relinquished her claim to the remaining 50 percent of one of these accounts to Karmel. In that affidavit, Tara also sought an order from this Court reversing her own actions in treating that account as outside the estate and relinquishing the remaining 50 percent of that investment account. Instead, Tara sought an order from the Court that the remaining share of that account be added to the estate and split between herself and Karmel.

[37] I turn then to the issue of whether Tara can remain as executrix of the estate.

SHOULD TARA BE REMOVED AS EXECUTRIX?

[38] Karmel argues that Tara should be removed as executrix for the following reasons:

- (a) Tara is in a conflict of interest in relation to her interest in the estate;
- (b) The estate property is endangered;
- (c) Tara has a clearly expressed animus against Karmel;
- (d) There is no reason to believe Tara will ever sell the house;
- (e) Tara has failed to provide an accounting in violation of the Trustee Act, despite repeated demand;
- (f) Tara has failed to provide basic information about the estate despite repeated request; and
- (g) Tara has exhibited unreasonable, erratic, immature, and unbalanced behaviour that impugns her ability to administer the estate.

[39] Tara argues that she has done her best given that Karmel has not been cooperative, and has not been willing to negotiate a division of the estate with her, without demanding unreasonable amounts of documentation and other information, including a formal accounting, that is onerous and difficult for Tara to produce.

[40] Tara also argues that Karmel's proposed co-executor, Robert, was not on good terms with his brother (their father) when their father died, and that it would not be David's wish to have Robert involved in any way with his estate.

- [41] Tara says she has now produced the formal accounting demanded, which will now be subject to a Registrar's hearing for the passing of those accounts.
- [42] She wishes to continue to live at the Property, but she would be willing to list and sell the Property provided she was granted a first right of refusal. She seeks a substantial credit in her favour towards the purchase costs for the Property on the basis of the substantial amounts she says she has spent as executor in administering the estate and maintaining the Property (which includes amounts paid to both herself and Mr. Roberts who lives with her for work on the Property) and improving its value.
- [43] I am satisfied on Tara's evidence and arguments alone, that Tara is in a conflict of interest with respect to her role as executrix of the Property. She is essentially advancing claims against the estate that go beyond what a reasonable executrix might ultimately claim from an estate, and extend to seeking:
- a) the purchase of the main asset of the estate at less than half its appraised value, or alternatively a court order granting Tara a right of first refusal against the estate, which is strongly opposed by Karmel; and
 - b) orders to reverse her own actions as executrix with respect to the TD accounts.
- [44] Furthermore, Tara resists the claims of the estate for occupational rent, and instead advances claims for her costs of occupancy of the Property from the estate.
- [45] I am also satisfied that Tara has endangered the estate Property by disconnecting the electricity providing heat to the home, and failing to secure house insurance for the Property. She has expended all of the liquid assets of the estate, including substantial distributions to herself, without accounting for these assets or her distributions to Karmel, and has failed to date to provide Karmel with requested bank records showing the TD accounts, or amounts in the Deceased's other bank accounts, and other important records.
- [46] It is well established that an executrix cannot continue to act as trustee when she is in a conflict of interest with the interests of the estate. Classic examples of a conflict of interest include personal claims by the executor against the estate for property within the estate that are contested by the beneficiaries. In *Morelli v Morelli*, 2014 BSCS 106, Justice Harvey succinctly summarized the law as follows:
- [28] An executor is a trustee pursuant to the Trustee Act, R.S.B.C. 1996, c. 464. There is no disagreement that the court has discretion to remove a trustee and substitute a new trustee in cases where it is necessary to safeguard the welfare of the beneficiaries of the estate: *Conroy v. Stokes* (1952), 1952 CanLII 227 (BC CA), 4 D.L.R. 124.

