

CANADA / JUDGMENT

Reimer v. Reimer

2026 BCSC 60

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Supreme Court of British Columbia

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2026 BCSC 60 Reimer v. Reimer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Reimer v. Reimer,

2026 BCSC 60

Date: 20260115

Docket: S143944

Registry: Kelowna

Between:

Jennifer Bernice Reimer, Amaris Marie Reimer, and Jennifer Bernice Reimer and Amaris Marie Reimer in the name of Jacqueline Laura Reimer in her capacity as the Executor and Trustee of the Estate of Peter Edwin Reimer

Plaintiffs

And

Jacqueline Laura Reimer, in her personal capacity and in her capacity as the Executor and Trustee of the Estate of Peter Edwin Reimer, Britney Laura Johnston, Daven James Johnston, and Harrison Gregory James Reimer

Defendants

Before: The Honourable Justice S. Ramsay

Reasons for Judgment

Counsel for the Plaintiffs:

A.J. Eden

Counsel for the Defendant, Jacqueline Reimer:

J. Keeley

Place and Date of Trial:

Kelowna, B.C.

September 8-12, 15-19, 2025

Place and Date of Judgment:

Kelowna, B.C.

January 15, 2026

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Introduction

- [1] This litigation is about the extent and disposition of the estate of Peter Reimer, who died on February 28, 2022, just shy of his eightieth birthday. For ease of reference, I will refer to the many related individuals discussed in this decision by their first names. I mean no disrespect in doing so. I will use surnames to refer to witnesses who are not part of Mr. Reimer's family.
- [2] Peter married twice in his lifetime. His two eldest daughters, Jacqueline Reimer and Jennifer Reimer, were born during his first marriage. Jacqueline has two children, Daven Johnston and Britney Johnston. Jennifer has one child, Harrison Reimer. All the grandchildren are now young adults.
- [3] Peter's third daughter, Amaris Reimer, was born during his second marriage. Amaris does not have children; she is much closer in age to Daven and Britney than she is to Jacqueline and Jennifer.
- [4] The primary dispute in this litigation is between Jacqueline, Jennifer, and Amaris and relates to Jacqueline's receipt of significant sums of money from Peter --effectively his entire net worth--between January 2018 and July 2021. Peter had received those funds in settlement of family law litigation arising out of the breakdown of his second marriage.
- [5] Jennifer and Amaris also seek to vary Peter's will.

Background Facts

- [6] The following background facts are either agreed to or undisputed by the parties, unless otherwise indicated.
- [7] Peter was born in 1942. He lived in the Lower Mainland for most of his life. He was an avid car enthusiast and drag racer, with a keen interest in classic cars. He turned these passions into a career as an accomplished machinist and mechanic, specializing in pre-fuel injection cars. His business, which made specialized wheels for vehicles such Model As and 1930s-1960s Ford and Chevrolets, served the international classic car community.
- [8] Peter married Jacqueline and Jennifer's mother around 1968. Jacqueline was born in 1969, followed by Jennifer in 1973. The marriage ended in or around 1975. Peter remained close with Jacqueline and Jennifer after the divorce, despite a custody arrangement that gave them considerably less time together than they would have liked.
- [9] In 1994, Peter married Marie Reimer. Their daughter, Amaris, was born in 1995. In that general time frame, Jacqueline also married and had two children of her own, Britney and Daven. Peter's third grandchild, Jennifer's son Harrison, was born in 2002.
- [10] By all accounts, Peter was an involved, loving father to all three of his daughters in their childhood years.
- [11] Starting in around 2007, Peter began experiencing various health issues. His declining physical condition soon caused him to close his business. Over time, his mobility became impaired to the point where he required a scooter to get around.
- [12] At some point, Peter and Marie's relationship began to deteriorate. The reason for their marital breakdown is disputed: Marie places the blame on Jacqueline's increasing involvement in her father's life starting in about 2012; Jacqueline says that she stepped in because Marie neglected Peter's needs as his health deteriorated. Ultimately, Peter and Marie's marriage ended in 2013. The marriage breakdown and Peter's subsequent move to Kelowna, described below, resulted in Amaris and Peter's relationship becoming strained to the point of estrangement.
- [13] Peter signed a will on September 13, 2012. It is apparent that he contemplated the end of his marriage to Marie in making this will, as she is not a named beneficiary. The will makes specific gifts to Jacqueline (machinery, tools, and vehicles) and distributes the residue of his estate in equal shares among his children and grandchildren. At the same time, Peter also executed an enduring power of attorney and a representation agreement appointing Jacqueline, or in the alternative Britney, as his attorney for financial matters and his representative for health care decision-making.
- [14] In July 2013, Peter moved to Kelowna to live with Jacqueline. Peter and Jacqueline used inheritances they had each received from Peter's mother's estate to make a downpayment on the purchase of a rent-to-own house together. Peter, Jacqueline, Britney, and Daven lived in that house for about a year. However, Peter and Jacqueline were ultimately unable to complete the purchase. As a result, they lost their deposit and had to move out of the home

in September 2014. At that point, Peter moved to Fernbrae Manor, an independent seniors' community in Kelowna.

- [15] In October 2015, Peter moved to another seniors' community in Kelowna, the Village at Smith Creek. In October 2016, he moved again, to another Kelowna seniors' community, Sun Point Village. He resided at Sun Point Village until his death in 2022.
- [16] Between 2013 and 2019, Peter and Marie were embroiled in a contentious family law proceeding following the end of their marriage. In February 2017, Jacqueline was appointed litigation guardian for Peter in that litigation. The main issues in the family law litigation were resolved in August 2017, on terms that included Peter receiving an equal share of the proceeds from the sale of the family home and a payment from Marie as a Retirement Income Fund ("RIF") rollover. In October 2017, a TD bank account was opened in Peter's name for the purpose of receiving funds from the family law litigation settlement. That account was subsequently credited with the following significant lump sum amounts:
- a) \$607,032.62 on April 18, 2018, representing Peter's portion of the proceeds from the sale of the family home, less legal fees owed to his counsel; and
 - b) \$111,441.79 between January 2018 and July 2021, consisting largely of the RIF rollover.
- [17] These amounts did not remain in Peter's account for very long. On the same day the family home proceeds were deposited, two significant transactions debited Peter's account: a \$294,471.32 transfer to Benson Law LLP (discussed further below) and a \$312,501.36 transfer to Jacqueline's personal bank account. The deposits totalling \$111,441.79 were also all transferred to Jacqueline's personal account between January 2018 and July 2021. I will refer to these transactions collectively as the "disputed transactions".
- [18] Coinciding with Peter's receipt of the family home sale proceeds in April 2018, Jacqueline purchased a home on Bryden Road in Kelowna for \$777,000. The \$294,471.32 transferred from Peter's account to Benson Law LLP was applied to the purchase of the Bryden Road property. Jacqueline took out a \$475,000 home equity line of credit to complete the Bryden Road purchase. Title to the Bryden Road property was held solely by Jacqueline; Peter was not on title.
- [19] Other major purchases made by Jacqueline after receiving the funds from Peter described above included a motorhome for approximately \$63,000, a medical procedure not covered by MSP costing approximately \$20,000, and a complete rebuild of Peter's treasured classic Ford totalling approximately \$87,000.
- [20] In September 2021, Britney and Daven purchased a condo on Franklyn Road in Kelowna, with Britney as a 1% owner and Daven as a 99% owner. In February 2022, Britney transferred her interest to Jacqueline, who had provided \$80,937.50 toward the purchase price. Around the same time, Jacqueline also provided \$80,000 to Britney. Britney later purchased her own condo in June 2023.

