

CANADA / JUDGMENT

Simard v. Simard Estate

2021 BCSC 1836

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2021 BCSC 1836 Simard v. Simard Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Simard v. Simard Estate,

2021 BCSC 1836

Date: 20210921

Docket: S18364

Registry: Duncan

Between:

Anthony Charles Simard, Karen Lee Simard and Kathleen Ann Simard

Plaintiffs

And

Julie Marie Hall, Personally and as Executrix of the

Estate of Verna Marie Simard, Deceased

Defendant

Before: The Honourable Madam Justice Fleming

Reasons for Judgment

Counsel for the Plaintiffs:

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Place and Dates of Trial:

Duncan, B.C.

January 25-29, and

February 1-5, 2021

Victoria, B.C.

March 4 and 5, 2021

(appearing via videoconference)

Place and Date of Judgment:

Duncan, B.C.

September 21, 2021

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Introduction

- [1] The plaintiffs Tony, Karen, and Kathleen Simard and the defendant Julie Hall are the children of Verna and Maurice Simard. This case involves the estate of Verna Simard who died on February 28, 2018 at the age of 84. The primary issue is whether Julie holds some or all of the assets she received from Verna before and after her death on a resulting trust for the estate.
- [2] For ease of reference only, I will refer to the parties, Verna, Maurice, and others by their first names.
- [3] Maurice died in February 2006. Verna was the sole beneficiary and executor of his estate. After his death, she and Julie became estranged from the plaintiffs.

- [4] One of Maurice's assets was a half interest in three lots at Shawnigan Lake, which his parents acquired in the 1940s and he and his brother Ray had owned since the 1970s (the "SLP").
- [5] In 2009, Verna purchased Ray's interest in the SLP and then in February 2010 transferred the three lots to Julie for \$1 each.
- [6] Julie's response to civil claim pleaded that she and her husband Gordon Hall purchased the SLP from Verna, made monthly payments to her of \$500, and paid the property taxes until she died. At her examination for discovery, Julie testified that she and Gordon paid Verna \$200,000 for the SLP and took over a line of credit that Verna had obtained to purchase Ray's interest, which was secured against her home. Julie also gave evidence that she and Verna signed an agreement that provided for the \$200,000 purchase. However, she and Gordon only paid the monthly interest on the line of credit and, after Verna sold her home, they paid her \$400 per month. At the trial, Julie testified that Verna gifted her the SLP, the monthly payments to Verna were also a gift, and Julie had been unable to find the written agreement. During final submissions, Julie suggested the transfer of the SLP was not gratuitous, characterizing her gift of monthly payments as consideration. By consent, I granted her leave to amend her response to civil claim to include the "alternative" ground that the SLP was a gift from Verna to Julie.
- [7] Prior to the SLP transfer, in 2007, Verna sold her previous home to Julie for what the plaintiffs say was well below market value. In 2008, Verna established an investment account with Pinnacle Wealth Brokers Inc. ("Pinnacle Wealth Account"). Mary Neal was her investment advisor. Ms. Neal's notes indicate that Verna told her she wished Julie to be the sole beneficiary of the Pinnacle Wealth Account.
- [8] Between 2015 and 2017, Verna designated Julie as a joint account holder or a secondary account holder on some bank accounts and the beneficiary on two Registered Retirement Income Fund ("RRIF") accounts.
- [9] However, Verna's last will, dated May 4, 2016 (the "2016 Will"), provides the residue of her estate is to be divided equally amongst the four children. Apart from a small specific bequest to Gordon, the terms of the 2016 Will are the same as her previous will, which was also made after Maurice's death, on May 3, 2007 (the "2007 Will"). Both the 2016 Will and the 2007 Will appoint Julie as executor and Carly Dyke as the alternate executor. Carly is Kathleen's biological daughter but she was raised by Julie.
- [10] Before the death of Maurice, Verna made a will in 2001 that appointed him as executor and Karen, Tony, and Julie as alternates in that order (the "2001 Will"). Under the 2001 Will, Maurice was the sole beneficiary of the residue of Verna's estate. In the event of his death or failure to survive her for 30 days, the residue was to be divided amongst the four children.
- [11] The plaintiffs testified to only being aware of the 2001 Will. Julie testified to not being aware of the 2007 Will.

- [12] In addition to their own evidence, the plaintiffs rely on the testimony of several other witnesses including Tony's wife Jamie, two of Tony and Jamie's adult children, Sandra and Kyle, Verna's long time close friends, Lois Raby and Elsie Garrison, who is also Ray's ex-wife, and Hugh Armstrong, the lawyer who prepared Verna's 2016 Will and other legal documents, including a power of attorney. The plaintiffs also read in substantial portions of Julie's examination for discovery evidence and rely on documentary evidence.
- [13] Julie's case includes her testimony and the testimony of Gordon, her son Jordan, Carly, Julie's long-time close friend Linda Allen, her best friend's daughter Sarah Dawson, and Ms. Neal, who is also Julie's investment advisor. The defence witnesses gave evidence about what Verna said or expressed regarding her intentions in transferring assets to Julie, and the SLP in particular. Julie also relies on documentary evidence, including some hospital records for Verna from 2016 and 2017, many of Ms. Neal's records, and copies of letters attributed to Verna.
- [14] The plaintiffs take the position that Julie holds the SLP, Pinnacle Wealth Account, and various bank accounts on a resulting trust for Verna's estate. They also assert that much of the evidence about what Verna allegedly said or expressed regarding her intention when transferring assets is not admissible for a hearsay purpose or entitled to very little weight. They do not oppose, however, the admission of Ms. Neal's hearsay evidence. Nor do the plaintiffs dispute the authenticity or admissibility of copies of various letters attributed to Verna, with perhaps one exception.
- [15] In contrast, Julie argues it is clear that Verna intended to gift her the SLP and all of her other assets, either by designating her as the beneficiary or by granting her the right of survivorship. Julie emphasizes the significance of the estrangement between the plaintiffs and Verna as a factor in determining her intention. Julie also asserts the presumption of undue influence is not triggered because her relationship with Verna was never one of dependence.

Preliminary Matter

- [16] On September 16, 2019, an order was granted by consent, removing Julie as executor of Verna's estate and appointing Carly in her place. During the trial, I asked whether Carly, in her role as executor, ought to be named as a defendant and whether the plaintiffs required leave to bring this action on behalf of the estate, pursuant to s. 151 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA].
- [17] The plaintiffs argued it was unnecessary for Carly to be added as a defendant given the nature of the orders they were seeking. Julie took no position on either issue. None of the parties made submissions on WESA s. 151. Carly testified not in her capacity as executor but as a witness for Julie. I was advised, however, that Carly's counsel was made aware of my queries and wished to be notified of an application to add Carly as a defendant.

- [18] Section 151 authorises the court to grant someone who is not a personal representative leave to commence or defend proceedings on behalf of an estate, notwithstanding the exclusive authority of the personal representative to administer the estate pursuant to s. 136: *Mortimer v. Bender*, 2020 BCSC 483 at para. 32. Subsection 151(3) includes:
- (3) The court may grant leave under this section if
 - (a) the court determines the specified person seeking leave
 - (i) has made reasonable efforts to cause the personal representative to commence or defend the proceeding,
 - (ii) has given notice of the application for leave to
 - (A) the personal representative,
 - (B) any other specified persons, and
 - (C) any additional person the court directs that notice is to be given, and
 - (iii) is acting in good faith, and
 - (b) it appears to the court that it is necessary or expedient for the protection of the estate or the interests of a specified person for the proceeding to be brought or defended.
- [19] The authorities suggest, notwithstanding the exclusive authority of a personal representative, and without leave under s. 151, an estate beneficiary can bring a claim against a personal representative seeking a declaration that the personal representative holds assets on a resulting trust for the estate: *Neufeld v. Neufeld Estate*, 2004 BCSC 25, and *Cooke v. Cooke Estate*, 2005 BCCA 263. I note that here it is Carly, not Julie, who is presently the executor of the estate.
- [20] In the circumstances, I do not intend to address my own query other than saying this: were an application to be brought, I would certainly be satisfied that an order pursuant to s. 151 would be necessary to protect the estate and the interests of the plaintiffs as beneficiaries in its potential and significant assets. While Julie remained executor of the estate, there was an obvious conflict of interest. Even though Carly is now the executor, it is clear from her testimony discussed below that she is entirely aligned with Julie and no amount of effort would have caused her to carry on this proceeding.

Legal Framework

- [21] Before turning to the evidence it is useful to discuss the relevant legal principles.

Presumption of Resulting Trust

- [22] A gift is a gratuitous transfer of property made without consideration. The presumption of resulting trust is a rebuttable presumption of law and a general rule that applies to most gratuitous transfers: *Pecore v. Pecore*, 2007 SCC 17 at para. 24. *Pecore* established that it applies to gratuitous transfers from a parent to an adult child.
- [23] Because equity presumes bargains, not gifts, it is presumed that the transferor intended to convey only legal title to a transferee who paid no consideration: *Pecore* at para. 24. The transferee then holds the beneficial interest in the property on a "resulting trust" in favour of the transferor and is under an obligation to return the property to the transferor upon request. When a gratuitous transfer is challenged, to rebut the presumption of resulting trust, the party asserting a gift, typically the transferee, must prove on a balance of probabilities the transferor intended a gift at the time of the transfer: *Pecore* at paras. 25 and 43.
- [24] In *Pecore*, Justice Rothstein explained:
- [44] The trial judge will commence his or her inquiry with the applicable presumption and will weigh all of the evidence in an attempt to ascertain, on a balance of probabilities, the transferor's actual intention. Thus the presumption will only determine the result where there is insufficient evidence to rebut it on a balance of probabilities.
- [25] In a case such as this one, where there are multiple, sufficiently distinct transfers, the same approach applies to each one: *Winstanley v. Winstanley*, 2017 BCCA 265 at para. 44.
- [26] *Pecore* relaxed the traditional rule that required evidence of the transferor's intention to be contemporaneous with the transfer, to permit consideration of evidence of intention arising subsequently, if relevant to the intention at the time of the transfer, while guarding against after the fact self-serving evidence or evidence that reflects a change in intention: para. 59. The court must also consider if the transferor had any rational purpose for the transfer other than a gift: paras. 45-47.
- [27] *Pecore* itself involved a dispute over ownership of joint bank accounts of an elderly father, and his adult daughter, after he died. The father had established the accounts, contributed all of the funds, and continued to use and control them until he died. His will, which divided the residue of the estate between his daughter and her husband equally, did not mention the accounts.
- [28] A principal characteristic of joint tenancy is the right of survivorship. When one joint tenant dies, their interest in the property is extinguished and passes to the surviving joint tenant.
- [29] After the father's death, the daughter redeemed the funds in the joint accounts based on a right of survivorship. The issue was whether this right provided her with beneficial, as well as legal, ownership of the funds.

[30] Prior to *Pecore*, when property was transferred into joint tenancy, there were two possible legal consequences. Either the new joint tenant received an immediate gift of a beneficial interest in the property, or they acquired legal title only and the asset was held on a resulting trust for the estate of the transferor. *Pecore* recognized a third possibility: the transferor may have gifted the right of survivorship. Although the gift itself is *inter vivos*, the new joint tenant's beneficial interest vests with the death of the transferor/joint tenant.

[31] Justice Rothstein explained:

46 In certain cases, however, courts have found that the transferor gratuitously placed his or her assets into a joint account with the transferee with the intention of retaining exclusive control of the account until his or her death, at which time the transferee alone would take the balance through survivorship.

47 There may be a number of reasons why an individual would gratuitously transfer assets into a joint account having this intention. At the same time, the transferor may wish to avoid probate fees and/or make after-death disposition to the transferee less cumbersome and time consuming.

48 Courts have understandably struggled with whether they are permitted to give effect to the transferor's intention in this situation. One of the difficulties in these circumstances is that the beneficial interest of the transferee appears to arise only on the death of the transferor. This has led some judges to conclude that the gift of survivorship is testamentary in nature and must fail as a result of not being in proper testamentary form: For the reasons that follow, however, I am of the view that the rights of survivorship, both legal and equitable, vest when the joint account is opened and the gift of those rights is therefore *inter vivos* in nature.

50 Some judges have found that a gift of survivorship cannot be a complete and perfect *inter vivos* gift because of the ability of the transferor to drain a joint account prior to his or her death: I would reject this view. The nature of a joint account is that the balance will fluctuate over time. The gift in these circumstances is the transferee's survivorship interest in the account balance -- whatever it may be -- at the time of the transferor's death, not to any particular amount.

[32] In *Bergen v. Bergen*, 2013 BCCA 492, Justice Newbury clarified further:

[42] Consistent with this, the authors of *Waters* [Donovan W.M. Waters, Mark R. Gillen, & Lionel D. Smith, *Waters' Law of Trusts in Canada*, 4th ed. (Toronto: Carswell, 2012)] in the most recent edition (post-*Pecore*) state:

If A supplies the purchase money and conveyance is taken in the joint names of A and B, B during the joint lives will hold his interest for A, B will also hold his right of survivorship – again by way of resulting trust for A's estate, because that right is merely one aspect of B's interest. In other words, the starting point is that B holds all of his interest on resulting trust for A, or A's estate. However, evidence may show that, while A intended B to hold his interest for A during the joint lives, it was also A's intention that, should he (A) predecease, B should take the benefit of the property. The presumption of resulting trust would then be partially rebutted, in relation to the situation that has arisen, so that B would not hold his interest (now a sole interest and not a joint

tenancy) on resulting trust. He would hold it for his own benefit.

[Emphasis added in Bergen.]

- [33] In summary, where a gratuitous transfer to a joint account is challenged, the presumption of resulting trust arises and it falls to the surviving joint account holder to prove that the transferor intended to gift the balance in the account at their death. Otherwise, the account balance will be treated as part of the transferor's estate to be distributed according to their will: *Pecore* at para. 53. In other words, when legal title is transferred gratuitously and a resulting trust arises, the right of survivorship is held on trust by the transferee unless otherwise established: *McKendry v. McKendry*, 2017 BCCA 48 at para. 36.
- [34] In British Columbia, the courts have determined the presumption of resulting trust, as discussed in *Pecore*, applies to transfers of real property: *Schouten Estate v. Swagerman-Schouten*, 2014 BCSC 2320 at para. 4; *Fuller v. Fuller Estate*, 2010 BCCA 421 at paras. 41-45; *Modonese v. Delac Estate*, 2011 BCSC 82 at paras. 141-142, *aff'd* 2011 BCCA 501; *Suen v. Suen*, 2013 BCCA 313 at paras. 35-38.
- [35] It is well established that, notwithstanding s. 23(2) of the Land Title Act, R.S.B.C. 1996, c. 250, when a transfer of land is gratuitous, the presumption of resulting trust may displace the presumption of indefeasible title: *Bajwa v. Pannu*, 2007 BCCA 260 at paras. 9-15; *Fuller* at para. 43; *Suen* at para. 34; *Bergen* at para. 42; *McKendry* at para. 37.

Presumption of Undue Influence

- [36] Undue influence is an equitable doctrine designed to redress an abuse of trust, confidence, or power in a broad range of transactions including gratuitous inter vivos transfers or gifts: *Webber v. Sullivan*, 2019 BCSC 1522 at para. 105. There are two classes of undue influence: actual and presumed.
- [37] A gratuitous transfer from a parent to an adult child does not automatically give rise to the presumption of undue influence: *Modonese* at para. 101. Instead, it may apply where a relationship of dependence or potential dominance between the parent and adult child is established: *Modonese* at paras. 105-106. Once triggered, the presumption of undue influence shifts the burden of proof to the transferee. To rebut the presumption of undue influence they must show (*Webber* at para. 109):
- [109] that the transferor entered the transaction as a result of their own "full, free and informed thought" Substantively, that will require the transferee to demonstrate that they deployed no actual influence on the transferor. In making this determination, the court will generally consider whether the transferor had independent legal advice, the motivations of the transferor and transferee, and the magnitude of the disadvantage or benefit

[Citations omitted.]

