

CANADA / JUDGMENT

Pascuzzi v. Pascuzzi

2022 BCSC 907

COURT

Supreme Court of British Columbia

DECIDED

1 June 2022

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2022 BCSC 907 Pascuzzi v. Pascuzzi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Pascuzzi v. Pascuzzi,

2022 BCSC 907

Date: 20220601

Docket: S200081

Registry: Vancouver

Between:

Alexandra Marie Pascuzzi

Plaintiff

And

Ingrid Gisela Pascuzzi, in her capacity as executor of the last will of Michael Thomas Pascuzzi
and in her personal capacity, Michael Joseph Pascuzzi and Marissa Charlene Pascuzzi

Defendants

Before: The Honourable Mr. Justice Crossin

Reasons for Judgment

Counsel for the plaintiff:

D.A. Hobbs

Counsel for the defendant Ingrid Gisela Pascuzzi, in her capacity of executor:

J.H. Bryant

Counsel for the defendant Ingrid Gisela Pascuzzi, in her personal capacity:

N. Safarik

Place and Dates of Trial:

Vancouver, B.C.

October 25-29, 2021

Place and Date of Judgment:

Vancouver, B.C.

June 1, 2022

Introduction

- [1] The plaintiff, Alexandra "Alex" Pascuzzi ("Alex"), seeks an order to vary her deceased father's will for such provision that is adequate, just, and equitable in all the circumstances under s. 60 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 (the "Act").
- [2] The plaintiff is the daughter of the deceased father, Michael Thomas Pascuzzi ("Mr. Pascuzzi"). The relationship between this father and daughter was complicated by other relationships: the relationship between Mr. Pascuzzi and the plaintiff's mother; the relationship between Mr. Pascuzzi and his wife, the defendant Ingrid "Ariyanna" Pascuzzi ("Ariyanna"); and the relationship between the plaintiff and the defendants--including Michael Pascuzzi ("Michael") and Marissa Pascuzzi ("Marissa"), the children born to Mr. Pascuzzi and Ariyanna. These relationships informed and intruded upon the lives of the plaintiff and her father. In the end, this is a case about many relationships, not just one relationship.
- [3] For ease of reference and to avoid confusion, I will refer to the members of the Pascuzzi family as defined above for the remainder of this judgement.
- [4] The will in question was executed by Mr. Pascuzzi on November 1, 1996--when the plaintiff was nine years old. Mr. Pascuzzi and the plaintiff's mother had been long-separated at this point. The will provided for a trust that paid \$450 per month in child support for the benefit of the plaintiff until the plaintiff turned 19 years old. This was to be paid by a life insurance policy. The remaining estate passed to Ariyanna. There was no other provision for the plaintiff under the will.
- [5] The plaintiff was 32 years old when Mr. Pascuzzi passed away in 2019.

Issues

- [6] The issues to be determined are straightforward:

- a) Did Mr. Pascuzzi owe a moral obligation to provide for the plaintiff in his will?; and
- b) If so, what provision does the Court find as adequate, just, and equitable for the plaintiff in the circumstances?

Review of Evidence

The Plaintiff's Evidence

The Evidence of Cheryl Ann Jacobsen

- [7] Cheryl Ann Jacobsen ("Ms. Jacobsen") is the mother of the plaintiff.
- [8] Ms. Jacobsen and Mr. Pascuzzi were never wed and they did not have a lengthy relationship. The two met in the fall of 1986 and had what has been described as an intense relationship. Soon after the start of the relationship, Ms. Jacobsen became pregnant with the plaintiff and by December 1986, the two were engaged to be married. Mr. Pascuzzi began to essentially live with Ms. Jacobsen in the early part of 1987. However, their relationship ended in the spring of 1987.
- [9] Ms. Jacobsen has struggled throughout her life with various psychological difficulties. While she was pregnant with the plaintiff, she was hospitalized due to these difficulties.
- [10] Alex was born August 17, 1987. Ms. Jacobsen and Mr. Pascuzzi apparently discussed whether their newborn should be put up for adoption. Ms. Jacobsen ultimately decided to keep the child. Ms. Jacobsen says that Mr. Pascuzzi said he was not prepared for fatherhood. This is consistent with the evidence as a whole and I accept this evidence.
- [11] Prior to her pregnancy, Ms. Jacobsen had attended university and obtained a Bachelor of Science degree in nursing with a first-class standing. However, her health issues prevented her from pursuing a nursing career. As a result, she was working at less challenging employment before giving birth to the plaintiff.
- [12] Ms. Jacobsen was not a person of means. While awaiting the plaintiff's birth, she resided at a home for wayward mothers connected to the Salvation Army. After giving birth to the plaintiff, Ms. Jacobsen moved about before returning to live with her mother in Kelowna, BC. Thereafter, she took up residence at a shared rental home in Vancouver.
- [13] Following the plaintiff's birth, Ms. Jacobsen and Mr. Pascuzzi entered into what has been referred to in the trial as a custody and access agreement, whereby Mr. Pascuzzi agreed to pay Ms. Jacobsen \$250 per month in child support. This amount was to increase in accordance with the cost of living. There was no provision for spousal support. They agreed to shared guardianship.

- [14] Ms. Jacobsen testified that for the first couple of years after the plaintiff was born, the relationship between Mr. Pascuzzi and the plaintiff was generous and healthy. Mr. Pascuzzi's mother, who looked after the plaintiff from time to time, also became an important part of the family unit.
- [15] Ms. Jacobsen continued to experience financial difficulties after the plaintiff's birth. Other than the \$250 per month in child support, she received no other financial assistance from Mr. Pascuzzi . She worked two jobs and also worked nights.
- [16] Around 1989, Mr. Pascuzzi met the defendant Ariyanna. Ariyanna had two children--Matthew and Megan--from a previous marriage. Mr. Pascuzzi and Ariyanna married in 1992.
- [17] Mr. Pascuzzi's involvement in the plaintiff's life deteriorated with the commencement of his relationship with Ariyanna. Mr. Pascuzzi's visits to the plaintiff grew shorter and less frequent. Ms. Jacobsen testified Mr. Pascuzzi seemed to have shifted his attention to his marriage with Ariyanna and his employment life.
- [18] Various letters and emails were submitted evidencing Ms. Jacobsen and Mr. Pascuzzi's efforts to come to an understanding as to how best to facilitate his responsibilities concerning the plaintiff. It is apparent on all the evidence that there were difficulties between Mr. Pascuzzi and Ms. Jacobsen around this time.
- [19] A letter dated March 25, 1992 from Ms. Jacobsen to Mr. Pascuzzi clearly illustrates the difficulties and frustrations they had with navigating the plaintiff's circumstances and best interest. It is apparent on the evidence that there was friction between Ms. Jacobsen and Mr. Pascuzzi, and that this friction, in time, impacted the plaintiff.
- [20] On May 10, 1992, Mr. Pascuzzi sent a letter to Ms. Jacobsen concerning the issues associated with parenting the plaintiff (the "May Letter"). In my view this letter was an ill-advised and inappropriate letter in the circumstances, and it appeared to have caused much collateral damage.
- [21] The May Letter reads as follows:

I am writing to let you know that I am having a hard time coping with our situation and Alex, the way it presently stands.

