

Court of King's Bench of Alberta

Citation: Estate of Larry Wayne Gall, 2026 ABKB 54

Date: 20260126
Docket: ES02 07416
Registry: Drumheller

Court File Number	ES02-07416
Court	Court of King's Bench of Alberta (Surrogate Matter)
Judicial Centre	Drumheller
Estate Name	Larry Wayne Gall
Applicant (Plaintiff)	Wylene Lynn Buchert
Respondent (Defendant)	David Wiens, Betty Ann Gall, Danielle Kristine Toews, Jamie Nicole Toews, Kaden Landon Franke, Riley Jacob Franke, Sydney Evangeline Gall, Tate Wade Gall, Serena Angeline Buchert, Office of the Public Guardian and Trustee (on behalf of Jax Warren Buchert)

**Reasons for Decision
of the
Honourable Justice R.W. Armstrong**

[1] Larry Wayne Gall (the "Deceased") passed away on August 2, 2021. He died testate, leaving a will dated September 26, 2018 (the "Will"), and a codicil dated May 6, 2021. The codicil has no bearing on the within application as it contemplates disposition of assets owned jointly with his spouse if she pre-deceased him. The Deceased's spouse, Betty Ann Gall, is still alive.

[2] The Deceased owned a home at the time of his death. The legal description of the property is set out in paragraph 10 of the Will as follows:

Meridian 4 Range 23 Township 32

Section 12

That portion of the South East quarter

Described as follows:

Commencing at the South East corner of said quarter section thence Northerly along the East boundary thereof 496.97 feet thence Westerly and parallel to the South boundary of said quarter section 324.51 feet thence Southerly and parallel to the said East boundary to a point on the said South boundary thence Easterly thereon to the point of commencement containing 1.50 hectares (3.70 acres) more or less, excepting thereout all mines and minerals.

(hereinafter the “Residence”)

[3] Prior to his death, the Deceased and Betty Ann Gall lived together in the Residence.

[4] Paragraph 10 of the Will deals with the disposition of the Residence upon the Deceased’s death. It says:

To hold as a separate trust to allow my spouse, Betty Ann Gall, during her lifetime the use, occupation and enjoyment of whatever residence including the household goods and furniture that I may own at my death. All taxes, insurance, and repairs shall be paid out of my general estate, being charged either to income or capital or partly to income and partly to capital, as my Trustees in their discretion deem advisable. Subject to the interest of my spouse, any residence held by my Trustees under the terms of this paragraph shall form part of the residue of my estate. The land on which I live at the time of this my Last Will and Testament is as follows:

...

If my spouse, Betty Ann Gall, should predecease me or in the event of her death, the above noted property [the Residence] shall be sold and the proceeds shall be divided in equal shares between my grandchildren. . .

[5] Paragraph 10 of the Will creates two conflicting instructions to the estate’s Personal Representative: it directs that any proceeds from the sale of the Residence should form part of the residue of the estate and it also directs that the proceeds of the sale of the Residence should be divided in equal shares and given to his grandchildren.

[6] Paragraph 12 of the Will provides instructions regarding the Residence if the Deceased survived his spouse, Betty Ann Gall. In that event, the Personal Representative is instructed to sell the Residence and divide the proceeds in equal shares between the Deceased’s grandchildren.

[7] Paragraphs 14 through 23 of the Will comprise a series of bequests of \$25,000 to each of the Deceased’s 8 grandchildren and bequests of \$1,000 to each of his two sons. The bequests at paragraphs 14 through 23 total \$202,000. If the proceeds of the sale of the Residence are payable

to the grandchildren, there are insufficient funds in the estate to fund the gifts set out in paragraphs 14-23 of the Will.

[8] Paragraph 24 of the Will designates the Deceased's daughter, Wylene Lynn Buchert, the sole residuary beneficiary of the estate.

[9] Notwithstanding that Betty Ann Gall had a life estate in the Residence pursuant to the terms of the Will, she decided not to exercise that right. When Ms. Gall renounced her life estate the estate sold the Residence. Proceeds of the sale of the Residence in the amount of \$397,408.73 remain in the estate pending a determination as to the correct interpretation of the Will.

[10] This applicant in this action is Wylene Buchert. She is a daughter of the Deceased and a residuary and non-residuary beneficiary under the Will. She is a former co-personal representative of the estate; however, she ceased being a personal representative of the estate pursuant to a consent order dated December 8, 2022.

