

CANADA / JUDGMENT

Morberg Estate (Re)

2025 BCSC 2265

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2025 BCSC 2265 Morberg Estate (Re)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Morberg Estate (Re),

2025 BCSC 2265

Date: 20251119

No. P252254

Registry: Vancouver

In the Matter of the Estate of Roy Alvin Morberg, Deceased

Before: Associate Judge Robertson

Reasons for Judgment

Counsel for Wendy Garcia Reyes:

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J.A. Thomson

Place and Date of Hearing:

Vancouver, B.C.

September 19, 2025

Place and Date of Judgment:

Vancouver, B.C.

November 19, 2025

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Introduction

- [1] Wendy Garcia Reyes (the "Applicant") seeks an order to compel her sister, Amber Roberta Morberg ("Ms. Morberg"), to undergo a DNA test to prove that she is the biological daughter of Roy Alvin Morberg (the "Deceased").
- [2] The Deceased died on May 21, 2025 at the age of 86, without a will. He is identified as the father on the birth certificates of both the Applicant and Ms. Morberg (collectively, for the purpose of these reasons, the "Parties"). He was predeceased by the Parties' biological mother, Karen Bernice Morberg (the "Parties' Mother"), who died on November 16, 2009, 16 years prior to the Deceased's death.
- [3] The Applicant alleges that the Parties' Mother had a sexual relationship with a man other than the Deceased while she was married to the Deceased and that Ms. Morberg was conceived from that other relationship, a "fact" that was not known by the family until, allegedly, Ms. Morberg made a comment to that effect which, when later asked by the Applicant, the Parties' Mother allegedly confirmed it while she was terminally ill and in hospital. The Parties' Mother died shortly thereafter.
- [4] If that allegation is true, the Applicant intends to argue that Ms. Morberg will not be entitled to any portion of the Deceased's intestate estate, relying upon court of appeal authority, albeit under the Wills Variation Act, R.S.B.C. 1996, c. 490 ("WVA") as now replaced by the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 ("WESA"), by which the term "child" was found to refer to only a natural or adopted child of a deceased for the purpose of the WVA, which the Applicant intends to argue is equally applicable to WESA.

Evidence in support of Allegation

- [5] The evidence in support of the allegation as to Ms. Morberg's parentage is primarily contained in an affidavit filed by the Applicant. In her 3rd Affidavit sworn September 2, 2025, the Applicant deposes that:
- a) In October 2009, the Parties' and one of the Applicant's two sons, Ryan, were at the Parties' Mother's apartment, while she was in the hospital. A conversation occurred in which Ms. Morberg referenced that she was named after her "real" biological father, who was not the Deceased.
 - b) Shortly after that statement was made, the Applicant and her son went to visit the Parties' Mother at the hospital and asked if it was true that the Deceased was not Ms. Morberg's biological father.
 - c) The Parties' Mother admitted that the Deceased was not Ms. Morberg's father and that the Deceased did not know that to be the case, and stated that she was going to phone the Deceased to tell him.
 - d) Although there is no evidence one way or the other as to whether that phone call was made, when, on his "deathbed", the Deceased informed the Applicant and her other son, Joshua, that Ms. Morberg was not his biological daughter, and expressed that she should not inherit anything from his estate.
- [6] The evidence as to the above events is supported by affidavits sworn by the Applicant's two sons, in affidavits which largely mirror the Applicant's affidavit on those allegations, but to a more limited degree.
- [7] Also in her 3rd Affidavit, the Applicant:
- a) refers to periods of separation of the Parties' Mother and the Deceased, including one around the time that the Parties' Mother became pregnant, which is an unattributed hearsay, given that the Applicant is stated to have been about six years old or younger when these events occurred such that she is unlikely to have any memory of the detail, or sequence of such events as deposed, without any source for that knowledge; and
 - b) has exhibited a Facebook message she sent to Ms. Morberg in 2015 in which she referred to Ms. Morberg's October 2009 statement which she states was not refuted by Ms. Morberg. The Applicant suggests that given the failure of Ms. Morberg to refute the Facebook post, the court should conclude that the alternative parentage was admitted by Ms. Morberg.
- [8] In addition, there is an affidavit provided by a patient, who shared a hospital room with the Deceased from February to May 2025, when she had her leg amputated due to complications with diabetes. That patient deposes that she developed a friendship with the Deceased. The following paragraphs are relevant to this application:

8. On one occasion, while Ms. Reyes and her son, Joshua, were visiting the Deceased, I overheard the Deceased say to Ms. Reyes that "Amber" was not his biological daughter, he wanted Ms. Reyes to have his house, her two sons, Joshua and Ryan, to get the money from his bank accounts, and for Amber to not get anything from his estate, and these statements are offered for the relevant purpose of establishing that they were made.
9. During my stay at RCH, on at least three occasions, I spoke with the Deceased regarding his estate. The Deceased stated to me that he did not have a will, he wanted his house to go to his daughter, Ms. Reyes, the money in his bank accounts to go to Ms. Reyes' two sons, Joshua and Ryan, and he did not want Amber to receive anything from his estate, and these statements are offered for the relevant purpose of explaining the Deceased's state of mind and conduct at the time, specifically that he was talking normally, was fully cognizant and his mental faculties were intact, and further explaining the Deceased's intentions with respect to distribution of his estate.
- [9] Finally, the Applicant relies on a transcript of a surreptitious recording she made of a telephone conversation between herself and Ms. Morberg the day following the Deceased's passing. The initial basis for the call, as noted in the transcript, appears to be an inquiry as to whether Ms. Morberg would be assisting financially with the funeral costs as the Applicant was making those arrangements. The Applicant then quickly switched topics to the allegation that the Deceased was not Ms. Morberg's biological father, which Ms. Morberg denied. A portion of the transcript is as follows:

MS. REYES: Because I remember before like when Mom died, I remember you were saying that Dad wasn't your dad, because your dad was Robert James. I remember you saying that, "That's not my dad. My dad is Robert James." So, technically you're not really his biological daughter, but he did, did put your name his -- on the birth certificate. So I'm just wondering what you're thinking.

FEMALE VOICE: That he is my biological father and he always has been my biological father. And whatever you're thinking about Robert James or anything like that was not accurate.

MS. REYES: Well, that's what Grandma said and that's what you also said.

FEMALE VOICE: (inaudible) like that at all. So, I mean there's DNA tests, there's all kind of tests you can do. We can do to prove that Dad was my dad. We looked alike. He was my father, he was your father.

- [10] Later, after Ms. Morberg discussed wanting to attend the funeral and say goodbye to the Deceased, the Applicant continued as follows:

MS. REYES: And so, like I said, back to the estate, what you thinking you're entitled to?

FEMALE VOICE: I really haven't thought about any of that right now. I, I just, I have no idea what to think about any of the estate or his house or anything like that. I thought that he had a will. He told me that he had a will. So that's where -- and like that's why I just wanted to be part of the will reading, (inaudible) doesn't have a will (inaudible).

MS. REYES: And then, like I said, I'm going to say it one more time, sorry, but like grandpa said you weren't his daughter, grandma said you weren't his daughter, you admitted that you weren't his daughter when you were in Edmonton when grandma was dying and grandma admitted it to us at the hospital too.

FEMALE VOICE: Yeah, that, that I remember it. And mom was in a lot of stress and pain killers at that time. And I just don't see it that way.

[11] As the conversation continued, the Applicant asserted that the Deceased wanted her to have the house, suggested that Ms. Morberg is "going to be fighting for it", and that she, the Applicant, is the "next of kin" and should get this house and when she dies, her children should have it because Ms. Morberg does not have any children. In response, Ms. Morberg expressed that she needed time to "digest things" and as she was still in shock as the Deceased had just passed the day before their conversation.

[12] The Applicant argues this was an admission, and that there was consent given to have a DNA test.