Alex has been very distant towards Ingrid, and has told me many times that she doesn't want to visit us anymore. When I asked her why, she replied, "I don't want to come here anymore because my mom doesn't want me too".

Other direct quotes from Alex are:

"My mom would be unhappy if I like Ingrid". "Ingrid is not really my stepmother daddy mommy told me so". "My mom is unhappy when I come to your house daddy". "My mom doesn't want me to come here." "I am feeling very frustrated and betrayed".

I would like to know what your goals are as far as my relationship with Alex because I am feeling like my efforts to include her in my life are being sabotaged.

I have spent too much time and energy on my relationship with her to hear her say things like that. It is clear to me that my relationship with Alex cannot endure without your support. At this point I don't think I have it.

I also think I have been very fair and honest with you and that I deserve more support.

At any rate Alex says she doesn't want to visit here anymore. I've told her that's okay and she seems very excited that this will be her last visit.

I would have hoped that Alex would know that it is okay to enjoy herself here. That it is okay to like my wife and stepchildren. That it is not her responsibility to make her mom happy.

This is apparently not the case. I am giving Alex her wish. I also think I am giving you your wish. I will not expect to see Alex anymore. If Alex decides that she wants to see us sometime she can call us.

As for any other plans, I am not willing to have Alex here under the present circumstances - it literally tears my heart out.

[Emphasis added.]

[22] On May 29, 1992, the same month as the May Letter, Mr. Pascuzzi executed a will. Although this is not the will in issue, it has some relevance to this case.

[23] In this will, Mr. Pascuzzi bequeathed part of his estate in trust as follows:

To hold the sum of \$109,000 in trust for my daughter Alexandra Jacobsen provided she survived me for a period of 30 days, and said sum shall be held and kept invested by my trustee, and the incoming capital or so much thereof as my trustee in his or her discretion considers advisable shall be paid to or applied for the maintenance, education, advancement or benefit of Alexandra Jacobsen until she attains the age of 21 years old when one half of such share shall be paid or transferred to her; and thereafter the net income from the remainder of such share shall be paid to Alexander Jacobsen until she attains the age of 30 years old when the remainder of such share shall be paid or transferred to her.

[Emphasis added.]

[24] Further:

If my wife, [Ariyanna] survives me for a period of 30 days, I give the residue of my real and personal property to her.

[25] And finally:

In the event that my wife, [Ariyanna] fails to survive me for 30 days, I direct my trustee to hold the residue of my estate in trust for those of my children and my wife's children who survive me for a period of 30 days and to divide the residue into equal shares for my children and my wife's children.

[Emphasis added.]

- [26] As previously referenced, Mr. Pascuzzi's subsequent will, made in 1996, provides that child support would continue to be paid from the estate until the plaintiff reached the age of 19. It leaves nothing from the estate to the plaintiff.
- [27] The relationship between Mr. Pascuzzi and the plaintiff changed after the May Letter. Ms. Jacobsen took a leave of absence from her employment and moved to Thetis Island for some months with the plaintiff. Ms. Jacobsen testified that she told the plaintiff, as gently and humanely as possible, that Mr. Pascuzzi was only able to see her sporadically and on special occasions because of his busy work. Ms. Jacobsen told the plaintiff that Mr. Pascuzzi would be more like an uncle than a father.
- [28] While Ms. Jacobsen and the plaintiff resided on Thetis Island, there were overtures between Ms. Jacobsen, Mr. Pascuzzi, and Ariyanna to revitalize their relationship.
- [29] Ms. Jacobsen and the plaintiff returned to the Lower Mainland after approximately a year. Ms. Jacobsen continued to struggle financially. The plaintiff began her schooling. The relationship between the plaintiff and her father remained more or less the same; that is, only sporadic visits by Alex with his new family. Mr. Pascuzzi and Ariyanna also had two children of their own: Michael, born in 1993, and Marissa, born in 1995.
- [30] Ms. Jacobsen testified concerning a series of events that surely, tragically impacted the plaintiff and her parents. When the plaintiff was around 10 or 11 years old, she was sexually assaulted on multiple occasions by a neighbour who was ultimately convicted of sexual assault. Ms. Jacobsen says that the impact and collateral damage of these assaults was immediate and devastating to Alex. The details are not required for the purposes of these Reasons.
- [31] When the plaintiff was 14 years old, she was again sexually assaulted. On this occasion, by a boy in high school.
- [32] Ms. Jacobsen testified that around 2013-2014, the plaintiff--who was in her mid-twenties--and her father, decided to seek counselling in an attempt to heal their relationship. The sessions mostly involved Mr. Pascuzzi and the plaintiff. Ms. Jacobsen testified it was her understanding Ariyanna attended on a couple of occasions as well. Alex became happier, more grounded, and thought much better of her father. In fact, in December 2014, the plaintiff decided to change her family name from Jacobsen to Pascuzzi, which Ms. Jacobsen supported wholeheartedly.

- [33] In May 2017 the plaintiff met a young man and announced that they may well be married. According to Ms. Jacobson, when the plaintiff spoke to her father about this, Mr. Pascuzzi said he didn't know if he could come to the wedding. Ms. Jacobson testified that while the counselling had appeared to be very positive, she was saddened to see the relationship between the plaintiff and Mr. Pascuzzi once again fracturing.
- [34] Finally, she testified that the plaintiff sobbed and was most upset upon learning of Mr. Pascuzzi's death.