[11] Betty Ann Gall is the surviving spouse of the Deceased. She is a non-residuary beneficiary under the Will. She was also initially a co-personal representative of the estate but was removed from that position along with Wylene Buchert pursuant to the consent order dated December 8, 2022. The respondent, David Wiens, is currently the sole Personal Representative of the estate.

[12] The other respondents are grandchildren of the Deceased, one of whom is a minor and represented by the Office of the Public Guardian and Trustee.

Issues for Determination

[13] The applications before the Court identify four issues for determination:

Issue 1: What is the proper interpretation of paragraphs 10 and 14-23 of the Will to give effect to the intentions of the Deceased?

Issue 2: How shall Betty Ann Gall's claim for division of family property be adjudicated?

Issue 3: What Estate property needs to be returned to the Estate?

Issue 4: What compensation is the Personal Representative entitled to receive, and should there be an order for legal costs for the parties?

[14] With respect to the second issue, at the hearing of this matter counsel advised that Betty Ann Gall is no longer pursuing a claim for division of family property. An attempt to discontinue the action for division of family property was unsuccessful due to a filing error but Ms. Gall does not intend to pursue the action.

[15] Betty Ann Gall does seek relief in respect of two issues. She seeks return of a pistol that is in the possession of Wylene Buchart, and she seeks reimbursement of \$1,130.00 for an electrical bill that she paid in relation to property belonging to the estate.

Position of the Applicant, Wylene Buchert

[16] The Applicant, Wylene Buchert, argues that the plain meaning of the Will is clear: the Residence forms part of the residue of the estate while Betty Ann Gall is alive. Accordingly, the

proceeds from the sale of the Residence should be used to fund the gifts outlined in paragraphs 14-23 of the Will, with the remaining balance forming part of the residue payable to Wylene Buchert as the residuary beneficiary.

[17] Ms. Buchert opposes any rectification of the Will. Specifically, she submits that deletion of the third sentence of paragraph 10 would frustrate the Deceased's intentions. If the sale proceeds from the Residence are divided among the grandchildren, the additional gifts of \$25,000 to the grandchildren will not be funded. She further argues that assets owned by the corporation cannot be used to fund the legacies as the Deceased did not personally own those assets. The corporation, LarRon's Excavating Ltd. ("LarRon"), owns the assets and the Deceased's share ownership does not entitle the estate to use corporate assets to satisfy the legacies set out in the Will.

[18] Ms. Buchert also claims entitlement to possession of corporate property belonging to LarRon. As the sole shareholder of the company by virtue of the Will, Ms. Buchert asserts that all the corporate assets must be accounted for and returned to her.

[19] Ms. Buchert argues the claim for compensation by the Personal Representative is premature as the administration of the estate is not yet complete. She maintains that the Personal Representative has yet to account for estate assets including vehicles, tools, cash, personal property belonging to the Deceased and RBC Dominion Securities Accounts held by the Deceased. She submits that the Court cannot properly assess the factors relevant to determining the Personal Representative's compensation until the administration of the estate is substantially complete.

Position of the Personal Representative

[20] As the Personal Representative, Mr. Wiens takes no position regarding the interpretation of the Will, other than to express hope that the Deceased's wishes to benefit his grandchildren, spouse, and daughter will be honoured.

[21] The Personal Representative provided an accounting of the estate assets as of January 10, 2025. As of that date the estate account had a balance of \$420,004.24. As of July 8, 2025, that balance was \$403,497.95. Of that total, \$397,408.73 represents the proceeds from the sale of the Residence. As of August 2025, the estate has paid \$32,371.27 in legal fees, \$2,971.15 of which relate to fees incurred on behalf of the Deceased's company LarRon. The Personal Representative seeks repayment of that \$2,971.15 from LarRon to the estate.

[22] The Deceased's Will fixes compensation at \$2,500.00; however, the Personal Representative relies on section 4 of the Surrogate Rules to permit a variation from the compensation fixed by the Will. The Personal Representative seeks executor compensation in the amount of \$34,361.11, that being 2.5% of the gross value of the estate at the time of the Deceased's death.

Position of the Public Trustee

[23] The grandson of the Deceased, Jax Buchert, is a minor, represented in these proceedings by the Public Trustee.

[24] The Public Trustee asserts that there is clear evidence to support a finding that the intention of the Deceased was to benefit his grandchildren from the proceeds of the sale of his Residence, once the life estate in the property had expired.