Hearsay Evidence

- [38] Presumptively inadmissible, hearsay evidence is an out-of-court statement relied on for its truth. The hearsay rule is primarily concerned with an inability to test the out-of-court statement through cross-examination. Statements of a deceased person may be admitted into evidence pursuant to a traditional exception or the principled exception to the hearsay rule. In this case, only the principled exception is engaged, which allows for the admission of hearsay evidence that meets the criteria of necessity and threshold reliability. Verna's death establishes the necessity criterion.
- [39] Threshold and ultimate reliability must be assessed in accordance with the principles in *R. v. Khelawon*, 2006 SCC 57 and *R. v. Bradshaw*, 2017 SCC 35.
- [40] The onus is on the party tendering the hearsay evidence to establish threshold reliability on a balance of probabilities. The threshold reliability of the out-of-court statement, and if admitted its ultimate reliability, are assessed by considering all relevant factors, including the presence of supporting or contradicting evidence: *Khelawon* at paras. 2, 4. Evidence will not corroborate the threshold reliability of a statement unless it is independent evidence that supports the truth of an assertion. Applying a functional approach, the admissibility inquiry focuses on the particular dangers presented by the hearsay evidence at issue and the circumstances relied on to overcome those dangers. Ultimate reliability is concerned with whether, and to what degree, the statement should be believed and relied on to decide issues in the case: *Bradshaw* at para. 39.
- [41] In *Khelawon* at para. 2, Justice Charron explained:

When it is necessary to resort to evidence in this form, a hearsay statement may be admitted if, because of the way in which it came about, its contents are trustworthy, or if circumstances permit the ultimate trier of fact to sufficiently assess its worth. If the proponent of the evidence cannot meet the twin criteria of necessity and reliability, the general exclusionary rule prevails. The trial judge acts as a gatekeeper in making this preliminary assessment of the "threshold reliability" of the hearsay statement and leaves the ultimate determination of its worth to the fact finder.

3 The distinction between threshold and ultimate reliability reflects the important difference between admission and reliance. In determining the question of threshold reliability, the trial judge must be mindful that hearsay evidence is presumptively inadmissible. The trial judge's function is to guard against the admission of hearsay evidence which is unnecessary in the context of the issue to be decided, or the reliability of which is neither readily apparent from the trustworthiness of its contents, nor capable of being meaningfully tested by the ultimate trier of fact .

- [42] Both *Khelawon* and *Bradshaw* discussed two types of reliability. The first, referred to as procedural reliability in *Bradshaw*, is established where there is no real concern about whether the statement is true or not because of the circumstances in which it was made. In

other words, adequate procedural safeguards for testing its truth and accuracy were present at the time. A statement made under oath or affirmation at a preliminary inquiry is an example. The second, referred to as substantive reliability, involves a content-based assessment that focuses on the circumstances in which the statement came about to assess its admissibility. Substantive reliability may be established where there are "sufficient circumstantial or evidentiary guarantees that the statement is inherently trustworthy", or the statement was made in circumstances where cross-examination would add little or be unlikely to change it: Bradshaw at para. 22 and Khelawon at para. 62.

[43] Procedural and substantive reliability are alternatives but they may also operate in tandem.

[44] Bradshaw at para. 57 identified four tasks for the trial judge in determining substantive reliability at the threshold stage:

In sum, to determine whether corroborative evidence is of assistance in the substantive reliability inquiry, a trial judge should:

1. identify the material aspects of the hearsay statement that are tendered for their truth;
2. identify the specific hearsay dangers raised by those aspects of the statement in the particular circumstances of the case;
3. based on the circumstances and these dangers, consider alternative, even speculative, explanations for the statement; and
4. determine whether, given the circumstances of the case, the corroborative evidence led at the voir dire rules out these alternative explanations such that the only remaining likely explanation for the statement is the declarant's truthfulness about, or the accuracy of, the material aspects of the statement.

[45] *Gutierrez Estate v. Gutierrez*, 2015 BCSC 185 at para. 34, identified a number of factors that can be considered when assessing threshold reliability:

- a) the presence or absence of a motive to lie;
- b) independent corroborative evidence that "goes to the trustworthiness of the statement";
- c) timing of the statement relevant to the event;
- d) the declarant's mental capacity at the time of making the statement; and
- e) solemnity of the occasion and whether the declarant's statement was made "in circumstances that could arguably be akin to the taking of an oath where the importance of telling the truth and the consequences of making a false statement were properly emphasized."

[46] Applying *Khelawon* and other authorities, in *Harshenin v. Khadikin*, 2015 BCSC 1213, Justice Dardi discussed the assessment of reliability of a deceased's statement as follows:

- [35] A court is required to assess the reliability of a statement sought to be adduced by way of hearsay evidence by examining the circumstances under which that statement was made. A circumstantial guarantee of trustworthiness is established if the statement was made in circumstances which "substantially negate" the possibility that the declarant was untruthful or mistaken: *Smith* at 933.
- [36] As a preliminary threshold issue, the court must first find on a balance of probabilities that the statement was made by the Deceased before it goes on to determine the treatment and weight of such evidence: *Creutz v. Estate of Kristian Winther*, 2007 BCSC 1463 at para. 99. In essence, this assessment turns on the credibility of the various witnesses: *Halfpenny v. Holien* (1997), 37 B.C.L.R. (3d) 186 (S.C.).
- [47] Her approach has continued to be applied since *Bradshaw* in estate cases involving disputes about the presumption of resulting trust and the admissibility of hearsay statements of a deceased: *Davy v. Davy*, 2019 BCSC 1826; *Flesjer v. Butterfield*, 2019 BCSC 2332.
- [48] The credibility of several defence witnesses is a significant issue here. Further, some if not most of the hearsay evidence regarding Verna's intentions involved testimony about what she "wanted" or what her wishes were rather than what she actually said and in what circumstances.
- [49] Rather than declaring multiple voir dires and ruling on the admissibility of each witness's hearsay evidence during the course of the trial, I permitted them to testify during the trial proper and advised the parties I would determine the admissibility of the hearsay evidence in these reasons. Unfortunately, during closing submissions Julie did not identify specific alleged statements she sought to have admitted for a hearsay purpose or address the application of the principled approach. Nor did the plaintiffs, apart from making submissions about credibility. Just as *Dardi J.* did in *Harshenin*, I will discuss the admissibility of various statements or expressions of intention attributed to Verna when I review the relevant testimony and when I examine the transfers in question.
- [50] At this stage, I will also comment on a related evidentiary issue. Julie's documentary evidence includes hospital records regarding Verna's hospitalizations in 2016 and 2017. The 2016 hospital records include statement(s) attributed to Julie that are materially inconsistent with her testimony regarding Verna's cognitive function at the time, which she did not address in her evidence. Further, the 2017 records include hospital findings regarding Verna's cognitive impairment, which Julie disputes.
- [51] *Sahota v. Slupskyy*, 2019 BCSC 2215, discussed some of the principles governing the admission and use of clinical records at para. 64:
- clinical records are admissible evidence of the fact that the plaintiff attended upon the medical professional on the date indicated and received the treatment recorded;

- any recorded observations, diagnosis and administered treatment are admissible to prove the fact of their occurrence;
- any opinions, including diagnoses, recorded in the clinical records by the health professional are admissible for the fact that they were made at the time but not for their truth or correctness in the absence of any other properly admissible opinion evidence to that effect;
- any statements of the plaintiff recorded in the clinical records are admissible to prove the fact that such statements were made but not for the truth of their contents, unless the statements constitute an admission against the plaintiff's interests or the plaintiff otherwise adopts at trial the statements as being true;

- [52] Regarding the admissions exception to the hearsay rule and clinical records, in *Firman v. Asadi*, 2018 BCSC 2437, Justice Verhoeven clarified: "[w]ith respect to clinical records, if I am satisfied that the plaintiff made a statement, and if I am satisfied that it proves an admission against her interest, or the plaintiff adopts as true the statement at this trial, then the statement can be admitted for proof of its contents" (para. 29).
- [53] Earlier, in *Edmondson v. Payer*, 2011 BCSC 118, aff'd 2012 BCCA 114, Justice N. Smith also commented that prior inconsistent statements of a party may be treated as admissions and accepted for the truth of their content. At the same time, he outlined "important qualifications" that apply to statements in clinical records regardless of their use, observing they are typically brief summaries or a paraphrase of what the plaintiff actually said, which she is unlikely to recollect.
- [54] *Sahota*, *Firman*, and *Edmondson* involved the clinical records of plaintiffs in personal injury cases. In my view, the same considerations apply to statements attributed to Julie in Verna's hospital records.

Overview

- [55] What follows is a largely chronological overview of the relevant circumstances that includes findings of fact based on undisputed or uncontradicted testimony and documents. With very few exceptions, there are no findings in this section based on disputed evidence. The overview is long because of the breadth of the circumstances.
- [56] Maurice and Verna were married for 47 years. Karen, Tony, Julie, and Kathleen were born in that order between 1957 and 1963. Devoutly Catholic, Maurice and Verna were actively involved in the St. Francis Xavier Catholic Church, in Mill Bay, BC, where Maurice and Verna are buried. Maurice was also very involved in Catholic community organizations. After he died, Verna continued to attend Catholic church services every week as well as bible study.

[57] Verna and Maurice's marriage was very traditional in the sense that Maurice was the primary decision-maker. At the same time, he was a gentle, kind-hearted, and generous person and a particularly loving and affectionate parent who was adored, admired, and respected by all four of his children.

[58] Ray was Maurice's only sibling.

The SLP and Business Ventures

[59] The three lots that comprise the SLP include two undeveloped waterfront lots ("Lots X and Y") and a developed lot located across the road ("Lot 1"). Ray and Maurice's parents lived in a small house on Lot 1 until their father died in or about 1978.

[60] Growing up, the parties spent time at the SLP, especially during the summer when they would stay with their grandparents. They also visited their grandparents there with Maurice and Verna.

[61] In comparison, Ray and his family, who moved to Salt Spring Island, spent very little time at the SLP.

[62] From a young age, Tony worked for Maurice and Ray, who were both involved in logging. Maurice owned a logging business called Simard Logging Ltd.

[63] In the 1980s, Maurice went bankrupt. Prior to the bankruptcy, Tony worked for Maurice without pay for about a year and a half. To compensate him for his unpaid wages, Maurice transferred a seven-acre lot to Tony and his wife Jamie, which they sold for about \$35,000 and used as a down payment on the home where they continue to live. Apparently unaware of the unpaid wages, Julie said she understood the transfer of property to have been a gift.

[64] Before and after the bankruptcy, Maurice was a successful business person. Verna participated in some of his business ventures. She also worked outside the home. Until the bankruptcy, Maurice and Verna owned a grand home referred to as 'the Mansion'.

[65] After the bankruptcy, they rented their housing. However, Maurice and Verna along with Ray and his wife acquired what became a successful gravel pit, situated on 60 acres, where Maurice and Ray operated Shawnigan Gravel Supplies Ltd. ("Shawnigan Gravel"). The four were equal shareholders. Verna, Tony, Jamie, and their son Kyle worked there. Verna and Jamie shared the job of weighing the trucks coming in and out of the yard and running the office. After Verna retired in 1996 or 1997, Jamie also took on the bookkeeping. Once Maurice retired, Ray operated Shawnigan Gravel on his own, paying Verna and Maurice monthly "royalties" of as much as \$4,000. Verna continued to receive payments after Maurice died.

- [66] Verna and Maurice's last home together, located at 3193 Moorfield Drive ("Moorfield") was purchased in 2001 at least in part with money that Verna had saved. Karen recalled that Verna talked to her about buying a home for several years prior and they looked at some other houses together, but Verna asked her to keep it secret from Maurice because he was "loose with money".

Family Background and Relationships

- [67] Tony and Jamie married very young at the age of 17. They have four children: Kyle (43), Alisha (39), Bonnie (37), and Sandra (35), and seven grandchildren.
- [68] Julie married her first husband Brad Dyke in 1980. Initially they lived in the house on Lot 1 at the SLP before moving to another property at Lake Cowichan. Julie and Brad's oldest child Jordan was born in 1983, followed by their daughter Brittany in 1986. Brittany was severely disabled both cognitively and physically. That same year Kathleen gave birth to Carly. Kathleen was 22 years old and living on her own in the Lower Mainland. Verna and Julie arranged for Julie to assume custody of Carly at some point during her infancy. Kathleen gave bizarre but unchallenged evidence about being told Julie had to take Carly because Brittany needed her - somehow Carly's presence was helpful to her. Kathleen also gave very poignant evidence about being repeatedly told that she was too young to care for a baby and, without a husband, it was better for everyone if Julie raised Carly. Kathleen said she came to believe she was not suited to be a mother and regrets losing Carly every day of her life.
- [69] Julie and Brad separated in 1992. Julie and the three children continued living at Lake Cowichan. Julie completed training and worked as a hair dresser. Very sadly, Brittany died at the age of 17 in 2003. Another tragedy occurred in October 2006 when Jordan was seriously injured in a car accident that left him with quadriplegia. After being hospitalized, he remained for an extended period at GF Strong, a rehabilitation centre in Vancouver. Fortunately, despite his disability, Jordan became remarkably independent. In 2008, he married his girlfriend Shannon. They have two children, now eight and two. Although there is no evidence he is employed, he is able to drive and participates in competitive if not Olympic-level wheelchair rugby. Carly also has two young children and lives with her partner.
- [70] Kathleen never had any other children. She remained in the Lower Mainland for several years. Unfortunately, although perhaps in part to provide a foundation for the suggestion Verna disapproved of her lifestyle, some emphasis was placed on the fact that part of that time Kathleen worked as an exotic dancer. After spending six months in Montreal, she returned to the Cowichan Valley in or about the early 1990s, staying with Verna and Maurice for about one year, before moving into the home on Lot 1 of the SLP. She lived there until it was demolished in 2008. For much of that time, and until today, Kathleen relies on government disability benefits. She gave evidence that she suffers from a number of health issues, including PTSD or Post Traumatic Stress Disorder, which she attributes to a serious assault by a former boyfriend, the death of Maurice, and the demolition of what was for

many years her home on Lot 1. She lives in a trailer in Chemanius.

- [71] Some of the witnesses testified to having heard rumours about, being told, and/or Verna believing, that Kathleen had a problem with drugs and alcohol. Kathleen acknowledged that Verna was not happy about her involvement in exotic dancing and when she returned from Montreal, Verna asked her if she was using drugs. Kathleen said she told Verna she had used them in the past. Kathleen gave uncontradicted evidence that when she was 32, Julie stole her address book and called her friends to say she was using drugs and was an exotic dancer.
- [72] Karen never had children. She often helped Julie with Brittany's care. Karen would also care for Jordan and Carly when Brittany was in hospital. She worked locally for many years. Starting in 1996, she worked in logging camps for a business called Helifor, performing a variety of roles including cooking and first aid. Karen rented a series of properties, including a lakefront property in Youbou, BC. From late 2005 until early 2006, Karen lived at Julie's property at Lake Cowichan. Since 2009, she has lived in a motorhome on a property belonging to Lois Rabey.
- [73] Karen testified to having a number of health issues, including a thyroid issue that started when she was teenager. In 2006, a benign tumour was found in her thyroid and surgically removed. Prior to that, Karen thought she was depressed based on her symptoms. In a letter to Karen dated April 28, 2006, Julie complained that Karen seemed to have "no use" for the family or her friends, lacked motivation, and was failing to take care of herself and Julie's property, where Karen was living at the time. While Julie also expressed concern for Karen, most of the letter was critical and judgmental. In 2009, Karen was diagnosed with a brain aneurism that required neurosurgery. Due to her health issues, she takes a number of medications and stopped working five years ago.
- [74] Each of the plaintiffs and Jamie testified to sharing a positive or at least stable relationship with Verna before Maurice's death.
- [75] Kathleen recalled visiting her parents quite frequently after she moved to the SLP. She and Maurice were always very close. Describing herself as a "tom girl", Kathleen recounted assisting her father with various building, repair, and bookkeeping tasks and watching hockey games together. She testified about feeling very troubled by Verna and Julie's conduct during his last Christmas when he was in hospital. The two of them took Kathleen to Julie's on Christmas Eve. The family tradition of attending midnight mass was not observed. Instead, the next morning Verna told Kathleen if she wanted to remain part of the family she had to get up and go to church. Kathleen refused, upset they had not attended midnight mass. Verna and Julie also told her at that point that Maurice would not be there for Christmas dinner, although the day before they said he would be. Kathleen arranged for a ride to the hospital and stayed with Maurice until quite late in the evening when Julie and Verna arrived. Julie's account was much the same, although she testified that Maurice seemed perfectly happy spending Christmas with his friends in the hospital.

