

CANADA / JUDGMENT

Andersen v. Andersen

2025 BCCA 342

COURT

British Columbia Court of Appeal

DECIDED

3 October 2025

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2025 BCCA 342 Andersen v. Andersen COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Andersen v. Andersen, 2025 BCCA 342 Date: 20251003 Docket: CA50258 Between: Tim Andersen Appellant (Plaintiff) And Carl Lloyd Andersen and Leona Gertrude Andersen Respondents (Defendants) Before: The Honourable Justice Iyer The Honourable Justice Riley The Honourable Justice Mayer On an application to vary: An order of the Court of Appeal for British Columbia, dated June 18, 2025 (Andersen v. Andersen, Vancouver Docket CA50258). The Appellant, appearing in person (via teleconference): T. Andersen No one appearing on behalf of the Respondents Place and Date of Hearing: Vancouver, British Columbia September 2, 2025 Place and Date of Judgment: Vancouver, British Columbia October 3, 2025 Written Reasons by: The Honourable Justice Mayer Concurred in by: The Honourable Justice Iyer The Honourable Justice Riley Summary: The appellant, Tim Andersen, applies under s. 29(1) of the Court of Appeal Act to vary or set aside an order of this Court made in chambers on June 18, 2025, dismissing his appeal as abandoned. The order was made after Mr. Andersen failed to comply with a previous order made on January 22, 2025, requiring him to post security for costs within 30 days. The application for dismissal was heard by Justice Horsman. Mr. Andersen did not attend. Justice Horsman found Mr. Andersen had not provided a reason for his delay in posting security or assurance that this would be done within a reasonable period. She found a further delay of indefinite duration would prejudice the respondent and the appeal lacked merit. She concluded that dismissal of the appeal was in the interests of justice. Held: Application dismissed. Mr. Andersen has not identified any error of fact, law, or principle in Justice Horsman's analysis. Her conclusions are owed deference. Reasons for Judgment of the Honourable Justice Mayer:

- [1] This is an application made under s. 29(1) of the Court of Appeal Act to vary or set aside the order made by Justice Horsman in chambers on June 18, 2025, dismissing the appeal of the appellant, Tim Andersen. Justice Horsman made the order because Mr. Andersen had not complied with the previous order of Justice Griffin made January 22, 2025, requiring him to post \$10,300 as security for appeal costs within 30 days.

Background

- [2] On October 5, 2021, Mr. Anderson commenced an action against his parents, the respondents Carl and Leona Andersen, advancing claims in trust, breach of contract, and tenancy issues.
- [3] After an exchange of offers in or about March 2024, the parties agreed to settle the matter. The respondents paid settlements funds in two tranches: \$60,000 directly to Mr. Andersen's daughter on March 27, 2024; and a \$250,000 bank draft provided to Mr. Andersen on April 8, 2024, which he directed be made payable to his daughter. He provided a signed release and consent dismissal order to the respondents on March 31, 2024.
- [4] On May 8, 2024, Mr. Anderson applied to set aside the consent dismissal order and release, alleging duress. Justice Latimer dismissed the application on October 11, 2024. Mr. Andersen filed a notice of appeal on November 7, 2024.
- [5] On January 22, 2025, Mr. Andersen applied for several orders in this Court: an extension of time to file an appeal record, leave to amend filings and documents, and waiver of court fees. The respondents cross-applied for an order that Mr. Anderson pay \$10,500 as security for costs of the appeal, \$41,169.44 as security for costs incurred in other proceedings and \$250,000 as security for the settlement funds paid in April 2024.
- [6] Justice Griffin dismissed Mr. Andersen's application. She ordered him to post \$10,300 as security for costs of his appeal within 30 days, with leave to the respondents to apply for dismissal of the appeal as abandoned if this was not done. The appeal was stayed until security was posted. The remainder of the respondents' application was dismissed.
- [7] Mr. Andersen did not post security. On January 29, 2025, he filed an application to vary Justice Griffin's order but took no steps to advance that application.
- [8] The respondents filed an application to dismiss Mr. Andersen's appeal, which they served on June 10, 2025. The application came on for hearing before Justice Horsman in chambers on the morning of June 18, 2025. Although registry staff emailed Mr. Andersen the day before to remind him of the hearing, he did not attend. After directing registry staff to take steps to contact Mr. Andersen, which were unsuccessful, Justice Horsman allowed the hearing to proceed at 2pm. She delivered reasons that day.
- [9] In her reasons, Justice Horsman set out the following considerations for dismissing an appeal as abandoned based on failure to comply with a security for costs order, summarized by Justice Voith in *Ashraf v. Jazz Aviation LP*, 2023 BCCA 434 at para. 13:
 - a) What was the reason the appellant failed to comply with the order? Has the appellant offered a realistic assurance that security will be posted within an acceptable period of time?
 - b) Will the delay in posting security cause prejudice to the respondent?
 - c) Do the merits of the appeal justify declining to exercise the jurisdiction to dismiss?

d) Is the dismissal of the appeal in the interests of justice?