The Evidence of the Plaintiff

- [35] The plaintiff's first clear recollection of her childhood relating to these matters is the time her mother told her that her father would be "more like an uncle" and would be seeing her less. She was approximately four-and-a-half years old at the time. The plaintiff testified she felt devastated. I accept this evidence without reservation. It was apparent that this memory continues to cause emotional upset to the plaintiff.
- [36] In this regard, it was put to the plaintiff whether she said any of the things attributed to her in the May Letter and, not surprisingly, she had no recollection of any of it.
- [37] The plaintiff testified that upon returning from Thetis Island the co-parenting by Ms. Jacobsen and Mr. Pascuzzi resumed, although without any particular pattern of consistency or schedule. The plaintiff estimates that she saw her father sporadically--perhaps once a month, perhaps once every three months--between the ages of six and 12.
- [38] In June 1993, Mr. Pascuzzi sent another letter to Ms. Jacobsen. In this letter, Mr. Pascuzzi attempts to facilitate a return and resumption of trust between the parties, particularly as it related to the larger family unit and the plaintiff. Mr. Pascuzzi said, in part, as follows:

I would like to visit with Alex on or around her birthday for maybe half a day or so. After that I would like to see her occasionally when I feel I want to, and have the time. I will try and call well in advance. At this point I'd rather Alex didn't phone here. She can send me mail whenever she wishes. I hope to see her once every one or two months and would like to have a visit around Christmas. For now Alex would not be visiting my home of my family. Down the road if things progressed well in both [Ariyanna]'s and my estimation there may be a possibility of more involved visits with my family in my home.

You must understand that I love Alex dearly. I think of her lots and miss her very very much. I wish things could be different, but I accept them the way they are. I truly believe I am doing the best for Alex.

- [39] At the same time Mr. Pascuzzi sent a letter directly to the plaintiff. The plaintiff at this point was six years old.
- [40] This letter reads in part as follows:

How are you? I hope you're doing well.

I've been very busy myself lately. I'm building lots of houses for people right now, so I must work quite hard. Since I am so busy, I'm finding it hard to find much time to come and visit you. I'm sad about this and I hope you understand.

I think about you always and really enjoy your cards and drawings - I keep them in my drawer beside our bed.

I'm hoping to see you for your birthday. I thought we could go to the park or a movie or something. You can decide. Please ask your mom to let me know what day and time would be best. Love dad.

- [41] As previously referenced, Mr. Pascuzzi and Ariyanna had conceived two children of their own by the mid-1990s and so had a full household. In addition, the demands of Mr. Pascuzzi's business began to take more of his time.
- [42] The plaintiff testified that when she did visit in her father's home, she felt she was walking on eggshells. She always felt she was unwanted. She testified that Mr. Pascuzzi did not find the time to individually engage with her. While she was often invited to the birthdays, Christmas celebrations, and special family events, she says she was not able to really integrate with the life of Mr. Pascuzzi's family.
- [43] The plaintiff testified concerning the sexual assaults that took place when the plaintiff was between 10 and-a-half to 11 years old. The material presented to me shows that these assaults have created great difficulties in the plaintiff's life. She testified the assaults aggravated her sense of estrangement from her father. She was angry with her father for not being there to protect her.
- [44] The defendants' counsel questioned the plaintiff concerning these sexual assaults. The purport of the questions was essentially the suggestion that her mother had "given" her to the neighbour and that the plaintiff could not say whether her father knew her mother was leaving her in the care of the neighbour. I found this line of cross-examination unhelpful.
- [45] The plaintiff testified that her psychological health went into a serious downward spiral upon entering high school. The plaintiff, who had not had any issues at school up to that point, had to reduce her schedule at school in order to cope. She began receiving therapy twice a week.
- [46] When she was around 14 years old, she was sexually assaulted by a 17 year-old high school student. She was bullied, threatened, and urged to not report this incident to the police. In the end, she never did.
- [47] The plaintiff confirmed that there were periods of time during her high school years where she chose to not speak to her father. She says they spoke every one to three months during her high school years.

- [48] Around this time, on October 31, 2001, Mr. Pascuzzi wrote another letter to the plaintiff. It can be fairly described as a letter of apology and regret, and it is filled with expressions of love for his daughter. Mr. Pascuzzi expressed how sorry he was for the things that have been happening to her and that he couldn't help but think he had failed her in many ways. He implored that he wanted her to know that he cares for and is available to her. He enclosed a St. Christopher medal as a gift to her.
- [49] The plaintiff testified that she wears the St. Christopher medal to this day and that she thought the letter came "from an endearing place".
- [50] At the same time however, the plaintiff testified that the letter confused her. Mr. Pascuzzi had not attempted to help the plaintiff after any of the sexual assaults. The letter came at a time when little had changed in terms of the sporadic nature of her involvement with her father. The plaintiff was struck that, once again, her father was purporting to be available to her but, from her perspective, was never actually available to her.
- [51] She continued to be involved with her father and his extended family for special celebratory occasions but was not in any way part of the day-to-day activities of his life or his family. The evidence of the plaintiff reveals that she continued at this point to feel like an outsider in her father's life, and when in the home, somewhat of a stranger in the home.
- [52] The response to the October 31, 2001 letter from the then 14 year-old plaintiff was, in turn, a mixture of love, regret, and confusion. It reads in part as follows:

I have decided to write you back since I don't feel up to talking to you on the phone yet. I received your letter, and I found it very sweet and sincere. You're right, maybe I am hurt, and that is why I'm mad. I don't really no. The night mom told me that I wasn't going to see you for a while (about seven years ago), I cried myself to sleep; I was very hurt. And, when I did see you again, there was no feelings toward you anymore. When people asked me where my dad was, I said I was "divorced" from him. That is why I didn't leap for joy or was happy to sleep over at your house when I saw you again. I remember crying all night when I was at your place. Maybe I'm scared the same thing will happen again, and that is why I don't want a relationship; I'm not quite certain. You're right, you don't have much time, but right now I'm not in the space to have a once a month relationship. I know this might not be true, but in my point of view, if I was really important to you, you'd make time. Whenever I do get to see you, it's either for maybe one hour in the morning (which is too early for me) or the whole day but with strings attached. For example going grocery shopping (which is not very fun) or having to look after the little kids and sometimes not even being able to see you. Don't get me wrong, I care about the whole family a lot but you can't spend the day without them or even sometimes an hour. I know you don't profess to be the ideal parent, but can you at least make an effort to have a little more father daughter time.

I know you want to get to know me more, but it will take a long time if we see each other once a month and maybe get to see my report cards. [Redacted]. I don't know much about your childhood, but I know your father was around, so you wouldn't know how I feel. I know you mean the best (your letter) and I know you're trying, but it's not enough. I don't think this relationship is working, but when you're ready to include me more in your life, call me.