- [76] Karen described her relationship with Verna as "fine" before Maurice died. In addition to being taken into Verna's confidence about her plan to buy a home, Karen and Verna shared an interest in antique furniture and other items. Karen always attended family gatherings if she was not working "in camp". However, Karen's feelings towards Julie were quite negative. She characterized Julie as controlling and intolerant when she was challenged.
- [77] Pinnacle Wealth Account records include notes prepared by Ms. Neal regarding some of her appointments with Verna. Her notes for an appointment on July 4, 2008, include that Verna "was concerned about what would happen to 'her other daughters' if they suddenly came into a large sum of money". Ms. Neal testified that Verna told her that day that they may have been involved with drugs and alcohol and she was concerned about their lifestyles.
- [78] Karen adamantly denied the suggestion of drug use. She testified that Verna accused her of drug use only once, after Jordan's accident in October 2006, when Karen picked her up at the ferry terminal. Verna was returning from a visit with Julie and Jordan at GF Strong. Karen testified to seeing a side to Verna that day she had not seen before. Verna said to Karen she should quit her job with Helifor and move to Lake Cowichan to look after Jordan. Karen was dumbfounded. After she refused, Verna told Karen some guy on the street said she had a drug problem. Outraged, Karen asked Verna who he was and what she said in response.
- [79] An unsigned, undated typed letter from "Your Loving Mother" was put to Karen in cross-examination. It reads in part:

Dear Karen

First I love you very much I pray for you every night

I don't like the way you have been treating me

You [were] so desperate for money you sold the accordion for \$30.00

And other things cheaply I had in my garage

You didn't help me to wash my bedroom when Dad died.

You just sat there in the living room Feeling sorry for your self

.

I don't know why you are so jealous of Julie and she is very hurt by it and so am I

Julie has never asked for money ever Yes we paid her mortgage when she was in the hospital with Brittany

I know that was the DRUGS TALKING

- [80] Karen testified that she had never seen the letter before and she did not believe it was written by Verna, specifying she did not write "like this" and her phrasing was totally different; also Verna typically signed her letters in handwriting and included the date. Based

on my own examination of all of the letters attributed to Verna, as well as those written by Julie, I agree. The tone, content, and style of writing are very different from everything else apparently written by Verna and, in particular, from a subsequent letter to Karen that she actually received. I note, for example, that none of Verna's other letters include open expressions of love but some of Julie's do.

- [81] Julie gave limited evidence about finding various letters from Verna to others in a box of her belongings.
- [82] In cross-examination, Julie agreed that she thought Karen was using drugs in 2006 and 2007 but gave no evidence about why she held this belief.
- [83] Tony testified to sharing a really close relationship with Verna, and described the various ways in which they spent time together. Tony also felt his relationship with Julie was good until Maurice died, providing details about their involvement with one another before and after she separated from Brad.
- [84] Jamie expressed the view that Verna was actually somewhat standoffish with Tony, but he really cared about her and his relationship with Maurice was fantastic. Jamie described her own relationship with Verna as really good. Jamie added that Verna was not an outwardly loving person but she clearly enjoyed visiting with them and loved her grandchildren. Jamie also said she and Verna remained really close after Verna retired. Verna continued to visit "all the time", they would shop or have lunch together and her relationship with the grandchildren remained strong. The family also visited Verna and Maurice at Moorfield regularly. When Maurice became very ill, Tony and Jamie also helped out with shopping and their daughters often went over to sit with him while Verna "ran errands".
- [85] Jamie also described Tony and Julie's first husband Brad as really close, but she said she found it hard to be close to Julie. Jamie testified that Julie spoke negatively about people "behind their backs" in an apparent attempt to make "you" angry with them. Jamie offered the example of Julie calling to complain that Karen had stolen toilet paper. When asked about a letter Julie sent to her and Tony dated May 17, 2006, Jamie testified Julie had sent such letters before, stating this is how Julie caused trouble. She and Tony never believed any of her allegations and never responded to her letters.
- [86] Julie's May 2006 letter reads in part:

I am [writing] this so it is very clear you understand & there are no miscommunications or twisting what I am saying.

- 1) I am not making any deals behind your back. The only reason I went to the beach is solely for dad I would never want the place & would never want my kids living there
- 7) This is the only advice I have for our mother; she did the moral thing by Ray with signing off their agreement, their agreement not ours. The other [advice] I have given her is she is 72 she does not need the stress of all this, she should sell everything & go travelling & [not]

come home until the money is all gone. So [those are] our secret meetings we have behind your back. The other secret meeting we have with Ray is advice & support on the graveyard [where] we will be [burying] Dad my daughter & grandma Lactin, when we know when that will be everyone else will know as well

- 8) I am enclosing the letter I wrote to Karen so you can take your time in reading it & maybe realize I am not all wrong & the good things I also said in the letter.
- [87] There is no dispute the beach referred to is the beach at the waterfront lots of the SLP.
- [88] Both Tony and Jamie identified their relationships with Julie's children and the relationships between their children, Karen, Julie, and their cousins as close. Tony recalled travelling to Vancouver to help Jordan move when he was a student at BCIT. Jamie indicated she and Karen visited Jordan in Vancouver after his accident. Shannon was also there. After depositing some money in Shannon's bank account, Jamie received a phone call from Julie telling her to mind her own business. Kyle also recalled visiting Jordan with Karen after his accident.
- [89] Tony and Jamie's children, Sandra and Kyle, gave similar evidence about family relationships. Sandra also testified to being close to Jordan and really good friends with Carly as a teenager. Sandra recalled sleepovers at Julie's at Lake Cowichan. After a particular sleepover, when she was 15 and her sister Bonnie was 14, during the drive home, Julie proposed they live with her and pay rent, because their parents were not really able to look after them. Julie denied saying this during her testimony. Sandra's recollection, however, is consistent with other evidence Jamie gave about a much more recent discussion with Carly. During a phone call, Carly indicated her young child was not sleeping through the night. When Jamie said that hers were by that age, Carly responded with words to the effect of, "well that is because you put alcohol in their bottles".
- [90] Julie provided a different account of the parties' relationships with Verna, emphasizing there were long-standing tensions and conflicts before Maurice died. She described the family starting to fall apart early on, when Kathleen moved to the SLP, adding, without specifying further, that was when Jamie and Tony focused on what they expected from "mum and dad". Describing herself as the closest to Verna, and also as very close to Maurice, Julie referred to the three of them as very like-minded and unlike "everyone else in the family". She also testified that, when he was dying, Maurice said to her, "you and Mum are a team now. I know I can't count on anyone else in the family." Julie said she felt the relationship between Tony and Maurice was "stressed" from working together for many years. She also said Verna and Kathleen had no relationship from the time she was a teenager. Acknowledging Kathleen was "daddy's girl", Julie testified that Maurice always "enabled" her. Julie testified that over time there was no relationship between Karen and Verna and Maurice. According to Julie, they drifted apart because Karen was "in camp all the time" and "her lifestyle had changed". Julie also disputed Tony's account of his relationship with her, and Jamie's account of her relationship with Verna, stating Verna told Julie she felt

bullied and pushed around at the gravel pit so much by Jamie that she retired early.

- [91] The whole family gathered regularly, however, at the Mansion, before it was lost, Tony and Jamie's home, and in the summertime at the SLP until the death of Maurice in February 2006.

The Estrangement

- [92] Verna's (and Julie's) contact with the plaintiffs stopped sometime after Maurice's death in February 2006 and, until she died, Verna spent a significant amount of time with Julie, Carly, Jordan, and their children.
- [93] Each of the plaintiffs testified to Julie's near constant presence when they did see Verna prior to and during the breakdown of their relationships with her.
- [94] Elsie Garrison, Ray's first wife and a long time good friend of Verna's, gave similar evidence. Elsie indicated she and Verna remained good friends after she separated from Ray. She and her second husband lived in Victoria. They would visit with Verna and Maurice at Moorfield and in Victoria. The friendship between Elsie and Verna continued after Maurice died, although, once Elsie's husband died, their contact was mostly by phone because Elsie does not drive. Elsie recalled arranging to visit Verna at her home before then in 2008. But the visit ended moments after it started because Julie arrived to take Verna to her home for the afternoon. Elsie estimated she spoke to Verna every few months after that. They only visited once more in person, when Julie brought Verna to Victoria for lunch.
- [95] Tony and Jamie gave evidence that after Maurice died their relationship with Verna remained positive initially. They visited her at Moorfield every weekend, helping her with gardening and cleaning the backyard, which was quite full of Maurice's things "until Mother's Day". Jamie said she did not know why, but, at some point after that, Verna refused to talk to them. Tony attributes Verna's rejection to a discussion he had with Verna "just after Mother's Day". Verna told him Julie was selling her house and wanted to buy Moorfield. Tony suggested they meet with Julie and perhaps Karen and advised Verna not to do anything - it was too soon after Maurice's death. Verna later called and asked him to remove Maurice's belongings from the carport. When he arrived at Moorfield, she told him Julie had bought the house and she had to be out by Saturday. Tony let Verna know he was unhappy with her decision.
- [96] Verna sold Moorfield to Julie in July 2007, not 2006, for \$225,000. Lawyer Don Orchard acted for both Julie and Verna on the conveyance. Julie met Gordon after he purchased the property next door to Moorfield. Once they married in late 2009, Julie moved into Gordon's home and rented out Moorfield.

- [97] Verna also spoke to Tony about selling her interest in the gravel pit. She expressed concern that Ray was going to stop paying the monthly "royalties" and he was planning to decommission the gravel pit and zone the property for subdivision. Again, Tony encouraged her to wait. He also told her Shawnigan Gravel could sell at any time. He recalled Verna coming to his home after that and telling him not to interfere in her business. Tony agreed to back away, "to take the pressure off", which he did.
- [98] On May 3, 2007, Mr. Orchard prepared Verna's 2007 Will, which changed the executor from Karen, Tony, and then Julie as alternates, to Julie and Carly as alternates. It divided the remainder of her estate, however, equally among her children. Mr. Orchard also prepared a power of attorney at that time, appointing Julie. This was never executed by Julie and she stated she was unaware of it.
- [99] In that same month Verna purchased a condominium at 3103 Heron's Way ("Heron's Way") for \$290,000. Mr. Orchard acted for her on the conveyance.
- [100] Concerned about Verna's apparent rejection, Jamie went to Heron's Way with a picture of the grandchildren to give to her. Jamie recalled Verna telling her, "I've been advised to speak to no one" at the front door before shutting the door on her. Jamie knocked and called out to Verna, asking her to talk, but she could see that Verna had picked up the telephone. Jamie left the picture on the doorstep but it was later returned by mail. Jamie also tried calling Verna three times in 2007 and 2008 without success.
- [101] Julie testified that before she bought Verna's home, Verna had asked her to move to Duncan and told her she did not want the responsibility of owning the house. Julie was working full-time in Duncan by then. She stated that Verna set the price and told her she had consulted with a realtor friend. Julie sold her home at Lake Cowichan for \$215,000 and was left with a fairly small mortgage on Moorfield. In cross-examination, Julie indicated she was unaware of its market value at the time.
- [102] Some of this is consistent with the contents of a letter from Verna to Ray dated only "Saturday 21 April", which I infer was written in 2007: "I had talked to Julie about selling her home in Lake Cowichan and buying my home in Duncan as I am finding it to much work with the yard etc she had decided to do so". Verna also writes, "[a]nd I am getting full market value for my home as I intend to get a patio home. Where there will be only the house to care for".
- [103] However, in 2008, a property transfer tax notice of assessment identified the fair market value of the property at \$293,000 and imposed additional tax which Julie paid. The notice includes the following "explanation of assessment": "[f]air market value has been increased to that established by the BC Assessment 2008 roll. Property transfer tax is a registration tax based on the fair market value of land and improvements on the date title is registered". During cross-examination, Julie said she did not recall receiving the notice, although she assumed she paid the additional transfer tax and did not deny the accuracy of the assessed market value.

- [104] Throughout the Saturday 21 April Letter, Verna complained that Jamie had been talking to her friends and family members, including the grandchildren, about the "gravel Pit Business", "our finances", including the payment of taxes on the "property", "family home", and "house", referring, I infer, to the SLP. Her comments include, "[w]hy would Carly know about my finances anyway?".
- [105] The evidence includes a letter from Karen to Ray dated August 21, 2007, advising him of an unpleasant phone call she had with Verna.
- [106] On July 4, 2008, Karen wrote Verna an extremely angry letter that referred to a conversation they had on July 1, 2008. Karen complained bitterly about Verna's refusal to have anything to do with the plaintiffs and about Julie herself. Calling herself Julie's "twenty year victim", and describing Julie as Verna's "puppeteer advisor", Karen wrote: "I have been your, Advisors mental and emotional punching bag since Brittany died I had to get away from her in order to have any kind of life. Julie is a manipulator and a BULLY. She said I quote my mothers business is my business". Addressing Verna's rejection of her and her other siblings, Karen stated:
- [w]hat horrific thing has anyone of us done to you? Hanging up on me, shutting the door in Jamie's face, sending back the picture of Tony and his Grandchildren, your Great Grandchildren your missing out on telling Ray that you have disowned Tony Jamie [their] kids and Karen what kind of a Mother are you! All the lies you and Julie have told over the past few years should get you both front row seats in hell....
- [107] Karen also referred to Verna's accusation of drug addiction made during the drive from the ferry, based on what a stranger in the street had apparently told her. There is no reference to the undated letter that Karen disputes was authored by Verna.
- [108] In cross-examination, Karen testified that she was very ashamed and mortified by what she wrote to her mother but she had been absolutely devastated by her allegation she was a drug addict.
- [109] In February 2009, Karen wrote to Verna again, this time to advise her she had been diagnosed with a "blocked artery in [her] brain" that doctors told her could be hereditary. Verna wrote back, responding very warmly: "[t]hank you so much for letting me know about your illness I am so shocked I don't know what to say Please let me know when your surgery date is or not it is entirely in your hands. I pray for you & the rest of my family every night before I go to bed. Thank you again Mum."
- [110] Julie also wrote to Karen about her medical condition:

Mom showed me the letter you dropped off for her. I thank you for that I pray things go well for you. I will go to my Dr.

This is a big load for you to carry I know you don't want anything to do with us or Mom you have said so at many times You are my sister & I do care about you & your future

I don't know where you stand in believing in our God or that you can have a personal relationship with him.

Karen you have nothing to lose in trying, only everything to gain ..

Don't take my word for this please find out for yourself, that God is real & he does love us he just wants you to pray & ask him into your life & to teach you how to forgive

Get down on your knees & pray from the bottom of your heart & guts

The Sale of Shawnigan Gravel and the SLP

- [111] On May 29, 2007, Verna accepted \$240,000 for her (and Maurice's) interest in Shawnigan Gravel. In 2005, however, Ray and Maurice, who was very ill by then with terminal cancer, had received an unconditional offer to purchase Shawnigan Gravel and the property for \$1,800,000. Maurice wanted to accept the offer but Ray refused. Tony described Maurice as very angry with Ray about this.
- [112] A letter to Ray dated March 12, 2007, from Verna's accountant Margo Young, clarified that Verna was offering her shares and shareholder's loan for \$250,000 and repayment of her loan (\$42,791).
- [113] A letter dated March 29, 2007, from Orchard and Co. lawyer Scott Ritter, expressed concern about the below market "value transfers of land and equipment". Verna later acknowledged receiving this advice from her lawyer and accountant in a letter to Ray discussed below.
- [114] Julie testified to seeing both of these letters at the time. She denied being aware of the 2005 offer for \$1.8 million or being concerned that Verna was selling her interest below market value, stating Verna was capable of making her own decisions and she had "her reasons" for accepting the price she did. But Julie also said Verna was really upset with Ray about the \$240,000 but she "let it go".
- [115] In what a letter identified and some of the witnesses testified was 2009, Ray sold Shawnigan Gravel for \$2.5 million to a business referred to as Tower Fence. Tony testified that he knew Tower Fence had purchased another property for a concrete plant and was in the market. Ray wanted \$2 million for the gravel pit business and the property. He laughed when Tony said he would ask for \$2.5 million. However, the owner of Tower Fence agreed to the price "no questions asked". Ray eventually paid Tony (and Jamie) \$100,000 for brokering the deal, after what Tony described as a major fight to get something.
- [116] Until the sale to Tower Fence, Jamie and Tony continued to work for Ray at Shawnigan Gravel. It was Jamie who printed the cheque for \$240,000 to Verna. She recalled Verna coming to the office and having a pleasant conversation with her that included a discussion about Jordan's recovery.