[13] For her part, in her Second Affidavit filed September 10, 2025, Ms. Morberg denies all allegations that the Deceased is not her biological father, pointing to him being on her birth certification, that her mother noted the Deceased as her father in her baby book, and, in terms of her name, that she and the Deceased shared the same initials. She also deposes as follows:

- a) She has never stated that the Deceased was not her father. For as long as Ms. Morberg can remember, the Applicant has asserted otherwise, which is inconsistent with her evidence noted above that she first learned of this allegation when the Parties' Mother was dying in 2009.
- b) The story given by the Applicant and her son about the conversation in the Parties' Mother's apartment is fabricated and untrue, and she never made the statement alleged.
- c) When the Parties' Mother was in the hospital prior to her death, she was on strong pain medication for her comfort, such that anything said by her would be unreliable.
- d) At no time during her life did the Parties' Mother ever say to her that the Deceased was not her biological father.
- e) At no time did the Deceased ever express any doubt to Ms. Morberg that she was his biological daughter; on the contrary he consistently acknowledged and treated her as such.

- f) Around the time that the Deceased allegedly made the statement in the hospital that Ms. Morberg was not his biological daughter, he had experienced cognitive decline, for example he did not recognize Ms. Morberg on one visit, and on another, he was tied to his bed because of the hospital's concern for self harm.

Preliminary Issues

[14] There were four preliminary issues raised on this application:

- a) The admissibility of hearsay evidence,
- b) the admissibility of the transcript of the telephone conversation between the Applicant and Ms. Morberg;
- c) the argument of the Applicant that a May 2015 Facebook message was an admission that Ms. Morberg is not the Deceased's biological child; and
- d) that the DNA sample from the Deceased was available and reliably obtained.

[15] I accept that hearsay evidence is admissible for the purpose of this application, it being an interlocutory application. I need not address the various exceptions to hearsay as raised by the Applicant.

[16] As to the surreptitious recording by the Applicant, the test for admitting such evidence has been set out in *Finch v. Finch*, 2014 BCSC 653, at paras. 58-59, and 62, as recently summarized in *Fleury v. Budd*, 2023 BCSC 1749, at para. 12:

- a) the recording must be relevant;
- b) the participants must be accurately identified;
- c) the recordings must be trustworthy; and
- d) the Court must be satisfied that the probative value of the recordings outweighs its prejudicial effect.

[17] The first and last factors are significant in family litigation given the odious nature of such evidence in family disputes, as noted in *Fleury*. While this matter is not, strictly speaking, family litigation, some of the same concerns apply as to the erosion of trust and increase in conflict in a family relationship when such evidence is tendered. The court in *Fleury* summarized the issues as follows:

[22] The practice of secretly recording a party for use in a family law proceeding has been repeatedly described as odious and one that ought to be discouraged. I agree. This type of behaviour undermines the general objectives of family law and admitting such recordings has the potential to erode trust, increase conflict and hinder the restructuring of family relationships. In this regard, surreptitiously obtained evidence is prejudicial because its admission comes at a high cost to the core values of family law and has the potential to bring the administration of justice into disrepute: see e.g. *C.C. v. S.P.R.*, 2022 BCSC 1057 at para. 30,

citing Martha Shaffer, "Surreptitiously Obtained Electronic Evidence in Seven Simple Steps" (2019) 38 Can Fam LQ 259.