[Redacted]

[53] The plaintiff testified that their communication thereafter was limited. She didn't feel welcome or loved in Mr. Pascuzzi's home--instead, she felt judged and vulnerable. The plaintiff pointed to a letter that he sent to her around Christmas in 2001 that demonstrated their complicated relationship. This letter contained a critique of her behaviour. It reads in part as follows:

I'm sending this message to say how nice it was that you phoned your grandparents on Christmas day it was a courteous and respectful thing to do. Please remember there are other people in your family who care for you, and also deserve courtesy and respect. I do not understand why you have not returned my calls or Mikey's regarding when we might get together. If you do not wish to see us over the holiday or any other time, that's your choice, however it is extremely rude and disrespectful to ignore us. If you choose not to accept our invitations you have a responsibility to acknowledge the invitations and provide some explanation why you are choosing not to attend. Arayanna (Ingrid) and I have also purchased a gift for you and are shocked that you won't even make the time to reply as to when we can get together. This is very selfish and rude behaviour. Again, I do not understand why you do not respond to my calls, messages. I am also disappointed that you didn't call at Christmas. Love dad

[54] The plaintiff says that she was "barely keeping afloat" around the time she received this letter. She was in therapy and struggling with deep psychological difficulties. It was also around this time that she was being bullied at school to not report the sexual assault incident.

[55] The plaintiff says she was not able to find a way, at least at that point, to embrace the overtures--especially ones that were laced with unhelpful and unnecessary criticisms--being made by Mr. Pascuzzi in this letter.

[56] In any event, in the beginning of 2002, the plaintiff sent a message to her father that reflected her fundamental feelings toward him: "thank you for listening to what I had to say. I really do love you, but it takes time to adjust to having you in my life a lot."

[57] In 2005, the plaintiff left high school without completing several courses that were required for graduation. She subsequently earned the remaining high school credits, held a number of jobs, and then enrolled in Langara College ("Langara"). She later transferred to Simon Fraser University and completed a Bachelor of Arts degree in psychology.

- [58] As the plaintiff and Ms. Jacobsen testified--and it was clear on the evidence--Ms. Jacobsen was never someone of substantial financial means. The plaintiff testified that Ms. Jacobsen helped her out financially during her first year at Langara, and with buying her text books during her second year at Langara. The plaintiff--who received an academic scholarship in the amount of \$10,000--bore the financial responsibility of attending Simon Fraser University.
- [59] During her post-secondary education, the plaintiff reached out to her father because she had understood that the family had created an education fund for the children. The plaintiff testified Mr. Pascuzzi told her that her post-secondary education was Ms. Jacobsen's responsibility.
- [60] The plaintiff continued to reside with her mother throughout her school years. During this time, in 2008, Ms. Jacobsen suffered grave mental deterioration and had to be hospitalized.
- [61] The plaintiff, upon finding it increasingly difficult to live with her mother, asked her father if she could come and live with his family for a period of time. After indicating that he would check with Ariyanna, Mr. Pascuzzi's response was no--that he could not invite the plaintiff to his home as it was not best for his family. The plaintiff says that around this time, between 2008 and 2009, she saw her father every six months.
- [62] Soon however, Mr. Pascuzzi began to put more effort into his relationship with the plaintiff. He travelled downtown to see the plaintiff where she worked. Their conversations began to improve and they often had lunch together. This evolved into a suggestion by Mr. Pascuzzi that they attend counselling together to try and further improve their relationship. The plaintiff testified that despite her hesitancy and feelings of vulnerability, she agreed. She volunteered to find someone that she thought would be a good fit for them.
- [63] The counselling sessions began around December 2013 and extended over the course of the next year.
- [64] The plaintiff describes the experience as "phenomenal". The plaintiff and her father began to get to know each other. The plaintiff testified they discussed the challenges of the plaintiff growing up without her father really being a part of her life. The plaintiff testified Mr. Pascuzzi described the estrangement incident--when Ms. Jacobsen and the plaintiff went to Thetis Island--as an "earthquake", after which there was no recovery. She says he talked about the demands of his work and the fact that Ms. Jacobsen "was not easy" to interact with. The plaintiff testified her father conceded that having her in his home with Ariyanna and their children was comparable to leaving her in a battlefield.

- [65] The plaintiff says she disclosed to her father how she felt like she was a nuisance around his family, and that Mr. Pascuzzi agreed he sometimes felt like he was "feeding her to the wolves". The plaintiff testified that Mr. Pascuzzi accepted responsibility and that she felt trust was being restored to their relationship. This restoration led to the plaintiff inviting Ariyanna to attend a session in September 2014. The sessions between Mr. Pascuzzi and the plaintiff concluded in December 2014.
- [66] The plaintiff states that their relationship thereafter, compared to their relationship before, was like "night and day". Their relationship now contained mutual trust and was more comfortable, and Mr. Pascuzzi had begun sharing things about himself with the plaintiff in a way that allowed her to understand who he was. They enjoyed more time, better communication, and lunches together. The plaintiff says they had more of a father-daughter relationship. It was during this period of time that Mr. Pascuzzi mentioned that he was hurt by the fact that the plaintiff had not taken his last name. As a result, the plaintiff arranged to legally change her last name to Pascuzzi.
- [67] In 2015, the plaintiff told Mr. Pascuzzi that she had incurred debt and they discussed this matter. They decided to set up a joint bank account and work on a budget. Mr. Pascuzzi indicated that he would deposit \$5,000 into the bank account and that he would match any contributions she made thereafter to the joint account. This arrangement went on for about a year. The plaintiff testified that she believes it stopped because she began to make more money in her employment.
- [68] Around Christmas in 2016, there was once again a rupture in the relationship between the plaintiff and Mr. Pascuzzi. The plaintiff readily admits that at the time she was still very vulnerable to stresses and exceedingly sensitive to the tone of communication from Mr. Pascuzzi's family.
- [69] The plaintiff was invited to Christmas dinner with Mr. Pascuzzi and his family in Whistler. Since getting to Whistler was logistically difficult for the plaintiff, she had to consider and make various travel arrangements. As a result, the plaintiff did not respond in a timely way to the invitation email.
- [70] Later, Ariyanna sent a group email to Mr. Pascuzzi's family members concerning the upcoming celebrations in Whistler. Near the end of the email Ariyanna wrote: "Alex, I have not received a reply from you so I am assuming that you are unable to make the trek for this Christmas".
- [71] While Ariyanna's note may not be viewed as particularly insensitive, the plaintiff, in her vulnerable state, was hurt by the note. The plaintiff testified that she had phoned Mr. Pascuzzi prior to receiving Ariyanna's email to tell him that the logistics of getting to Whistler looked daunting but she would do her best. When the plaintiff received Ariyanna's email, she assumed that Ariyanna was speaking on behalf of her father. She reacted badly to Ariyanna's email and felt slighted. As a result, cracks began to form again in the plaintiff and Mr. Pascuzzi's relationship.