- [21] Jennifer and Amaris allege that Jacqueline also made other payments to or on behalf of her children, including additional funds toward the downpayment and mortgage payments on Daven's condo and payment of Britney's student loans. Jacqueline, Daven, and Britney deny that these payments were made.
- [22] Jacqueline (and, at times, Britney and Daven) lived at the Bryden Road property until November 2021, when she sold the property. Jacqueline received \$584,462 as proceeds from the sale of the Bryden Road property. In March 2022, Jacqueline purchased a condo at Big White Ski Resort, near Kelowna. Jacqueline used \$218,000 from her personal bank account to purchase the condo.
- [23] As stated above, Peter died on February 28, 2022. Pursuant to his will, Jacqueline inherited Peter's machinery, tools, automotive parts and supplies, and his classic Ford truck. When Jennifer asked Jacqueline about the residue of Peter's estate, Jacqueline advised there was nothing remaining to distribute. Jennifer and Amaris commenced this litigation on May 12, 2022. On June 1, 2023, the Court granted them leave under s. 151 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13, to assert claims on behalf of the estate.

Issues

- [24] Peter's mental capacity to make the disputed transactions is not at issue in this litigation. Rather, Jennifer and Amaris say that Jacqueline breached her fiduciary duty to Peter--owed either under the power of attorney or at common law--by making the disputed transactions and using Peter's funds for her own benefit and the benefit of her children. Alternatively, Jennifer and Amaris submit that Jacqueline held Peter's funds under a resulting trust, such that they remained his and should have formed part of his estate. They seek damages against Jacqueline, Britney, and Daven in an amount that reflects what they say their inheritance should have been.
- [25] Jacqueline denies these allegations. She says that Peter transferred the funds to her as a gift. In the alternative, she claims an equitable set-off to recognize support she says she provided to Peter.
- [26] As a secondary issue, Jennifer and Amaris argue that Peter's will does not make adequate provision for them. They say that each sister should receive one-third of the residue of the estate and the grandchildren should receive nothing.
- [27] Given the above allegations and potential for variation of the will, Jacqueline, Britney, Daven, and Harrison are all named as defendants in this proceeding. Britney and Daven filed a response to civil claim but did not participate in the trial other than as witnesses, with Jacqueline's counsel making some closing submissions on their behalf. Harrison did not file a response. He also testified at trial but did not otherwise participate in the proceeding.
- [28] The foregoing facts give rise to the following issues between the parties:

- a) To what extent is the evidence relied on by the parties admissible, credible, and reliable?
- b) Did Jacqueline breach a fiduciary duty owed to Peter by making the disputed transactions?
- c) If so, does the principle of knowing receipt apply to the funds Britney and Daven received from Jacqueline?
- d) Does the presumption of a resulting trust apply to the funds transferred to Jacqueline in the disputed transactions?
- e) If so, is the presumption rebutted because the funds were a gift to Jacqueline?
- f) If there is a resulting trust, is Jacqueline entitled to an equitable set-off on the basis of unjust enrichment?
- g) If the evidence establishes a breach of fiduciary duty or a resulting trust, what is the appropriate remedy?
- h) Should the Court vary Peter's will?

[29] The evidence results in mixed success for the parties on these issues.

[30] For the reasons that follow, I find that the plaintiffs have not met their burden of proving Jacqueline's alleged breach of a fiduciary duty. However, I am satisfied that the presumption of resulting trust applies to funds Jacqueline received in the disputed transactions as the evidence does not establish that the funds were a gift. I find that Jacqueline is entitled to an equitable set-off against the resulting trust funds, although not to the extent she claims. I require further submissions from the parties to determine the appropriate remedy arising out of these findings and provide directions in that regard below.

[31] Finally, Jennifer and Amaris have not persuaded me that Peter's will should be varied. The evidence does not support the Court interfering with Peter's testamentary disposition of the residue of his estate.

Analysis

- a) To what extent is the evidence relied on by the parties admissible, credible, and reliable?

Family member witnesses

[32] Each party submits that the family member witness testimony relied on by the other is not credible or reliable. The family member witnesses at trial consisted of the parties (that is, Jennifer, Amaris, Jacqueline, Britney, Daven, and Harrison), Marie, and Daegan Reimer (Peter's niece and cousin to Jacqueline, Jennifer, and Amaris).

- [33] Having considered the parties' submissions and the relevant legal principles, I have no concerns regarding the credibility of the family member witnesses' testimony: *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357, 1951 CanLII 252 (B.C.C.A.); *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 185-187, *aff'd* 2012 BCCA 296, leave to appeal to SCC *ref'd*, 35006 (7 March 2013).
- [34] Jennifer and Amaris say the testimony of Jacqueline, Britney, and Daven is not credible because it was "rife with inconsistencies, evasiveness, and lack of candour". I do not agree with that characterization of their evidence. Jacqueline, Britney, and Daven all presented as nervous witnesses who did their best to answer questions truthfully. To the extent there were any inconsistencies in their evidence, it was not on matters of significance and was not beyond what I consider normal with respect to the expected differences in memory and perception of events among witnesses.
- [35] I acknowledge that much of the evidence given by Jacqueline, Britney, and Daven about financial matters lacked detail. This was particularly an issue with Jacqueline's evidence. However, I did not form the impression that the lack of detail in their evidence was associated with an intention to evade questions or to mislead the Court.
- [36] On the other hand, Jacqueline submits that Harrison gave exaggerated testimony. I do not agree. While his evidence was often vague and lacking in the type of specific detail that would have been helpful in resolving the issues in this case, there is nothing that causes me concern as to the credibility of his evidence.
- [37] Rather than being indicative of credibility issues, I find that the generality of the evidence of these witnesses is more likely explained by factors such as faded memory due to the passage of time, not knowing the future significance of certain events at the time they occurred, or lack of knowledge about a particular topic.
- [38] Jacqueline also submits that Jennifer's evidence lacks credibility because she appeared motivated by her resentment toward Jacqueline. I do not agree. Jennifer's feeling of resentment toward Jacqueline was readily apparent in her testimony. However, I did not form the impression that resentment motivated her evidence. Instead, Jennifer was forthright in acknowledging the challenging nature of her relationship with Jacqueline and made appropriate concessions regarding facts favourable to Jacqueline. These concessions further support my conclusion that Jennifer's resentment did not affect the credibility of her testimony.
- [39] Amaris and Marie also presented as resentful witnesses with hostility toward Jacqueline, more so than Jennifer. However, as with Jennifer, I did not form the impression that their hostility impacted the truthfulness of their evidence. It was apparent from their testimony that they blame Jacqueline for the breakdown of Marie and Peter's marriage and the ensuing absence of Peter from Amaris' life. However, as with Jennifer, I find that the overall character of Amaris and Marie's testimony supports their credibility. For example, they were both forthright in admitting their feelings about Jacqueline, Marie fairly acknowledged that

she might have done some things differently with the benefit of hindsight, and Amaris acknowledged when her evidence about a topic was based on second-hand information.