- [23] However, surreptitious recordings are not presumptively inadmissible. Circumstances may arise in which the probative value of the surreptitious recording outweighs the prejudicial effect of its admission: C.C. at para. 4; *Karrington v. Morrison*, 2023 BCSC 570 at para. 69. The court has a limited discretion to exclude this type of evidence simply on a policy basis: C.C. at para. 32, citing *Finch v. Finch*, 2014 BCSC 653 at para. 59; *Mathews v Mathews*, 2007 BCSC 1825 at para. 43.
- [18] The concern that I have regarding admitting this particular recording arises from the first and last factors, those being the relevance of the discussion itself and its corresponding probative value.
- [19] In the context of the entirety of the conversation, what is said adds little value to this dispute. At its core, it is a conversation where the Applicant appears to be coaxing Ms. Morberg to have a conversation that she is not interested in having and pressuring her into making some sort of admission on the issue, with Ms. Morberg repeating that she has not and is not turning her mind to the issue given that she was still processing the death of her father the day before. Any statement made by Ms. Morberg, such as referencing a DNA test, is in the nature of appeasement to avoid conflict about the issue, rather than an admission (in fact, I would say that Ms. Morberg avoids making any admissions) or consent as suggested by the Applicant.
- [20] On the test set out in *Finch*, I find that the recording is inadmissible.
- [21] However, even if I were wrong in that respect, for the same reasons, I would give it little weight.
- [22] In terms of the "admission" in the Facebook posting, I do not find the failure to respond to, or specifically deny, an inflammatory Facebook post to be an admission in any respect. A party may reasonably choose to simply disengage from a public dispute on social media about private matters. Doing so should not be viewed as an admission against one's legal interest.
- [23] Finally, the issue as to the DNA sample being reliably obtained from the Deceased was addressed by the Applicant by way of the filing of reply affidavits. While that raises an issue with the Applicant "splitting its case" by not having that evidence included in the original application materials, the admission of that new material was not strenuously argued.
- [24] I accept that the DNA sample was properly obtained from the Deceased for the purposes of the test being sought.

Legal Framework for DNA Testing

- [25] Ms. Morberg has filed a notice of dispute in which she opposes the taking of any actions by the Applicant in the estate matter. In filing the notice of dispute, Ms. Morberg alleges that she is the natural child of the Deceased. Ms. Morberg has also filed a cross-application to have herself appointed as administrator of the Deceased's estate.
- [26] The Applicant has put Ms. Morberg's parentage into dispute by denying that she is entitled to a distribution on the basis that she is not the Deceased's natural child. The dispute as to parentage is relevant to the administration of the Deceased's estate, both as to an appropriate administrator and the appropriate distribution as s. 23 of WESA provides that if a person dies without a will and without a spouse, as is the case here, their "descendants" will evenly split the estate.
- [27] If a DNA test provides evidence that will assist a trier of fact in determining whether Ms. Morberg is the Deceased's biological child, and such a declaration is made, the Applicant intends to argue that Ms. Morberg has no interest in the Deceased's estate and is not a descendant for the purpose of s. 23, relying on *Peri v. McCutcheon*, 2011 BCCA 401, in which our Court of Appeal considered the issue as to whether a child who was not a biological child of the deceased was entitled to bring an action under the WVA and, in doing so, was asked to reconsider its decision in *Hope v. Raeder Estate*, 1994 CanLII 2185 (B.C.C.A.), 2 B.C.L.R. (3d) 58.
- [28] In *Hope*, the Court of Appeal had found that the definition of "children" in s. 2 of the WVA was restricted to natural or adopted children of the testator. The five-member panel in *Peri* found that the facts of the case did not justify a reconsideration of the *Hope* decision as they were not persuaded that the appellant's relationship with the testator, one where the testator had never stood in a parental role at all, justified the court expanding the meaning of "child" to fit her circumstances. However, the Court of Appeal in *Peri* left open whether circumstances could exist that would justify such an expansion, noting as follows:
- [4] [] The question of whether it is appropriate for this Court to interpret the word "children" in s. 2 of the [WVA] to encompass applicants who are not either natural or adopted children of the testator is one which should await a more compelling factual foundation.
- [29] The Applicant acknowledges that even if Ms. Morberg is not the biological child of the Deceased, she could argue that her circumstances are ones that provide a "more compelling factual foundation" as contemplated in *Peri*, given the parental role taken on by the Deceased during Ms. Morberg's life.
- [30] In either case, the Applicant argues, the threshold issue as to parentage must be determined, and that the preferred way to do so is by way of a DNA test, which the court has jurisdiction to order pursuant to Rules 7-6(1) and (4) of the Supreme Court Civil Rules.