- [10] Justice Horsman concluded that Mr. Andersen had not provided a reason for his delay in posting the security ordered by Justice Griffin or any assurance that he would do so. She decided that a further delay of indefinite duration would result in prejudice to the respondent Carl Andersen, who was 89 years old and living in an assisted care facility. By the time of the hearing Leona Andersen had passed away. Justice Horsman considered that Mr. Andersen's appeal had no merit because he had not identified any error of fact or law in Justice Latimer's decision that he had not satisfied the legal test for duress. In the circumstances, Justice Horsman concluded that dismissal of the appeal was in the interests of justice. Submissions of Mr. Andersen
- [11] Mr. Andersen submits that he is a person with disabilities, which makes it difficult for him to participate in court processes, including complying with filing requirements and appearing for court. He says that this difficulty is exacerbated by his limited access to technology and the remote location where he lives. As well, he says his financial circumstances have impacted his ability to make necessary filings, and despite his efforts, he has been unable to retain pro-bono counsel. He submits that for these reasons, he did not have the ability to file response materials or adequately prepare for the hearings before Justice Griffin or the hearing before Justice Horsman. He says that in both cases, he asked for adjournments, but his requests were refused.
- [12] Mr. Andersen explained that he did not attend at the hearing before Justice Horsman on June 18, 2025, because he fell and crushed his phone - his only means of communication - as he was walking from his home that morning to get to an area with better cell phone service. He did not explain what steps he took afterwards to attempt to call into court for the hearing.
- [13] In submissions to this Court, Mr. Andersen did not set out what he would have said at the hearing before Justice Horsman if he had been able to attend, or on a new hearing date if the matter had been adjourned. He did not set out a plan to pay security as ordered. Rather, he said security was not necessary because the respondents can recover any costs order made against him from his "share" of their estate. As I understand it, Mr. Andersen also says he does not have the money to pay security. He says that the \$250,000 he received from the respondents to settle his claims belongs to his daughter.

Analysis

- [14] Section 29 of the Court of Appeal Act, S.B.C. 2021, c. 6, permits a division of the Court to cancel or vary an order made by a justice sitting in chambers. However, the Court will not do so unless it is satisfied the chambers judge was wrong in law, or in principle, or misconceived the facts: *Haldorson v. Coquitlam (City)*, 2000 BCCA 672 at para. 7

- [15] The Court is reluctant to interfere with a discretionary decision, such as that made by Justice Horsman: *Ashraf v. Jazz Aviation LP*, 2024 BCCA 45, at para. 3.
- [16] Mr. Andersen has not explained how the result would have been different if he had appeared before Justice Horsman on June 18. Justice Horsman had been provided with screen shots of his written submissions in support of an adjournment. Those submissions alleged unfairness to date, unjust rulings, and complaints that his disability and status as a self-represented litigant had been ignored. Justice Horsman was not satisfied that the submissions disclosed a legitimate basis for an adjournment.
- [17] Mr. Andersen's submissions did not explain why he had not provided security or when he would. Justice Horsman concluded there was no basis to believe he would do so. His submissions before this Court did not remedy this situation. His argument that security is not required because the respondents may set off any future costs award against his future inheritance ignores the point. Security was ordered by Justice Griffin after consideration of the factors set out in *Creative Salmon Company Ltd. V. Staniford*, 2007 BCCA 285, at para. 9. Mr. Andersen has not complied with that order.
- [18] Justice Horsman found that Carl Andersen would suffer prejudice if there was a further delay in providing security. Mr. Andersen does not challenge this finding but says that he has suffered prejudice because of various alleged historical wrongdoings by the respondents and members of his family. In my view, those alleged wrongdoings are not relevant to this application.
- [19] Finally, with respect to the merits of the underlying appeal, Justice Horsman concluded that Mr. Andersen had not identified any error of law or fact in the chambers judge's conclusion that he had not met the legal test for duress. In this application he contends that at the time he signed the release and consent dismissal order he was under the influence of drugs, without the benefit of counsel and under extreme financial and emotional distress. As Justice Horsman noted, Justice Latimer found Mr. Andersen had not established financial or emotional distress. Mr. Andersen's submission that he was under the influence of drugs and without counsel when he agreed to settle his claims against the respondents is a new argument, not based on evidence before the Court.
- [20] In my view, there is no basis to vary or set aside Justice Horsman's order dismissing Mr. Andersen's appeal as abandoned.

Disposition:

- [21] I would dismiss this application. "The Honourable Justice Mayer" I AGREE: "The Honourable Justice Iyer" I AGREE: "The Honourable Justice Riley"

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Prepared on 25 October 2026 · Esheria