- [40] Several witnesses had emotional reactions during their testimony. Jacqueline was often tearful during her testimony and needed to pause on occasion to collect herself. Other witnesses also became tearful during their testimony, although to a much lesser degree than Jacqueline. All of these emotional reactions appeared to me to be genuine and spontaneous. Amaris, Marie, Jennifer, and Daegan each expressed some negative emotions when discussing Jacqueline, but nothing outside the range of what one would expect given the fractured relationship between the parties.
- [41] As is often the case in situations involving breakdown of relationships--in this case, both marital and familial--the parties and family members have very different perspectives on what occurred. Overall, my impression was that these witnesses each made their best effort to be truthful in their testimony. However, while I do not believe any witness intended to deceive the Court, it was apparent that their testimony on disputed matters was influenced to varying degrees by negative underlying family dynamics.
- [42] Jacqueline and Jennifer have had a challenging sibling relationship since their teenage years; their relationship became significantly more strained after Peter moved to Kelowna. Daegan is quite close with Jennifer and not close at all with Jacqueline. As such, she has mostly been privy only to Jennifer's version of events, which does not portray Jacqueline in a positive light. Jacqueline and Jennifer were not particularly close with Marie or Amaris, which is not surprising as they were adults living their own lives by the time Peter and Marie started their relationship. The family law proceeding between Peter and Marie was high conflict. After Peter moved to Kelowna he was effectively estranged from Amaris and saw Jennifer infrequently. Britney and Daven do not appear to have any real relationship with Harrison, and vice versa. Understandably, Peter's grandchildren are aligned with their respective mothers.
- [43] Given these circumstances, it is not surprising that starkly different narratives emerge from the evidence. To varying degrees, Jacqueline and Jennifer say they felt unwelcome in Peter's new home with Marie; Marie says they were always welcome. Jacqueline perceives Marie to have neglected and mistreated Peter, which Marie denies. Jacqueline says she saved Peter from an abusive marriage; Marie and Amaris say Jacqueline unnecessarily interfered in their family life and caused the breakdown of the marriage. Peter's move to Kelowna left Amaris feeling abandoned by her father and Jennifer feels that her relationship with Peter was hindered by Jacqueline; Jacqueline feels that her siblings abandoned Peter, leaving her solely responsible for his emotional, physical, and logistical care.
- [44] I agree with Jacqueline that Daegan presented as a witness whose perspective was deeply biased against Jacqueline, which I attribute to Daegan only hearing Jennifer's version of events over the years. This significantly impacted the reliability of her evidence. Another issue with Daegan's testimony is that much of her evidence was speculative or consisted of

inadmissible double hearsay. For these reasons, while I have no concerns with the credibility of Daegan's testimony, I consider it to be of little assistance in resolving the issues in this case.

[45] Overall, I consider the highly fractured nature of the family relationships in this case to have negatively influenced the reliability of all family member witness testimony, including the parties. I have therefore exercised caution in relying on their testimony, particularly where it is not supported by objective evidence. Where relevant, I will discuss specific evidence I consider to be unreliable throughout my reasons.

Fact witnesses

[46] In addition to the family member witnesses, the following fact witnesses testified:

- a) Lara Kuchtya: social worker employed at Sun Pointe Village when Peter resided there.
- b) Dr. Bernard Lewke: provided care to Peter when he lived at the Village at Smith Creek.
- c) William Clarke: Peter's legal counsel in the family law litigation with Marie.
- d) Dr. Dermot Adams: Peter's treating neurologist.
- e) Tim Bugera: friend of Jacqueline and Peter.
- f) Andrew MacKay: personal banker at the TD bank branch where Jacqueline and Peter held accounts.

[47] Importantly, none of these witnesses testified as experts. Despite that, the testimony of many of the fact witnesses who hold professional positions--Ms. Kuchtya, Dr. Lewke, Dr. Adams, and Mr. MacKay--ventured into opinion. This was particularly an issue with Dr. Lewke's testimony. To the extent that any of these witnesses expressed opinion evidence in their testimony, that evidence is not admissible and I have not considered it.

[48] I have no concerns with the credibility of these non-family member witnesses, who largely presented as neutral and objective. Mr. Bugera was particularly helpful in providing a perspective from someone who was close with Peter and not embroiled in the negative family dynamics that coloured much of the evidence at trial. To the extent I consider any testimony of the fact witnesses unreliable, I will discuss my specific findings in that regard in my reasons below.

Affidavit evidence

[49] Jacqueline seeks to rely on an affidavit sworn by Peter in the family law litigation. The affidavit is hearsay, but I may admit it into evidence if it is necessary and reliable.

- [50] Given Peter's death, I have no difficulty finding that the affidavit evidence is necessary to the extent it bears on the issues in this litigation. Jennifer and Amaris do not take issue with the necessity of the affidavit but argue that the circumstances under which the affidavit was prepared by Mr. Clarke significantly reduce its reliability, despite it being sworn evidence.
- [51] Jennifer and Amaris submit that Mr. Clarke's evidence was "that Peter simply gave general information about the drafting of the affidavit and [Jacqueline] assisted with the particulars". This does not accurately capture Mr. Clarke's evidence about the process he followed. Mr. Clarke's evidence, which I accept, is that he prepared the first draft of the affidavit based on lengthy conversations he had with Peter about the relevant topics. Mr. Clarke then sent the draft to Peter for review. The draft was returned with revisions that Mr. Clarke reasonably assumed were made by Jacqueline, given that Peter did not type. Were that the end of things, Jennifer and Amaris' concern might be well-founded.
- [52] However, Jennifer and Amaris' position ignores Mr. Clarke's evidence about how the affidavit was then finalized. Mr. Clarke described meeting with Peter to conduct a line-by-line review of the revised affidavit. This was not done in the presence of Jacqueline, whose practice was to remain waiting in the law firm reception area when she took Peter to meetings with Mr. Clarke. Mr. Clarke described having his computer brought into the boardroom where he met with Peter, because Peter's mobility issues meant he could not get to Mr. Clarke's personal office. Mr. Clarke described how he had Peter face the monitor to go through the affidavit together. Mr. Clarke made changes as necessary during that review, before finalizing the affidavit and taking Peter's oath. I accept Mr. Clarke's evidence as accurately describing the process he followed.
- [53] It is not unusual for people other than the affiant to be involved in reviewing affidavit drafts and providing feedback. That type of involvement is acceptable so long as the final version of the affidavit, as sworn or affirmed, reflects the affiant's evidence. Here, I find that Mr. Clarke took appropriate steps, in the process he described, to confirm that the final affidavit reflected Peter's evidence.
- [54] While I conclude that there is no merit to Jennifer and Amaris' concern about interference by Jacqueline, other considerations do impact the reliability of Peter's affidavit evidence. The affidavit was sworn in the context of a high-conflict family law proceeding and the parties in this matter have not had the opportunity to test Peter's evidence by cross-examination. These factors impact the weight to be given to Peter's affidavit evidence. As with the testimony of the family-member witnesses, I will exercise caution in relying on Peter's affidavit evidence if it is not supported by objective evidence.
- b) Did Jacqueline breach a fiduciary duty owed to Peter by making the disputed transactions?

- [55] As stated above, Peter's mental capacity to make the disputed transactions is not at issue. Rather, the plaintiffs claim rests on the allegation that Jacqueline breached either the fiduciary duty she owed to Peter under the power of attorney or an ad hoc fiduciary duty owed to Peter under the common law.
- [56] As a preliminary issue, Jacqueline asserts that the allegation of breach of an ad hoc fiduciary duty is not pleaded. Jennifer and Amaris disagree but, in the alternative, seek leave to amend their claim.
- [57] I agree with Jacqueline that the amended notice of civil claim does not go so far as to plead breach of an ad hoc fiduciary duty. However, applying the principles set out in *Macdonald v. Macdonald*, 21 B.C.L.R. (3d) 379, 1996 CanLII 1360 (B.C.S.C.), and summarized in *Lam v. Chiu*, 2012 BCSC 677 at para. 10, I permit the proposed amendment. It is not inconsistent with the pleadings already filed, is necessary to determine the issues between the parties, and is not inconsistent with evidence tendered at trial or discovery. The amendment is not unfair to Jacqueline and, had it been sought earlier, it would not have changed course of the trial, which proceeded as though breach of a broader fiduciary duty was in issue.
- [58] Turning to the merits of the plaintiffs' claim, their position is that Jacqueline acted under the power of attorney to make the disputed transactions. Alternatively, they say Jacqueline had an ad hoc fiduciary relationship with Peter that gave her control over him.