- [72] A short while later, the cracks deepened. The plaintiff and a person named Marcus had begun a whirlwind romance. The plaintiff met Marcus, who was an American, in Los Angeles. She planned to marry him, and then live and work in Los Angeles. Mr. Pascuzzi declared that he was less than impressed with these circumstances and could not commit to attending the plaintiff's wedding.
- [73] The plaintiff testified she became concerned that she would lose her father once again over this issue. She says she has had fears of abandonment and of people not loving her throughout most of her life. She eventually ended the relationship with Marcus.
- [74] In December 2017, there was another misunderstanding--and perhaps overreaction--concerning Christmas arrangements. As a result, the relationship between the plaintiff and Mr. Pascuzzi went into a decline. The plaintiff testified that she had to stop all contact with her father. She did this, not because she did not love him, but for her own protection. She had no communication with Mr. Pascuzzi for the next 18 months, until his death.
- [75] The plaintiff was asked about her expectations regarding Mr. Pascuzzi's will. She testified she thought her father would have left her something as an acknowledgement that she was his daughter.
- [76] The plaintiff was asked how she felt when she first saw the will and realized she was not included in it, but for the maintenance payments. The plaintiff testified that the will somewhat validated the way she had felt her whole life. She was nine years old at the time Mr. Pascuzzi made this will in 1996. In the plaintiff's view, the will reflected how Mr. Pascuzzi looked upon her differently than his other children, and how she was not a priority in his life.

The Defendants' Evidence

The Evidence of the Defendant Ariyanna

- [77] Ms. Ingrid Pascuzzi, also known as Ariyanna, is 65 years old. Ariyanna was married to a Mr. Turner from 1980 to 1988. There are two children of that marriage--Matthew and Megan.
- [78] It appears that Ariyanna's marriage to Mr. Turner deteriorated around 1987 to 1988. It was in this time frame that Ariyanna first met Mr. Pascuzzi. Their relationship blossomed and the two were married on February 14, 1992. Ariyanna sold her home and purchased a townhouse where she and Mr. Pascuzzi lived for a short while, before purchasing a piece of property in North Vancouver in the early 1990s (the "Emerson Court home").

- [79] Around the time of purchasing the Emerson Court home, Ariyanna had some funds from selling her previous home--approximately \$400,000. Mr. Pascuzzi, at this point at least, had little in the way of assets. Nevertheless, the two purchased bare land in North Vancouver on Emerson Court for the amount of \$70,000-\$80,000, and subsequently built a home with a budget of \$300,000. Mr. Pascuzzi took a loan from his construction company to contribute to these purchases.
- [80] As life began to unfold in the Emerson Court home, Mr. Pascuzzi and Ariyanna shared parenting responsibilities over Matthew and Megan, the plaintiff, and eventually, two children of their own--Michael and Marissa.
- [81] Ariyanna testified about her understanding of the circumstances relating to the May Letter. She agrees that the May Letter was cruel and not very nice. Ariyanna says that she and Mr. Pascuzzi were upset about what the plaintiff said, and that they came to the view that their own relationship would have difficulty progressing if the plaintiff maintained such an attitude. Ariyanna says that she thought the deterioration of the plaintiff and Mr. Pascuzzi's relationship was due to Ms. Jacobson sabotaging the relationship. In Ariyanna's view, Ms. Jacobsen purposefully "decided to take [the plaintiff] away from [Mr. Pascuzzi] to Thetis Island". Ariyanna testified that while Mr. Pascuzzi was upset about the move, he did not want to pursue any legal action.
- [82] Ariyanna says that it seemed the plaintiff and Mr. Pascuzzi's relationship regenerated once Ms. Jacobsen and the plaintiff returned from Thetis Island.
- [83] As previously referenced, Ariyanna and Mr. Pascuzzi's first child, Michael, was born in 1993, and their second child Marissa was born in 1995. As their family grew, so did Mr. Pascuzzi's business. The two purchased an interest in a Whistler home in 1994 for a cost of \$65,000-\$70,000.
- [84] Their family did not take many vacations. Mr. Pascuzzi was described as a "penny pincher".
- [85] Ariyanna's evidence concerning the plaintiff's visits to the Emerson Court home is somewhat sparse. She remembers that following the birth of her children with Mr. Pascuzzi, the plaintiff visited less often. Ariyanna thought the plaintiff did not enjoy her visits with them when she did visit. While Ariyanna could not say how much parenting time Mr. Pascuzzi had with the plaintiff, she noticed it became less and less with time.
- [86] When Ariyanna was asked why the plaintiff's visitations began to decrease in 2000--around the time that the plaintiff was in grade 8--she testified she thought it was because the plaintiff was angry, although she didn't know why, as she tried not to get involved. Ariyanna says that Mr. Pascuzzi always tried to reach out to the plaintiff and that the plaintiff sometimes responded and sometimes not.

- [87] Ariyanna confirmed that she and Mr. Pascuzzi did not invite the plaintiff to stay with them in 2008 when Ms. Jacobsen was having difficulties with her mental health. The two thought it would be better for the plaintiff to stay with her mother and to look after her. Ariyanna also confirmed that she did not contribute any financial or other help to the plaintiff in 2008. She did not see the plaintiff or Ms. Jacobsen during what was likely a difficult time for the plaintiff, and she does not know whether Mr. Pascuzzi saw the plaintiff and/or Ms. Jacobsen.
- [88] Ariyanna testified concerning Mr. Pascuzzi and the plaintiff's decision to open and maintain a joint savings account. Ariyanna says that she thinks the joint account arrangement came to an end when the plaintiff took out a loan that Mr. Pascuzzi did not agree with.
- [89] Ariyanna says that as a family, they agreed to pay for one extracurricular activity per child, although not for the plaintiff. Ariyanna testified that the two provided some funds for Michael and Marissa's post-secondary education, but not for Matthew and Megan as they did not pursue post-secondary education. They provided no funds to the plaintiff for her post-secondary education.
- [90] Ariyanna addressed the plaintiff's unfortunate reaction to Ariyanna's family email that suggested the assumption that the plaintiff refused their Christmas dinner invitation in 2016. She testified that Mr. Pascuzzi was upset by the incident and that he accused Ariyanna of throwing the plaintiff under the bus.
- [91] Ariyanna states that by Christmas of 2017, the relationship between the plaintiff and Mr. Pascuzzi seemed to be disintegrating again. However, she says that Mr. Pascuzzi was hopeful and that he kept reaching out to the plaintiff, despite not receiving any responses from her. She testified that Mr. Pascuzzi was upset that he learned about the plaintiff's engagement through Facebook.
- [92] Ariyanna was questioned about the position in her pleadings that the plaintiff was not Mr. Pascuzzi's child and thus did not have standing to apply for an order under s. 60 of the Act. She testified that she did not think Ms. Jacobsen or the plaintiff were credible and that she wanted to pursue the issue of paternity in relation to credibility. She conceded she had no evidence to support the allegation that Mr. Pascuzzi was not the plaintiff's biological father.
- [93] Ariyanna gave evidence concerning the discussions of estate planning she had with Mr. Pascuzzi. It appears these discussions took place between 2017 and 2019--the two or three years prior to his death. According to Ariyanna, the two wanted to "retire in five years" and ensure they had enough funds to carry them through their senior years. She says they discussed the notion of redoing their wills as well as the idea of establishing a joint trust--although this was not possible until they each reached the age of 65.
- [94] Ariyanna confirmed that her children from her marriage with Mr. Turner were not included in Mr. Pascuzzi's will as she had a life insurance policy that would benefit them, and because Mr. Turner agreed to look after them. She was of the view that Mr. Turner was situated to properly take care of Matthew and Megan financially.