[25] The portion of paragraph 10 of the Deceased's Will that attributes the proceeds of the sale of the Residence to the residue of the estate is drafting error and has been acknowledged as such by the solicitor who drafted the Will. According to the solicitor, the Deceased intended to provide gifts to his grandchildren out of the proceeds of the sale of his property.

[26] The Public Trustee argues that the Court should give effect to the Deceased's testamentary intention by exercising its power of rectification under s 39 of the *Wills and Succession Act*, SA 2010, c W-12.2 (the "WSA") to remove the sentence in paragraph 10 of the Will which designates the proceeds of the sale of the Residence to the residue of the estate.

[27] The Public Trustee acknowledges that if the Court finds the proceeds from the sale of the Residence go to the grandchildren rather than the residue of the estate, there will be insufficient funds in the estate to pay the gifts identified in paragraphs 14-23 of the Will. Under such circumstances, the Public Trustee argues that the gifts must be administered in accordance with the marshalling provisions set out in section 28 of the *Estate Administration Act*, SA 2014, c E-12.5 (the "EAA").

Position of the Grandchildren

[28] The Deceased's grandchildren, Sydney Gall, Danielle Toews, Jamie Toews, Kaden Franke, Riley Franke and Tate Gall, were represented by counsel at the application. The grandchildren submit that the Deceased intended to leave the proceeds of the sale of the Residence to them pursuant to paragraph 10 of the Will, in addition to the gifts of \$25,000 set out in paragraphs 14-23 of the Will. Any reference to the proceeds of the sale of the residence forming part of the residue of the estate was the result of a drafting error that ought to be rectified.

[29] The grandchildren argue that the evidence is clear and convincing that the Deceased did not intend to direct the proceeds of the sale of the Residence to the residue of his estate. Rather, the proceeds were to be distributed to the grandchildren. Given the clear and convincing evidence of the Deceased's intent, the Court ought to rectify the Will in accordance with section 39 of the *WSA* and delete the portion of paragraph 10 of the Will that refers to the proceeds of the sale of the Residence forming part of the residue of the estate.

[30] The grandchildren adopt a similar argument to that advanced by the Public Trustee with respect to any shortfall in the estate, stating that estate expenses and payment of debts are to be applied against the gifts in accordance with section 28 of the *EAA*.

[31] The Grandchildren take the position that the compensation requested by the Personal Representative is excessive.

Interpretation of the Will

[32] Paragraph 10 of the Will contains contradictory instructions regarding the disposition of the Residence. It says:

To hold as a separate trust to allow my spouse, Betty Ann Gall, during her lifetime the use, occupation and enjoyment of whatever residence including the household goods and furniture that I may own at my death. All taxes, insurance, and repairs shall be paid out of my general estate, being charged either to income or capital or partly to income and partly to capital, as my Trustees in their discretion deem advisable. Subject to the interest of my spouse, any residence held by my Trustees under the terms of this paragraph shall form part of the residue of my estate.

...

If my spouse, Betty Ann Gall, should predecease me or in the event of her death, the above noted property shall be sold and the proceeds shall be divided in equal shares between my grandchildren ...

[33] Paragraph 10 contains two inconsistent directions. One states that the proceeds from the sale of the Residence, upon the termination of Ms. Gall's life interest, form part of the residue. The other directs that the proceeds be divided into equal shares among the grandchildren. As both cannot operate simultaneously, the Court must determine the Deceased's intention.

[34] Section 26 of the WSA requires that a will be interpreted in a manner that gives effect to the intent of the testator. Evidence as to the testator's intent may be admitted to assist the court in ascertaining the testator's intent.

[35] In addition to the statutory provisions regarding interpretation of a will, there are four primary principles at common law that govern the interpretation of a will. First and foremost, any interpretation of a will ought to give effect to the testator's intentions. In ascertaining those intentions, the entire will should be read, and the words should be understood in their ordinary meaning unless evidence supports some other interpretation. Finally, admissible extrinsic evidence is permissible to assist the court in interpreting the will and giving effect to the testator's wishes: *Hicklin Estate v Hicklin*, 2019 ABCA 136 at paras 47-51.

[36] Applying these principles to the present case, I find that the Deceased intended to leave the proceeds of the sale of the Residence to his grandchildren. Reference to the proceeds of the sale of the Residence forming part of the residue of the estate was a drafting error only and the sentence at paragraph 10 of the Will to that effect does not reflect the true intent of the Deceased.

[37] I find the Deceased intended to leave the proceeds of the sale of the Residence to his grandchildren for the following three reasons.