Power of attorney

- [59] Jacqueline denies using the power of attorney as alleged. She admits to using the power of attorney on only a few occasions, which do not include any of the disputed transactions. Jacqueline says that while she took Peter to the bank on April 18, 2018, he conducted the transactions himself that day. I accept Jacqueline's evidence as credible in that regard. There is no reason to question Peter's ability to direct the transactions. Indeed, as stated above, his capacity is not an issue in this proceeding.
- [60] That Peter directed the transactions himself is supported by the bank records tendered at trial, which do not bear any obvious indication that a power of attorney was used for the disputed transactions. Mr. MacKay testified that it is standard practice for TD bank records to include an express notation indicating transactions for which a power of attorney has been used. While Mr. MacKay was not employed at the bank at the time of the disputed transactions, he is generally familiar with TD Bank records through his employment. I consider his evidence relevant and reliable to the extent he confirms that nothing in the bank records suggest to him that the transfers in question were made using a power of attorney.
- [61] Jennifer and Amaris suggest I can infer that Jacqueline used the power of attorney for the disputed transactions because she "consistently" represented herself to others as Peter's attorney pursuant to the power of attorney. This overstates the evidence, which establishes only that Jacqueline made people aware of the power of attorney on occasion, not

"consistently". In any event, Jacqueline representing that she has a power of attorney to the categories of people cited by Jennifer and Amaris, without more, does not support an inference that she did so for banking purposes. Nor does making people aware of the power of attorney, without more, lead to an inference that she in fact used the power of attorney to make the disputed transactions, particularly where there is evidence to the contrary.

- [62] The plaintiffs have the burden of proving that Jacqueline used the power of attorney as alleged. The evidence falls well short of establishing that allegation on a balance of probabilities.

Ad hoc fiduciary duty

- [63] The plaintiffs say that even if Jacqueline did not use the power of attorney, she was in an ad hoc fiduciary relationship with Peter. Jacqueline denies this.
- [64] Considering the guidance and factors set out in *Elder Advocates of Alberta Society v. Alberta*, 2011 SCC 24, I accept that there is evidence sufficient to establish on a balance of probabilities that Jacqueline owed ad hoc fiduciary duties to Peter beyond those arising under the power of attorney.
- [65] After moving to Kelowna, Peter was dependant on Jacqueline in many respects. His impaired mobility meant that he could not drive. While he was able to use transit on his own when needed, more often Jacqueline drove him places. Peter was not proficient with computers and had Jacqueline send emails on his behalf. His monthly government benefit payments were deposited into an account held jointly with Jacqueline, which she managed and used for "family expenses"--the family being Peter, Jacqueline, and her then dependent children. Jacqueline arranged for Peter's various rental accommodations. She was appointed his litigation guardian in the family law proceeding after it became difficult for Mr. Clarke to obtain time-sensitive instructions on days when Peter's fluctuating symptoms were at the "bad day" end of the spectrum.
- [66] Jacqueline expressly agreed to act in Peter's best interests in the family law litigation by virtue of her appointment as his litigation guardian. Given the nature of their relationship after Peter moved to Kelowna, I have no difficulty finding that Jacqueline also impliedly agreed to act as a fiduciary to Peter more broadly in her management of his affairs. I also have no difficulty finding that, in the circumstances I have described, Peter was vulnerable to Jacqueline's misuse of the degree of control she had over his affairs. Finally, given Peter and Jacqueline's financial arrangements, I have no difficulty finding that Peter had a substantial practical interest that stood to be adversely affected by Jacqueline's actions.
- [67] However, it is not enough for to simply establish the existence of an ad hoc fiduciary relationship, which was the focus of their submissions. They must also prove that Jacqueline breached the fiduciary duty she owed to Peter.

- [68] As stated above, the evidence does not establish that Jacqueline used the power of attorney to carry out the disputed transactions. The evidence also does not establish that Jacqueline conducted the disputed transactions in any other way. Indeed, the evidence establishes that the only role Jacqueline played in the disputed transactions was driving Peter to the bank on one occasion (the evidence does not establish how the funds were transferred on other occasions). This distinguishes the present case from those relied on by the plaintiffs. In those cases, the fiduciaries engaged in the very conduct that was found to be in breach of their duties.
- [69] In their submissions, Jennifer and Amaris emphasize Jacqueline's alleged control over Peter. In doing so, it is unclear whether they suggest that Jacqueline breached her fiduciary duty by influencing or controlling Peter into making the disputed transactions. To the extent they advance that argument, their theory is not established by the evidence.
- [70] While Jacqueline acted as Peter's fiduciary in many respects, Peter was not wholly dependant on Jacqueline. As stated above, he could take transit on his own. He spent time with people in the absence of Jacqueline, including his legal counsel, Mr. Clarke. I accept Jacqueline's evidence that Peter had firm views, including about the type of home he wanted to purchase in Kelowna, and that she deferred to those views. Mr. Bugera also gave evidence about Peter's strong will, describing his provision of on-the-scene oversight and very specific direction when they moved his large collection of tools and parts from the Lower Mainland to the Bryden Road property in Kelowna.
- [71] I accept that Jennifer and Amaris felt that Jacqueline was controlling Peter. However, their perception is not reliable given the animosity they felt toward Jacqueline and their own admissions about the limited degree to which they saw Peter after he moved to Kelowna.
- [72] I do not accept Jennifer and Amaris' suggestion that Jacqueline controlled their access to Peter. There is ample evidence that Jacqueline tried to facilitate contact between Peter and his other daughters on many occasions, usually without success. Jennifer's allegation that she was at times prevented from visiting Peter is impossible to reconcile with the evidence that Amaris and Marie had no issue visiting Peter. It is implausible that Jacqueline would have taken steps to prevent Jennifer, but not Marie and Amaris, from seeing Peter. Instead, the evidence establishes that Jennifer and Amaris did not take much initiative to see Peter after he moved to Kelowna. While this may well be explained by or justified in their respective circumstances, I consider it the more likely explanation for their reduced contact with Peter.
- [73] Overall, there is significant evidence which suggests that Jacqueline did not exert the degree of control over Peter alleged by Jennifer and Amaris. I find that such evidence overwhelms the discrete examples of alleged controlling behaviour cited by Jennifer and Amaris. Those examples carry even less weight when viewed in context. In the examples cited by Jennifer and Amaris, the parties and other family members were not interacting under normal circumstances. Their choices, communications, and reactions occurred amidst an ongoing

and high-conflict family breakdown, which inevitably caused all parties to assume the worst of each other.

- [74] For example, Jennifer and Amaris take issue with Jacqueline's insistence about certain elements of Peter's mother's memorial picnic, such as not inviting Jacqueline and Jennifer's mother or Marie. I do not consider Jacqueline's communications in that regard to be out of proportion given the heightened emotions which arose not only out of the family law litigation but also the death of a beloved family matriarch and very difficult childhood memories which resurfaced during memorial planning.
- [75] I also do not accept Jennifer and Amaris' suggestion that Jacqueline's relationship with Peter leading up to and following his move to Kelowna was financially motivated. A multi-year scheme by Jacqueline to take control of Peter's finances is not supported by the evidence.
- [76] Peter's only source of income was government benefits. Peter and Marie did not live an extravagant lifestyle. Indeed, for many years they lived in a trailer on their property and then in an unfinished house. There is nothing in the evidence which suggests that Jacqueline would have expected Peter to have access to any significant amount of money. Further, while Jacqueline had some financial stressors in her life, given the breakdown of her marriage, her experience as a single mother, and her disability from employment, she nonetheless had good disability benefits through her workplace that provided her with a steady income.
- [77] Jacqueline also made at least three major financial decisions that are not consistent with Jennifer and Amaris' theory of her motives. First, she used her entire inheritance from her grandmother to contribute toward the downpayment on the rent-to-own home. I accept Jacqueline's evidence that Peter was involved in selecting that home, which was chosen because it could accommodate his desire for a workshop for his very large collection of tools and parts that had been left at the family home he owned with Marie. Making an equal contribution with Peter toward the purchase of a home well-suited to his needs is more consistent with Jacqueline wanting to care for her father than it is with her wanting to take advantage of his money.
- [78] Second, the circumstances surrounding the purchase of the Bryden Road property are contrary to Jennifer and Amaris' theory. I accept Jacqueline's evidence that the deciding factor in that purchase was the property's large garage. Again, this property was selected so that Peter would have somewhere to set up a workshop. Jacqueline converted the garage to a workshop, as planned. With Jacqueline's assistance, Peter moved all his tools and parts to the home at a significant cost. These expenses all depleted funds that might otherwise have been accessed by Jacqueline. If Jacqueline's motivation was to take advantage of Peter's money, as Jennifer and Amaris allege, it is unlikely that she would have undertaken such expensive projects for Peter's benefit.