- [29] Courts are hesitant to interfere with the testator's right to nominate his or her executor but such is provided for under ss. 30 and 31 of the Trustee Act and it is also part of the court's inherent jurisdiction: *McKay v. Howlett*, 2003 BCCA 555. The inherent jurisdiction of the court also permits it to remove an executor without appointing a new one: *Levi-Bandel v. Hunter Talesiesin Estate*, 2011 BCSC 247, at paras. 14-17.
- [30] The welfare of the beneficiaries of an estate may be endangered if there is a conflict of interest. While a conflict of interest may not always be sufficient to pass over an executor, the court may exercise its power to remove and substitute an executor if it is necessary and expedient to do so: *Mardesic v. Vukovich Estate* (1988), 1988 CanLII 3125 (BC SC), 30 B.C.L.R. (2d) 170 (S.C.). It must be well justified and it must amount to a case of clear necessity: *Re Weil* (1961), 1961 CanLII 157 (ON CA), 30 D.L.R. (2d) 91.
- [31] In *Re Becker* (1986), 1986 CanLII 2596 (ON SC), 57 O.R. (2d) 495, [1965] O.J. No. 2980 (S.C.), the Court found an executor should be passed over where there was a conflict because the executor, on behalf of the estate, could not attack a gift and transfer of properties to himself "while at the same time maintaining in his personal capacity that the gifts and transfers were proper" (at para. 8).
- [32] In *Becker*, the matter was summarized as follows (at para. 14):

In considering the fitness of the respondent to act as an executor I have considered also the duties of an executor in a general way. One duty of an executor is to bring in the estate for distribution among the beneficiaries. If it is perceived, on good grounds, that that important duty is compromised by a personal conflict of interest because the executor will be asked to sue himself to recover what may be a large part of the estate property, he must be passed over. That consideration is particularly important when the action against the executor is for a very significant amount in respect to the size of the estate.

- [47] In *Veitch Estate*, 2007 BCSC 952, Justice Kelleher reviewed the law which provides that the main guide for removal of an executor is the welfare of the beneficiaries:
- [19] The principles in this regard are well-developed. In the first place, courts are reluctant to remove an estate trustee. That is because a priority is to respect the testator's decision to appoint that person. Thus, the Ontario Court of Appeal in *Re Weil*, 1961 CanLII 157 (ON CA), [1961] O.R. 888, 30 D.L.R. (2d) 91 said:

It seems to me that such an interference with the discretion and choice of a person in preparing his last will and testament must be not only well justified but, as has been said before, must amount to a case of clear necessity.

See also *Re Winter Estate* (2001), 197 N.S.R. (2d) 385, 2001 NSSC 121 at para. 69, *aff'd* (2002), 202 N.S.R. (2d) 5, 2002 NSCA 23.

[20] Animosity or hostility between the executor and a beneficiary is not sufficient on its own to warrant removal of an executor: *Letterstedt v. Broers* (1884), 9 A.C. 371 at 389 (P.C.); *Re Winter Estate*, 2001 NSSC 121 at para. 25.

[21] The considerations for the court in a petition to remove a trustee remain those described by the Privy Council in *Letterstedt v. Broers*, *supra*, at 385-386:

... in cases of positive misconduct, Courts of Equity have no difficulty in interposing to remove trustees who have abused their trust; it is not indeed every mistake or neglect of duty, or inaccuracy of conduct of trustees, which will induce the Courts of Equity to adopt such a course. But the acts or omissions must be such as to endanger the trust property or to show a want of honesty or a want of proper capacity to execute the duties, or a want of reasonable fidelity.

See also *Conroy v. Stokes*, 1952 CanLII 227 (BC CA), [1952] 4 D.L.R. 124 (B.C.C.A.); *Re Seaton Estate* (2003), 188 B.C.A.C. 28, 2003 BCCA 555; *Re Winter Estate*, *supra*.

[22] The main guide in exercising the court's discretion to remove trustees is the welfare of the beneficiaries: *Letterstedt v. Broers*, *supra*, at 387. It is not the interests of a particular beneficiary that are to be considered, but rather the benefit of the beneficiaries collectively: *Conroy v. Stokes*, *supra*, at 128; *Re Winter Estate*, 2001 NSSC 121 at para. 22.

[48] The Court of Appeal more recently opined in *Klassen v. Cornies*, 2023 BCCA 420:

[100] This Court has expressed reluctance to lay down any general rule as to the circumstances in which a personal representative or trustee should be removed beyond "the very broad principle" that the main guide must be the welfare of the beneficiaries: *Miles* at paras. 84-85, citing *Letterstedt* at p. 385; and *Conroy v. Stokes*, 1952 CanLII 227, [1952] 4 D.L.R. 124 at 126-27 (B.C.C.A.).

[101] Determining whether it is in the interests of the beneficiaries for a personal representative or trustee (or both, as the case may be) to be removed is a case-specific and discretionary judgment. []

[49] I have found that Tara's claims against the estate for a right of first refusal over the Property (which I agree with Karmel would diminish the marketability of the Property) and her most recent request that the Court reverse her own actions as executrix with respect to the Deceased's TD investment account, put her in a position of seeking contested relief against the estate itself. I also find that she has endangered the main asset of the estate, the Property, by removing the electrical heat sources and allowing it to remain uninsured for over two years.