- [31] The Applicant relies on various decisions where an order for DNA testing has been made, two of which were in the context of wills variation claims, and two in family litigation where the issue as to whether a party was the biological father of the child was in issue.
- [32] In *Hyslop v. Banks*, 2024 BCSC 1848, the court confirmed that Rules 7-6(1) and (4) allow for the acquisition of biological samples for the purpose of DNA testing from persons if "necessary or expedient to obtain full evidence or information". In *Hyslop*, the plaintiff, who was left out of her father's will, brought a wills variation action, and the defendants, her siblings, sought an order to compel her to undertake a DNA test to prove her parentage.
- [33] The court made the order finding that the DNA test would only be a minor inconvenience to the plaintiff but had the potential benefit of "resolving a material factual issue for trial".
- [34] Notably, the evidence in *Hyslop* included various instances where the deceased had stated to multiple people that the plaintiff was not his daughter, he intentionally left the plaintiff out of his will, and there was the "23 and me" DNA ancestry result of one of her siblings that revealed no relationship to the deceased's family, a fact noted by the presider to "add weight" to the evidentiary foundation for seeking the DNA test.
- [35] In *Schubert v. Cahoon Estate*, 1994 CanLII 3009 (B.C.S.C.), the application was brought by the child himself, who asserted that he was a natural child of the deceased. The deceased in that case, known to be a bachelor, had died leaving his estate to his two nephews, without reference to ever having had a child. The evidence relied upon was the recollection of the plaintiff that he, his mother, and his father, had all lived with the deceased on his farm when he was young, that after moving out, he would continue to spend nights at his house and that, when he was around 20 years old, a friend said that the deceased was his biological father, a fact that was then confirmed by his mother, who herself had also passed away.
- [36] The court made the order to compel the nephews to provide their blood to be tested against the plaintiff, confirming that once "matters are put in issue in litigation before the courts, the avenues for discovery provided by the Rules should be employed to ensure that all litigants obtain access to all relevant evidence and information in order to allow the litigation process to provide answers to the questions in issue between the parties."
- [37] In *I.M. v. K.M. et al*, 2003 BCSC 678, the court considered the application in family litigation where the application sought a declaration as to his parentage, or a lack thereof, albeit without a specific purpose for it other than the applicant wishing it for "peace of mind and estate planning". At para. 16, the court commented on the utility of such tests, ultimately finding that it was in the interests of justice to make the order:
- [16] In ordering blood tests under Rule 30(1) to provide a basis for a declaration of paternity, the courts have recognized that DNA profiling will provide highly relevant evidence of biological parentage, and that the interests of justice will generally best be served by obtaining such evidence so that the truth may be ascertained: *J.S.D. v. W.L.V.*, 1995 CanLII 1799 (BC CA), [1995] B.C.J. No. 653 (Q.L.) (C.A.) at para. 26.

- [38] Similarly, the parties in *B.(J.S.) v. V.(W.L.)*, 1995 CanLII 1799 (B.C.C.A.), 3 B.C.L.R. (3d) 380 sought a declaration as to parentage and an order compelling a DNA analysis to assist in determining the issue. The chambers judge dismissed the application, with that being overturned on appeal on the basis that the chambers judge had applied improper considerations. However, the Court of Appeal did not itself make an order for a DNA test and, instead, remitted the matter for determination by the trial judge.
- [39] The court stated as follows at para. 26:
- [26] In summary, while there is no specific legislation in this Province governing the obtaining of samples for DNA testing to determine biological paternity, it has been clear since *Bauman v. Kovacs* [(1986), 10 B.C.L.R. (2d) 218 (C.A.)], that an order may be made under Rule 30(1) requiring a person to provide the necessary samples for such testing, where biological paternity must be determined in order to resolve a disputed claim. Such an order is discretionary and, in the absence of guiding legislation, the principles which are to be applied in the exercise of that discretion must be derived from the developing case law. Those principles include recognition that DNA profiling provides evidence of a highly reliable kind when determining biological parentage and that the interests of justice will generally best be served by obtaining such evidence so that the truth may be ascertained.

