

CANADA / JUDGMENT

Baillargeon v. Adams

2025 BCSC 824

COURT

Supreme Court of British Columbia

DECIDED

1 May 2025

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2025 BCSC 824 Baillargeon v. Adams IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Baillargeon v. Adams, 2025 BCSC 824 Date: 20250501 Docket: E96521 Registry: Nanaimo Between: Josee Baillargeon Claimant And Calum David Adams Respondent Before: The Honourable Justice Lamb Reasons for Judgment Counsel for the Claimant: K. Rongve Counsel for the Respondent: A. Mujtabah Place and Date of Hearing: Nanaimo, B.C. January 28, 2025 Place and Date of Judgment: Nanaimo, B.C. May 1, 2025

- [1] The parties brought cross applications seeking orders pursuant to s. 97 of the Family Law Act, S.B.C. 2011, c. 25 to effect the division of family property and family debt that I ordered on April 30, 2024 after a five-day trial. My reasons for judgment following trial are indexed at Baillargeon v. Adams, 2024 BCSC 711 (the "trial decision"). I will use the defined terms from the trial decision in these reasons for judgment.
- [2] The real issue at this time is whether Ms. Baillargeon should receive the amount ordered at trial (which was based on the appraised values of the properties) or whether Ms. Baillargeon's share of the equity should be adjusted to reflect the sale price of the two properties that will be sold. For the reasons that follow, I find that Ms. Baillargeon should be compensated in accordance with the final order.

Background

- [3] By way of brief summary, the final order provided that the parties would divide family property and family debt equally, subject to Mr. Adams' excluded property claim of \$45,000. The value of family property as of the trial date was \$1,147,500, which was derived from the parties' interests in three residential properties in Port Alberni. The amount of family debt to be divided was \$575,723, most of which relates to financing for the three properties. Of the equity in the three properties, Ms. Baillargeon was entitled to receive \$285,889, and Mr. Adams was entitled to retain \$330,888.
- [4] As of the trial date, registered title in the three properties was held as follows:
- a) 10th Avenue Property owned solely by Mr. Adams;

- b) 12th Avenue Property owned 99% by Mr. Adams as tenant in common and 1% by Mr. Adams and Ms. Baillargeon as joint tenants; and
 - c) 1st Avenue Property owned by Mr. Adams and his mother as joint tenants.
- [5] As of the trial date, Mr. Adams and Ms. Baillargeon were both mortgagees on the 12th Avenue Property. Mr. Adams was the sole mortgagee and borrower on home equity lines of credit on the 10th Avenue Property and co-borrower with his mother for debt related to the 1st Avenue Property.
- [6] As part of the trial decision, I gave the parties the option of seeking an order pursuant to s. 97 of the Family Law Act if they could not agree on how to divide the properties so that equal division of family property and family debt could be accomplished. The final order reads as follows:
7. [Ms. Baillargeon] is entitled to receive \$285,889 from the equity in the family property.
8. [Ms. Baillargeon] and [Mr. Adams] are at liberty to appear before Lamb J. to seek orders pursuant to s. 97 of the Family Law Act in the event that they are unable to determine how to divide the property so that [Ms. Baillargeon] can receive the sum referred to in paragraph 7 of this Order.
- [7] As he was at trial, Mr. Adams was self-represented when the final order was entered.
- [8] The parties now agree that at least two of the properties will need to be sold to facilitate the division of family property and family debt. The parties disagree as to how the proceeds of sale should be divided. Cross-applications and consent orders
- [9] Ms. Baillargeon filed a notice of application on August 30, 2024 seeking an order for sale of the 12th Avenue Property and other real property registered in Mr. Adams' name sufficient to pay her \$285,000 (as per para. 7 of the final order). In a response filed October 30, 2024, the Mr. Adams opposed the relief sought. Mr. Adams said in the factual basis of the application response that both the 10th Avenue Property and the 12th Avenue Property would have to be sold as he could not refinance to pay the claimant her share of the equity.
- [10] Mr. Adams then filed his own notice of application on October 30, 2024 seeking an order that the 10th Avenue Property and the 12th Ave Property be sold and the proceeds be divided equally "after all taxes and liabilities and excluded property claim has been deducted". Ms. Baillargeon agreed to list the two properties for sale but opposed the balance of relief sought by Mr. Adams.
- [11] At the hearing of these applications, the parties consented to orders that the 10th Avenue Property and 12th Avenue Property would be sold and how the sales would be conducted. The parties also consented to orders that the mortgages registered against the two properties, real estate commissions and legal fees for the sale of the two properties would be paid out of the proceeds of sale. The parties agreed to pay equally for accounting advice to minimize capital gains tax payable and to estimate the amount of capital gains tax payable.

Ms. Baillargeon agreed that her half of the estimated capital gains tax payable would be held in her lawyer's trust account pending payment of those capital gains taxes.