- [95] She testified about the discussions she had with Mr. Pascuzzi concerning the making of new wills--particularly regarding his desire to benefit the plaintiff.
- [96] In cross-examination, Ariyanna confirmed that Mr. Pascuzzi's will mirrors her own will--that the estate would pass on to the survivor, and that the survivor would pass on the estate to their two children, Michael and Marissa.
- [97] Ariyanna testified that in the course of discussions concerning their estate planning and new wills, it was agreed that Alex 'should get something'. She and the deceased discussed what each child should receive although the witness was not asked about the particulars of these discussions.
- [98] Ariyanna testified that in the proceeding now before the Court to vary the will of the deceased, in her view, Alex should get something, it's simply a question of how much. She also testified that notwithstanding Alex was not a beneficiary under her will, the family was close and they would never 'leave anyone out' and Alex would not be left out, although, Ariyanna testified, nothing was in writing in this regard.
- [99] In re-examination, she stated that it was her intention that when she passed, the plaintiff would receive something from the estate.

The Evidence of Megan Bonici

- [100] Ms. Bonici is the daughter of Ariyanna and Mr. Turner. She was born in 1985.
- [101] Ms. Bonici testified about her relationship to Ariyanna and Mr. Pascuzzi's family, particularly her dealings with the plaintiff. Ms. Bonici was effusively supportive of Mr. Pascuzzi. Ms. Bonici testified that Mr. Pascuzzi 'was great' despite having gone through a lot. She says he tried to see the plaintiff as much as he could.
- [102] She testified she would see the plaintiff for special occasions and for modest family vacations. Ms. Bonici said she had several sleepovers at Ms. Jacobsen's home--around three times during the early 1990s. It was during this period of time that the plaintiff told Ms. Bonici that her mother, Ms. Jacobsen, did not want her to visit Mr. Pascuzzi's home. Ms. Bonici only saw the plaintiff sporadically between 1994 and 2000.
- [103] Ms. Bonici testified that Mr. Pascuzzi always tried to have a presence in the plaintiff's life. Ms. Bonici says that it was fun when their family did see the plaintiff. She says that she enjoyed her time with the plaintiff.
- [104] In the 1990s, the plaintiff stayed in Ms. Bonici's room in the Emerson Court home when Ms. Bonici was at Mr. Turner's house. By 2003-2005, both Ms. Bonici and her brother Matthew had left the Emerson Court home and were living in downtown Vancouver. Ms. Bonici states that the plaintiff started to act spiteful toward Mr. Pascuzzi during this time. Ms. Bonici stopped talking to the plaintiff in 2008. She said when Mr. Pascuzzi was in a bad way as a result of an accident in 2008, the plaintiff never visited or helped out.

- [105] Ms. Bonici confirmed that her relationship with the plaintiff improved during the time Mr. Pascuzzi and the plaintiff underwent counselling sessions; in fact, the plaintiff was a bridesmaid at Ms. Bonici's wedding in August 2016.
- [106] After Ms. Bonici returned from her travels in 2017, she observed the plaintiff was "ignoring" Mr. Pascuzzi, which continued until his death. The plaintiff also stopped talking to Ms. Bonici in August 2018. Ms. Bonici says that the plaintiff ignored the family on every occasion during this time.
- [107] Ms. Bonici testified that Mr. Pascuzzi was hurt and disappointed that he was not told about the plaintiff's engagement to Nate, her current husband. She says that Mr. Pascuzzi told her that he was not invited to the plaintiff's wedding and he was hurt by this.

Legal Principles

- [108] Section 60 of the Act reads as follows:

Maintenance from estate

60 Despite any law or enactment to the contrary, if a will-maker dies leaving a will that does not, in the court's opinion, make adequate provision for the proper maintenance and support of the will-maker's spouse or children, the court may, in a proceeding by or on behalf of the spouse or children, order that the provision that it thinks adequate, just and equitable in the circumstances be made out of the will-maker's estate for the spouse or children.

- [109] The legal principles applicable to the matter at bar have been well settled, pursuant to the jurisprudence arising from s. 2 of the Wills Variation Act, R.S.B.C. 1996, c. 490, the former legislation that governed this area.
- [110] The Wills Variation Act was repealed in March 2014 and replaced by the Act. The relevant provisions, however, are virtually the same, and the courts continue to be guided by that jurisprudence. As shown above, the legislation provides that if in the court's opinion a will fails to make adequate provision for the proper maintenance and support of the testator's--that is, the will maker's--spouse or children, the court is empowered, in its discretion, to vary the will to make provisions that it considers adequate, just, and equitable in the circumstances.
- [111] While the principles are well settled, applying the principles in light of modern values and expectations remains a challenge. As captured by McLachlin J. (as she then was) in *Tataryn v. Tataryn Estate*, [1994] 2 S.C.R. 807, which continues to be the leading authority for wills variation action, the application of the variation provisions involves "the search for contemporary justice": *Tataryn* at 814-815.