[117] Tony said he called Verna two weeks after the sale of Shawnigan Gravel, which he said was in 2009 but Ms. Neal's notes, discussed below, suggest it was prior to July 2008. He asked her how she felt about it. She told him she was not happy with Ray but her brother-in-law had his lawyer "on it". Tony tried unsuccessfully to speak to her about it again and to offer her a ride to Elsie's husband's funeral, but she did not return his calls and Tony never spoke to her again.

[118] In a letter to Ray dated July 29, 2010, that Julie testified to finding in a box of Verna's papers, Verna wrote:

I thought the world of you. I thought you were a righteous man with moral and integrity.

You have used my children to your own benefit.

You told me you were going to deactivate and subdivide when you new all along that the deal was in motion.

I have a friend in Langford who works for Tower.

My lawyer and accountant told me that I was getting underpaid for the gravel pit

I didn't know you as unscrupulous I trusted you and had no idea how badly you had taken advantage of your brothers wife and her children

You have robbed Maurices and my children out of their inheritance I have lost my son and daughter and grandchildren as they believed in you They put up the ladder up against you that turned up to be a false wall.

I hope they sue you

[119] An earlier letter from Verna to Ray dated "June 2009-07-17" discusses both the sale of the "gravel pit" and the SLP:

Ray

I am writing this to you because it seems our communication with each other is not that good. Since Maurice passed away 3 ½ yrs ago we can't seem to resolve the Beach & house property. I have offered to buy you out & I have offered to sell it to you, your answer to me has been I will think about it. I feel taken advantage of you sending Tony over here 3 weeks after Maurice passed away for me to rescind on your & Maurices Legal agreement for me to buy you out of your share for \$134,400,000. I would never ever put any of your children in situations like you have with mine over & over again its not morally right !! & has caused nothing but damage with myself & my kids relationships with each other.

When we made an agreement on you buying me out of the Gravel Pit I was advised buy my Lawyer I was been under paid by you I didn't care because I trusted you & you told me you wanted to subdivide the property & sell it that way & that scared the heck out of me. I just wanted out then I hear you turned around & sold it for 2 million dollars & good for you you have worked hard your whole life & deserve every bit of it!

What I want from you now is to honour your dying brother's wishes. I realize now all the stalling you did with the beach property is to wait until the expiry date on the contract. Witch was one ["which" in handwriting in the margin] month after Jordon broke his neck & we had all that stress to deal with good Job ! if I had to do it all over again things would be different .. I sucked up a loss with the pit now you can suck up the beach & house property..

I want to do what my husband wanted us to do & we gave him our word for me to buy you out of your share.

Verna

[120] Tony denied being aware of any agreement between Ray and Maurice related to the SLP before he died, or taking it to Verna three weeks later. Tony also indicated Verna never told him she was upset with Jamie for talking to people about her business but he acknowledged Ray had told him Verna wanted nothing to do with Tony.

[121] Jamie was not asked about Verna's letter to Ray but she was confronted with the suggestion she had been discussing Verna's finances, which she denied. Jamie also indicated that she knew nothing about Verna's finances, agreeing with the suggestion Verna did not discuss her finances with other people. Jamie testified that she and Tony were of the view that Verna had been "ripped off" by Ray over the gravel pit. She said Ray had also talked about his intention to sell his interest in the SLP to Verna. Jamie denied that she and Tony were upset about this, specifying Maurice had wanted Verna to buy out Ray and keep the property in the family and Ray had never had any use for it.

[122] Kathleen gave similar evidence that she was not aware of an agreement between Ray and Maurice regarding the SLP but Maurice told her the SLP was supposed to stay in the family. Neither Jamie nor Kathleen were challenged on this point. Kathleen also testified that Maurice said she could live there as long as she wanted.

[123] Regarding the SLP, Verna and Ray negotiated for some time about whether to sell it or buy one or the other out.

[124] In the Saturday 21 April (2007) Letter to Ray, Verna discusses the SLP and what I infer are the payment of property taxes on the SLP or Lot 1:

Jamie was telling everyone that you had paid all the taxes on the home and that Maurice paid nothing yet I have receipts

Where did Jamie and Tony get the information that Julie wanted to buy the Shawnigan property? I'll never know was that a pipe dream or what? She has never ever wanted that property .She is very hurt about their attitude toward her and she doesn't' deserve it .

I would like Jamie and Karen to but out of affairs that don't concern them

I am intending to pay the taxes for this year as I did last year and will give you a copy.

I really appreciate all you have done for me

Verna

- [125] There are two letters from Ray to Verna's lawyer, Mr. Orchard, dated October 20, 2007, regarding the SLP. In one, he wrote he was not prepared to discuss the purchase or sale of the SLP until it was brought up to a saleable condition. In the other, he wrote that if Verna and her family continued to use the SLP, an agreement would be required to recognize her responsibility to look after it and incur all expenses.
- [126] The house on Lot 1 was in very poor condition. Kathleen was still living there during this time. Verna and Julie would stop by and urge her to move out, telling her the SLP was going to be sold. Kathleen estimated this happening 20 times before Verna and Ray served her with an eviction notice in 2008, which she successfully challenged through the residential tenancy branch. She also "won" an "appeal". However, in or about August 2008, while Kathleen was away, the house was demolished. Julie blamed Ray and Tony for the demolition. She testified that Verna was furious over it. Tony acknowledged he was present but stated it was Ray's decision and he had understood Verna and Ray had concluded that Kathleen had to move out. I do not recall any evidence that either he or Julie were aware of the residential tenancy branch proceeding or the outcome.
- [127] In any event, a few months later, in a letter dated September 7, 2008, Verna offered to sell Ray the SLP for \$200,000, writing, "After years of the burden weighing on my shoulders and the expense it has cost me in the Past three years I don't want the stress continuing with the two properties."
- [128] However, in a letter dated August 4, 2009, Ray offered to sell his interest in the SLP for \$195,000 or to buy her interest for \$200,000. A short time later, Verna purchased his interest for \$195,000 using proceeds from a line of credit on Heron's Way with a limit of \$172,250 that she obtained from Canada Trust on September 1, 2009. The documents regarding the transfer of Ray's interest in the SLP to Verna are not in evidence.
- [129] On February 23, 2010, Gordon prepared Form A transfer documents. He listed the market values of Lots X, Y, and 1 at \$71,750, \$71,750, and \$242,000 respectively, based on the BC Property Assessments. Mr. Berns, Julie's trial lawyer, certified the Form A transfers at his office in Victoria, without providing any legal advice. Verna signed the Form A transfers as transferor on her own behalf and as executor of Maurice's estate. That same day, Gordon also prepared Form 17 transmission documents transmitting each of the three lots to Verna

as executor of Maurice's estate. Two days later, the documents were filed with the Land Title Office and the transfers were registered.

- [130] Both Gordon and Julie gave unchallenged evidence that Verna agreed to let Gordon do the "paper work for her" after telling them she had met and spoken with Mr. Orchard about the SLP transfers, but he was going to charge her too much.
- [131] A Canada Trust statement dated January 29 to February 26, 2010, for an account that had been Verna's, shows Julie as a joint account holder. Earlier statements, starting September 1 to September 30, 2009, show monthly deposits of \$500 which continue after the account is made joint. Also in evidence is a pre-authorized transfer service agreement signed by Julie that provided for the monthly transfer of \$500 from a TD account in her name to the joint account, effective February 28, 2010.

Verna's Investments

- [132] Much earlier, Gordon met Ms. Neal while completing investment and insurance courses at Pinnacle Wealth. Ms. Neal became and has remained Julie's investment advisor.
- [133] On May 9, 2008, Julie introduced Verna to Ms. Neal. At the time, all of her investments were in GICs and she was interested in earning a better rate of return. Ms. Neal made various recommendations about reinvesting, which Verna accepted. Ms. Neal's notes specify that on July 4, 2008, she and Verna discussed beneficiaries and Verna said that she wanted Julie to be the sole beneficiary of her investments. Ms. Neal asked Verna about the family dynamics and why Julie "was to be named sole beneficiary". Her notes include "[s]he [Verna] was concerned about what would happen to her other daughters if they suddenly came into a large sum of money. She felt that Julie would care for them should they need it. She felt that her son had already benefited from the sale of the gravel pit, so he already had his portion of any inheritance."
- [134] Ms. Neal testified that Verna did not mean that she expected Julie would set aside funds for Kathleen and Karen. Instead, Verna was expressing a belief that Julie would help them if she found them "broken down" on the side of the road but they would not help her. Ms. Neal added Verna's concern that the funds would be detrimental to Karen and Kathleen was based on their lifestyles.
- [135] Ms. Neal also gave evidence it is her practice to review beneficiary designations every time a client purchases a new instrument and she tries to meet with them annually to discuss any changes. She maintained Verna's intention never changed. Her notes from a meeting with Julie and Verna on December 5, 2011, include: "[a] review of beneficiary(ies) was done again and Verna reiterated that she wants Julie to be the sole beneficiary."

[136] On April 28, 2016, through Ms. Neal, Verna opened an RRIF and a TFSA with Olympia Trust, designating Julie as the beneficiary. Ms. Neal's notes for a meeting the following day, that Julie also attended, indicate other investments and \$128,000, were discussed. The notes also state that:

[Verna] specifically wanted to insure that everything was set up so as little as possible went into the estate, as she was concerned that the funds would be fought over and end up in the wrong hands. Verna again asked if everything was set up so it would go seamlessly to Julie. That the other children were not to receive any of the estate. I believe that we have done this. Everything is either in a segregated fund with a named beneficiary or Joint with Rights of Survivorship."

[137] However, Ms. Neal's notes for July 12, 2016 indicate Verna expressed a different intention regarding the Olympia Trust instruments that day: "[t]hese funds are to go into the estate to be divided up between the rest of the children upon Verna's passing." Ms. Neal testified that this was her idea not Verna's, because Ms. Neal was concerned the estate would require "fees". Verna acquiesced according to Ms. Neal, although she conceded this is not what her notes say. A formal change in beneficiary however, was never made. Ms. Neal asserted that Verna said Julie would take care of the costs because she would be taking "the estate".

[138] Ms. Neal described Verna as very bright and knowledgeable about the markets. Not once was she concerned about Verna's ability to make decisions or a lack of independence.

[139] Like several other witnesses, Ms. Neal also described Verna as very private. Aside from telling Ms. Neal that her relationship with the plaintiffs was not good, she was very quiet about them.

[140] A statement from Verna's RRIF savings account with Coast Capital Savings for July 1, 2015 to December 31, 2015 identifies Julie as the beneficiary. Similarly, a BMO RRIF account statement for January 1 to March 31, 2017 identifies Julie as the beneficiary.

[141] Statements for Verna's chequing and savings accounts with Coast Capital Savings list Julie as a joint holder starting with the statement for March 11, 2016 to April 10, 2016.

Verna's Declining Health

[142] In April 2016, Verna sold Heron's Way for \$300,000. Mr. Armstrong acted for her on the conveyance.

[143] On April 6, 2016, Verna executed a power of attorney. The power of attorney was prepared by Mr. Armstrong and appointed Julie, and Carly as the alternate. Both Julie and Carly signed the power of attorney. During his testimony, he indicated Julie instructed him to prepare it because Verna was in the middle of the Heron's Way conveyance and there was a concern she may be too ill to sign the closing documents.

[144] On April 13, 2016, Verna was admitted to the Stroke Rapid Assessment Unit at Victoria General Hospital. An MRI showed bilateral strokes. A letter from Dr. Andre Durocher to Verna's family doctor, dated that same day, included in the hospital records reads:

Julie came to get [Verna] to take her to hospital. she was dragging L foot on way to car to go to ED. Got walker after and was doing well. Had a fall in the shower since. Julie has noted confusion recently and slurred speech intermittently

According to her daughter memory has been affected also; maybe for a year can forget things from one day to the other, and in general has become "a bit slow". In the last months has episodes where she seems "confused": starts a sentence midway & doesn't realize it, says someone has called when that person hasn't, for example. Patient acknowledges having "some memory problems" .

[145] The mental status examination findings that date read in part:

Some psycho-motor retardation. Mild dysarthria?

Or: knows hospital name, not the floor.

Knows year, month, day of week but not date.

2 out of 3 words recalled after 5 minutes.

Serial 3's (not 7s: education level): only 2/5.

[146] A consultation note dated April 20, 2016 describes Verna's functioning as improved:

Currently, Ms. Simard is independent with transfers and is mobilizing about the hospital She is a good historian. She is aware of her condition and reason for admission and why she is still in hospital.

[147] During her evidence, Julie maintained that Verna suffered from bilateral strokes that affected her legs only. She also testified that, before the strokes, Verna was in "better shape than me", walking endlessly with friends, going out for meals, visiting garage sales and attending church once a week as well as bible study. In cross-examination, Julie said she called Mr. Armstrong and asked him to prepare the power of attorney because of the strokes, although the evidence suggests they happened a little later.

[148] Verna was discharged on April 22, 2016. By that time, she had moved to Wedgewood Seniors' Home.

[149] When the sale of Heron's Way completed at the end of April 2016, Verna received net sale proceeds of \$128,000. A short time later, on May 2, 2016, Verna wrote a cheque in the same amount payable to Equitable Life which went to her Pinnacle Wealth Account.

[150] Julie gave evidence about reducing the monthly payments to \$400 after Verna sold Heron's Way and paid off the Canada Trust line of credit. Julie indicated she would give Verna cash and sometimes she paid her less than \$400 because she would deduct any expenses she

incurred for Verna. The evidence includes copies of 20 receipts she prepared, none of which are signed by Verna. Less than half refer to "Shawnigan Lake", "Shawnigan Lake (mom)" or "Shawnigan". Some of them appear to simply record expenses paid. A receipt dated "June 1st" lists "\$250 property + \$150 house insurance". Julie suggested they were simply a reflection of very sloppy bookkeeping.

- [151] On May 3, 2016, Verna was hospitalized again, this time at Duncan Hospital, after suffering a heart attack. That same day, Julie contacted Mr. Armstrong and instructed him to prepare the 2016 Will for Verna. His notes of their phone call are very cursory and include nothing more than the date, "Julie", a phone number, "\$30,000 Coast Capital", "alt Carly granddaughter", the names of the plaintiffs, "cremation" and the full names and addresses of Verna, Julie and Carly.
- [152] There is no dispute that the reference to "\$30,000 Coast Capital" was to Verna's Coast Capital accounts held jointly by then with Julie.
- [153] Mr. Armstrong and his assistant met with Verna in her hospital room the next day to review and execute the 2016 Will. Although his recollection was very poor generally, he did remember Verna being in a new wing of the hospital and appearing better than he expected. She was the only patient in the room and was "nicely fixed up", wearing a house coat similar to his mother's. Mr. Armstrong also gave evidence that he and Verna did not discuss her estate generally. He simply confirmed the asset Julie had been told about, \$30,000 in the Coast Capital account. He did not recall discussing any other assets Verna had or assets passing outside the estate. Mr. Armstrong also indicated he was not aware of the 2007 Will or the 2007 Power of Attorney, stating it is not his practice to ask if there is a previous will.
- [154] On May 11, 2016, in a "Know Your Client" form ("KYC form") completed with Ms. Neal, Verna specified she had \$500,000 in "Fixed & Other Assets" next to "Other Real Estate Properties/Investments". Julie agreed that the amount was the approximate value of the SLP around that time. Verna had no other real property and all of her investments apart from two small RRIFs were being managed by Ms. Neal.
- [155] On the KYC form, Ms. Neal wrote: "[s]he (Verna) has a very complicated family situation and her lawyer advised her that she position all of her assets so they by pass probate, and avoid contestation of the will", which is entirely inconsistent with Mr. Armstrong's evidence. In cross-examination, Ms. Neal was challenged about whether it was actually Verna who told her this. Ms. Neal was not aware that Mr. Armstrong had acted for Verna. She understood he was Julie's lawyer, which is true. There is no evidence that, prior to meeting with Mr. Orchard regarding the transfer of the SLP in February 2010 and Mr. Armstrong's preparation of the power of attorney in April 2016, Verna sought or received legal advice.