- [12] The remaining issue of contention is how to divide the remaining net proceeds of the sale of 10th Avenue Property and the 12th Avenue Property: should Ms. Baillargeon receive \$285,000 from the net proceeds of sale or should the parties divide the proceeds equally after deducting agreed amounts? Mr. Adams is concerned that the value of the two properties has dropped since the trial decision was issued and that the current value of those two properties is less than the value determined at trial. The question really is who should bear the risk that the value of the two properties has dropped or that the value of the two properties as determined at trial may not have been accurate.

Analysis

- [13] For the reasons that follow, I am not prepared to vary the final order. Ms. Baillargeon is entitled to be paid \$285,000 from the proceeds of sale.
- [14] The court has the authority to vary a previous order dividing property to give effect to the court's intention in making the previous order: *C.A.L. v. D.E.L.*, 2020 BCSC 1026 at para. 21; citing *Klassen v. Klassen*, 2001 BCCA 445 at para. 73. However, the authority to vary is constrained. Most notably, the court may not vary a final order to achieve a materially different apportionment: *C.A.L.* at para. 21; *Chapman v. Chapman*, 2024 BCCA 372 at para. 54.
- [15] Further, *C.A.L.* is authority for the proposition that the property valuation found by the trial judge should not be varied post-judgment to reflect changes caused by fluctuations in the real estate market, particularly where the trial decision was not appealed. In *C.A.L.*, the claimant sought an order to force the sale of the family home in order to collect unpaid amounts owing by the respondent pursuant to the final order. The respondent argued that the amount owing ought to be adjusted because, one year post-judgment, the family home was worth less than the valuation found by the trial judge. However, the chambers judge concluded that the trial judge's valuation of the family home should not be amended post-judgment: *C.A.L.* at para. 39.
- [16] In this case, if Mr. Adams believed the valuation of the 10th Avenue Property or the 12th Avenue Property as found in the trial decision was flawed, then he could have appealed the final order. A post-trial drop in the real estate market is not proper grounds for varying the final order, just as a post-trial increase in the real estate market would not justify varying the final order.
- [17] The Family Law Act sets out the procedure for dividing family property and family debt. Family property is typically valued as of the trial date. Whatever the valuation date, the value of property determined at trial is (absent appeal) a final determination for division of property purposes. The market value of property may change from the trial date to the date of judgment or the date when family property is distributed or liquidated. However, that is a

risk that parties bear when trying a claim for division of family property. As Justice Lambert noted in *Gilpin v. Gilpin*, 50 B.C.L.R. (2d) 251, 1990 CanLII 1576 (C.A.) at p. 7 (a case decided under the Family Relations Act, R.S.B.C. 1996, c. 128): Continuing fairness is impossible to achieve. Fairness at a particular point in time is the legislative goal.

- [18] In this case, the final order included the value of family property as determined at trial. Division of family property and debt was fair as of the trial date.
- [19] If the final order (and in particular paras. 7 and 8 of the final order) appears to be unfair to Mr. Adams more than a year post-trial because he fears the 10th Avenue property and the 12th Avenue property will sell for less than their valuations in the trial decision, then that is a risk he took in proceeding to trial and in taking the positions he did at trial. In particular, Mr. Adams failed to tender evidence that might have resulted in a different valuation for the 12th Avenue Property: see trial decision at paras. 76 - 80.
- [20] The potential risk arising from a post-trial change in property value may have been exacerbated by the position Mr. Adams took at trial regarding how family property should be divided. Neither party made submissions at trial on how to effect division of family property and family debt if they were to be divided equally, which was the outcome at trial. Instead, Mr. Adams sought an order that he receive 90% of family property pursuant to s. 95 of the Family Law Act, which may not have required the sale of two properties to effect. Further, at trial, Mr. Adams testified that his livelihood as a property developer relied on using the equity in the properties and on his managing the three properties as rental units. Without submissions and in light of the position taken by Mr. Adams at trial, no order was made in the trial decision pursuant to s. 97 of the Family Law Act to effect an equal division of family property and family debt. Mr. Adams must assume the risk created by the unsuccessful arguments he advanced at trial and his insistence that he needed to maintain ownership of the three properties. That risk includes any decrease in the value of the 10th Avenue Property and the 12th Avenue Property.
- [21] Finally, Mr. Adams did not suggest that the valuation of all family property and in particular the 1st Avenue Property should be updated. Mr. Adams did not propose to allow Ms. Baillargeon to benefit from any increase in the value of the 1st Avenue Property (if that is the case) or that Ms. Baillargeon should be entitled to a share of the net rental income Mr. Adams has earned from the three properties since the trial date. Again, the final order achieved fairness at a point in time. Both parties must live with that result.
- [22] Ms. Baillargeon was the successful party on the only issue not resolved by consent. She is entitled to her costs. "Lamb J."

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