- [112] There are two fundamental interests protected by the relevant legislation: (1) adequate, just, and equitable provision for the testator's spouse and children, and (2) the testator's testamentary autonomy--that is, the testator's decision to dispose of their interest as they see fit. While both interests are protected, testamentary autonomy must yield to what is adequate, just, and equitable: *Tataryn* at 815-816.
- [113] In a wills variation action, the court must determine whether the will made adequate provision for the proper maintenance and support of the applicant spouse and/or children. If no such provision was made, the court must consider what provision would be adequate, just, and equitable in the circumstances: *Tataryn* at 814.
- [114] What is adequate, just, and equitable in the circumstances is guided by contemporary legal and moral obligations. For this determination, the court may ask whether the testator, in their lifetime, legally owed any obligation to the applicant spouse and/or children. The court may alternatively ask whether the testator met their moral obligations to the applicant in the context of "society's reasonable expectations of what a judicious person would do in the circumstances by reference to contemporary community standards": *Tataryn* at 820-821. In other words, the court must objectively assess the adequacy of the testator's provision in the context of contemporary community standards.
- [115] Where the application for variation is brought by a self-sufficient adult child of the testator, their moral claim may be more tenuous than that of a spouse or dependent child. However, the weight of the jurisprudence makes it clear that where the size of the estate permits, some provision for such children should be made, unless there are circumstances that would negate such an obligation: *Tataryn* at 822-823.
- [116] As summarized by Ballance J. in *Dunsdon v. Dunsdon*, 2012 BCSC 1274, para. 134, the courts have accepted the following circumstances as relevant to the existence and strength of a testator's moral duty to self-sufficient adult children:
- a) relationship between the testator and claimant, including abandonment, neglect, and estrangement by one or the other;
 - b) size of the estate;
 - c) contributions by the claimant;
 - d) reasonably held expectations of the claimant;
 - e) standard of living of the testator and claimant;
 - f) gifts and benefits made by the testator outside the will;
 - g) testator's reasons for disinheriting;
 - h) financial need and other personal circumstances, including disability, of the claimant;
 - i) misconduct or poor character of the claimant; and

j) competing claimants and other beneficiaries.

[117] There are "valid and rational" reasons for disinheritance that will negate the testator's moral obligations. To constitute as "valid and rational" reasons justifying disinheritance, the reason must be based on true facts, and the reason must be logically connected to the act of disinheritance: *Clucas v. Royal Trust Corporation of Canada* [1999] 1 S.C.R. 181, 1999 CanLII 5519 (B.C.S.C.), 25 E.T.R. (2d) 175 at para. 12.

[118] For instance, a testator's moral obligations may be negated where there has been a lengthy estrangement. A testator who has been rejected by a member of his family is not required morally to ignore the rejection, nor to treat all family members equally, even when all are in need and the estate is small. While the testator must be judicious, they need not be impervious: *Price v. Lypchuk Estate* (1987) 11 B.C.L.R. (2d) 371 (C.A.) at 381.

[119] Lastly, while needs or maintenance is no longer the sole factor in governing variation claims, a consideration of needs is still relevant: *Clucas* at para. 12.

[120] The court, in deciding the award, may provide a single global percentage award.

[121] The date of the deceased's death is the appropriate date at which to assess the value of the estate: *Eckford v. Van Der Woude Estate*, 2014 BCCA 261 at para. 50.

Analysis

The Parties' Arguments

[122] The plaintiff does not allege that Mr. Pascuzzi owed her any legal duty. Rather, the plaintiff submits that Mr. Pascuzzi owed a moral obligation to her in these circumstances and that the plaintiff should share in his estate. The plaintiff submits there are no circumstances that would undermine that obligation.

[123] The defendants' position, at least as plead, is somewhat curious. The defendants' primary position is that the plaintiff is not, in fact, Mr. Pascuzzi's child and that therefore the plaintiff has no standing to apply for a variation order under the Act. However, the defendants did not lead any evidence in relation to this point, nor did they make any argument in support of this proposition.

[124] The defendants' alternative position is that the will in question makes adequate provision for the proper maintenance and support of the plaintiff, and that as a result, the will should not be varied.

Mr. Pascuzzi's Moral Obligations to the Plaintiff

[125] The will in question includes a provision addressing Mr. Pascuzzi's legal obligation to pay child support for the plaintiff. There is no other provision in the will that benefits the plaintiff.

[126] In my view, Mr. Pascuzzi's provision for the plaintiff in his will not only fails to adequately meet his moral obligations in the context of contemporary community standards, but it also fails to reflect what seemed to have been his actual intentions on the evidence.

[127] While the factors in Dunsdon are not to be treated as the only relevant circumstances, I found them to be helpful in providing guidance in my assessment of the existence and strength of Mr. Pascuzzi's moral duty to the plaintiff who is a self-sufficient adult.

The size of Mr. Pascuzzi's estate

[128] While the size of Mr. Pascuzzi's estate does not give rise to significant wealth, it nevertheless is such a size as to allow for distribution to the plaintiff, if it is found to be appropriate to do so. It is clear that Mr. Pascuzzi's wealth had dramatically increased since the making of his will in 1996. The value of the estate, as placed before the Court by the parties for the purpose of this exercise, is approximately \$1.8 million.

Competing beneficiaries

[129] The evidence also discloses that additional assets were passed to Ariyanna outside the estate. The value of these additional assets appears to be between \$1 million and \$2 million. In addition, she continues to own her RRSP in the amount of \$260,000.

[130] Currently, in the event that Ariyanna passes, only Michael (who is, at the time of the trial, 29 years old) and Marissa (27 years old) would inherit under her will. They are both independent adult children and there is no evidence that they are in need. They did not testify.

Mr. Pascuzzi's reasons for disinheriting the plaintiff

[131] There is little, if any, direct or circumstantial evidence that explains why Mr. Pascuzzi chose to disinherit the plaintiff from his will in 1996. The weight of the evidence, particularly the evidence of the defendant Ariyanna, demonstrates that Mr. Pascuzzi had since decided to revisit his decision to disinherit the plaintiff.

Mr. Pascuzzi and the plaintiff's relationship, their conduct, and character

[132] The parameters of the dispute in this case related in part to dissecting the relationship between Mr. Pascuzzi and the plaintiff.

[133] Counsel on behalf of the plaintiff tended to heap criticism upon Mr. Pascuzzi for effectively abandoning the plaintiff as a child, and for never really making an adequate effort to reconcile with the plaintiff. Counsel for the plaintiff submits Mr. Pascuzzi must bear the weight of moral culpability in this matter.

