

CANADA / JUDGMENT

Best v. Best

2025 BCSC 1856

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1856 Best v. Best IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Best v. Best, 2025 BCSC 1856 Date: 20250924 Docket: E6938 Registry: Chilliwack Between: Leanne Denise Best Claimant And Alan Bernard Best Respondent Before: The Honourable Justice Caldwell Reasons for Judgment In Chambers The Claimant, appearing in person: L.D. Best Counsel for the Respondent, appearing via videoconference: D.M. Smith Place and Date of Hearing: Chilliwack, B.C. July 28, 2025 Place and Date of Judgment: Chilliwack, B.C. September 24, 2025 Table of Contents Introduction.. 3 Facts. 3 The Law.. 4 Analysis and Decision.. 8 Costs. 10

Introduction

- [1] This application deals with the mechanics of dividing Mr. Best's pension as ordered by the late Justice Joyce in June 2009.

Facts

- [2] On June 9, 2009, Justice Joyce heard competing summary trial applications brought by the parties. He ordered, among other things, that Mr. Best's pension be divided equally between the parties. He reserved on the issue of entitlement end date. On July 6, 2009, he delivered Reasons (indexed as 2009 BCSC 928) setting September 28, 1996, as the start date for entitlement and June 9, 2009, as the end date.
- [3] Both parties were represented by counsel at the summary trial hearing. Both lawyers signed the order of June 9, 2009, which was entered in December 2009.
- [4] The order of July 6, 2009, was not entered until it was settled before Justice Walkem on February 10, 2025.
- [5] Basically, nothing happened for well over 13 years.

- [6] Mr. Best retired on September 30, 2022. He elected to receive monthly payments for his CN Rail Pension but elected to receive the commuted value of his BC Rail Pension. That value was \$530,077.04 in total, which includes value accrued during the pre-entitlement period from August 4, 1995, to the date of marriage, September 28, 1996. He was able to defer taxes on all but \$156,729.60 of those funds. The result was that he paid \$57,810.03 in taxes in 2022.
- [7] No evidence was presented to address whether Mr. Best could have avoided or minimized such tax consequences by providing the June 9, 2009 order and the July 6, 2009 Reasons for Judgment to the administrator, and requesting to be paid only his calculated one-half share of the commuted value of the pension.
- [8] Mr. Best provided his calculations regarding the share of the \$530,077.04 which is attributable to the entitlement period. That amount, he says, is \$461,167.02. One-half of that amount is \$230,583.51. He seeks an order that he transfer that amount to Ms. Best from his tax deferred accounts and to have her be, and remain responsible for, any tax consequences associated with that transfer. He does however also seek an order that the parties cooperate and do all things necessary to avoid or defer any tax consequences to Ms. Best.
- [9] No evidence was presented indicating that Ms. Best, personally or through counsel, provided any notice of her claim or entitlement to Mr. Best's pension to any pension administrator prior to April 13, 2023. She did not file a Form 1 Claim of Spouse to Interest in Member's Pension as provided for in the Family Relations Act, R.S.B.C. 1996, c. 128 [FRA] or the later Form P1 Claim and Request for Information and Notice as provided for in the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [10] On April 13, 2023, Ms. Best contacted the pension administrator and subsequently provided a copy of the June 9, 2009 order. That was her first notice to the administrator regarding her claim to an interest in Mr. Best's pension.
- [11] Ms. Best has received her one-half share of the CN pension since December 2023 in the form of monthly payments. She has not received any portion of the BC Rail pension commuted value. Mr. Best has sufficient funds in his RRSP accounts to transfer at least \$230,583.51 to Ms. Best. It may be that this could be done without triggering tax consequences if done by a T2220 rollover but no expert evidence was provided to confirm this. The Law
- [12] In *Verwoord v. Verwoord*, 2011 BCSC 573 [Verwoord], Justice Bracken faced a similar situation. The wife in that case had a defined benefit pension plan. The parties separated. The husband provided no notice to the pension administrator regarding his claim to a share in the wife's pension. When she qualified to claim her annuity (at age 55), she elected to take an annuity based on her single life with a guaranteed payment period of 10 years.
- [13] Mr. Justice Bracken noted that:
- [31] The significant issue surrounding the claimant's pension plan is her election to select a single life annuity with a 10-year guarantee. She acknowledges the respondent is entitled to a proportionate share of her pension, however, because she chose a single life annuity after

the 10-year guarantee period the respondent's benefits under the plan will cease when the claimant dies. Had the claimant elected a joint life annuity, the monthly benefit would have been smaller; however, it would have been paid until the respondent's death even if the claimant died first.