- [79] Finally, Jacqueline's decision to arrange for a very expensive refurbishment of Peter's beloved Ford truck as a surprise to him also depleted funds in a manner inconsistent with Jennifer and Amaris' theory that Jacqueline had personal financial motives.
- [80] I accept that Jacqueline was concerned about her father in the months leading up to his move to Kelowna and felt that his medical issues were not being adequately addressed by Marie. While Marie, Amaris, Jennifer, and Jacqueline have different perspectives on the extent of Peter's physical impairment and need for assistance, there is no real dispute on the evidence that Peter's health was in decline in the years and months leading up to his move to Kelowna.
- [81] I accept that Jacqueline believed Peter was not receiving the necessary level of care while living with Marie. While things may not have been as dire as Jacqueline perceived, there is no dispute that Peter was home alone for not insignificant periods of time when Marie and Amaris travelled, which was relatively often. As noted above, Marie acknowledged that, looking back, she might have done things differently. I find that Jacqueline's impression of Peter's situation--accurate or not--was reasonably held in the circumstances.
- [82] Jacqueline spent significant time with Peter after he moved to Kelowna. She assisted him with necessities such as attending medical and legal appointments and with his daily living needs. She also spent time with him socially, taking him on outings, such as to car shows and on short trips. Their time together greatly exceeded what would be expected in a typical relationship between an adult child and their parent and supports Jacqueline's evidence that she loved her father and wanted to help him.
- [83] Considering the evidence as a whole, I find that Jacqueline's underlying motivation in her relationship with Peter was care and concern for his well-being, not money. There is no evidence that Jacqueline forced or directed Peter to make the disputed transactions, nor does the evidence support a finding that Jacqueline controlled or improperly influenced Peter's decision-making in that regard. Jennifer and Amaris have not advanced any other theory as to how Jacqueline allegedly breached her fiduciary duty.
- [84] Given these findings, the plaintiffs have not established their claim for breach of a fiduciary duty.
- c) Does the principle of knowing receipt apply to the funds Britney and Daven received from Jacqueline?
- [85] I understand the plaintiffs' claim of knowing receipt against Britney and Daven as resting on their claim against Jacqueline for breach of fiduciary duty. Having found no breach of a fiduciary duty, it follows that there is no claim remaining against Britney and Daven.
- [86] In any event, I accept the evidence of Britney and Daven that they did not know the money they received from their mother might be from their grandfather.

- [87] Jennifer and Amaris submit that Britney and Daven ought to have inquired into the source of the funds they received from Jacqueline, given their knowledge of Jacqueline's financial circumstances and Peter's vulnerability. However, there is no evidence that Britney or Daven had any meaningful knowledge about Peter's financial circumstances. Indeed, Daven denies ever speaking with Peter about financial matters. Additionally, Daven testified that, while he knew Peter received money in the family law litigation settlement in 2018, he did not know the amount.
- [88] The evidence also establishes that Britney and Daven knew their mother had a good job before becoming disabled and that she thereafter received a monthly disability insurance income. While their family's financial circumstances fluctuated, they knew she had the means to buy and sell houses throughout their lifetime. I am not persuaded that they should have made any connection between Peter on the one hand, and Jacqueline's gifts of approximately \$80,000 to each of them on the other, especially given that those transfers post-dated Peter's settlement by over two years. The more obvious explanation for the source of the gifts would have been that the funds related to the sale of the Bryden Road property, which they understood Jacqueline owned (and which she did own, at least in part).
- [89] Overall, the evidence does not establish that Britney or Daven had knowledge of facts that would put a reasonable person on notice of a possible misapprehension of trust property: *Citadel General Assurance Co. v. Lloyds Bank of Canada*, [1997] 3 S.C.R. 805 at para 49, 1997 CanLII 334.
- d) Does the presumption of a resulting trust apply to the funds transferred to Jacqueline in the disputed transactions?
- [90] The plaintiffs' alternative position in this litigation is that the funds transferred to Jacqueline in the disputed transactions are subject to a resulting trust. The presumption of resulting trust arises where there is a gratuitous transfer of property: *Suen v. Suen*, 2013 BCCA 313 at paras. 35-36, citing *Pecore v. Pecore*, 2007 SCC 17 at para. 20, and *Kerr v. Baranow*, 2011 SCC 10 at paras. 17-19.
- [91] Jacqueline argues that the presumption of a resulting trust does not arise in this case, at least not in respect of the funds applied toward her purchase of the Bryden Road property. She argues that her pledge of credit toward the purchase of the Bryden Road property constitutes consideration such that the transfer of funds toward the purchase was not gratuitous. She relies on *Bajwa v. Pannu*, 2007, BCCA 260 and *Jafar-Gholizadeh v Larijani*, 2018 BCSC 279, in support of her position.
- [92] I consider *Bajwa* and *Jafar-Gholizadeh* to be distinguishable on their facts. Jacqueline taking on mortgage debt in respect of the Bryden Road property--of which she was the sole owner--cannot be characterized as consideration for Peter's transfer of funds toward the purchase. Peter received nothing in return for the funds. Unlike the circumstances in *Bajwa* and *Jafar-Gholizadeh*, Peter had no legal ownership interest in the property. Peter's transfer of funds to Jacqueline, by way of contributing to the purchase price of the Bryden Road property, was

entirely gratuitous and gives rise to the presumption of resulting trust.

- [93] Jacqueline does not suggest there was any consideration for the other transfers Peter made to her in the disputed transactions. Those transfers were also gratuitous and give rise to the presumption of resulting trust.
- e) If there is a presumption of resulting trust, is it rebutted because Peter transferred the funds to Jacqueline as a gift?
- [94] Jennifer and Amaris do not argue that Peter did not have the capacity to make gifts to Jacqueline. As already stated above, Peter's mental capacity is not at issue in this case. Rather, they argue that the evidence does not establish that Peter intended the funds transferred in the disputed transactions as a gift to Jacqueline. On this issue, the presumption of a resulting trust allocates the burden of proof to Jacqueline as the recipient of the funds: *Pecore* at para. 24. Jacqueline must therefore prove, on a balance of probabilities, that a gift was intended by Peter.
- [95] I find that the evidence does not establish that Peter intended either the contribution toward the purchase of the Bryden Road property or the funds transferred to Jacqueline in the disputed transactions as gifts.

Bryden Road property

- [96] The only evidence about Peter's intention for the funds he transferred toward the purchase of the Bryden Road property is from Jacqueline. She says that Peter wanted the Bryden Road property to be in her name only because he wanted her to inherit the property. For the reasons discussed above, I do not consider this evidence reliable in the absence of corroborating evidence.
- [97] Jacqueline argues that a gift letter signed by Peter supports the fact that the funds he contributed toward the purchase of the Bryden Road property were a gift. The gift letter is not in evidence before me and Mr. MacKay testified that the bank was not able to locate it.
- [98] I accept that the bank most likely required a gift letter before agreeing to extend credit to Jacqueline to purchase the Bryden Road Property. However, that proves only that Peter agreed to sign documentation necessary for Jacqueline to obtain the mortgage. I do not consider that alone to be sufficient to establish that Peter intended his contribution toward the Bryden Road property as a gift, particularly given the evidence that suggests Peter believed he had an ownership interest in the Bryden Road property.
- [99] Specifically, Peter moved all his tools and parts to the Bryden Road property--a major and expensive undertaking--and set up his workshop there. He could and did independently attend the Bryden Road property by transit, a consideration Jacqueline says was relevant to purchasing that particular property. I accept Jennifer's testimony that Peter invited her to come live at the house. I do not accept Jacqueline's interpretation of this as an invitation simply to visit. In any event, it is clear that Peter considered himself able to extend the

invitation on his own, without consulting with Jacqueline. These factors all support the conclusion that Peter understood the Bryden Road property to also belong to him.