- [156] Ms. Neal, when asked if she knew Verna made a new will one week before she completed the KYC form that divided the residue of the estate equally amongst her children, responded, "absolutely not". She then suggested what surprised her was the timing of the will. She equivocated about whether she was also surprised by the equal division. Ms. Neal acknowledged, however, that she did not discuss general estate planning issues with Verna and specified she only dealt with "her financials".
- [157] As indicated, Ms. Neal's notes indicate she most often met with Verna and Julie together. Ms. Neal agreed they contained several errors, mostly related to dates, including the date of Verna's death. It is also apparent that Ms. Neal did not document all of the meetings. Her notes dated February 16, 2018 (which she acknowledged should have been dated February 27, 2018, the day before Verna's death), document "such a huge difference" in Verna since she last saw her a few months prior, yet the notes for the meeting prior are dated July 12, 2016.
- [158] In or about 2016, Karen began volunteering at the legion, cooking meals for seniors. Kathleen also volunteered sometimes. Both gave evidence about seeing Verna there. Karen said the first time Verna looked really surprised. Karen greeted her and then later sat down to chat, but Verna seemed very hesitant and uncomfortable. She kept attending, however, and Karen said she continued to see her at the legion every two weeks for a couple of years before she died.
- [159] Kathleen recalled seeing Verna at the Legion three times, there with a man named Darcy. Julie was not present. Kathleen said she and Verna exchanged pleasantries. She described putting her hand on her mother's shoulder and saying it was really good to see her.
- [160] Kathleen also testified to trying to visit with Verna once at Heron's Way, and then three times at Duncan Manor, the seniors' residence where Verna lived from June 2016 onward. Kathleen said she ran into Carly, Julie and Shannon, Jordan's wife, the first time she went to Duncan Manor, and they told her she could not see Verna because she was not feeling well. Kathleen tried to visit twice after that but Verna was not there. She also left her a happy birthday phone message that was not returned.
- [161] On October 11, 2017, Verna was admitted to Cowichan District Hospital suffering from confusion and hyperglycemia related to diabetes and placed in intensive care. A consultation report dated that same day records "some amount" of decline in Verna's "mental functioning" over the "last month". Verna remained in hospital until November 13, 2017. The discharge summary states that she was "cognitively reassessed by OT and Physio", and was found to be significantly cognitively impaired, however it was felt she could be sent to Duncan Manor and "waitlisted" from there, which I infer is a reference to a higher level of care.

- [162] Julie testified that Verna was hospitalized for a diabetic "seizure" and a "diabetic coma". Initially, Julie said she did not remember a difference in Verna's memory afterward. She described Verna "firing back pretty good". Referred to a hospital record, however, she then recalled Verna "going down into a fog" that probably remained the same when she was discharged.
- [163] Carly testified that once Verna was moved to the regular ward she was "my grandma", also indicating Verna was herself again once her "levels" settled, after about a week. Jordan recalled Verna having no cognitive difficulties ever, even though he saw her once or twice a week until she died.
- [164] On October 31, 2017, Julie drove Verna from the hospital to the local CIBC where Julie was added as a secondary account holder on Verna's chequing account. In cross-examination, she agreed that Verna had not passed the "cognitive test" but she disagreed that she was significantly cognitively impaired and emphasized Verna had been receiving passes to leave the hospital by then.
- [165] Julie also testified that, after Verna was discharged, she remained "semi independent" until she came to stay with Julie shortly before she died. Verna knew how to take her medication bubble packs but she was forgetful and mentally foggy. She knew night from day but might be confused about the day of the week and she slept a lot more. Julie also felt the need to check on her more often although Verna was still able to make meals.
- [166] In re-direct, Julie testified to being present when the hospital occupational therapist and physiotherapist did a cognitive assessment, and being scared to take Verna out of the hospital, but "we were all shocked" by how well she did after that.
- [167] Also in October 2017, Julie arranged for Mr. Armstrong to prepare a representation agreement for Verna, which he billed for but is not contained in his file.
- [168] Julie and Gordon moved to Lot 1 of the SLP in or about the fall of 2017, where they lived in a mobile or modular home.
- [169] On February 21, 2018, Verna was diagnosed with terminal pancreatic cancer. According to Julie, they were told Verna was expected to live for another three weeks or more. Julie took Verna to her home. She died only a week later on February 28, 2018. Julie described Verna as "carrying on" until the end, the two of them shopping and Verna visiting and remaining "with it". Julie also testified that Verna agreed that family and friends could be told about her diagnosis. Julie said she got "the message out" to the plaintiffs and she also informed Verna's sister as well as Ms. Neal.
- [170] Asked about Ms. Neal's assistant's notes for February 23, 2018, which include, "Julie is adamant that nothing for Verna goes to probate", Julie said she was acting on Verna's instructions. On February 26, 2018, two days before Verna died, Ms. Neal's assistant also wrote: "[j]ust wanted to relay a request from Julie when she dropped by on Friday night As you probably know from Gord, they are adamant that nothing end up in probate and she

would like the banking information for all investments and insurance changed to the joint account at Coast Capital that we already set up with Manulife." Gordon did not recall contacting Ms. Neal about this or discussing it with Julie.

[171] That same day, Jordan brought Karen to see Verna. Karen described Verna lying in her chair and having a hard time talking and gathering her thoughts. Jordan described Karen as rude during the visit. Karen expressed frustration that Julie never gave the two of them any privacy.

[172] Ms. Neal visited Verna on February 27, 2018. Her notes describe Verna as in a semi-conscious state. In cross-examination, she acknowledged Verna was nearly comatose.

[173] When Verna died the next day, the balance in the Pinnacle Wealth Account was \$302,000.

Arrangements Following Verna's Death

[174] On that same day, February 28, 2018, Julie made two transfers of \$3,000 from Verna's CIBC chequing account, one of which she appeared to transfer back. She also transferred \$17,000 out of the joint Coast Capital savings account. On March 6, 7 and 15, 2018 Julie made three withdrawals of \$3,000 from Verna's CIBC chequing account and then withdrew the balance of \$22,863.40, again apparently transferring back \$3,000. She deposited the funds into her own savings account.

[175] Also in March 2018, Julie made a donation of \$40,000 to the Baptist Church she attends with funds she received from the Pinnacle Wealth Account.

[176] Julie did not arrange a Catholic funeral for Verna. Instead, she organized a potluck lunch at her Baptist Church, which took place on March 11, 2018. None of the plaintiffs were notified. An obituary published in the local newspaper on March 7, 2018 included an invitation to the potluck.

[177] Tony indicated he was alerted to it when the Catholic Church that Verna had attended called upset that a service for her was not being held there.

[178] Karen and Kathleen arrived at the potluck just as it was ending, as did Lois Rabey and her husband.

[179] Verna was later buried at the Catholic Church. The plaintiffs were not notified of the burial.

[180] On March 15, 2018, Julie prepared cheques of \$2,000 each for Karen, Tony and Kathleen from the joint Coast Capital chequing account. On the memo line of each cheque she wrote "Love mom".

[181] She wrote a note to Tony that reads:

Tony

Mom never stopped loving you or your children she loved you dearly

I don't know where you heard these rumours about not letting you in her building or that she considered you dead to her

These are things she never said nor did I

God Bless Julie

[182] Julie also sent cheques to each of Tony and Jamie's children in the amount of \$400.

[183] Both Julie and Mr. Armstrong gave evidence that she consulted with him briefly about Verna's estate after her death. Mr. Armstrong had some recollection of Julie telling him there were joint assets. He told her if the accounts were joint there was nothing to administer and sent her away.

[184] It was not until April 2018 that the plaintiffs learned Verna had transferred the SLP to Julie in 2010.

[185] Once aware of pending litigation, Julie wrote to them:

I have nothing to hide our mother had nothing to hide

I have no problem handing over the will so it won't cost all of you extra lawyer fees taking it to court for a dead end street \$\$\$\$\$\$

Legally I am not even required to do that

Our beautiful Mother Loved us all I am sorry you missed out on the blessings of knowing and enjoying her

[Emphasis added.]

[186] Both Julie and Carly gave vague evidence about Verna's belongings at the time of her death. Each indicated that Verna had gotten rid of many of them as she downsized. According to Carly, Julie received Verna's china before she died. Carly received some paintings. Asked about Verna's jewelry, Julie said Verna did "whatever she did" with it. Asked about Verna's wedding ring specifically, Julie testified she did not know whether Verna gave it to one of the grandchildren. Carly stated, however, that she received Verna's wedding ring after she died but she did not know what happened to the rest of Verna's jewelry. Carly also received Verna's computer but said she could not recall whether that happened before or after Verna's death.

[187] In October 2018, the plaintiffs were given access to a storage locker of Verna's. Karen recalled Verna having lots of antiques, including two full sets of Royal Dalton china. Kathleen recalled artwork. She also had some jewelry. None of those things were there, apart from a desk of Maurice's. Tony and Jamie described most of the contents as junk.

- [188] On September 16, 2019 Julie consented to an order removing her as executor and appointing Clary in her place. However, she opposed a subsequent application for an order restraining her from disposing of various assets that Verna had an interest in when she died. These assets include bank accounts, the Pinnacle Wealth Account, her safety deposit box as well as the SLP. Justice Power granted the order on November 25, 2019.
- [189] During cross-examination, it became clear Carly knows very little about the role and responsibilities of being an executor when she agreed to the appointment. After the order was made, Carly retained a lawyer but she did not discuss the 2016 Will with that lawyer. Carly was very hesitant when testified that she had read it. She could not recall its contents and could not explain what the "residue" of an estate means. Carly also seemed unaware about whether Verna's estate had a bank account, which Julie had previously opened to deposit various cheques payable to the estate. Asked what she did discuss with her lawyer, Carly said, "filing for probate", which she described as gathering the assets, paying the debts, applying for probate and distributing what is left. Despite the subject matter of this litigation, Carly emphasized there is nothing to distribute to the beneficiaries. Carly also testified that Julie gave her the contents of Verna's safety deposit box, which she proceeded to divide four ways about two weeks before the trial and delivered to the plaintiffs' counsel's office. Carly denied any knowledge of the restraining order, specifying that Julie did not tell her about it.
- [190] Julie and Gordon separated in June 2020. Several years earlier, Gordon developed some serious health issues, including many blocked arteries that required open-heart surgery. In September 2019, a brain stem stroke affected Gordon's memory, his speech and his balance.

Other Evidence regarding Verna's Intentions

- [191] Aside from Ms. Neal's evidence, most of the testimony, as opposed to documentary evidence, relating to Verna's intentions at the time of the transfers focused on the transfer of the SLP.
- [192] At the outset of these reasons, I highlighted Julie's changing assertions about the nature of the transfer and the terms of any consideration. Again, in her response to civil claim she pleaded that she and Gordon purchased the property from Verna and made payments of \$500 per month until she died in addition to paying the property taxes. Julie testified at her discovery that she and Gordon paid \$200,000 for the SLP, taking over Verna's secured line of credit, although they actually only made monthly interest payments, followed by \$400 each month once Verna sold Heron's Way. She also testified she and Verna signed a "written thing that's been witnessed" for the \$200,000 but she could not find the document. At the same time, she denied owing the estate \$200,000, despite never contributing to the principal on the line of credit. At the trial, Julie asserted Verna gifted her the SLP.
- [193] Sarah Dawson, Julie and Gordon gave conflicting evidence about the circumstances related to a written document or agreement and its content.

- [194] Sarah testified to being at the "beach", meaning the beach at the SLP, one day during the summer of 2009 or 2010. Julie and Verna were also present. According to Sarah, Verna asked her to witness something. Sarah was told it related to Julie paying out the rest of the loan for the "property" as well as any upkeep and taxes. Sarah said the document also provided for monthly payments of \$500, but she was not sure if that included taxes and did not know if it referred to the transfer of the SLP. Sarah did not recall if the document was handwritten or typed. She testified to Verna saying more than once something like, "can you imagine anybody else taking care of the property and paying the loan." In cross-examination, Sarah maintained the document provided that Julie would take over the loan for the property, its upkeep and the taxes, but she was uncertain about whether the document also referred to rent. Sarah said she signed the document but did not recall if Verna or Julie signed it.
- [195] Julie gave no evidence about the circumstances related to a written document or agreement in her direct examination. She did say she searched everywhere for days but could not find it. Asked what the agreement said, she appeared to recite, "I Julie Hall commit to taking over at TD Canada Trust, to paying taxes, upkeep required with the transfer of the property."
- [196] Julie was asked in cross-examination about Sarah witnessing a document related to the transfers. Julie testified that she prepared a letter committing to take over the interest payments, the taxes and the maintenance of the SLP, which Sarah witnessed at Julie's home because Sarah and her children just happened to be walking past at the time.
- [197] When asked if he was aware of a written agreement related to the SLP transfer, at first Gordon said he never saw one. He then said he saw one that Julie drafted with a friend of the family but not one that Verna had signed. Regarding the draft Gordon said the property was to transfer to Julie and Verna wanted to make sure it stayed in the family. According to Gordon, he and Julie discussed taking over the loan payments on Verna's line of credit right after the transfer. This was something they thought up themselves because Verna was giving them the property and they planned to live there.
- [198] Julie also testified that when Verna bought Ray's interest in the SLP, Verna intended to give the SLP to Julie because Verna did not want the responsibility of maintaining it and she wanted Julie to have it for her children and grandchildren. Julie said the two of them agreed she would pay the interest on the line of credit which was around \$500 per month. In cross-examination, Julie was adamant the SLP was a gift from Verna and she did not owe Verna \$200,000. Taken to her discovery evidence on this issue, Julie said she did not understand then and that was "her truth" at the time. Julie emphasized that she committed to making monthly payments out of a sense of moral obligation and as a gift from her to Verna. Verna did not require them. Julie also reiterated that Verna did not want the burden of the property.

- [199] Gordon gave only vague evidence, however, about discussions regarding the transfer of the SLP. He stated Verna wanted the properties transferred to "us" for use by "our" immediate family, although he and Julie had only been married for three months when the transfer occurred. He also said Verna did not want the SLP going to the other children, but he could not recall her specific words. Gordon indicated much of this was conveyed through stories and he could not recall Verna discussing the plaintiffs with him directly. Asked if Verna put any conditions on the SLP transfer, Gordon said "basically none" and "none at all". He also testified it was almost like Verna was going to step back and she wanted the SLP to come to "Julie's hands" and "our hands" so it could be left for the grandchildren.
- [200] Regarding the transfer documents, Gordon said he had initially written gift on each Form A but the "lady" at the Land Title Office told them it was better to put \$1, which he did.
- [201] Several times, Gordon, Julie, and Julie's very good old friend Linda Allen referred to Verna saying she had washed her hands of the plaintiffs. Julie gestured rather dramatically as if to wash her hands when she gave this evidence.
- [202] Linda also testified that she always talked to Verna at the SLP. She would ask her how she was and if there was any movement from the plaintiffs. According to Linda, Verna regularly said she was done with them and Julie was her family now. Asked whether she and Verna had discussed the transfer of the SLP, Linda said she mentioned to Verna how beneficial "it" was. Verna told her the property never held good memories for her and she wanted Julie and her children to create good memories.
- [203] Linda, Gordon, Carly and Jordan also described Verna and Julie's relationship as close and very loving. Gordon and Jordan emphasized how much Verna trusted Julie. Ms. Neal gave similar evidence about the relationship between Verna and Julie.
- [204] In cross-examination, Linda acknowledged purchasing Moorfield from Julie and Gordon privately in June 2019. She agreed she was testifying because she was sympathetic to Julie, although she also said she wanted Verna's wishes honoured.
- [205] There were other conflicts between Sarah and Julie's evidence and the evidence of the plaintiffs, who said they had never met Sarah, and Tony and Jamie's evidence about their use of the SLP in the past.
- [206] Sarah testified that growing up she and her family gathered at the SLP with Julie and her family in the summer months at least every second weekend, but the plaintiffs were never there. She could not recall ever meeting Kathleen. She described only one interaction with Karen at her rental property in Youbou, which she said involved Karen teaching her toddler to roll cigarettes while Sarah was out on the lake tubing. After Sarah married and had her own children, she said she used the SLP even more until moving to Calgary in 2011, because it was a clean and safe place to go. Sarah also testified she had been told not to go to the SLP when Kathleen was there, because she would be stoned and drunk and things were being stolen and broken. Sarah recalled Kathleen "almost squatting" in a shack for a

short time only.