[38] First, when the Will is read as a whole, in its entirety, the Deceased's intention regarding his grandchildren is reflected not only in paragraph 10 of the Will but is repeated later in the Will. At paragraph 12 of the Will, the Deceased directs that in the event his spouse, Betty Ann Gall predeceases him, the Residence is to be sold and the proceeds "shall be divided in equal shares between my grandchildren ...". This language mirrors the language in paragraph 10 of the Will which also provides for the proceeds of the sale of the Residence to be divided in equal shares among the grandchildren if Betty Ann Gall predeceased the Deceased or the life estate terminates on her death.

[39] Read as a whole, the Will uses consistent language regarding the sale of the Residence and the equal division of proceeds among the grandchildren in both paragraphs 10 and 12. No

evidence was presented explaining an intention to treat the proceeds differently depending on whether the Deceased survived his spouse or her life interest ended after his death. This supports the conclusion that the proceeds were intended for the grandchildren.

[40] Second, the evidence surrounding the circumstances under which the Will was drafted and executed are consistent with the Deceased intending to divide the proceeds of the sale of the Residence equally among his grandchildren.

[41] Norman Tainsh was the lawyer who drafted the Deceased's Will. His evidence in his affidavit sworn on October 25, 2022, is that the Will the Deceased signed contained an error. The Will should not have included the sentence in paragraph 10 designating the proceeds of the sale of the Residence to the residue of the estate.

[42] When Mr. Tainsh was retained to prepare the Deceased's Will, he gave the Deceased a will questionnaire to complete. The Deceased returned the completed will questionnaire along with a handwritten, signed document dated April 11, 2018, which outlined how he wished various estate assets – and some non-estate assets belonging to LarRon – to be distributed. The will questionnaire did not address the Residence. However, in the April 11, 2018 document, the Deceased stated that the Residence was to be sold and the proceeds paid into the estate. That document also directed that each of the grandchildren was to receive a gift of \$25,000, and that Wylene Buchart would be the residuary beneficiary.

[43] Following receipt of the will questionnaire and the April 11, 2018 document, Mr. Tainsh prepared a draft of the Will. The draft contained provision for a life estate in the Residence for Betty Ann Gall. This was a holdover from an earlier version of the Deceased's will that Mr. Tainsh had also drafted for the Deceased.

[44] Mr. Tainsh met with the Deceased on September 12, 2018 to review the draft. In his notes from that meeting, Mr. Tainsh noted that the Will needed to include provisions for what would happen to the Residence upon Betty Ann Gall's death. In a follow up call with Mr. Tainsh's assistant, Patricia Fenton, the Deceased instructed that upon the death of Betty Ann Gall, the Residence was to be sold and divided 8 ways. These instructions were reflected in a note to the file made by Ms. Fenton. The recorded instructions are consistent with an intention by the Deceased to divide the proceeds of the sale of the Residence between his 8 grandchildren. They are not consistent with an intention to leave the proceeds of the sale of the Residence in the residue of the estate for the benefit of Wylene Buchert.

[45] The final draft of the Deceased's Will reflected the instructions recorded by Ms. Fenton in paragraphs 10 and 12, both of which direct the proceeds from the sale of the Residence be divided in equal shares between the grandchildren.

[46] Mr. Tainsh's affidavit and the notes from his file indicate that the direction to divide the proceeds equally among the grandchildren in the Will reflect instructions received from the Deceased.

[47] The provisions dividing the proceeds of the sale of the Residence among the grandchildren are prominent in the Will, with each of the grandchildren's names spelled out in both paragraphs 10 and 12. Had clauses 10 and 12 not reflected the Deceased's intent to have the proceeds of the sale of the Residence be divided among his grandchildren, I have no difficulty finding that the Deceased would have been aware of clauses 10 and 12 and had he not wanted to have the proceeds of the sale of the Residence to go to his grandchildren, he would have instructed Mr.

Tainsh to change those provisions. He did not instruct Mr. Tainsh to make those changes, and he executed the Will as written.

[48] Third, there is compelling evidence that the inclusion of the reference to the proceeds of the sale of the Residence forming part of the residue of the estate was an error. This error did not reflect the Deceased's true intent.

[49] According to Mr. Tainsh, the error occurred when he neglected to remove the provision designating the proceeds from the sale of the Residence to the residue of the estate from a precedent he used when preparing the Deceased's Will.

[50] Mr. Tainsh's evidence is that the intentions of the Deceased are properly reflected in the sentence at the end of paragraph 10 of the will, which states: "If my spouse, BETTY ANN GALL, should predecease me or in the event of her death, the above noted property shall be sold and the proceeds shall be divided in equal shares between my grandchildren ...".