- [32] The pension could have been divided so the respondent would be entitled to his own pension benefits that would terminate upon his death. That option is no longer open. The respondent alleges the claimant deliberately made a choice to maximize her own benefits well knowing it would deprive the respondent of his entitlement to a separate pension.
- [33] An analysis of this issue requires some discussion of Part 6 of the Family Relations Act, R.S.B.C. 1996, c. 128, ("the Act") dealing with the division of pension entitlements.
- [34] Pursuant to s. 70 of the Act, the claimant's pension is a defined benefit plan and is matured. Section 71(1) of the Act states: 71 (1) Subject to subsection (2), if a spouse is entitled under Part 5 to an interest in a pension,
- (a) the spouse's share of the pension, and
 - (b) the manner in which the spouse's entitlement in the pension is to be satisfied must be determined in accordance with this Part.
- [35] The claimant was entitled to a pension prior to the operative date of July 1, 1995 and therefore, s. 71 and the provisions of Part 6 of the Act apply.
- [36] Pursuant to s. 72(1) of the Act, the respondent could have been designated as a "limited member" of the plan by delivering a notice in the prescribed form to the administrator of the pension plan. Under s. 74 of the Act he could have set the plan up as his own plan completely separate from that of the claimant. However, pursuant to s. 76(1) of the Act, once the claimant's pension had matured, that is, once she began receiving benefits, the only option available to the respondent is to receive a proportionate share of the benefits paid under the pension until either the termination of the pension or the claimant's death. He has no right to his own separate pension plan payable until his own death.
- [14] The husband sought reapportionment of other family assets in his favour to compensate for the possibility that he would be left without a pension income in the event of the wife's death after 10 years in receipt of annuity payments.
- [15] The learned judge continues later in the judgment:
- [86] The respondent says he has been severely prejudiced by the claimant's election of a single life annuity with a 10-year guarantee. By making that election the respondent argues he has been deprived of a guaranteed lifetime pension income. He says it is only fair and reasonable to reapportion the matrimonial home entirely in his favour and let the respondent keep her pension. Obviously if the respondent outlives the claimant the pension will stop on her death. Likewise, if she outlives him he will have a lifetime pension.

- [90] The court in Rutherford dealt with a pension plan that had not matured. Here, the plan has matured. Section 76(1) of the Act provides:
- (1) If a pension to be divided is in a local plan and has matured, a spouse, by delivering a notice in the prescribed form under section 72 (1), is entitled to receive from the plan a proportionate share of benefits paid under the pension until
 - (a) the death of the spouse, or
 - (b) the termination of the pension, whichever occurs first.
- [91] The respondent was well aware that the claimant had a defined benefit pension plan he was entitled to share. Notwithstanding that knowledge, he took no steps to protect his interest. He had discussions with two lawyers prior to the end of May 2007. Before the claimant made her election of benefits in February 2007, it was still possible to protect his interest but even though he received some legal advice he did not file the simple form asserting his claim to an interest in the claimant's pension plan until September 2009.
- [92] There is no evidence the claimant ever misled the respondent in any way about the possibility of reconciliation. She made reasonable efforts to engage him in settlement discussions and she advised the pension plan staff of her marital status when she inquired about her benefits. The respondent displayed no interest in resolving matters or asserting his rights until well after the claimant made her election and began collecting benefits. In these circumstances I find that the claimant did not have any duty or obligation to do more than she did. The respondent is now entitled to the benefits contemplated in s. 76(1) of the Act and no more.
- [97] The pension plan is a family asset the claimant brought to the marriage. The respondent is not entitled to more than a proportionate share of the pension. He had a right to claim a division of the pension before it matured by notifying the Public Service Pension Plan and completing and forwarding a simple one-page document. He did not do so until September 3, 2009. He chose to sit on his rights in spite of urgings from the claimant and her lawyer to respond.
- [98] Given the respondent's reluctance to engage in a resolution of the issues between them, the claimant is not obligated to make an election that provides the best possible outcome to the respondent.
- [16] This analysis was done pursuant to the provisions of the FRA, which was in effect at the time Verwoerd was decided and at the time that the decision of Justice Joyce was rendered in the current matter.
- [17] Pension division is now dealt with by Part 6 of the FLA.
- [18] Section 130 provides that the Supreme Court may give directions or make orders to facilitate or enforce the division of benefits in accordance with an order.