- [207] I am not able to accept Sarah's evidence about her frequent visits to the SLP.
- [208] There is no dispute that Kathleen lived in the home on Lot 1 from some time in the 1990s until in or about August 2008. There is also no dispute Julie did not visit the SLP much before she moved to "town" from Lake Cowichan in July 2007. In addition, Julie also gave uncontested evidence that she and her family did not use the SLP between 2007 and 2010, apart from once for Carly's birthday.
- [209] Jordan and Carly also gave some evidence about Verna's intentions. Without identifying when or in what circumstances, Jordan said Verna really wanted to give the SLP to his mum so he and his sister could enjoy it with their families. Jordan further stated that Verna not only trusted his mum, but also did not trust "them", meaning the plaintiffs. Carly testified she was not sure when she learned that Verna had transferred the SLP to her mum but, before the transfer, Verna told her she wanted to buy out Ray and "gift" the property to Julie. Afterward, they talked about it at the beach. According to Carly, Verna said she was happy and thankful she had "gifted" the property to Julie and she was able to see them enjoying it. Denying that Julie had told her about deciding to pay interest on Verna's line of credit, Carly stated that Verna told her about this arrangement.
- [210] Julie also gave brief evidence related to Verna's intentions regarding the "transfer" of some of her other assets.
- [211] When Julie was asked about being added to Verna's Coast Capital accounts as a joint account holder in March 2016, she testified Verna had just had a stroke, was concerned about her health, was no longer driving, and she wanted Julie to oversee her accounts. Prompted about anything else Verna may have said, Julie added Verna wanted her to have the accounts if anything happened to her. Julie gave similar evidence about Verna's BMO RRIF, stating Verna wanted her to be the beneficiary. Regarding Verna's CIBC account, which shows Julie as a secondary account holder as of October 31, 2007, Julie testified that, although Verna was hospitalized, she was getting day passes. According to Julie, Verna asked her to pick her up and take her to the bank. Julie also said the bank had made an appointment with Verna. Verna told Julie she wanted to make sure Julie was on the CIBC account. When the teller told her Julie was not, she added Julie as a secondary account holder.
- [212] Cross-examined about whether Verna knew the difference between joint tenancy and tenancy in common, Julie testified that she did not know but she did know that Verna wanted nothing to go to probate.
- [213] Carly, when asked about Verna's bank accounts, said she was aware Verna had accounts at Coast Capital and CIBC. Verna told Carly she had added her mum "as joint". When asked whether Verna had discussed leaving anything to the plaintiffs, Carly said Verna was worried Karen and Kathleen would harm themselves or "overdose on her dime" and Tony

had already received his portion from the gravel pit. Carly provided no evidence about the circumstances in which these discussions occurred and she also testified that Verna did not talk about money with her.

- [214] Although it remained vague, Gordon's evidence on this issue went further than Julie and Carly's. He alleged Verna wanted whatever she had to go to Julie and was adamant that nothing went to her three other children. Gordon also testified, however, that he and Verna did not discuss why she added Julie to her Coast Capital accounts. He had accepted it was because Julie was her "medical advisor" and had power of attorney. He also acknowledged he was not really aware of Verna's dealings with Ms. Neal.

Credibility

- [215] The credibility of the defence witnesses is a significant issue in this case. As stated early on in these reasons, the plaintiffs take the position that most of the defence witnesses, and Julie especially, are not credible. In response, Julie made very few if any submissions.

- [216] The proper approach to assessing the credibility of any interested witness's testimony was articulated many years ago in *Faryna v. Chorny*, [1952] 2 D.L.R. 354 at 357 (B.C.C.A.):

The credibility of interested witnesses, particularly in cases of conflict of evidence, cannot be gauged solely by the test of whether the personal demeanour of the particular witness carried conviction of the truth. The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

- [217] The factors identified in *Bradshaw v. Stenner*, 2010 BCSC 1398 at para. 186, *aff'd* 2012 BCCA 296 also inform the assessment of whether the evidence of a witness is not only truthful, but accurate or reliable. They include the capacity and opportunity of the witness to observe the events at issue; the witness's ability to remember those events; the ability of the witness to resist being influenced by their interest; inconsistency in the witness's evidence, meaning did their testimony change between direct and cross-examination, or is it inconsistent with prior statements or discovery evidence; whether the witness's evidence harmonizes with or is contradicted by other evidence, particularly independent or undisputed evidence; whether their evidence seems unreasonable, improbable or unlikely, bearing in mind the probabilities affecting the case; and the witness's demeanour, meaning the way they presented while testifying.

- [218] Regarding the last factor, Faryna and other authorities have discussed the dangers of relying too heavily on demeanour to determine credibility, recognizing the risk that a better actor's testimony will be preferred or, conversely, an honest witness who presents poorly will be misinterpreted as deceptive (see e.g. *R. v. Jeng*, 2004 BCCA 464 at para. 54; *R. v. Tyers*, 2015 BCCA 507 at para. 18).

Julie's Evidence

- [219] It is likely apparent from my overview and discussion of the defence evidence regarding Verna's intentions that I have significant concerns about Julie's credibility. Most significant perhaps are the contradictions in her accounts regarding the nature of the transfer of the SLP. Again in contrast to her response to civil claim and discovery evidence, she testified forcefully at trial that Verna gifted her the SLP and her interest-only payments on the line of credit Verna obtained to purchase Ray's interest were also a gift. I found it very suspicious that Julie was unable to find a written agreement or document related to the SLP transfer. In addition, there is the significant discrepancy between her evidence and Sarah's regarding the circumstances in which she was asked to witness a document.
- [220] Another significant concern is the manner and extent to which Julie's testimony aligned with her interest in the outcome of this case. This is true not only of her evidence about Verna's intentions regarding the transfer of assets but also Verna's capacity. Julie took every opportunity to characterize Verna as intelligent, strong-minded, very active and highly independent. Further, Julie continually highlighted Verna's cognitive capacity. Julie emphasized for example that Verna's April 2016 stroke affected her legs only and had no impact on her cognition. However, this was contradicted by the hospital records documenting Julie's account of Verna's cognition and memory problems at the time. As indicated, the records include Julie noting recent confusion, slurred speech, and poorer memory or forgetfulness for about a year. Those same records state that Verna herself acknowledged "some memory problems". Although Julie was not asked about the records in cross-examination, she relies on them as evidence in her case. Given she is a party, the statements attributed to her may be treated as admissions. I recognize that hospital records summarize or paraphrase what Julie said at the time. Approached cautiously, however, her account of Verna's cognitive function in the hospital records cannot be reconciled with her testimony.
- [221] Similarly, Julie consistently attempted to portray herself in an unrealistically positive light. Her self-portrayal was unconvincing not only because it lacked balance but also because it was contradicted by the evidence and inferences to be drawn from that evidence that established there are very negative aspects to Julie's character. I have in mind some of Julie's own correspondence, the testimony of Jamie, Karen and to a lesser extent Sandra, which I accept, and undisputed evidence about Julie's behaviour after Verna's death. On this last point, for example, Julie transferred significant funds from Verna's joint accounts to her own starting the very day that Verna died. This transfer of funds is not only inconsistent

with what I would expect to be the immediate shock and distress over the loss of her mother, but also Julie's assertion that Verna intended to gift her the right of survivorship in the joint accounts. Another example is the contradiction between Julie's professed commitment to honouring Verna's wishes and her decision to arrange for a potluck lunch at her own Baptist church instead of a Catholic funeral. Coupled with this is Julie's donation of \$40,000 to her Baptist church with funds from the Pinnacle Wealth Account. Julie arranged the potluck lunch and Baptist church donation despite Verna's strong Catholic faith and life long attendance at Catholic churches. In the same vein, Julie decided not to inform the plaintiffs of the potluck celebration, or the Catholic burial that took place later, although there is no indication that Verna was opposed to their attendance. In fact, it was only a few days later that Julie wrote to Tony about how much Verna loved him and his children. Further, shortly before she died, Verna either asked or agreed to Julie advising the plaintiffs she was dying and inviting them to call or visit.

- [222] Julie's testimony was rather transparently self-serving in other ways too. Some, if not many, of her apparent lapses in memory struck me as convenient, partly because of what she said she could recall. Further, in describing particular transactions with Verna, Julie appeared to minimize her role or knowledge. Regarding her purchase of Moorfield from Verna, for example, Julie suggested Verna was entirely responsible for setting the price and that she was either unaware of the market value or a passive participant.
- [223] There is also the reality that Julie has attributed an unsigned, undated letter addressed to Karen from "your loving mother" to Verna. I have found Verna did not write this letter and suspect that Julie may have. I place little weight on what would otherwise give rise to a serious concern about Julie's credibility because the plaintiffs did not formally contest the authenticity of any of the letters attributed to Verna.
- [224] In terms of demeanour, Julie also presented very poorly as a witness. Her demeanour was intense and, during cross-examination, aggressive, combative and evasive, all of which served to reinforce my concerns about her credibility.

Gordon's Evidence

- [225] I also have concerns about the credibility of Gordon's evidence. Unlike Julie, Gordon presented well, meaning he was polite and respectful throughout his evidence. He was also quite responsive. However, Gordon displayed significant problems with his memory impacting the reliability of his evidence. His poor memory also undermined the credibility of his evidence on a significant issue, namely his involvement in preparing and arranging for Verna to execute the transfer documents related to the SLP. Gordon gave detailed evidence about preparing, signing and filing the transfer documents for the SLP all in one day. Arranging the transfer documents involved attending the Land Title Office in Victoria with Verna to obtain and complete the documents, driving to Mr. Berns' office where they were signed and certified and then driving back to the Land Title Office to file them. However, the documents were signed and certified on February 23, 2010 and filed February

25, 2010. In cross-examination, Gordon acknowledged the discrepancy, stating, "I guess I didn't go back (to the Land Title Office) the same day I guess we went back two days later". I was left entirely uncertain about what parts of his initial account were reconstructed rather than recalled.

- [226] I am also concerned that about the influence of Gordon's financial and emotional interests on his testimony. Certainly he remains closely aligned with Julie. Although they separated in June 2020, Gordon continues to wear his wedding ring. Asked whether the separation was permanent, he testified with some enthusiasm that he hoped not. Regardless, the outcome of this case could very well have a significant financial impact on Gordon.
- [227] Aspects of Gordon's evidence were also difficult to believe. Like most of the hearsay evidence about Verna's statements of intention, as I have indicated, his provided essentially no context and for the most part alleged what she wanted or did not want as opposed to what she said. This is not surprising, or in itself concerning, given the passage of time. However, his evidence that Verna indicated she wanted everything she had to go to Julie and Verna being adamant that nothing go to the three other children was unconvincing. In addition to being devoid of context, and highly self-serving, it was inconsistent with the other evidence he gave that he did not recall Verna discussing the plaintiffs with him. It was also inconsistent with other defence evidence, which only went as far as indicating Verna did not say she wanted the plaintiffs to receive anything.

Carly, Jordan and Sarah's Evidence

- [228] Turning to Carly, I also have very little confidence in her contested evidence. In general, Carly was not a careful, detailed or thoughtful witness. Nor did she display a particularly good memory. Much like with Julie there was also an unevenness in what Carly could and could not recall and she seemed to go out of her way to emphasize Verna's competence.
- [229] Very significantly, Carly often said she did not understand what she was being asked, particularly in cross-examination, in response to typically straightforward questions. I formed the strong impression that some of her specific testimony was contrived, including most significantly that Verna told her she wanted to gift Julie the SLP before the transfer and after, she was happy and thankful she had gifted it. Carly's use of the words "gift and "gifted" based on interactions with Verna that occurred many, many years ago, aligned all too well with Julie's trial version regarding the transfer. Just as importantly, the precision of this evidence is at odds with the rather poor quality of Carly's evidence generally and her imperfect memory.
- [230] I also have some concerns about Carly's evidence because as I have said, she revealed not only very little understanding but also very little appreciation of her role and responsibilities as the executor of Verna's estate, despite being appointed in 2019. Further, she was evasive when asked about Verna's personal belongings when she died and what she and Julie received.

- [231] I pause to also note the lack of respect or regard Carly, Jordan and Sarah displayed for the plaintiffs during their testimony. Given Carly and Jordan's minimal contact with them since Maurice's death, and Sarah's complete lack of involvement, I am left to conclude their attitudes reflect what they had been told and their strong alliance with Julie.
- [232] The same dynamics likely motivated what I view as Carly and Jordan's attempts to minimize their past relationships with Tony, Jamie, Karen and some of their cousins and the significance of any contact with them since Maurice's death. Whereas Sandra described remaining friends with Carly, despite the family strife, Jordan and Carly referred to their cousins as mere acquaintances. Carly denied ever being close to Sandra, presenting as cold and somewhat defensive when she did so. However, Carly also acknowledged that she and Sandra text one another, she "hung out" with both Sandra and Kyle, by the pool at his home in the summer of 2019, and she and Jordan attended a family picnic, organized by Jamie and Tony after Verna died.
- [233] There is no dispute that during the visit at Kyle's home, he initiated a discussion about Verna's estate and "court stuff". Kyle suggested Verna's money should be divided four ways. According to Kyle, Carly said Karen and Kathleen could not be trusted with money, which he told her was not for her to decide. Carly also said she would speak to her mum about a trust fund for Kathleen and Karen. Sandra recalled Carly agreeing Verna's estate or money should be shared equally. Carly recalled the conversation quite differently. According to her, she told them if she became the executor she would do what needs to be done and respect Verna's wishes. She denied indicating the estate should be divided equally and did not recall saying something should be put in trust for Kathleen and Karen, which again struck me as self-serving and inconsistent with her apparently clear recollection of Verna's long ago statements of intention regarding the SLP transfer.

Ms. Neal's Evidence

- [234] Ms. Neal's testimony stands on more solid ground. A qualified and experienced investment advisor, I accept that she did her best to testify honestly and accurately. That said, I have some concern that her ongoing relationship with Julie, both in her role as the executor of Verna's estate and as her client has influenced her perspective, and the reliability of some of her evidence. Ms. Neal's records and notes contain some errors including, for example, a number of dates and her description of Verna's statement of intention during a meeting on July 12, 2016. Ms. Neal's notes regarding her meetings with Verna (and often Julie) are also summary in nature.
- [235] Excepting the July 12, 2016 meeting notes, however Ms. Neal's other notes summarizing Verna's wishes or instructions withstood scrutiny. Subject to considerations arising from their brevity and my interpretative analysis set out below, I accept therefore that they are reasonably reliable. I am less certain about the accuracy of Ms. Neal's recollections of what Verna said absent a contemporaneous recording.

- [236] Ultimately, I have determined that it is necessary to approach Julie's contested evidence, and the contested evidence of most of the other defence witnesses, with caution. Evidence of the Plaintiffs and their Witnesses
- [237] Although their credibility was not contested, I turn briefly to the evidence of the plaintiffs and their witnesses, which, given their lack of contact with Verna, did not address the critical issue of her intentions at the time of various transfers. In summary, I am satisfied that each of them testified truthfully and tried their best to be accurate. In the reasons that follow, I have not mentioned Kyle's evidence, not because I did not believe him, but because it was less significant.
- [238] I found all of their evidence, and Karen, Jamie and Sandra's evidence in particular, to be consistent, straightforward and reasonable. Karen was careful to identify what she did and did not remember or was uncertain about. Both Karen and Kathleen identified their memories as poor and themselves as very anxious about testifying. However, I did not find their abilities to recall dates or even timeframes well in the past to be any worse than those of most witnesses. Each of the plaintiffs acknowledged circumstances that were not in their interest. For example, they readily acknowledged to having no evidence that Julie had been influencing Verna, apart from observing, before their own contact with Verna ceased, that Julie was almost always present after Maurice died. More significantly, Karen appraised herself very critically when cross examined about the content of her July 4, 2008 letter to Verna. In contrast to many of defence witnesses I was not concerned about the influence of their interest on their recollections. A minor exception may be Tony's testimony he did not recognize Verna's signature on the Form A transfers for the SLP.
- [239] There were also no material inconsistencies in the evidence of the plaintiffs or their witnesses. Jamie was not confronted about Julie's particularly negative evidence that Verna felt bullied by Jamie. Leaving aside the fairness issue, I found this evidence difficult to accept given Verna's role as an owner of Shawnigan Gravel, Tony and Jamie's evidence about their relationship with Verna and her involvement with their family, and Jamie's demeanour. Throughout her testimony, Jamie presented as insightful, calm, and entirely appropriate. Jamie was the first witness to testify and her presentation did not change as she sat through the remainder of the trial.
- [240] To the extent their evidence differs from the evidence of the defence witnesses, I prefer the evidence of the plaintiffs and their witnesses unless it is inconsistent with objective evidence or defence evidence I expressly accept. In saying this, I am not referring to inconsistencies between the plaintiffs' evidence about the process of estrangement from Verna and letters written by Verna to Ray. For example, about Jamie and Tony's conduct and the plaintiffs wanting nothing to do with her. What Verna wrote is not objective. Nor is it necessarily accurate.