- [100] I acknowledge that Jacqueline was solely responsible for mortgage payments on the Bryden Road property. However, that is not inconsistent with Peter also considering himself an owner of the property. It is reasonable that, having contributed the downpayment, Peter would not be required to also make mortgage payments.
- [101] Jacqueline says that Peter "was fully knowledgeable about property ownership and title", which she argues supports the conclusion that he intended to gift the Bryden Road property downpayment to her. The difficulty with this submission is that there is no evidence about Peter's knowledge about property ownership and title. The mere fact that Peter owned other homes in his lifetime is insufficient to support an inference that he turned his mind to the legal implications of how the Bryden Road property was purchased. Mr. Clarke had no helpful evidence in that regard as he was not retained for that transaction.
- [102] Jacqueline testified that she had discussions with Peter about selling the Bryden Road property so that Daven could purchase a condo. I do not agree with Jacqueline's suggestion that this evidence supports an inference that Peter agreed that the proceeds of the Bryden Road property sale would be solely hers, something that would be consistent with him having given the downpayment to her as a gift. Instead, I find it is equally plausible that Peter agreed that the Bryden Road property should be sold so that Jacqueline could have access to her share of the proceeds to assist in Daven's purchase of a condo.
- [103] Overall, the evidence falls well short of establishing, on a balance of probabilities, that Peter's "financial contribution [to the Bryden Road property] was deliberate and that he took steps to ensure [Jacqueline] would be secure in the home following his death", as Jacqueline alleges. The evidence does not establish that Peter intended the downpayment he made toward the Bryden Road property as a gift to Jacqueline.

The Disputed Transactions

- [104] There is no clear evidence, even from Jacqueline, about Peter's intention for the funds that were transferred directly to her in the disputed transactions. Jacqueline effectively seeks an inference that Peter intended those transfers as a gift to her, which she submits is consistent with how Peter chose to manage his financial affairs after moving to Kelowna. The difficulty with that position is that I do not agree with Jacqueline's characterization of the financial arrangements after Peter's move.
- [105] After Peter moved to Kelowna, he and Jacqueline pooled their monthly incomes in a joint account which Jacqueline managed and used to pay "family expenses". As previously stated, the "family" consisted of Peter, Jacqueline, and Jacqueline's children when they were dependants. I accept Jacqueline's evidence that she and Peter agreed to manage their finances in this way. Indeed, their conduct after moving to Kelowna is consistent with having made an agreement to that effect. However, I do not accept Jacqueline's submission

that this arrangement means that Peter intended for her to have "an immediate beneficial interest" in his monthly income such that it was a gift to her. Instead, the evidence supports the conclusion that Peter maintained his interest in his monthly income and that Jacqueline understood that was the situation. Peter was a named accountholder, Jacqueline consulted him about purchases, and Jacqueline paid for Peter's living expenses using funds from that account.

- [106] Even if the evidence supported an inference that Peter's monthly income was provided to Jacqueline as a gift, which I do not find to be the case, the monthly income cannot be equated with the funds transferred in the disputed transactions, which were not income but instead represented Peter's share of family property accumulated during his marriage with Marie. Notably, the family law litigation settlement funds were deposited into Peter's personal account, not the joint account. These facts weigh against an inference that Peter intended the settlement funds to be treated the same way as his monthly income.
- [107] The evidence supports the conclusion that Jacqueline understood that Peter maintained his interest in the funds transferred to her in the disputed transactions. This is the only reasonable inference arising from her evidence that she thereafter consulted Peter on all significant financial decisions except for the Ford restoration, which she says she undertook as a gift to Peter. There would be no reason to consult Peter on significant financial decisions if he had given the funds to her as a gift. Jacqueline's submission that Peter trusted her to use the money in a way that reflected their shared values and family needs also supports the inference that she held the funds in trust for him, not as a gift from him.
- [108] Jacqueline's assertion that Peter wanted her to have "ownership and decision-making authority" over his funds from the moment he transferred them to her in the disputed transactions, and that he intended her to have a right of survivorship, simply has no basis in the evidence. I find that the evidence does not establish that Peter gave those funds to Jacqueline as a gift.

Conclusion regarding alleged gifts

- [109] For the above reasons, I find that Jacqueline has not proved, on a balance of probabilities, that Peter intended his portion of the downpayment for the Bryden Road property or the other funds transferred in the disputed transactions to be a gift to her.
- [110] Peter's contribution to the purchase of the Bryden Road property is more consistent with the conclusion that he understood that he and Jacqueline would own the property together. That Peter signed a gift letter that was a condition to Jacqueline obtaining a mortgage on the property does not, in the absence of other compelling evidence, support an inference that he intended to gift the downpayment for the Bryden Road property to Jacqueline.

- [111] Additionally, Peter deciding to give what was effectively his entire net worth to Jacqueline as a gift is inconsistent with his clearly stated intention, in his will, that the residue of his estate be divided equally among his daughters and grandchildren. There is no evidence that Peter turned his mind to his estate planning and decided to change what was set out in his will. Further, Peter's invitation to Jennifer to come live together with him and Jacqueline weighs against an inference that he had decided to disinherit his other daughters and rather supports the conclusion that Peter had a continuing desire to support not only Jacqueline, but his other children as well.
- f) If there is a resulting trust, is Jacqueline entitled to an equitable set-off on the basis of unjust enrichment?
- [112] Given my finding that the presumption of a resulting trust applies to the funds transferred to Jacqueline in the disputed transactions and that Jacqueline has not rebutted that presumption, Jacqueline seeks an equitable set-off on the basis of unjust enrichment to recognize the following contributions she made during Peter's lifetime: financial support prior to the family law litigation settlement, assistance with the family law proceeding, and personal care services.
- [113] To succeed, Jacqueline must establish there was an unjust enrichment and that the appropriate remedy is to account for payment to Jacqueline for the services rendered by way of a set-off against the funds she received under the resulting trust. She must also establish the amount to be set-off.
- [114] Jennifer and Amaris' argument that Jacqueline's efforts did not benefit the estate is misplaced in relation to the issue of an equitable set-off. Jacqueline's position is that Peter was unjustly enriched by her contributions such that she should be compensated by way of a set-off against the resulting trust funds. To succeed, Jacqueline must prove that Peter benefited in the ways she alleges, that she suffered a corresponding deprivation, and that there is no juristic reason for the enrichment: Kerr at para. 32.

Financial support

- [115] The difficulty with Jacqueline's claim, specifically as it relates to her alleged financial support of Peter prior to his settlement with Marie, is that the state of the evidence makes it impossible to assess whether there was a benefit to Peter and a corresponding deprivation to Jacqueline. Jacqueline provided summaries of expenditures, but many are unsupported by relevant documentation. Where there is financial documentation, it is not always possible to know from the face of the document whether it was Peter or Jacqueline who actually paid for the incurred cost. This issue is further complicated by the pooling of their finances after Peter moved to Kelowna.
- [116] Another problem is that Jacqueline's documents summarizing the expenses she claims benefitted Peter include expenses that are not established by supporting evidence. For example, Jacqueline's summary lists a \$17,500 expense and states that the entry represents

her half of the deposit lost on the rent-to-own property, which Peter wanted to repay to her. There is no evidence to support her contention that Peter wished to repay her for the deposit. The summary also lists the downpayment and purchase price of a motorhome as an expense for Peter. However, without objective supporting evidence, and in light of the limited evidence of Peter ever using the motorhome, I do not accept Jacqueline's testimony that this purchase was made for Peter.