Analysis and Conclusion

- [40] Ms. Morberg opposes any order being made to compel her to undergo DNA testing based on what she describes as 'unsubstantiated allegations and conjecture'. She argues that in the face of the official documentation such as the birth certificate that confirms paternity, in order to compel the intrusion on her privacy and dignity that a DNA test would cause, more credible and substantiated evidence would need to be before the court.
- [41] For the purpose of these reasons:
- a) I accept that there is no presumption of paternity by virtue of the Deceased being identified as Ms. Morberg's father on her birth certificate, as is provided for in the Family Law Act, S.B.C. 2011, c. 25;
 - b) I accept that I have the jurisdiction to make the order sought under Rules 7-6(1) and (4), and that the results of a DNA test may assist the court in determining if Ms. Morberg is entitled to a distribution from the Deceased's estate, notwithstanding that the issue of whether or not the definition of "child" would include her in any event, given the comments in *Hyslop*, remains arguable.
- [42] Nonetheless, to exercise my discretion in making such an order, it must be in the interests of justice to do so. The Applicant bears the onus of establishing that, with sufficient evidence, to justify what Ms. Morberg describes as "an invasion of her privacy".

- [43] In the decisions referred to by the Applicant in her argument, there is little discussion as to the privacy concerns as raised here by Ms. Morberg, with no mentioning of such considerations in the older case law other than by reference to blood tests not being "cruel and unusual" for the purpose of s. 12 of the Charter of Rights and Freedom.
- [44] The court in Hyslop did comment upon whether the test itself is invasive, although did so only in that context, i.e., the actual mechanism of the test itself being now a mere cheek swab. Even in that context, the court noted the weight of the evidence being sufficient to warrant the test being conducted. The court in Hyslop did not comment on Ms. Morberg's privacy interests as a result of the test being taken.
- [45] Even if the mechanism of the test is now rather simple, a cheek swab as opposed to a blood test, the data as to Ms. Morberg's DNA sequence, the essence of her being, will be in storage and on a database over which she has no control. Thus, even if the test itself is not invasive, the effect of it has a direct impact on Ms. Morberg's sense of privacy as it is intimate private information about her, which is potentially available to others. While there are known safeguards from improper use of such data, the fact it will exist means that there is private and personal data vulnerable to release.
- [46] As such, evidence to support that a DNA test should be ordered should be compelling.
- [47] Here, the evidence is largely uncorroborated hearsay repeated by the Applicant herself.
- [48] While the Applicant relies on what she argues is "independent corroborative evidence" of the patient sharing the Deceased's bedroom, the weight of that evidence is severely limited by what is not included with. There is no indication of how the Deceased may have learned of the allegation that Ms. Morberg was not his biological daughter or, notably, the background to the conversation, and the context in which the Deceased allegedly said Ms. Morberg was not his daughter in earshot (and notably not to) the patient in the same room.
- [49] None of the Applicant's deponents describe the events or nature of the conversation leading up to the alleged statements to provide any context for why they may have been made, which is particularly worrisome when the Deceased was in a vulnerable state in which reliability may be questioned.
- [50] For example, even assuming the statement was made by the Deceased that Ms. Morberg was not his daughter, the Applicant herself could have prompted the statement by raising it with the Deceased through leading statements. In this respect, the transcript of the conversation between the Applicant and Ms. Morberg included those types of leading statements being made by her. Without full context of the conversation between the Applicant and the Deceased, the evidence as to any statement by the Deceased, which could simply have been repeating a statement made by one of the other parties to the conversation, is not persuasive. The same can be said of the alleged statement by the Parties' Mother when she too was in a vulnerable state and medicated.

- [51] Evidence that is corroborated by third parties who are either aligned in interest (as is the case with the Applicant's sons), or third parties who do not provide context to determine the primary source of the information, is not independent corroboration.
- [52] I agree with Ms. Morberg that an unsubstantiated family rumour repeated by the Applicant and/or her sons is not a sufficient basis on which to compel a party to undergo a DNA test.

Order

- [53] The Applicant has failed to meet the onus necessary to establish compelling circumstances to justify making the order sought. The application is dismissed.
- [54] Given the outcome, costs of this application will be to Ms. Morberg as against the Applicant.

"Associate Judge Robertson"

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