[50] I find it unnecessary to consider many of the other grounds for removal raised by Karmel in this case. It is possible that some of Tara's conduct which appears to Karmel as deliberate deceit, delay and obfuscation stems from an incapacity on Tara's part to understand and properly act upon her role as trustee. My overall impression of Tara's evidence and representations to the Court is that she views herself as the victim of Karmel's demands for

an accounting and distribution of the estate, and is fundamentally unable to understand what it means to hold property in trust for the estate for the benefit of herself and Karmel as equal beneficiaries. Tara's communications, while often polite on the surface, are often evasive and passive aggressive. Tara repeatedly expresses an expectation that Karmel, as beneficiary, be required to determine the value of the estate she is entitled to, and to make decisions and provide information that Tara is actually obliged to provide as executrix.

[51] At this time, I agree with Karmel and Robert that the estate needs an executor who will:

- a) hire a realtor to list the house for sale (after preparing it for sale);
- b) hire an accountant to file the taxes and request a clearance certificate from CRA;
- c) clearly and comprehensively account for the assets and liabilities in the estate to the beneficiaries; and
- d) upon approval of the accounts or a passing of the accounts before the Court, distribute the estate.

[52] In addition to her conflict of interest with the estate, I am convinced by Tara's own conduct, materials and representations that she is unable to complete the above obligations, or to understand or execute upon her fiduciary obligations as executrix more generally. I find that it is not in the interests of the beneficiaries that Tara remain executrix of David's estate.

[53] I find that it is necessary to remove Tara as executrix of David Koshman's estate, effective immediately.

APPOINTMENT OF AN ALTERNATE EXECUTOR

[54] The estate at issue is not sizeable enough to attract a third party executor, and any such arrangement would undoubtedly significantly erode its value further.

[55] Karmel seeks to be appointed in Tara's stead, and I find that this is a reasonable solution.

[56] Karmel also seeks to appoint Robert Koshman, Tara and Karmel's uncle, as co-executor. Unlike Karmel, Robert Koshman lives locally, and is familiar with a number of his brother's assets, including the stereo equipment and farm equipment and vintage and other vehicles which Tara seems to have valued at nil. Although Tara believes that Robert will not be impartial as between herself and Karmel, Robert attended the hearing and I found him to be an independent voice. Amongst other things, his views did not simply align with the views expressed by Karmel's counsel. I find that he would be able to provide a more independent perspective on the efficient realization and distribution of the estate than Karmel alone, and his involvement is highly practical.

[57] While I accept Tara's concern as genuine that David would likely not have wanted his brother's involvement in his estate, Tara's own inability to fulfil her obligations as trustee and her position of conflict requires a practical solution. I am satisfied that the appointment of Robert as co-executor is preferable over the appointment of Karmel alone.

ANCILLARY RELIEF

[58] Section 158(3)(f) of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 ("WESA"), provides for the removal of a personal representative if the personal representative is:

- (i) unable to make the decisions necessary to discharge the office of personal representative,
- (ii) not responsive, or
- (iii) otherwise unwilling or unable to or unreasonably refuses to carry out the duties of a personal representative,

to an extent that the conduct of the personal representative hampers the efficient administration of the estate

[59] Section 159 of WESA provides for the appointment of a substitute personal representative.

[60] Section 160 of WESA provides that the estate vests in the appointed personal representative without further court order.

[61] Section 161 of WESA provides that the former personal representative must provide to the substitute personal representative, within 30 days of the court order, the estate property and any records and documents relating to the estate and its administration. This would include, in this case, the Property.

[62] Pursuant to these provisions, the following orders follow my order removing Tara and making Karmel and Robert the executors of David's estate:

- a) All assets, real and personal, of the Estate vest in Karmel Koshman and Robert Koshman as personal representatives of the Estate.
- b) The Registrar of Land Titles shall register the title of the real property legally described as:
PID 009-721-291 Lot 45 District Lot 6438 Kootenay District Plan 1083 (the "Property")

Into the names of:

Karmel Koshman and Robert Koshman as personal representatives of the estate of David Maxim Koshman, deceased

- c) Tara Koshman shall immediately, and in any event within 30 days of pronouncement of this order:
 - i. Transfer to Karmel Koshman and Robert Koshman all estate moneys held by her;

ii. Provide to Karmel Koshman and Robert Koshman any and all records and documents relating to the Estate and its administration; and

iii. Transfer title and possession of all estate assets to Karmel Koshman and Robert Koshman.