[117] Overall, given the above issues, I consider Jacqueline's financial summary documents unreliable.

[118] There is no expert evidence to assist the Court in understanding the extent to which Jacqueline's claim is supported by objective documentary evidence. The Court cannot be expected to conduct its own forensic analysis of the financial documents. Further, even if I could reasonably accomplish such an assessment, it would be impossible for me to discern the degree to which Peter's expenses were paid with Jacqueline's funds versus Peter's funds, given the state of the evidence and the joint management of their finances.

[119] For these reasons, Jacqueline has not proved the necessary elements of an unjust enrichment claim in relation to her financial support of Peter.

Family law litigation support

[120] Turning to Jacqueline's claim for time spent assisting Peter with the family law litigation following his divorce, she estimates she spent a total of 2,404 hours in that regard. Of that, she says she spent 1,255 hours on document review and 1,149 hours discussing matters with Peter.

[121] I accept that Jacqueline provided some assistance to Peter in the family law litigation. However, I do not accept her time estimates as reliable. Her timekeeping does not appear to have been contemporaneous. Additionally, while the family law litigation was high conflict, there is no evidence to suggest that the issues were overly complicated or that they would necessitate the dedication of so many hours of Jacqueline's time.

[122] That said, at minimum, Mr. Clarke's evidence supports Jacqueline's testimony that she took Peter to his appointments with Mr. Clarke and waited in the reception area for the duration of the appointments. Mr. Clarke and Jacqueline each testified that Jacqueline assisted with reviewing and summarizing documents and that she performed work that reduced the cost of the litigation. While Mr. Clarke struck me as overly effusive in his description of Jacqueline's efforts, such that I consider him to have exaggerated the extent of her assistance, it is consistent with Peter's reliance on Jacqueline that she provided some degree of assistance.

[123] Jacqueline's contributions to the family law litigation benefited Peter. For instance, he did not have to pay for transportation to and from his appointments with Mr. Clarke. While I doubt the number of claimed hours, I accept Mr. Clarke's evidence that Jacqueline's document review saved Mr. Clarke or one of his employees from having to do that type of work and charge Peter for it.

[124] I do not accept Jennifer and Amaris' assertion that Jacqueline has not established a corresponding deprivation because she was not employed and therefore did not lose income. They provided no authority to support that position. Ultimately, Jacqueline's time has value to her and she spent it assisting Peter. She was not required to do so and was not compensated.

Personal care services

[125] Jacqueline claims her time spent providing personal care services to Peter was even more significant--in excess of 22,000 hours total between 2011 and 2022. While I accept that Jacqueline assisted Peter in many respects from 2011 until his death, I do not accept her estimate of total hours spent as reliable. The document Jacqueline relies on in support of her estimate does not appear to be based on contemporaneous timekeeping but rather an estimated reconstruction of her time.

[126] That said, there is no question that Jacqueline provided some degree of personal care assistance to Peter, especially before he moved into the Village at Smith Creek, where he received institutional support. In doing so, she suffered a deprivation. As stated above, there is a value to Jacqueline's time and she spent it caring for Peter without an obligation to do so and without compensation.

[127] There is no merit to Jennifer and Amaris' argument that because Jacqueline did not make a claim to a management fee under the power of attorney, she cannot now claim compensation for her labour. The services Jacqueline provided to Peter were not undertaken pursuant to the power of attorney and she was therefore not required, nor entitled, to claim them as an attorney management fee.

Conclusion regarding unjust enrichment

[128] I find that Jacqueline has established an unjust enrichment in respect of the assistance she provided to Peter in his family law litigation and with his personal care.

[129] I agree with Jacqueline that the appropriate remedy in the circumstances of this case is payment to her on the basis of quantum meruit. The difficult question, given the state of the evidence, is the valuation of Jacqueline's claim for a set-off. As indicated above, I do not accept Jacqueline's time estimates as reliable.

- [130] Jacqueline says the value of her claim for legal work on a quantum meruit basis is just over \$48,000. She also suggests that the assessment should not be limited to a strict quantum meruit calculation but should instead be an amount that reflects her contributions to the family law litigation settlement. However, that submission is unhelpful as she does not propose what that number should be.
- [131] Jacqueline also submits the minimum value of her claim for personal care services is \$448,500. She bases this on \$20 per hour for time she spent assisting Peter, receipts for expenditures, and estimates of expenditures and time commitments that are not captured in the documentary evidence. She also suggests that a higher amount would be appropriate but, again, her position in that regard is unhelpful as she does not explain why that is or how I should arrive at the higher assessment.
- [132] The Court has broad discretion in determining the appropriate method to apply in calculating the quantum meruit value of the claim: *Dutcyvich v. Monette Farms Ltd.*, 2025 BCSC 548 at para 187, citing *Infinity Steel Inc. v. B & C Steel Erectors Inc.*, 2011 BCCA 215 at paras. 19-23. Given the state of the evidence, particularly the unreliable nature of Jacqueline's time estimates and the issues with the documentary evidence discussed above, I consider the best approach to valuing Jacqueline's unjust enrichment claim is to assess the global value of her services--both with respect to Peter's personal care and in the family law litigation--on an annual basis, commencing in September 2012, when she became increasingly involved in Peter's care.
- [133] While I acknowledge that Jacqueline spent some time assisting Peter before September 2012, the evidence establishes that this assistance was intermittent and not outside what might be expected between an adult child and parent. After September 2012, Peter's marriage to Marie was in the process of ending. At that point, I find the evidence establishes that Jacqueline stepped into to a more active personal care support role for Peter.
- [134] I consider a reasonable assessment of Jacqueline's claim to be \$20,800 annually. This is an amount that I find fairly compensates Jacqueline for her time--which I assess at an average of 20 hours of care per week--assuming an hourly rate of \$20 per hour as proposed by Jacqueline, which I consider reasonable. While there are periods when the evidence suggests Jacqueline would have spent in excess of 20 hours per week, such as during parts of the family law litigation, there are other periods when the time Jacqueline needed to devote to Peter would most likely have been less, such as after he moved to the Village at Smith Creek. I consider 20 hours per week to be a reasonable approximation of the overall average of the time spent by Jacqueline on Peter's care.
- [135] The total value of Jacqueline's claim for set-off is therefore \$197,600. This compensates her for the 114 months of care provided to Peter from September 2012 until Peter's death in February 2022 (\$20,800 annually, divided by 12 months, times 114 months).

g) If the evidence establishes a breach of fiduciary duty or a resulting trust, what is the appropriate remedy?

[136] The plaintiffs' submissions on remedy were premised on successfully proving that Jacqueline breached a fiduciary duty to Peter, in which case they urged an award of damages. They had very little to say about remedy if Jacqueline was found to have received the funds under a resulting trust.

[137] In the amended notice of civil claim, the plaintiffs seek an order that a resulting trust be imposed in favour of Peter's estate upon Jacqueline, Daven, and Britney with respect of any transfer of assets received without valuable consideration. In submissions, they suggested that tracing orders would be appropriate in the event of a resulting trust, which is also relief pleaded in their notice of civil claim. However, Jennifer and Amaris did not make meaningful submissions at trial in support of any of these orders.

[138] The orders sought in the plaintiffs' notice of civil claim will presumably require the Court to consider Jacqueline's use of the resulting trust funds and whether it was consistent with or in breach of the conditions under which she held the funds. The parties made no submissions on that topic. I also received no submissions on how Jacqueline's set-off claim affects the remedy analysis. The comingling of Peter's and Jacqueline's funds might also conceivably impact the analysis but was not addressed by the parties in submissions.

