

CANADA / JUDGMENT

D'Aoust v. Dagesse

2025 BCSC 1984

COURT

Supreme Court of British Columbia

DECIDED

9 October 2025

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2025 BCSC 1984 D'Aoust v. Dagesse

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

D'Aoust v. Dagesse,

2025 BCSC 1984

Date: 20251009

Docket: E240368

Registry: Vancouver

Between:

Rayleen Evett D'Aoust

Claimant

And

Joseph Jude Paul Dagesse aka Paul Jude Dagesse,

Mark Andrew Dagesse, and Michelle Marie Yvette Dagesse

Respondents

Before: The Honourable Justice Layton

Reasons for Judgment

In Chambers

Counsel for the Claimant:

C.J. Carta

Counsel for the Respondents:

C.A. Molloy

Place and Date of Hearing:

Vancouver, B.C.

September 22, 2025

Place and Date of Judgment:

Vancouver, B.C.

October 9, 2025

Table of Contents

Background.. 3

Analysis. 6

Conclusion.. 14

Introduction

- [1] The respondents, Paul Dagesse and his adult children Mark and Michelle Dagesse, apply under Rule 18-2(1) of the Supreme Court Family Rules, B.C. Reg. 169/2009, for an order that a family law action, filed against them by the claimant Rayleen D'Aoust, be dismissed on the basis that this Court does not have jurisdiction over the parties. They seek this order because Mr. Dagesse and Ms. D'Aoust already have an ongoing family law proceeding in Alberta, which is where they have been and are habitually resident.
- [2] The parties agree that, if the respondents succeed in dismissing Ms. D'Aoust's family law action, then a certificate of pending litigation ("CPL"), which she has registered against a property whose title is held in the names of Mark and Michelle, will end up being cancelled. This property is located on Mabry Road in the Kamloops area, and I will therefore refer to it as "Mabry Road". Removing the CPL on Mabry Road appears to be a main focus of the respondents' application.
- [3] In determining whether Ms. D'Aoust's family law action should be dismissed, I will begin by setting out the relevant background. I will then consider whether this Court has jurisdiction over Ms. D'Aoust's action, and if so whether that jurisdiction should nonetheless be declined because British Columbia is not the proper forum.

Background

- [4] Mr. Dagesse and Ms. D'Aoust began cohabitating in 2004 or 2005, and were married on February 13, 2010.

- [5] In September 2006, Mr. Dagesse purchased Mabry Road.
- [6] Throughout the relationship, the parties were habitually resident in Alberta, and they continue to reside there, but they appear to have spent significant time at Mabry Road.
- [7] In September 2021, Ms. D'Aoust left the family home, at which point she and Mr. Dagesse were separated.
- [8] About two weeks after the separation, Mr. Dagesse transferred title in Mabry Road by way of gift to Mark and Michelle. As I will discuss shortly, Ms. D'Aoust did not learn of the transfer until much later.
- [9] On April 18, 2023, Ms. D'Aoust filed a statement of claim for divorce and division of family property in the court of King's Bench in Alberta. In a disclosure statement filed the same day, Ms. D'Aoust listed Mabry Road as a property in which she had an interest.
- [10] Mabry Road was thus always on the radar as a piece of family property over which Ms. D'Aoust was making a claim in the Alberta family law proceeding.
- [11] Various other documents were filed in the Alberta proceeding in the ensuing months. The Alberta court also made a number of orders, and as pointed out by the respondents some of those orders related to family property. For example, on June 12, 2023, an order was made prohibiting the parties from disposing of property. This order would have prevented Mr. Dagesse from transferring Mabry Road to Mark and Michelle, had he not already done so shortly after the separation in September 2021.
- [12] Ms. D'Aoust first learned that Mabry Road had been transferred to Mark and Michelle when Mr. Dagesse was examined on an affidavit on January 24, 2024. In that examination, Mr. Dagesse said that the transfer had in fact been initiated in 2019, but that, "it took the lawyers two years to get it through because they were backed up".
- [13] On learning that Mabry Road had been transferred to Mark and Michelle, on February 16, 2024 Ms. D'Aoust filed a notice of family claim in this province, which is expressly limited to claims over property in British Columbia. In this notice, she claims a property interest in Mabry Road and applies for a CPL against it. Ms. D'Aoust registered the CPL on Mabry Road later in February 2024. She had not yet served the notice of family claim on any of the respondents.
- [14] In oral submissions, counsel for Mr. Dagesse agreed that Ms. D'Aoust's family law action in this province claims a property interest in Mabry Road, and did not disagree that, as later amended, this claim could, if established, permit this Court to make in rem orders regarding the ownership of and title to Mabry Road under s. 97 of the Family Law Act, S.B.C. c. 25 [FLA], and/or the Fraudulent Conveyance Act, R.S.B.C. 1996, c. 163.

