

CANADA / JUDGMENT

Aitken v. Doyle

2025 BCSC 951

COURT

Supreme Court of British Columbia

DECIDED

21 May 2025

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2025 BCSC 951 Aitken v. Doyle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Aitken v. Doyle,

2025 BCSC 951

Date: 20250521

Docket: E91258

Registry: Nanaimo

Between:

Sandra Virginia Aitken also known as Sandy Aitken

Claimant

And

Dawn Marie Doyle also known as Dawn Doyle

Respondent

Before: The Honourable Mr. Justice Baird

Reasons for Judgment

Counsel for the Claimant:

S. McPhee, K.C.

H. Parmar (A/S)

(May 5, 2025 only)

The Respondent, appearing in person:

D. Doyle

Place and Dates of Hearing:

Nanaimo, B.C.

April 7, 2025 &

May 5, 2025

Place and Date of Judgment:

Nanaimo, B.C.

May 21, 2025

INTRODUCTION

[1] This is a family law case. The dissolution of the parties' marriage looks to have been somewhat acrimonious and the business of dividing their assets has been hotly contested. In early 2023, the parties conducted a five-day trial before my colleague Justice Tammen. It was mostly about finances and property division. His judgment is indexed at 2023 BCSC 1258.

LITIGATION HISTORY

[2] On July 24, 2023, on the totality of the evidence adduced, and relying on a Scott Schedule jointly submitted to him by the lawyers for both parties, Justice Tammen made a duly endorsed and entered final order after trial that has never been appealed or varied. That order includes the following terms:

- a) that the respondent, Dawn Doyle, had a valid excluded property claim and was entitled to retain assets without division in the cumulative total amount of \$483,266;
- b) that to equalise the division of family property and to compensate the claimant, Sandra Aitken, for a variety of things, including retrospective child support, her share of child tax benefits, expenses related to a jointly owned rental property on Malaview Avenue, Sidney, BC, and a fixed amount of litigation costs, Ms. Doyle had to pay Ms. Aitken the cumulative total amount of \$497,083 ("the judgment debt");
- c) that Ms. Doyle's non-excluded registered investment accounts had to be equalised by means of a spousal rollover in accordance with s. 146(16) of the Income Tax Act, and that Ms. Doyle was to execute and deliver to Ms. Aitken all the necessary tax documentation to accomplish this purpose; and,
- d) that the Malaview Avenue property was to be listed for sale with the proceeds to be divided equally.

- [3] When Ms. Doyle failed to comply with these orders, Ms. Aitken brought the matter back before Justice Tammen on October 27, 2023. Ms. Doyle was now self-represented, her trial lawyer having recently filed a notice of withdrawal. After hearing the parties, Justice Tammen repeated his order that Ms. Doyle had to pay the judgment debt, and this time he put a deadline on it. He gave her until November 30, 2023 to settle up. He made a fresh order requiring Ms. Doyle immediately to prepare and distribute the documentation required for the registered account rollovers. He also ordered that Ms. Aitken was to have sole conduct of the sale of the Malaview Avenue property, a step usually taken in family litigation when the court has concluded that the sale will not proceed if both parties continue to have a say in it.
- [4] In short, this latest go-round in court was all about forcing Ms. Doyle promptly to comply with orders the court had already made. Justice Tammen seized himself of any matters related to compliance, and I assume that he did this because, on the showing so far, he apprehended that enforcement of his orders would likely require his active involvement and oversight. Ms. Doyle was ordered to pay Ms. Aitkens' fixed costs of the hearing in the amount of \$1,000 plus disbursements.
- [5] Ms. Doyle did not pay the judgment debt by November 30, 2023 and once again failed to deliver the necessary documentation to perfect the spousal rollover of her registered accounts. On February 14, 2024, Ms. Aitken filed an application seeking conduct orders related these failures. She also sought compensation for expenses necessarily incurred, post-judgment interest in the amount of \$11,926, and special costs.
- [6] The hearing of this application was scheduled for March 7, 2024, but for some reason it was adjourned. It was finally taken before Justice Tammen for a contested hearing on August 9, 2024. During the interval the judgment debt was finally paid. This latest hearing resulted in an order in the following terms:
1. The Respondent [Ms. Doyle] pay to the Claimant [Ms. Aitken] \$7,461.27, being the expenses reasonably and necessarily incurred by the Claimant as a result of the respondent's failure to pay the Claimant the judgment amount of \$497,083.00 no later than November 30, 2023, as required and set out in par 3 of the order of this court made October 27, 2023.
 2. The Respondent pay to the Claimant \$11,926.00, being the post judgement interest on the judgment amount of \$497,083.00, from July 27, 2023, to December 1, 2023.
 3. The Respondent pay to the Claimant her costs of all matters related to the application filed February 14, 2024, as full indemnity, special costs from December 1, 2023 to August 9, 2024.
 4. The relief sought by the Claimant at par. 1 b. of the application filed February 14, 2024, is adjourned generally.
 5. The parties each provide the statements related to their accounts as listed in lines 39, 40, 41, 42 and 43 of the Scott Schedule attached to the Final Order of this court made July 24, 2023, to the other party or their counsel (if they have counsel), on or before September 30, 2024.