Discussion

Relationships and Estrangement

- [241] Julie argues the estrangement between Verna and the plaintiffs is an important factor in determining her intentions regarding all of the transfers.
- [242] In *Pecore*, Rothstein J. referred to the quality of the relationship between the transferor and the transferee as relevant to determining whether the presumption of resulting trust has been rebutted: para. 37. Julie relies on *Fuller*, where Justice D. Smith noted the long-standing close personal relationship between the deceased transferor and the appellant transferee and the absence of a relationship with the respondent: para. 61. However, Smith J. determined the trial judge erred in fact when he concluded the deceased did not intend to gift the appellant the right of survivorship when he transferred real property into joint tenancy. This finding was based on the trial judge's failure to consider direct evidence of the deceased's actual intent and by drawing inferences that were not supported by the evidence: para. 62. The ignored evidence included, first, evidence that supported the undisputed inference the appellant intended to place the property out of reach of the respondent. Second, it included the appellant's undisputed evidence the deceased had told him he wanted to gift him title to the property outright, but the notary public had persuaded him that giving a joint interest was a better option in case he died first.
- [243] To the extent Julie suggests that estrangement plays a special role in determining the transferor's intention as a matter of principle, I disagree.
- [244] Based on my credibility (and reliability) assessment and the evidence as a whole, I make the following findings about Verna herself, the parties' relationships with each other and Verna before and after Maurice's death, and related circumstances.
- [245] Verna was a serious, bright, and active person. She was also deeply religious. Her very long, respectful and stable marriage was a traditional one with Maurice playing the role of the primary decision-maker. At the same time, Verna worked outside the home and was independent enough to save her own funds for the purchase of their last home without his knowledge. Significantly, Verna was also very private and proper.
- [246] Verna likely always had a closer relationship with Julie than she did with her other children. Julie was the only one it seems who remained religious, committing herself at the age of 40 to the Baptist church. Without a doubt Maurice and Kathleen had a special bond. I accept that Tony's relationship with Verna was conflict free if not positive, even if Verna was somewhat restrained in her approach to him. Verna's relationship with Jamie was also quite positive and Verna loved and enjoyed spending time with their children, her grandchildren. Kathleen likely did struggle more than her siblings and Maurice's closeness to her may well have been partly in response to this. I accept that Karen, perhaps the most independent of the siblings, had a straightforward, stable relationship with Verna. She always admired and respected her father.

- [247] It is neither possible nor necessary for me to determine precisely how and why the estrangement between the plaintiffs and Verna, as well as Julie, occurred after Maurice's death.
- [248] I accept that Maurice had been a unifying force. Karen felt anger and resentment toward Julie before Maurice died that continued and worsened. There was never really much of a connection between Julie and Kathleen. While Tony may have felt some attachment to Julie, the relationship between Jamie and Julie was never close, for the reasons expressed by Jamie. Also accepting Karen and Kathleen's complaints about Julie, although attentive and loving with Verna, Julie was divisive and undermining at times when it came to her siblings.
- [249] In addition to being very close to Julie, Verna likely felt protective of her, given the very difficult circumstances she had endured - Brittany's exceptionally high needs, her death at 17 and Jordan's catastrophic accident less than a year after Maurice's death.
- [250] Verna appears to have struggled somewhat in her new role as the "head" of the family. Unable to manage, if not drawn into, some dysfunctional dynamics, Verna may also have felt overwhelmed by the responsibility of making significant decisions on her own for the first time. Although perhaps, as Ms. Neal suggests, quite literate and knowledgeable regarding the financial markets, certainly Verna's decision to sell her shares (and Maurice's) in Shawnigan Gravel for as little as she did, against the advice of her lawyer and accountant, and despite Tony's attempt to dissuade her, indicates at least some impulsiveness or reactivity in her initial approach to significant financial decision-making.
- [251] I expect there are likely many additional factors that precipitated, or fostered, the deterioration in Verna's relationships with the plaintiffs. These additional factors probably include Julie's apparent support of the improvident sale of the Shawnigan Gravel shares as part of Verna's apparent desire to simplify her life, and Tony's negative response to the idea of her selling Moorfield to Julie. Some of Verna's letters also indicate that she formed the impression that Karen, Tony and Jamie had aligned themselves with Ray. I accept that Julie's divisiveness also played a role, if not a significant role, in the estrangement, as vulnerable as Verna no doubt was without Maurice. One small example involves Verna accusing Karen of drug abuse, at a time when Julie said she suspected the same. There is no reliable evidence, however, to support the accusation or Julie's suspicion.
- [252] Despite the estrangement, I am confident that Verna never stopped loving, or being concerned about, the plaintiffs or her grandchildren. It is difficult to imagine how any parent other than a particularly unfeeling one could become indifferent toward her children as well as her grandchildren in her 70s. Verna was not such a person. On the contrary, I accept that she was someone who felt quite deeply and likely suffered from the loss of involvement with the plaintiffs and her grandchildren. Some of Verna's post-estrangement correspondence confirms my impression. Her letter to Karen in February 2009, for example, indicates Verna was not only concerned about Karen's wellbeing but also

the "rest of my family". Similarly, in her letter to Ray dated July 29, 2010, Verna expressed intense anger towards him over not his profound financial betrayal of all of her children as well as her and the loss of Tony, "my daughter" and her grandchildren. It is also clear Julie understood that Verna still loved and cared about her siblings. Julie's note to Tony, and her letter to all of her siblings following Verna's death, as well as portions of her discovery evidence read in by the plaintiffs establish this.

[253] In forming my view, I have not ignored the defence's evidence that Verna spoke of having washed her hands of the plaintiffs, along with similar evidence that she considered Julie and her children her only family. If admitted for a hearsay purpose, this evidence could do little more than confirm the breakdown of the relationship between Verna and the plaintiffs, and validate Verna's trust and closeness to Julie. I have already found and accepted this is relevant to assessing Verna's intentions. In other words, this evidence would not further assist in establishing Verna's actual intent at the time of the transfers. Further, the evidence is insufficient to establish that Verna intended to disinherit the plaintiffs.

[254] I turn now to consider each of the disputed "transfers".

3193 Moorfield

[255] The plaintiffs argue that Julie received a gratuitous benefit of \$73,000 when Verna sold Moorfield to her, that is, subject to a resulting trust in favour of the estate, based on the purchase price of \$225,000 and a "fair" market value of \$298,000 as determined by the property transfer tax notice of assessment.

[256] Although I accept Verna likely understood the sale price was below market value, the presumption of resulting trust applies to gratuitous transfers, meaning transfers for no consideration or value. On any definition, the purchase price paid by Julie constituted consideration or value for the transfer of the property.

[257] Consequently, the presumption does not apply to this transaction.

Pinnacle Wealth Account

[258] There is no dispute that the presumption of resulting trust applies to the Pinnacle Wealth Account. As I understand it, the plaintiffs also do not contest the admissibility of Ms. Neal's hearsay evidence that Verna said she wanted Julie to be the sole beneficiary of her investments through Pinnacle Wealth, as recorded in her notes and discussed during her testimony. In addition to the principled exception, the business records exception also applies here. In any event, I assess the threshold reliability of her hearsay evidence regarding Verna's statements of intention as recorded in her notes as sufficient for admission, based on the circumstances in which they were made, namely at specific scheduled meetings with her investment advisor where the question of beneficiaries was formally canvassed and discussed.

- [259] Further, unlike much of the other hearsay evidence regarding Verna's intentions at the time of transfers, I am not concerned about Ms. Neal's honesty. Her notes regarding Verna's initial statement of intention, in July 2008, indicate that Ms. Neal asked her to explain why she wanted Julie alone, and not her other children, to receive the benefit of her investment account. Although I query the accuracy of parts of Verna's response - namely a concern about Karen as well as Kathleen's lifestyle, I accept that Verna came to believe there was a problem. Again referring to the notes for that particular meeting, Verna's comment that Tony had already benefitted from the sale of the gravel pit must be a reference to the \$100,000 "commission" he and Jamie received after it sold to Tower Fence. Verna's statements as recorded by Ms. Neal indicate that she reflected rightly or wrongly on the needs of each plaintiff in expressing her intention.
- [260] In other words, Verna's statement was considered and provided in circumstances where she would have understood the importance of truthfully stating her wishes and the consequences of failing to do so.
- [261] I also accept Ms. Neal's evidence that Verna never expressed a different intention. This is consistent with her notes regarding a meeting on December 5, 2011, Verna naming Julie as the beneficiary of the Olympia Trust instruments in 2016, Ms. Neal's testimony that it had been her idea, not Verna's, to name the estate instead, and Verna's queries about ensuring her investment account would pass outside the estate to Julie.
- [262] Turning to assess the substantive reliability of Ms. Neal's hearsay evidence, based on the same considerations, I give it significant weight. I find on a balance of probabilities that Verna intended Julie to receive the benefit of the balance in the Pinnacle Wealth Account when she died. My analysis extends to the Olympia Trust RRIF and TFSA, both of which Verna purchased through Ms. Neal as part of her investments with Pinnacle Wealth. In reaching this conclusion, I have also considered the beneficiary designation contained in the application form for each instrument which Verna completed, identifying Julie as the beneficiary:

I acknowledge any designation(s) made are subject to the following:

Any designation made shall apply to this Plan only.

A. Designation of Beneficiary (For all plan types)

In the event of my death, I hereby designate the following individual(s) as my designated beneficiary(ies) entitled to receive my interest in this Plan if living at the time of my death. If my designated beneficiary(ies) predecease(s) me and no other beneficiary has been appointed, I understand the proceeds of my Plan will be paid to my Estate. I reserve the right to revoke this designation, in writing, at any time.

- [263] Pecore recognized there may be some evidentiary value in bank documents as evidence of intention:

- [61] While I agree that bank documents do not necessarily set out equitable interests in joint accounts, banking documents in modern times may be detailed enough that they provide strong evidence of the intentions of the transferor regarding how the balance in the account should be treated on his or her death. Therefore, if there is anything in the bank documents that specifically suggests the transferor's intent regarding the beneficial interest in the account, I do not think that courts should be barred from considering it. Indeed, the clearer the evidence in the bank documents in question, the more weight that evidence should carry.
- [264] The language of the designation is detailed enough to provide further evidence that Verna intended Julie to receive the balance in both RRIFs when she died, and it is consistent with the intention she expressed to Ms. Neal during particular meetings.
- [265] I turn briefly to the issue of undue influence. In my view, if the presumption of undue influence does arise at the time Verna identified Julie as the beneficiary of the Olympia Trust RRIF and TFSA, based on a relationship of dependence or potential domination existed at that time, which I make no express finding about, I would be satisfied it had been rebutted. Verna purchased the Olympia Trust instruments and designated Julie as the beneficiary not long after suffering bilateral strokes. I accept there was a concern about Verna's cognitive health when she was hospitalized. Again, hospital records show Julie reported Verna displayed recent confusion and forgetfulness for about a year. Verna also acknowledged some memory problems. But the hospital records also indicate she recovered from the stroke related cognitive effects before being discharged. Further, Verna purchased the instruments through Ms. Neal and she had no concerns about Verna's competence or capacity for independent decision making at that time. Again, the designation clause provides a clear statement of intention that is consistent with her intention to gift Julie the Pinnacle Wealth Account which these instruments formed a part of.
- [266] I conclude therefore that, with respect to all of Verna's investments through Pinnacle Wealth, Julie has established Verna gifted them to her.

Bank Accounts

- [267] Again, Julie does not dispute that the presumption of resulting trust applies to all of Verna's bank accounts, some of which Verna made joint with Julie (Coast Capital chequing and savings), others where she designated Julie as the beneficiary (Coast Capital and BMO RRIFs), and one where she added Julie as a secondary account holder (CIBC chequing). The only issue, therefore, is what Verna's intention was when she did so.

Coast Capital and BMO RRIFs

[268] The only specific evidence regarding the Coast Capital RRIF is a statement, for July 1, 2015 to December 31, 2015, that shows a balance of \$4,828.48 and identifies the beneficiary as Julie.

[269] The same is true of the BMO RRIF. The only specific evidence includes a statement for January 1 to March 31, 2017 that identifies Julie as the beneficiary, and shows a balance of \$13,917.27, and another document confirming the purchase of a GIC on December 4, 2017 in the amount of \$13,050.80.

[270] Julie relies on Ms. Neal's hearsay evidence, that Verna wanted Julie as the sole beneficiary of her investments, to establish that Verna also intended to set up the RRIF and bank accounts in such a way that Julie received "all Verna's monies".

[271] If Julie means to suggest that Verna and Ms. Neal discussed or engaged in general estate planning, or Verna expressed to her a specific intention to gift any of her other assets, I disagree. For ease of reference I reproduce parts of her notes for April 29, 2016 which could assist:

[Verna] specifically wanted to insure that everything was set up so as little as possible went into the estate, as she was concerned that the funds would be fought over and end up in the wrong hands. Verna again asked if everything was set up so it would go seamlessly to Julie. That the other children were not to receive any of the estate. I believe that we have done this. Everything is either in a segregated fund with a named beneficiary or Joint with Rights of Survivorship."

[272] Clearly, "everything" refers to Verna's investments with Pinnacle Wealth. The references to the estate are contradictory and in my view confused. Read in context, I conclude Ms. Neal has recorded Verna's specific intention regarding the Pinnacle Wealth Account. This is also consistent with Ms. Neal's acknowledgement that her role was limited to dealing with Verna's "financials" at Pinnacle Wealth, meaning her investments, and her lack of knowledge about Verna's 2016 Will.

[273] It is clear I am being asked to conclude Verna's intention regarding the RRIFs was the same as that respecting the Pinnacle Wealth Account.

[274] It could be that Verna assumed designating Julie as the beneficiary of an account was sufficient to ensure she received it when Verna died, based on her dealings with Ms. Neal. However, in contrast to Ms. Neal's evidence that Verna sought her assurance that the necessary steps had been taken to ensure her investment account passed to Julie, there is an absence of this kind of evidence with respect to the RRIF accounts. The documents do not include the beneficiary designations. Nor is there evidence about when Verna designated Julie as the beneficiary of the RRIFs.

- [275] Bearing in mind Verna's stated concern about Karen and Kathleen receiving large sums of money, I also note the modest balance in these accounts and Verna's bank accounts, particularly when divided by four.
- [276] Based on all of these circumstances, I conclude the evidence does not establish on a balance of probabilities that Verna intended to "gift" Julie the balance in these accounts upon her death. The presumption of resulting trust has not been rebutted.

Coast Capital Chequing and Savings Accounts

- [277] Statements for Verna's chequing and savings accounts with Coast Capital list Julie as a joint account holder starting with the statement for March 11, 2016 to April 10, 2016. In the first week of April 2016, the balance in the chequing account was \$13,442.44 and the balance in the savings account was \$21,930.86. Apart from showing Verna added Julie, the records for these accounts contain no information about her intention in making the accounts joint.
- [278] Only Julie gave hearsay evidence about what Verna allegedly expressed in making these specific accounts joint. Julie testified initially that Verna wanted her to oversee them. Verna's alleged request was first, based on a concern about her poor health, namely her bilateral strokes which occurred a short time later, and her inability to drive limiting her ability to attend the bank. Only when prompted did Julie also give evidence that Verna wanted her to have the accounts if anything happened to her. At no time did Julie refer to a specific conversation with Verna.
- [279] In assessing the threshold substantive reliability of the hearsay evidence, regardless of whether Julie was wrong about the strokes as a factor, I accept there was a concern about Verna's health including her cognitive health at the time. Again, hospital records show Julie reported Verna displayed recent confusion and forgetfulness for about a year. Verna also acknowledged some memory problems. Further, Mr. Armstrong's evidence establishes that, in early April 2016, Julie instructed him to prepare a power of attorney for Verna based on a concern she may be too ill to sign the closing documents regarding the sale of Heron's Way at the end of that month.
- [280] Entirely inconsistent with Julie's evidence that Verna wanted her to receive the balance in the accounts when she died are the circumstances surrounding the 2016 Will. The only asset of Verna's that Julie identified, when she instructed Mr. Armstrong to prepare the 2016 Will, was "\$30,000 Coast Capital". He testified to confirming the asset with Verna when they met the next day, on May 4, 2016, at Duncan Hospital to review the will which Verna then signed. In other words, neither Julie nor Verna indicated to Mr. Armstrong that she wanted to gift the right of survivorship in the Coast Capital accounts to Julie.