[63] Karmel also seeks an order that Tara, and her partner Mr. Roberts, transfer possession of the Property to herself and Robert, including an order that they vacate the Property to allow it to be sold. Mr. Roberts was given notice of this application and did not file a response.

[64] I had originally hoped that some resolution might be possible whereby Tara could obtain a mortgage to purchase Karmel's interest in the Property. Unfortunately, the evidence provided by Tara in this respect, when given the opportunity to establish her ability to do so, fell far short, and I have no confidence that Tara will be able to purchase Karmel's interest in the Property in the near future, or at all.

[65] Furthermore, an accounting of what Tara might owe or be owed by the estate is now a year away, and the Property will have to be sold before that accounting is completed.

[66] Tara has had the full benefit of her father's property and bank accounts since his death for the last two and-a-half years, and Karmel has had none. In that time, Tara has not taken the necessary steps to fulfill her role as executor and realize upon and distribute the assets of the estate to its beneficiaries. She has also not met her informational obligations to provide information to the beneficiary regarding the contents of the estate, or to pass her considerable accounts, as required. The Property will have to be sold so that both beneficiaries can receive their inheritance. I am satisfied that this will require Tara and Mr. Roberts to vacate the Property, and leaving this order to a later date will only diminish the resources of the estate further.

[67] I therefore make the further order that Tara and Mr. Roberts hand over possession of the Property to Karmel and Robert, and vacate the property no later than 30 days of this order.

CONCLUSION AND COSTS

[68] In conclusion, I grant paragraphs 1-6 of the relief sought by Karmel in her notice of application filed June 12, 2025.

[69] Karmel also seeks her costs from Tara personally as special costs, and an order that Tara not be able to recover her own costs from the estate for defending this application. Alternatively, Karmel seeks her costs from the estate, but that Tara be denied her own costs.

[70] There is precedent for denying costs from the estate for an executor who unsuccessfully defends themselves from removal on the basis that they are defending themselves personally in the litigation, not the estate, and it would be unfair to the beneficiaries: *Levi-Bandel v. McKeen*, 2011 BCSC 247, paras. 33-36. There is also precedent for special costs being awarded against an executor who is removed for showing a troubling disregard for their duties as administrator and who places their own interests above those of the beneficiaries: *Estate of Forbes McTavish Campbell*, 2015 BCSC 774.

- [71] In this case, I agree with Karmel that Tara has not been able to distinguish her own interests from those of the estate, and has served her own interests by continuing to live in the Property, rent-free, for the last two and-a-half years despite Karmel's repeated demands for the sale and distribution of her inheritance.
- [72] I am also of the view that Karmel required the assistance of legal counsel in this matter, and does not have the means to pay for counsel outside the distribution of her inheritance from the estate. Had she not retained counsel, Tara would likely not have sold the Property or distributed Karmel's inheritance to her for some time. I anticipate that Karmel will also require the continued assistance of her counsel.
- [73] However, part of the responsibility for this situation is rooted in David's decision to appoint Tara as executor of his Will, knowing of the conflict between his daughters.
- [74] I am also cognizant that having the parties provide submissions on special costs will further delay this matter and eat into their resources and the resources of the estate. Further submissions and litigation about costs issues (which I consider likely were I to make the costs awards sought by Karmel) would be disproportionate to the value of this estate. Although Tara has not been entirely forthcoming regarding her income and its sources, I know that Karmel has very little income, and I find it likely that neither party has the ability to pay costs without a distribution from the estate.
- [75] In all the circumstances, I find that this is a case (becoming more unusual since *Hollander v Mooney*, 2017 BCCA 238) where the estate should bear the costs of this application. Tara, who was not represented by counsel on this application, will be entitled to her tariff costs at the ordinary scale for the preparation and attendance at a full day application (despite her absence for half a day) which also accounts for the substantial materials she prepared before the hearing and afterward. Karmel will be entitled to her solicitor and own client costs from the estate for this application.
- [76] Given the difficulties apparent in the Court file with respect to the entering of my interim order of September 18, 2025, I waive the requirement for Tara to sign the order reflecting these reasons. I will remain seized of any applications arising directly from the orders above.

"Marzari J."

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