6. The Claimant and Respondent will each receive \$150,000.00 as an interim distribution of the proceeds of sale of the Malaview property, which funds are presently in trust at RLR Lawyers.
7. The Claimant will receive an additional \$19,387.27 from the proceeds of sale of the Malaview property, which funds are presently in trust at RLR Lawyers, as a payment of the amounts set out in par. 1 and 2 above, which amount shall be deducted from the Respondent's share of the net sale proceeds on a final accounting of the same.
- [7] The relief sought in paragraph 1(b) of Ms. Aitken's application, the item that was adjourned generally, was that Ms. Doyle be compelled (yet again) to prepare the documentation required for the registered account rollovers. It seems that Justice Tammen declared a temporary hiatus in that process, I am not sure why, and ordered instead that the parties had to exchange statements for each of their accounts listed in the Scott Schedule on which the July 24, 2023 trial order was based. I suppose it meant that the sums to be divided remained in dispute, and that in order to complete the task a further exchange of financial disclosure was required.

THE PRESENT APPLICATION

- [8] Nine or so months later the parties are back before the court. They continue to be unable to agree on the amounts to be divided from the accounts in question. I was told that Justice Tammen denied a request to re-appear before him about this. Ms. Aitken's lawyer, Mr. McPhee, told me that this was based on Justice Tammen's opinion that he was functus officio: essentially, that he had made a final order and his jurisdiction over the parties' dispute was exhausted. I decided to deal with the matter on the basis, first of all, that the parties wanted me to, and, secondly, that what I have been asked to do is settle the proper application and enforcement of the final order, not to revisit its terms or correct it.
- [9] A major impediment to wrapping up the details has been Ms. Doyle's settled conviction that Justice Tammen's calculation of her excluded property claim is wrong, including as it relates to the division of the funds on account. In response to this I will simply repeat that the full extent of her excluded property claim was squarely addressed and finally determined at trial. Justice Tammen's order was really very simple: he gave Ms. Doyle credit for \$483,266 in excluded property, and ordered the presumptive equal division of all other family assets. The items of excluded property and their trial date valuations were as follows.

- \$237,000 - pre-relationship value of the matrimonial home;
- \$122,239 - pre-relationship investments;
- \$15,491 - excluded portion of a work-related severance payment;
- \$9,000 - post-separation TFSA contributions; and
- \$99,536 - inheritance funds.