[51] I accept Mr. Tainsh's evidence that the reference to the proceeds from the sale of the Residence forming part of the residue of the estate in paragraph 10 of the Will was carried over inadvertently from a precedent. His evidence was consistent through questioning.

[52] The inclusion of the reference to the residue of the estate in paragraph 10 is far less prominent than the reference to the grandchildren receiving the proceeds from the sale of the Residence and I accept that the error was therefore overlooked by Mr. Tainsh and the Deceased when they reviewed the Will together.

[53] Wylene Buchert's evidence is that she had several conversations with the Deceased that led her to believe she was to inherit the Residence upon the Deceased's death. That evidence contradicts the Deceased's intention as I have found it expressed in the Will.

[54] Wylene's Buchert's evidence is also contradicted by the evidence of Betty Ann Gall who testified at questioning that the Deceased had contemplated leaving the proceeds of the sale of the Residence to Wylene Buchert but then ultimately decided to leave the proceeds to his grandchildren.

[55] Section 11 of the *Alberta Evidence Act*, RSA 2000, c A-18 is applicable. It says that an opposed or interested party shall not obtain a verdict, judgment or decision on that party's own evidence in respect of any matter occurring before the death of the deceased person, unless the evidence is corroborated by other material evidence." Section 3(3) of the *WSA* expressly directs the application of section 11 of the *Alberta Evidence Act* in respect of evidence offered or taken in an application to the Court pursuant to the *WSA*.

[56] Ms. Buchert's account of conversations with the Deceased is not corroborated as required and is inconsistent with other evidence in the record. In these circumstances, that evidence does not establish an intention by the Deceased to direct the proceeds from the sale of the Residence to the residue of his estate.

[57] Wylene Buchert seeks to have judgment in her favor based on her evidence of discussions she had with the Deceased before his death. Her evidence in this regard is not corroborated and is, in fact, contradicted by the evidence of Betty Ann Gall. Wylene Buchert's evidence regarding the Deceased's expressed intentions is insufficient in this case to establish that the Deceased intended to leave the proceeds of the sale of the Residence to the residue of the estate and by extension to Wylene Buchert.

[58] Wylene Buchert also argues that the death of Betty Ann Gall is a condition precedent to the grandchildren receiving the proceeds of the sale of the Residence. Wylene Buchert argues that paragraph 10 of the Will, which says “If my spouse Betty Ann Gall, should predecease me or in the event of her own death, the above noted property [the Residence] shall be sold and the proceeds shall be divided in equal shares between my grandchildren ...”, means that the proceeds of the sale of the Residence cannot be distributed to the grandchildren because Betty Ann Gall did not predecease the Deceased, nor has she since died.

[59] While Ms. Gall did not predecease the Deceased, nor has she died, she did disclaim her life interest in the Residence. When a person who is the beneficiary of a life estate disclaims that interest then, unless a contrary intention is contained in the will, the subsequent interests are accelerated: *Re Brannan Estate* (1991), 56 BCLR (2d) 113, 83 DLR (4th) 106; *Roberts v Roberts Estate* (1993), 121 NSR(2d) 58; *Re Wallocha (Estate of)*, 2003 ABQB 886 at para 10. Ms. Gall’s disclaimer of her life interest in the Residence, accelerates the remainder interest in the Residence of the grandchildren.

[60] As a final consideration, I note that an interpretation consistent with the grandchildren receiving the proceeds of the sale of the Residence does not disentitle Wylene Buchert to a significant gift. Aside from designating his daughter as the sole beneficiary of the residue of the estate, the Deceased left 100% of his shares in his company, LarRon, to her. Those shares were valued at \$910,903.00 in the inventory filed in support of the application for a grant of probate. Even without the proceeds from the sale of the Residence, Ms. Buchert is receiving the largest share of the estate, and I have no concern that the Deceased’s intent to provide a substantial legacy for his daughter would be in any way thwarted by the grandchildren receiving the proceeds of the sale of the Residence.

[61] I am satisfied based on the totality of the evidence before me and based on a plain reading of the entirety of the Will that the Deceased’s intent was to leave the proceeds of the sale of the Residence to his grandchildren in equal shares. Reference to the proceeds forming part of the residue of the estate was inadvertently left in the draft from a precedent that was used.