- [134] The defendants submit that Mr. Pascuzzi was at all times an "active and caring father", both before and after his marriage to Ariyanna, and that any difficulties Mr. Pascuzzi encountered in parenting the plaintiff were caused by Ms. Jacobsen. They further submitted that it was the plaintiff that chose--for no apparent reason--to simply and randomly cut ties with Mr. Pascuzzi over the course of the relationship.
- [135] I do not agree with either of these positions.
- [136] All the witnesses understandably saw matters through their own lens, which were forged over the course of many years. I find that the plaintiff is not without blame, that Ariyanna is not without failing, and that Mr. Pascuzzi is not immune from criticism.
- [137] I conclude on the evidence that Mr. Pascuzzi at all times loved the plaintiff. I find that he made a terrible error in judgment in the way he approached the difficulties the plaintiff faced in her early childhood--particularly as reflected in the May Letter. Approaching matters as if a four-year-old was somehow responsible for her own behaviour was entirely unhelpful and led to a good deal of lasting anguish.
- [138] However, I do not find that Mr. Pascuzzi's conduct was behaviour driven by ill will towards the plaintiff. In addition, the weight of the evidence reveals Mr. Pascuzzi knew, over the course of time and reflection, that he had badly handled many aspects of parenting the plaintiff.
- [139] It is clear on the evidence that the plaintiff was traumatized by the way both parents dealt with matters when she was a young child. The victimization and sexual violation she experienced as a young girl amplified these issues and made the road to reconciliation with her father all the more difficult. The parents seemed, on the evidence, ill-equipped to provide any comfort. Ms. Jacobsen often had her own demons to fight. Mr. Pascuzzi was often too overwhelmed with other matters to fully accommodate the circumstances of the plaintiff's early childhood.
- [140] In my view, Mr. Pascuzzi and the plaintiff both deserved, desired, and needed a relationship with each other. However, the plaintiff's deep wounds, both visible and invisible, and Mr. Pascuzzi's lack of tools to constructively address the challenges of parenting in these circumstances, made such a relationship difficult to maintain.
- [141] The evidence discloses that while both Mr. Pascuzzi and the plaintiff blamed the other for the various failures in their relationship, it also appeared they also both knew and acknowledged that there were roadblocks to their relationship that were caused by circumstances beyond their control.
- [142] I find that the plaintiff and Mr. Pascuzzi were in the process of building a relationship that reflected their love for one another. I also find that Mr. Pascuzzi wanted to reassure the plaintiff that she was not looked upon differently compared to his other children. In my view, he was in the course of demonstrating that she was, in fact, a priority in his life.

The plaintiff's reasonably held expectations

[143] The evidence before me shows that the plaintiff reasonably expected to receive adequate provision from Mr. Pascuzzi's estate, notwithstanding the estrangement in the last months of their relationship. I find that, given Mr. Pascuzzi and the plaintiff's various reconciliation efforts over the last years before Mr. Pascuzzi's death, it was reasonable for the plaintiff to have expected some benefit from his estate.

The plaintiff's financial and personal circumstances

[144] The plaintiff currently earns approximately \$90,000 per year. She and her husband live in a condominium. There is little additional evidence concerning the plaintiff's other assets and debts. The evidence discloses that the plaintiff still lives with trauma, notwithstanding the success she has achieved in her life.

Conclusion on Mr. Pascuzzi's moral obligations

[145] Overall, I conclude that Mr. Pascuzzi owed a moral obligation to the plaintiff and that there are no circumstances that negate the existence of these moral obligations to the plaintiff. It is not reasonable in these circumstances to accept that the plaintiff forfeited her moral claim to Mr. Pascuzzi's estate, nor that there was any wrongful conduct or estrangement that would justify the will's lack of provision for the plaintiff. In fact, I conclude that Mr. Pascuzzi recognized his moral obligation and was acting upon that recognition before he passed away.

[146] Ariyanna's evidence in particular, in the context of all of the evidence, leads me to conclude that Mr. Pascuzzi was in the course of ensuring that the plaintiff benefited from the estate. The evidence remains vague as to whether he had settled upon a precise mechanism for doing so. It appears one avenue discussed was that the plaintiff was to be a beneficiary under Ariyanna's will if Mr. Pascuzzi should predecease her. There is little evidence concerning any discussion about his will in the event she predeceased him. In any event, while the plaintiff is currently not designated as a beneficiary under either will, I find that the evidence shows that Mr. Pascuzzi wanted to fulfill his moral obligations to the plaintiff.

[147] Therefore, I find that Mr. Pascuzzi's will does not make adequate provision for the plaintiff.

Adequate, just, and equitable provision in the circumstances

[148] The nature of the order sought by the plaintiff evolved over the course of the trial.

[149] Throughout the trial the plaintiff submitted that the value of Mr. Pascuzzi's estate--that was to serve as the foundation for any variation--was in the amount of approximately \$1.8 million. The defendants agreed with this amount.

- [150] The plaintiff originally submitted that in balancing the equities, the plaintiff should receive a lump sum bequest of \$500,000. This, submitted the plaintiff, was a fair and equitable result--particularly given that the other two children, Michael and Marissa, are currently the sole beneficiaries under Ariyanna's will and the valuation of that estate is potentially sizable.
- [151] However, during their reply submissions, the plaintiff changed course. The plaintiff submits that since the parties have only provided the gross value of the estate, without considering the various fees and taxes associated with probate, a lump sum order would not be appropriate. The plaintiff now seeks 50 percent of whatever is determined as the net value of the estate.
- [152] The defendants continue to submit that no moral obligation has been demonstrated. However, the defendants submit that in the event such an obligation is found, and there is to be a variation of Mr. Pascuzzi's will, the defendants agree there ought to be a percentage earmarked for the benefit of the plaintiff. However, the defendants say that 50 percent is not justified in all the circumstances.

Conclusion/Orders

- [153] I do find a moral obligation on the part of the deceased, Mr. Pascuzzi, to provide for the plaintiff. I conclude there is an obligation that dictates that Ariyanna receive, at a minimum, 50 percent of the net value of Mr. Pascuzzi's estate. After considering the interests of the plaintiff, Ariyanna, and all of Mr. Pascuzzi's children, I find that distributing 30 percent of the net value of Mr. Pascuzzi's estate to the plaintiff would be an adequate, just, and equitable provision in all the circumstances.
- [154] I will leave it to the parties to draft an order that implements this finding. There will be liberty to apply in the event further submissions are required.
- [155] Costs will follow the event and are awarded to the plaintiff at Scale B. The award of costs is subject to any party advising there are circumstances relevant to the issue of costs that ought to be brought to my attention. In that event, the parties may contact Trial Scheduling and so advise.

"Crossin J."

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