- [10] This was Justice Tammen's best judgment based on the evidence, and these are the precise figures that made their way into the Scott Schedule jointly agreed to by the lawyers acting for each party and attached as Schedule "A" to the duly endorsed and entered final order after trial. If his reckoning of the claim is incorrect for any reason, then Ms. Doyle should appeal his decision, something that Justice Tammen has apparently told her repeatedly during the various post-trial hearings that I have referred to. As far as this court is concerned, however, the matter of property division including exclusions is closed.
- [11] Another hold-up has been Ms. Doyle's contention that because her registered investments accounts have declined in value since the trial, it is the present-day balances that should be divided. This is wrong. Justice Tammen's order was clearly based on a trial date valuation. This accords with well-established legal precedent to the effect that, absent some compelling reason to do otherwise, and in the name of fairness, consistency and predictability, the presumptive valuation date for the division of matrimonial property is the date of trial: see, for example, *C.M. v. M.N.*, 2022 BCSC 684, especially the appeal authorities surveyed at paras. 9-16.
- [12] The good sense of this presumption is easy to make out in the present case. If the market value of the funds has decreased in the interval between trial and today, then Ms. Aitken would be disadvantaged by Ms. Doyle's refusal to facilitate the rollover almost two years ago when she was first ordered to do it. On the other hand, if she impinged upon registered funds to pay the judgment debt, then departing from the presumptive valuation date would be tantamount to a reapportionment of property. Either way it would be unfair.
- [13] Next up, Ms. Doyle has long insisted, and Ms. Aitken has now agreed, that the Scott Schedule presented to Justice Tammen contains an important error, in that Ms. Doyle's registered account balances were listed at book rather than market value. The result is that the account balances set out in the Scott Schedule are too high and must be adjusted downwards. Mr. McPhee has examined the account statements that Ms. Doyle disclosed to him in accordance with Justice Tammen's order of August 9, 2024, and he has corrected the figures in the Scott Schedule by listing their market value for the last financial quarter, March 31, 2023, before the trial. He has taken me through the statements and I am satisfied that his figures are correct.
- [14] With the valuation date and market value issues decided, the division of the funds on account is a straightforward matter. Ms. Aitken has rightly conceded that there must be a significant reduction in the equalisation payment applicable to these accounts set out in the Scott Schedule. On my evaluation of the corrected amounts, and to give effect to the clear intention of Justice Tammen's trial judgment, I hereby order Ms. Doyle to execute a rollover from her registered accounts in Ms. Aitken's favour in the amount of \$63,818. Ms. Doyle assured me that there are sufficient funds in her registered accounts to comply with this order immediately, and I order her to do just that. The necessary rollover documents must be fully executed and exchanged by no later than one week after the date of this ruling.

- [15] It does not seem to have been understood by counsel or the court that the Investors Group Mutual Fund referred to in the Scott Schedule is not registered. I will simply order that its trial-date balance of \$29,013 is to be divided equally. Payment will be made from Ms. Doyle's half-interest in the proceeds in trust from the sale of the Malaview Avenue property.
- [16] Ms. Doyle argued that Justice Tammen's order requiring her to compensate Ms. Aitken for child tax benefits was wrong in law. If she is right, then once again it is a matter to be raised on an appeal. She also sought compensation from Ms. Aitken for the capital gains tax payable on assets that she liquidated to pay the judgment debt, but in my view the manner in which she chose to re-arrange her finances to take care of this obligation is not Ms. Aitken's concern.
- [17] This concludes my assessment of the issues raised by the parties. There are aspects of Ms. Doyle's submission that I have not specifically addressed because I perceive them to be wrapped up in her overall complaint that the trial judge's approach to property division and exclusion was wrong, and an attempt to re-litigate matters which, rightly or wrongly, have already been decided by the trial court.

COSTS

- [18] I am not prepared to order special costs. Ms. Aitken has been prevailingly successful on the questions that I was asked to decide, but during the hearing she quite rightly abandoned a claim for a reasonably hefty sum in post-judgment interest, and made no reference to the claim in her pleadings that Ms. Doyle should pay her for further expenses incurred or a \$5,000 fine. Ms. Doyle advanced arguments that were destined to fail, but she also enjoyed some measure of success. In all of the circumstances, and in the interests of finality, I hereby order Ms. Doyle to pay Ms. Aitken fixed costs in the amount of \$1,500. This amount may also be deducted from her entitlement to the funds held in trust.

CONCLUDING REMARKS

- [19] In closing, I would emphasise that Ms. Doyle's objections to the trial result are clearly sincere and strongly felt. She believes, in particular, that the sums of money credited to her as excluded property are too low, and that because of it she has been ordered to pay Ms. Aitken more than is rightfully due to her. As I said during the hearing, an appeal may remain an available option even if the time limit for filing one has been exceeded. Orders extending the time to appeal are routinely made where the Court of Appeal is persuaded that the interests of justice require it.

[20] In the meantime, however, the orders made in this court must be obeyed and are immediately enforceable. I direct Mr. McPhee to draw up the order made in this ruling, which he may file electronically to my attention. Ms. Doyle's signature assenting to its terms will not be required, but I direct Mr. McPhee to provide her by email with a copy of the order as soon as it is entered. The matter may be returned to me in the event of non-compliance. I hope and trust that this will not be necessary.

"Baird J."

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