[62] Pursuant to section 39 of the WSA, where a will does not reflect testator’s intention because of an accidental slip, omission or misdescription’s it may be rectified. Evidence of the testator’s true intention must be clear and convincing before the court will engage in rectification. In this case I find the evidence of the Deceased’s intention, based on a reading of the Will as a whole, the evidence of Betty Ann Gall, and the evidence of Mr. Tainsh, including his file notes, clear and compelling. The Deceased intended to leave the proceeds of the sale of the Residence to his grandchildren.

[63] Accordingly, the Deceased’s Will shall be rectified by removing from paragraph 10 of the Will the following words: “Subject to the interest of my spouse, any residence held by my Trustees under the terms of this paragraph shall form part of the residue of my estate.” Those words were included in the Will because of an accidental slip when the drafter left the words in the Will from a precedent he was using. Those words do not reflect the true intention of the Deceased and must therefore be removed.

Paragraphs 14-23 of the Will and Insufficiency of Estate Assets

[64] Given my finding with respect to clause 10 of the Will, there will be insufficient assets in the estate to give effect to the bequests of \$25,000 to each of the grandchildren and the bequests of \$1,000 to Wade Larry Gall and Renie Myron Gall set out in paragraphs 14-23 of the Will.

[65] While the Will contemplates the sale of assets belonging to LarRon to satisfy the various bequests, assets belonging to LarRon cannot be disposed of by the estate. Those assets did not belong to the Deceased personally and they cannot therefore be disposed of by the estate.

[66] Section 28 of the *EAA* applies. The application of section 28 of the *EAA* was explained in *Maruzs Estate (Re)*, 2023 ABKB 247 at para 34:

Rules govern the priorities of certain obligations and bequests. Legally enforceable taxes, debts and expenses of a deceased person and their estate have first priority over the assets of a deceased person.

a. If the taxes, debts and expenses exceeded the total estate value, it would be irrelevant what bequests a person made in a will. In such circumstances, no beneficiary under a will would receive any inheritance and the creditors will divide the estate assets *pro-rata*: see *Estate Administration Act*, SA 2014, c E-12.5 (the “*EAA*”) section 27.

b. If assets in a particular estate exceed the taxes, debts, and expenses, those obligations are paid from the residue: see *EAA* section 28. The non-residuary beneficiaries are then advanced or transferred their bequests prior to the distribution of the residuary bequests. The remaining residue of the estate is then divided amongst the residuary beneficiaries.

c. If there is insufficient residue to fund all non-residuary bequests in full after payment of the taxes, debts and expenses, all the non-residuary bequests abate *pro-rata*. In these circumstances, residuary beneficiaries receive nothing.

[67] In this case, the estate is insufficient to fund all non-residuary bequests in full; therefore, the non-residuary bequests must abate. However, section 28 differentiates between types of non-residuary bequests, and the nature of the bequest must be considered when abatement is required.

[68] According to section 28 of the *EAA*, the first property to be applied to the payment of estate expenses, debts and liabilities is property specifically charged for the payment of those obligations. In this case, the Deceased did not designate any property toward the payment of estate taxes, debts, and expenses. It is therefore necessary to look to the next type of property that can fulfill the estate’s obligations. That is the residue of the estate. Based on the preliminary estimates of the estate expenses and liabilities, the residue of the estate will be insufficient to cover those expenses and liabilities.

[69] The next type of property available to pay estate expenses, debts, and liabilities are general gifts of property. A general gift “does not specifically identify the thing bequeathed; usually it is a pecuniary legacy.”: Ian M Hull, “HWE-113 Types of Gifts” in *Halsbury’s Laws of Canada – Wills and Estates*, 2024 Reissue (Markham: LexisNexis Canada, 2024) (loose-leaf), ch 6.

[70] The monetary gifts set out in paragraphs 14-23 are such general gifts. As there are insufficient funds to pay the legacies in paragraphs 14-23, those legacies abate. Any remaining shortfall is borne pro-rata by the specific gifts in paragraphs 10, 11 and 13, calculated based on the net value of those gifts at distribution.

[71] The specific amounts to be contributed from each gift cannot be determined until the final accounting of the estate is complete. The Personal Representative may apply to any justice of the court for directions if the parties cannot agree on calculations upon the passing of accounts.

The Family Property Claim

[72] Section 11 of the *Family Property Act*, RSA 2000, c F-4.7 (as amended) allows an application for a family property order to be made or continued against a deceased person by a surviving spouse. However, to do so, the surviving spouse must establish that an application for a family property order could have been started immediately before the death of the other spouse.