- [19] Sections 134 and 136 provide requirements regarding notice, particularly after an order for division has been made: 134 An administrator may administer the division of a member's benefits under this Part only if the administrator has first received a copy of an agreement or order respecting the division of benefits between the member and the member's spouse. 136 If a person is required to give notice or a waiver under this Part, the notice or waiver must be given to the administrator in the prescribed form and manner, if any.
- [20] Sections 4(1)(a) and 4(2) of the FLA, Division of Pensions Regulation, B.C. Reg 348/2012, deal with the proper form of notice and certain accommodation regarding the contents of the form of notice: 4 (1) For the purposes of section 136 of the Act,
- (a) notice referred to in section 133 of the Act must be given in Form P1 (Claim and Request for Information and Notice)
 - (2) A notice or other document delivered under the Act, including under this regulation,
 - (a) is not defective or ineffective,
 - (b) is not incomplete, and
 - (c) does not fail to provide sufficient information merely because it omits information referred to in section 13 (1) (a) or (b) or the information referred to in section 13 (1) (a) or (b) that is contained in the document is incomplete or incorrect.
- [21] The notice requirements that were in place under the FRA are functionally identical to those under the FLA making it immaterial when the actual date of division took place for the purposes of determining if there was adequate notice. Analysis and Decision
- [22] In my view, the decision in Verwoord is applicable to the present case with one significant distinction.
- [23] In Verwoord, the wife recognized the husband's one-half interest in the pension even before judicial determination. Her election was merely as to the mechanism and terms by which the pension would be received by the two parties in their respective shares.
- [24] In the present case, Mr. Best, with knowledge of the judicial determinations, elected to take the whole of the commuted value into his possession. He, at the very least, held Ms. Best's determined share of those funds in trust for her. He cannot avoid the order or his responsibilities by relying on the unwise decision of Ms. Best and her lawyer to not provide appropriate notice to the pension administrator.
- [25] Ms. Best must, however, also bear some responsibility for her failure to provide the simple notice required by the legislation and regulations. Her 13-year delay is inordinate and, in my view, inadequately explained or justified.
- [26] Nevertheless, Ms. Best is entitled to prejudgment interest on the funds that Mr. Best has held functionally in trust for her: See *Lotimer v. Johnston*, 2020 BCSC 119, at para. 28; and *Moxon v. Moxon*, 2024 BCSC 1751, at para. 136 The Court Order Interest Act, R.S.B.C 1996, c. 79,

requires the court to add interest to a pecuniary judgment at a rate the court deems appropriate in the circumstances starting from the date on which the cause of action arose to the date of the order. In this case the cause of action arose on September 15, 2022, the date on which Mr. Best requested the withdrawal of the commuted value of his BC Rail Pension.

[27] The prejudgment interest rate will be set at the customary 2% below prime rate in 6-month blocks. Therefore, the total interest accrued as of September 24, 2025 is \$29,247.98. Interest is calculated as follows: Time period Court Order Interest Rate Daily Interest Accrued Subtotal Sept 15, 2022 - Dec 31, 2022 (108 days) 1.70% \$10.74/day 108 days @ \$10.74 = \$1,159.92 Jan 1, 2023 - Jun 30, 2023 (181 days) 4.45% \$28.11/day 181 days @ \$28.11 = \$5,087.91 Jul 1, 2023 - Dec 31, 2023 (184 days) 4.95% \$31.27/day 184 days @ \$31.27 = \$5,753.68 Jan 1, 2024 - Jun 30, 2024 (182 days) 5.20% \$32.76/day 182 days @ \$32.76 = \$5,962.32 Jul 1, 2024 - Dec 31, 2024 (184 days) 4.95% \$31.18/day 184 days @ \$31.18 = \$5,737.12 Jan 1, 2025 - Jun 30, 2025 (181 days) 3.45% \$21.79/day 181 days @ \$21.79 = \$3,943.99 Jul 1, 2025 - Sept 24, 2025 (86 days) 2.95% \$18.64/day 86 days @ \$18.64 = \$1,603.04 TOTAL: \$29,247.98

[28] I order that:

1. Mr. Best forthwith transfer to Ms. Best the sum of \$230,583.51 from his RRSP or other tax deferred accounts as her share of his BC Rail Pension benefits.
2. Mr. Best forthwith transfer to Ms. Best the sum of \$29, 247.98 from his RRSP or other tax deferred accounts to account for interest accrued on her share of his BC Rail Pension from September 15, 2022, until the date of judgment.
3. The parties share equally all tax consequences accruing to Ms. Best because of such transfer.
4. The transfer or transfers shall be to such tax deferred accounts which Ms. Best may have or may establish to accommodate such transfer or transfers.
5. The parties shall each do everything reasonably necessary to give Ms. Best the best opportunity to defer taxes on the transfer or transfers, including but not limited to:
 - a. coordinating with their respective financial advisors and authorizing their respective financial advisors to communicate directly with each other; and
 - b. signing forms T2220 or such other documents as may be required to legitimately and legally minimize or eliminate tax consequences relative to the transfer or transfers.

[29] The parties will have liberty to apply for further directions if necessary. Costs

[30] Given the parties' respective roles and responsibilities in this matter, and the fact that neither party accomplished their stated objectives, I order that each party bear their own costs. "Caldwell J."

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