[139] In these circumstances, I cannot decide the appropriate remedy arising out of my findings above without first receiving further submissions that address the above matters. I direct that the parties contact Supreme Court Scheduling within 30 days of the date of this decision to arrange a judicial management conference before me to address the schedule for and content of further submissions. If, having had the opportunity to review these reasons, the parties are able to resolve the issue of remedy, the parties are directed to contact Supreme Court Scheduling and advise that the judicial management conference is not required.

h) Should the Court vary Peter's will?

[140] Jennifer and Amaris seek to vary Peter's will under s. 60 of the Wills, Estates and Succession Act on the basis that its division of his assets is not adequate, just, and equitable given their moral claims on his estate: *Tataryn v. Tataryn Estate*, [1994] 2 S.C.R. 807, 1994 CanLII 51. They say that considerations relevant to the existence and strength of Peter's moral duty support significant variation of his will to exclude the gifts to his grandchildren and instead give one-third of the residue of his estate to each of his daughters: *Dunsdon v. Dunsdon*, 2012 BCSC 1274 at para. 134.

[141] Given my findings in relation to Jacqueline's claim for a set-off, there is no merit to Jacqueline's argument that the legal obligations owed to her effectively diminish the value of the Peter's estate to nothing, such that there is no estate remaining for the Court to vary or moral duty to Jennifer and Amaris to consider.

- [142] Jacqueline also submits that the will should be varied in her favour. However, she has not brought a claim--either by way of counterclaim or separate notice of civil claim--seeking that relief. Jacqueline has not provided any authority that suggests she can seek variation of Peter's will as part of her defence of the plaintiffs' claim. In these circumstances, I conclude that variation of the will is not something that is available to her in this proceeding.
- [143] For the following reasons, I am not persuaded that Peter's testamentary gifts to Jennifer and Amaris fall outside the "wide range of options" that might be considered adequate, just, and equitable in the circumstances, such that his will should be disturbed: *Tataryn* at 823-824. Having considered the relevant factors enumerated in *Dunsdon* at para. 134, I conclude that Peter's disposition to Jennifer and Amaris "is in accordance with society's reasonable expectations of what a judicious parent would do in the circumstances" and that his will should therefore not be varied: *Dunsdon* para. 138.
- [144] As I have said, Peter had a close and loving relationship with his daughters in their childhood. He became less close with Jennifer and Jaqueline as they moved into adulthood, which is not unusual of a parent-child relationship. Leading up to and following the breakdown of Peter's marriage to Marie, Jennifer did not experience as close of a relationship with Peter as did Jacqueline. I find this is not due to any hard feelings between Peter and Jennifer but rather because Jacqueline's life circumstances at the time were such that she was better able to dedicate the time and resources necessary to achieve a renewed close relationship with her father. Jennifer's circumstances simply did not permit her to be as involved in Peter's life. While Jennifer and Peter did not see or communicate with each other as often as they would have liked, their relationship remained positive. I do not agree with Jacqueline's characterization of the relationship as being estranged.
- [145] As already stated, Peter and Amaris unfortunately became estranged after Peter moved to Kelowna. They had very little contact after that time, with the exception of a single visit. Despite that, I find that Peter continued to love Amaris and wished for the estrangement to end. He kept childhood photos of Amaris on display in his apartment and on occasion attempted to initiate communications with her. I do not consider his moral obligation to Amaris to have been extinguished in any way by their estrangement. However, I do consider Amaris' decision to cease contact with her father to be relevant to my consideration of whether the existing distribution to Amaris under Peter's will is just and equitable.
- [146] The size of Peter's estate is difficult to assess with any degree of certainty. I have found that Jacqueline held the funds received from Peter in trust for him. When he died, any remaining funds should have formed part of his estate. The difficulty is in determining what that amount is on the evidence before me.

- [147] Unfortunately, as discussed above, I require further submissions from the parties on the value of the resulting trust funds, once Jacqueline's set-off claim and any other appropriate deductions are made. The uncertainty on that issue makes it impossible to assess the value of the estate at this time.
- [148] However, even with that uncertainty in mind, I do not agree with Jennifer and Amaris' proposed valuation of Peter's estate at \$1 million. The value of Peter's share of the family property was \$718,474.41 in 2018. This value consists of the payments he received in settlement of the family law litigation, minus legal fees. Even allowing for the value of his tools, parts, and the Ford--which I cannot assess based on the evidence before me--it is difficult to see how Peter's estate would have been anywhere near the range of \$1 million at his death in 2023, given his ongoing living expenses and the fact that he had no source of income.
- [149] It is not unreasonable for each of Jennifer and Amaris to have expected to receive some inheritance from Peter. However, it is not reasonable for them to have assumed they would each inherit a one-third share of the estate.
- [150] There is no evidence that either Jennifer or Amaris contributed to Peter's estate. Jennifer and Amaris say their expectations were that, as surviving children, Peter was likely to provide for them in a manner similar to the way in which Peter's mother had provided for her family. It is notable that the evidence establishes that both children and grandchildren received an equal cash distribution from Peter's mother's estate. If Peter's mother's estate was the basis for the expectations held by Jennifer and Amaris, then they could only have had the reasonable expectation that Peter would do the same thing in his estate planning, which he did. Further, Jennifer confirmed in her testimony that she expected that Jacqueline, as the eldest child, would receive Peter's tools, parts, and the Ford.
- [151] Jennifer and Amaris emphasize that they have each struggled financially to varying degrees in adulthood. While I accept that is so, their submissions in that regard do not give enough weight to evidence that Jennifer has the skills and intention to reestablish her healthcare career and that Amaris is still relatively young and does not yet have a clearly established career path. Their submissions also ignore the fact that the relevant consideration is not simply their standard of living but also the relative standard of living of Peter and themselves. Peter was by no means living an extravagant life; he maintained a frugal standard of living.
- [152] Based on my findings above, Jacqueline did not receive gifts from Peter outside the will. While she certainly benefited from merging her finances with him, that is reasonable given the relationship she had with Peter at the time, as compared to the relationship Jennifer and Amaris had with him.
- [153] There is no evidence of relevant misconduct or poor character in this case that would impact the strength of the moral duty that Peter owed to Jennifer and Amaris.

[154] Unlike the cases relied on by Jennifer and Amaris, I am not faced with a scenario where Peter left the bulk of his estate to other beneficiaries to the exclusion of his daughters. Peter had a loving relationship with the other beneficiaries who Jennifer and Amaris seek to disinherit: his grandchildren. He chose to leave the residue of his estate to his daughters and grandchildren equally. Having considered the evidence before me, I am satisfied that in the circumstances of this case, that choice by Peter was within the range of what might be considered appropriate in the circumstances. As such, his will should not be disturbed: *Tataryn* at 824.

Costs

[155] While the parties have achieved mixed success on the issues decided in these reasons, the issue of remedy related to the resulting trust remains outstanding. I therefore consider it premature to make any decision on costs. I defer my decision on costs until resolution of the outstanding remedy issue. The parties have leave to include costs as a topic to canvas at the judicial management conference contemplated above.

Conclusion

[156] In summary:

- a) The plaintiffs' claim for breach of fiduciary duty is dismissed.
- b) The plaintiffs' claim for knowing receipt against Britney and Daven is dismissed.
- c) The funds transferred to Jacqueline in the disputed transactions are subject to a resulting trust.
- d) Jacqueline has a claim for an equitable set-off of \$197,600 against the resulting trust.
- e) I defer my decision regarding the appropriate remedy in relation to the resulting trust until the receipt of further submissions from the parties. I similarly defer my decision regarding costs until resolution of remedy. I direct the parties to contact Supreme Court Scheduling within 30 days of this decision to schedule the judicial management conference contemplated at paragraph 139 above.
- f) The claim to vary Peter's will is dismissed.

"Ramsay J."

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