[73] Section 5 of the *Family Property Act* sets out conditions precedent for the granting of a family property order. Those conditions include the granting of a judgment of divorce, a judgment of judicial separation, that the spouses having been living separate and apart for at least one year or the parties are living separate and apart and property is being dissipated. None of the conditions precedent exist in this case. The Deceased and Ms. Gall were married and living together at the time of death. While spouses may be held to be living separate and apart notwithstanding that they have continued to reside in the same house, the evidence in this case does not support such a finding.

[74] Betty Ann Gall did not pursue her claim under the *Family Property Act* at the hearing of this matter. For that reason and for the reasons set out above, her claim is dismissed.

Return of Estate Property

[75] In her submissions, Wylene Buchert identifies specific and unaccounted for property belonging to LarRon that she alleges are in the possession of Betty Ann Gall or are otherwise unaccounted for. Property belonging to LarRon are not estate assets. Share ownership does not confer direct ownership of corporate assets. As such, this court has no jurisdiction to deal with those assets in the context of this estate action. To the extent that LarRon has a claim for the return of property belonging to it, it will have to bring its own action for the return of that property.

[76] There is also estate property that Wylene Buchert alleges is unaccounted for. This property includes vehicles, tools, personal property belonging to the Deceased, some cash and a bank account. Wylene Buchert is not the personal representative of the estate. The sole Personal Representative of the estate is Mr. Wiens. It is his responsibility to identify the estate assets and liabilities and administer and manage the estate: *EAA*, section 7.

[77] In a letter dated August 24, 2021, the Personal Representative advised counsel for Ms. Wylene Buchert that vehicles which Ms. Buchert claims are estate assets were jointly held with Betty Ann Gall. Accordingly, those vehicles are not estate assets. Similarly, the RBC Dominion Securities Account had a designated beneficiary and therefore does not form part of the estate.

[78] The statements of the Personal Representative in the letter dated August 24, 2021 were not supported by any documentary evidence such as vehicle registrations or beneficiary designation forms. I direct that the Personal Representative provide to all the beneficiaries documentary evidence supporting the Personal Representative's assertion that the RBC Dominion Securities Account referenced in his letter of August 24, 2021 designated Betty Ann Gall as the beneficiary of the account. Further, the Personal Representative shall provide all beneficiaries with documentary proof (i.e. registrations) for all vehicles in which the Deceased had an ownership interest and for which the Personal Representative has determined Betty Ann Gall had a right of survivorship. The Personal Representative shall comply with this direction within 60 days.

[79] In the event any beneficiary disputes the Personal Representative's assertions that the RBC Dominion Securities Account and the vehicles are not estate assets after receiving the documents from the Personal Representative, or if 60 days pass and the documentary evidence has not been received, then any beneficiary may bring an application before me for a further determination.

[80] Betty Ann Gall has made a claim for the return of a pistol. In her affidavit filed November 16, 2021, Ms. Gall refers to personal assets that belong to her that she said Wylene Buchert had taken possession of. In her questioning, she referred specifically to a pistol.

[81] In her written submissions for this hearing, Betty Ann Gall submitted the following: "The pistol, which Ms. Gall asserts is part of the Estate and to which she is entitled, remains in the possession of another party or has not been returned to her. The Applicant [Wylene Buchert] has still not returned the pistol that belonged to the cousin of Ms. Gall, who had given it to her as a gift."

[82] If the pistol is Ms. Gall's personal property, given to her as a gift, it is not an estate asset. Just as I cannot deal with assets belonging to LarRon in this estate action, I cannot deal with assets belonging to Ms. Gall personally in this estate action. Ms. Gall would have to bring her own action to recover her personal property. If the pistol is estate property, then it is to be disposed of in accordance with paragraph 13 of the Will which deals with all firearms in the estate. Betty Ann Gall has no claim to any firearms that form part of the estate. Accordingly, Ms. Gall's claim for return of the pistol is dismissed.

[83] Betty Ann Gall's claim for reimbursement of an electrical bill. Her evidence is that she paid utility or energy bills on behalf of LarRon. When an error was discovered and reimbursement cheques were issued, they were issued to LarRon. As explained previously in these reasons, assets belonging to LarRon are not estate assets. The only estate asset relating to LarRon were the Deceased's shares that he bequeathed to his daughter Wylene Buchert. As the LarRon buildings are not estate assets, Betty Ann Gall is not entitled to reimbursement from the estate for expenses related to those buildings. Ms. Gall may have a claim against LarRon, but she cannot pursue that claim in this estate action. Her claim for reimbursement of the electrical bill within this estate action is dismissed without prejudice to her ability to bring a civil claim in her personal capacity for reimbursement against LarRon.