- [281] In these circumstances, I am not prepared to admit what I view as Julie's self-serving hearsay evidence that Verna wanted her to have the accounts. However, I do admit the balance of her hearsay evidence on this issue. Having admitted it, I accept that a concern over Verna's health and limited access to the bank prompted her to add Julie as a joint account holder.
- [282] Turning to Ms. Neal's hearsay evidence about Verna's intention regarding the Pinnacle Wealth Account, I am even less persuaded about its relevance to the Coast Capital accounts than I was with respect to the RRIFs, given they were the only asset identified by Julie to Mr. Armstrong, which he confirmed with Verna.
- [283] Again, Verna's stated concern about the impact on Kathleen and Karen receiving a large amount of money is not a significant consideration here given the relatively modest balances in both accounts, particularly when divided four ways.
- [284] In all of the circumstances, I find the evidence does not establish on a balance of probabilities that Verna intended to gift the right of survivorship in these accounts to Julie. The presumption of resulting trust has not been rebutted.

CIBC Chequing Account

- [285] My view is the same respecting this account.
- [286] The only documents regarding this account include a one page "Signature Card" signed by Verna and witnessed by Julie on October 31, 2017. The Signature Card identifies Julie Hall as the secondary account holder, in what appears to be Julie's handwriting, and some account statements. Most of the statements predate this transaction. One statement that postdates it, for February 21 to March 15, 2018, remains in Verna's name only and simply identifies transfers made by Julie. In other words, there is no language in the records themselves indicating what is meant by the secondary account holder designation.
- [287] Absent any evidence showing Verna added Julie as a joint account holder, the principles of joint tenancy and the right of survivorship are not even engaged.
- [288] In any event, there are additional concerns based on Verna's cognitive state at the time she added Julie as a secondary account holder. Verna, having been admitted to Duncan Hospital in what Julie described as a diabetic coma on October 11, 2017, remained a patient when Julie took her to the CIBC branch on October 31, 2017. Accepting the opinion evidence contained in the hospital records regarding Verna's significant cognitive impairment is not admissible for its truth, Julie's evidence satisfies me she was aware that Verna remained forgetful, mentally foggy and suffering from some confusion when she later was discharged on November 13, 2017.
- [289] Julie's evidence about Verna's statements regarding this transaction is ambiguous with respect to her intention. Julie testified that Verna asked her to take her to the bank because she wanted to make sure Julie was on the account, and then added her when the teller told

Verna she was not. If admitted for a hearsay purpose, it would not be sufficient to establish that Verna intended to gift Julie the balance, leaving aside the uncertain status of a secondary account holder. Further, Verna's decision to add Julie in this way, while hospitalized, is certainly consistent with an immediate concern about her health and her ability to manage the account on her own.

- [290] I find Julie has failed to establish Verna intended to gift to her the balance in this account when she died and the presumption of resulting trust has not been rebutted.

The SLP

- [291] Julie argues the presumption of resulting trust does not apply to the transfer of the SLP because it was not gratuitous. Characterizing the monthly interest payments/cash payments she testified to making as a gift to Verna, Julie also takes the position they constituted value for the transfers, "expressed by their agreement", that is, an agreement between Verna and Julie.
- [292] Whether value was given for a legal interest in property is a question of fact to be determined on the evidence: *Bajwa* at para. 16. The answer depends on the substance of the transaction rather than formal assertions in the documents. The fact that transfer documents state the conveyance was for \$1.00 is of no assistance: *Fleming v. Kwakseestahla*, 2010 BCSC 1006 at paras. 19-20.
- [293] Julie relies on *Mac v. Mak*, 2016 BCSC 1140, and the cases it reviews, to make the point a financial contribution is not determinative of whether value may be found. In those cases however, the defendants assumed financial risk by becoming a covenantor or mortgagor. In *Mac* itself, the defendants paid the deposit for the purchase of the property and made lump sum payments on the mortgage. I note that in *Bajwa*, where value was also found, the defendant pledged his credit under a mortgage and took on substantial debt, making it possible for the plaintiff to buy the property. Similarly, in *Petrick (Trustee) v. Petrick*, 2019 BCSC 1319, Justice Francis found the defendant gave value for receiving his interest as a joint tenant in the property, although the transferor did not necessarily require the defendant's pledge of credit to obtain the mortgage financing on the property. By becoming a co-borrower, Francis J. reasoned the defendant exposed himself to risk, therefore giving up something of value. Most recently, in *Davy*, Justice Gomery observed these same cases support the proposition that a transaction is not gratuitous where the transferee contributed something of value to the transferor (or to a third party) in order to permit the transaction to proceed.
- [294] Appreciating all of the cases involved transfers to joint tenancy, and construing the "transaction" broadly to include consideration of Verna's purchase of Ray's half interest in the SLP, it is clear Verna did not require the interest payments Julie said she made to obtain the secured line of credit. Nor has it been suggested that Verna required those payments to service the debt.

- [295] Given my credibility assessment, Julie's conflicting version of events relating to the transfer of the SLP, and the conflicting evidence of Sarah, Gordon and Julie regarding a written document or agreement, the only finding I can safely make is that Julie made some monthly payments of \$500 to pay the interest on Verna's line of credit. These monthly payments were made by way of transfer from her own TD Canada Trust account to a joint account with Verna, starting March 1, 2010. The documentary evidence includes only a pre-authorized monthly transfer of \$500 from Julie's TD account to the joint account effective February 28, 2010, and joint TD account statements that show payments from Julie's TD account on March 30 and April 30, 2016 only.
- [296] Very incomplete line of credit statements show an initial cash withdrawal of \$171,810 on October 5, 2009, a credit limit of \$172,250, no further withdrawals, and interest only payments, which, for May 1, 2011 and May 1, 2016, also list Julie's TD account.
- [297] It may also be that Julie made monthly cash payments to Verna after the sale of Heron's Way but the receipts she prepared are insufficient to confirm her evidence on this point.
- [298] Even assuming Julie made all of the monthly interest payments on the line of credit after the SLP transfer, until Verna sold Heron's Way and paid off the line of credit, followed by monthly cash payments, this does not, constitute value for the legal interest Julie received in the SLP. Unlike the defendants in each of the cases reviewed above, Julie did not contribute something of value to Verna in exchange for receiving her legal interest. Julie contributed nothing to the principal on the debt Verna incurred to obtain Ray's half interest, nor did she take on any of the financial risk. Instead it was Verna who assumed the risk, securing the line of credit, as she did, against her own property not the SLP. Furthermore, both Julie and Gordon insist all the payments made were entirely voluntary. In other words, they assert they were under no legal obligation to give up anything of value. While this may not be true, the state of the evidence and my significant credibility concerns do not allow me to find otherwise.
- [299] I find therefore that the transfer of the SLP was gratuitous and the presumption of resulting trust applies.

Verna's Intention

- [300] The remaining question is what did Verna actually intend when she transferred the SLP to Julie.
- [301] Julie suggests there is ample evidence showing that Verna intended to gift her the property, in addition to no longer wanting to be responsible for it.

Admissibility of Hearsay Evidence

- [302] In contrast to the other transfers, Julie relies heavily on Verna's hearsay evidence given by various defence witnesses in an attempt to establish her intention to gift the SLP. But as I noted much earlier, Julie's submissions did not identify what "statements" she was seeking to admit and how the principled approach discussed in Bradshaw and Khelawon should be applied.
- [303] I have no trouble accepting Verna would have discussed her purchase of Ray's interest in the SLP and the transfer with Julie and perhaps others. However, as I have previously stated, I have significant concerns about the credibility of most of the defence witnesses. Further, most of their evidence regarding Verna's expressions of intention regarding the transfer were vague in terms of what she said, as opposed to what she apparently wanted and the surrounding circumstances. Carly's evidence that Verna said she wanted to gift, and was grateful she had gifted, the SLP to Julie is one exception to my concern about vagueness. I have already indicated Verna's alleged use of the word gift and gifted struck me as contrived. Based also on my significant concerns about Carly's credibility, I simply do not believe this evidence and declined to admit it for a hearsay purpose. My view is the same with respect to Julie's evidence, particularly as it relates to the transfer of the SLP. Again, Julie testified that, when Verna bought Ray's interest, she "wanted" to give Julie the SLP. This is not only entirely vague but also inconsistent with her discovery evidence of a purchase. I am also not prepared to admit Gordon's similarly vague evidence for a hearsay purpose - that Verna wanted the properties transferred to "us" for use by "our immediate family", shortly after he and Julie married, along with his suggestion she did not want the SLP going to the other children. Again, Gordon said much of this was conveyed through stories. In addition to lacking the indicia of substantive reliability sufficient to establish its threshold reliability, it was unconvincing. In other words, I am left entirely uncertain about what she may have actually said to him or in his presence.
- [304] Sarah did not testify to Verna making a clear statement of intention regarding the transfer of the SLP to Julie. Most of Sarah's evidence about what Verna said was to the effect that the plaintiffs could not be counted on to take care of the property or pay "the loan". The same is true of Linda's evidence. She testified she "always" talked to Verna at the SLP and would ask whether there was any movement by the plaintiffs. Asked about any discussions regarding the SLP transfer, Linda said she mentioned to Verna how beneficial it was. Verna responded it never held good memories for her, but she wanted Julie and her children to create good memories there.

- [305] Admissible for the fact that Verna made those statements, nothing further is gained if they are also admitted for their "truth". In other words, their significance derives from what Verna allegedly said as opposed to whether or not it was the truth. More specifically, even if I accept as true that Verna wanted Julie and her children to enjoy the SLP, such a desire is not in itself inconsistent with, nor does it disprove, the existence of an intention on Verna's part to retain the beneficial interest in the property.
- [306] Julie also gave what I understand to be undisputed hearsay evidence about other statements made by Verna related to the transfer of the SLP that involved her not wanting the responsibility of maintaining the SLP. This is consistent with some of Verna's written communications before the transfer, her move from Moorfield to a much smaller home, the precipitous sale of the shares in Shawnigan Gravel, her age and her stage of life. Further, it does not align with Julie's interest. For these reasons, I accept Verna made these statements, find the evidence meets the threshold for substantive reliability, admit it and in assessing its ultimate reliability I accept it is accurate.
- [307] For some of the same reasons, I take the same approach to Julie and Gordon's evidence that Verna told them she had met with Mr. Orchard about transferring the SLP to Julie, but was concerned about his fees. I accept this was done before Verna agreed to Gordon's offer to prepare the transfer documents, which he did. In addition, prior to the SLP transfer, Verna and Maurice had consulted and retained lawyers regarding a multitude of transactions, over many years. Mr. Orchard acted for Verna on several matters after Maurice's death, including the sale of the shares in Shawnigan Gravel, the sale of Moorfield, the purchase of Heron's Way, her 2007 Will and 2007 Power of Attorney, and the purchase of Ray's interest in the SLP.

Factors Considered in Determining Verna's Intention

- [308] By the time Verna discussed the SLP transfer with Mr. Orchard, in or about February 2010, Pecore had been the law for about three years and Verna had been estranged from the plaintiffs for some time. If Verna intended to gift the SLP to Julie and discussed that intention with Mr. Orchard, I infer that he likely would have advised her to document her intention, if not to prepare a deed of gift. Recognizing Verna disregarded his advice regarding the Shawnigan Gravel share sale and it is possible he provided a fee estimate without discussing the nature of the SLP transfer, I give limited weight to the fact there is no document setting out Verna's intention to gift the SLP to Julie.
- [309] At the same time, however, it is also clear that Verna really trusted Julie. For this reason the absence of any documentation may well reflect her conclusion that there was no need to document an intention not to gift.

- [310] Although the close relationship between Julie and Verna is relevant to her intention and arguably an intention to gift, by the time of the transfer Verna had already bestowed significant financial benefits on Julie. These financial benefits included the sale of Moorfield well below the assessed market value, as well as Julie's designation as the sole beneficiary of Verna's Pinnacle Wealth account. Notably, the Pinnacle Wealth account was Verna's only significant financial asset.
- [311] I have also considered that following the transfer, Julie and Gordon maintained the property by paying the property taxes. If Verna intended to retain a beneficial interest in the SLP, why allow them to assume that financial responsibility? A reasonable explanation is that Verna intended to and did in fact permit Julie and her family to enjoy the property during her lifetime. Again, it is clear that Verna trusted Julie and it is not surprising that Verna would not feel the need to document this arrangement. In other words, Verna intending Julie and her family to enjoy the property during her lifetime and allowing her to pay the cost of maintenance is not inconsistent with a wish for the property to form part of her estate, thus benefitting all her children upon her death.
- [312] Accepting the plaintiffs' evidence that they learned about the SLP transfer after Verna died, the apparent secrecy is puzzling. It strikes me that a reasonable person intending to gift only one of their children would inform the other children about such a significant transfer. By the time of the transfer, however, Verna had been estranged from the plaintiffs for about three years, and may not have felt an obligation to inform them or wished to avoid the conflict that doing so may have created. Consequently, I have determined this is a neutral factor
- [313] A significant consideration that weighs against an intention to gift, is what I infer was Maurice's wish that the SLP remain in the family and Verna's awareness and commitment to honouring his wish. The SLP was, of course, his family's property, not hers. In her "June 2009-07-17" letter to Ray, she implores him to honour what she identifies as Maurice's dying wish to buy out Ray's share. It is apparent Maurice more than anyone else valued the SLP as a family property and wanted it to remain so. Also, as a devoted father and husband and a unifying force within the family, I am confident Maurice would have been devastated by the estrangement of Verna and Julie from the plaintiffs. Maurice likely would not have approved of Julie receiving the SLP to the exclusion of her siblings. These realities must have, in my view, influenced Verna.
- [314] A related consideration that weighs against a gift is Julie's known lack of interest in the SLP after Maurice's death, which she acknowledged. Again, in Verna letter to Ray dated Saturday 21 April (2007), she writes: "[w]here did Jamie and Tony get the information that Julie wanted to buy the Shawnigan property? I'll never know was that a pipe dream or what? She has never ever wanted that property."

- [315] Aware of the need for caution in relying on evidence of intention that postdates a transfer, I have also considered Verna's bequests in her 2007 Will and her 2016 Will. By 2007, her relationships with the plaintiffs had already deteriorated. By 2016, she had not had any real involvement with them for many years. Despite the deterioration and the estrangement, however, she prepared wills that continued to provide each of her children with an equal share in her estate, or its residue. I find it difficult to conceive of Verna executing the 2016 Will, if her actual intention was to deprive the plaintiffs of any inheritance, and the equal division reflected nothing more than a shrewd if not cynical attempt to avoid a wills variation claim. This view is reinforced by the absence of any evidence she received legal advice that would assist her in achieving such an objective.
- [316] A final consideration is the content of the 2016 KYC form. Again, Verna specified that she owned "other" real properties or investments worth \$500,000. At that time, she had no investments aside from those contained in the Pinnacle Wealth Account other than two small RRIFs. She owned no other real property, having sold Heron's Way a month earlier. Further, Julie agreed that the amount of \$500,000 was the approximate value of the SLP at that time. The most reasonable inference to be drawn in these circumstances is that Verna viewed herself as maintaining a beneficial interest in the SLP.
- [317] Weighing all of these considerations, I have no difficulty concluding that Julie has failed to establish on a balance of probabilities that Verna intended to gift her the SLP. I conclude the presumption of resulting trust has not been rebutted.

Conclusion

- [318] Given my conclusions that Julie has failed to rebut the presumption of resulting trust in relation to the SLP, Verna's CIBC chequing accounts, the joint Coast Capital accounts, the Coast Capital RRIF; and the BMO RRIF; it is unnecessary to consider the plaintiffs' claim based on the presumption of undue influence.
- [319] I conclude that Julie holds the following assets on a resulting trust for Verna's estate:
1. The SLP;
 2. The balance in the following accounts as of the date of Verna's death:
 - a. Verna's CIBC chequing account;
 - b. The joint Coast Capital accounts;
 - c. Coast Capital RRIF; and
 - d. BMO RRIF;
 3. Verna's personal belongings as of the date of her death including, but not limited to, jewelry, china, art, and antique furniture.

[320] A number of other orders are no doubt necessary such as those requiring Julie to transfer these same assets to Carly, as the executor of Verna's estate, and an accounting. I invite the parties to discuss "next steps", including any relief that may be necessary to effect the return of personal belongings that Carly and others received that properly form part of the estate and schedule a short appearance before me to address further orders. In the event that a costs order is not agreed, the scheduling of a costs hearing can also be addressed at that time.

[321] In the meantime, I confirm that Julie remains bound by the restraining order granted November 25, 2019, except as it relates to the Pinnacle Wealth Account.

"Fleming J."

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