Executor Compensation

[84] The factors to be considered when setting compensation for the personal representative of an estate include the value of the estate, the complexity of the administration, the skill required,

time expended, the number and complexity of tasks delegated to others and the number of personal representatives appointed in the Will.

[85] In addition to the factors set out in the Surrogate Rules, the Legal Education Society of Alberta (“LESA”) and the Alberta Law Reform Institute suggest a range of fees based on the value of the estate. These suggested ranges are based solely on the value of the estate without regard to the actual amount of time and effort expended by a personal representative.

[86] In this case, the Deceased’s will sets executor compensation at \$2,500.00. While this is a factor the court may consider in setting compensation, it is not determinative of the question and the court may order an amount greater than that which is prescribed in a will: *Surrogate Rules*, Alta Reg 130/1995, schedule 1 s 4.

[87] Ultimately, the court’s responsibility is to ensue that compensation paid to an executor is fair and reasonable. What is fair and reasonable will depend on the factors set out in the Surrogate Rules as well as the degree of conflict dealt with by the personal representative.

[88] In this case, the personal representative has not yet fulfilled all his duties and responsibilities. There may be additional estate assets to account for. Distributions have not been completed. A final accounting has not been prepared. In these circumstances, it is not possible for the court to properly assess the relevant factors as they may change materially by the time the estate is completed. The application to set the personal representative’s compensation is premature.

[89] The Personal Representative may renew his application to set compensation when the administration of the estate is complete or when he seeks to have the final estate accounting passed. In the meantime, the Personal Representative is entitled to hold back funds in the amount of \$35,000.00 from distribution pending either an agreement from the parties on his compensation or an order from the court setting his compensation. This amount aligns with the amount he is requesting but is less than he might be entitled to if the LESA guidelines were applied. It represents a reasonable holdback pending final determination and the holdback amount is without prejudice to any final assessment of compensation.

Summary and Conclusion

[90] The Deceased intended to leave the proceeds of the sale of the Residence to his grandchildren in equal shares. Accordingly, paragraph 10 of the Will is rectified by deleting the following sentence: “Subject to the interest of my spouse, any residence held by my Trustees under the terms of this paragraph shall form part of the residue of my estate.”

[91] With respect to the monetary gifts set out in paragraphs 14-23 of the Will, there are insufficient funds in the estate to fund those gifts. Accordingly, these gifts abate. The specific gifts of the shares in LarRon, the proceeds of the sale of firearms, and the proceeds of the sale of the Residence shall abate to the extent necessary on a pro-rata basis to satisfy any further expenses, debts or liabilities of the estate, including the Personal Representative’s compensation.

[92] Betty Ann Gall’s claim for division of family property is dismissed. Her claims within this estate action for return of a pistol and reimbursement of expenses paid on behalf of LarRon are dismissed without prejudice to her ability to bring civil claims against the appropriate parties for relief.

[93] Property belonging to LarRon is not estate property. Accounts with a designated beneficiary and assets that were jointly owned by the Deceased and Betty Ann Gall, ownership of which passed to Ms. Gall by reason of her right of survivorship, are not estate assets. The Personal Representative has 60 days to provide the beneficiaries with documentary support relating to the designated beneficiary on the RBC Dominion Account and the joint ownership of vehicles, failing which any beneficiary may bring an application before me for further determination.

[94] The Personal Representative's application to set his compensation is premature. He may re-apply to have his compensation set when the administration of the estate is complete or when he applies to formally pass the accounts of the estate. In the meantime, he may holdback \$35,000 of estate funds from distribution pending determination of his claim for compensation.

Heard on the 16th day of September 2025.

Dated at the Town of Drumheller, Alberta this 26th day of January 2026.

R.W. Armstrong
J.C.K.B.A.

Appearances:

Linda M. Lynch-Staunton

Kantor LLP

For the Applicant, Wylene Lynn Buchert

Gordon P. VanderLeek

VanderLeek Law

For the Personal Representative, David Wiens

Diann Castle

Castle and Associates

For Betty Ann Gall

Eryn B. Logie

EBL Family Law

For Sydney Gall, Danielle Toews, Jamie Toews, Kaden Franke, Riley Franke and Tate Gall

Kristen Clarke

Alberta Justice

For the Public Trustee on behalf of the minor Jax Buchert