- [15] On April 3, 2024, Mr. Dagesse and Ms. D'Aoust entered into a mediation-arbitration agreement with Patricia Blocksom, KC, who I will call the Arbitrator, to deal with all outstanding issues in the Alberta proceeding including division of all property, whether in Alberta or B.C.
- [16] On January 31, 2025, Mr. Dagesse and Ms. D'Aoust entered into a consent order stating that the Arbitrator has jurisdiction over interim and final issues including property division.
- [17] In February 2025, Ms. D'Aoust served her notice of family claim on Mark and Michelle. She was unable to serve Mr. Dagesse, and so brought a without notice application for alternative service, which was successful and included a costs order for just under \$1,700 against Mr. Dagesse, payable forthwith. He was served with the notice of family claim shortly thereafter, after which the respondents filed a jurisdictional response to family claim.
- [18] On May 1, 2025, the Arbitrator made an award directing, among other things, that Mr. Dagesse provide Ms. D'Aoust with access to Mabry Road to allow her to have the property appraised by her own appraiser.
- [19] On August 26, 2025, Ms. D'Aoust filed an amended notice of family claim in the proceeding in this province, for the purpose of seeking an order under the Fraudulent Conveyance Act that Mr. Dagesse's transfer of Mabry Road to Mark and Michelle was knowingly undertaken by all three of them to defeat her family law property claim in the property, and that the transfer was therefore void and of no effect as against her.
- [20] On September 9, 2025, the respondents filed their notice of application to dismiss Ms. D'Aoust's family law action in this province.
- [21] In her responding affidavit on the application, Ms. D'Aoust details instances where she asserts that Mr. Dagesse has disposed of family property following the separation, including removing \$20,000 cash from a safety deposit box. She also states that the retained earnings in one of his companies went from over \$1.5 million at the time of separation to negative \$276,000 18 months later. She further states that in his examination on affidavits in the Alberta case, Mr. Dagesse claims to have sold property for cash that he subsequently lost at the casino, including a boat purchased for \$260,000 USD in 2017 but that he purported to have sold after separation for between \$20,000 and \$25,000, and \$200,000 obtained from an auction of livestock, farm equipment and horses. In addition, Ms. D'Aoust mentions that Mr. Dagesse has yet to provide full financial disclosure, for example regarding what has happened to dozens of valuable breeding horses that were removed from their ranch post-separation.
- [22] In her affidavit, Ms. D'Aoust also states that documents disclosed by Mr. Dagesse in the Alberta litigation indicate that, post-transfer to Mark and Michelle, he has spent substantial amounts of money renovating Mabry Road and has continued to pay all utilities, taxes and maintenance on the property.

[23] Finally, in her affidavit Ms. D'Aoust indicates that she filed her notice of claim in British Columbia based on her understanding that an Alberta court or arbitrator cannot make orders directly affecting the title to Mabry Road, but that she does not intend to actively litigate the matter in British Columbia. Rather, she knows that the Arbitrator will make an award respecting her entitlement to Mabry Road as part of the family property pool. She says that her intention in commencing the British Columbia proceeding was to protect against Mabry Road being transferred to a third party so as to put it and its value outside of her reach for the purpose of satisfying the Arbitrator's award.

Analysis

[24] The respondents' application to dismiss Ms. D'Aoust's family law proceeding in this province is brought under Rule 18-2(1), which states:

- (1) A party who has been served with a notice of family claim, counterclaim or petition in a family law case, whether that service was effected in or outside British Columbia, may, after filing a jurisdictional response in Form F78,
 - (a) apply to strike out the notice of family claim, counterclaim or petition or to dismiss or stay the family law case on the ground that the notice of family claim, counterclaim or petition does not allege facts that, if true, would establish that the court has jurisdiction over that party in respect of the claim made against that party in the family law case,
 - (b) apply to dismiss or stay the family law case on the ground that the court does not have jurisdiction over that party in respect of the claim made against that party in the family law case, or
 - (c) allege in a pleading or in a response to petition that the court does not have jurisdiction over that party in respect of the claim made against that party in the family law case.

[25] The respondents say that Rule 18-2(1) is engaged because the Arbitrator is dealing with all of the property issues, including claims regarding Mabry Road, in a proceeding that has been ongoing for over two years, and that Ms. D'Aoust is attempting to run a parallel proceeding in this province with respect to Mabry Road that will waste resources and may result in inconsistent outcomes.

[26] Rule 18-2(1) sets out the process by which the issue of jurisdiction is brought before the Court for determination. It does not, however, provide the rules for determining whether jurisdiction has been established, or if so should nonetheless be declined.

- [27] In neither their notice of application nor their oral submissions did the respondents provide any case law or reference any statutory provisions setting out those rules. For instance, they did not refer to or rely on the jurisdictional rules found in Part 5, Division 6 of the FLA. In particular, s. 106 of the FLA sets out jurisdictional rules for family law claims regarding the division of property, and applies if an order for property division respecting the same spouses may be made in more than one jurisdiction.
- [28] The respondents' failure to reference or rely upon the jurisdictional rules in the FLA or any case law relating to them is problematic, although I appreciate that the relevant provisions in the FLA are cited in Mr. Dagesse's jurisdictional response to Ms. D'Aoust's notice of family claim.
- [29] In any event, Ms. D'Aoust referred to applicable FLA provisions and case law in her application response and oral submissions, and I will therefore consider how this law applies to the facts of the case before me.
- [30] Section 106(2)(d) of the FLA provides that the Supreme Court has the authority to make an order respecting property division if, among other things, there is a real and substantial connection between British Columbia and the facts on which the proceeding under Part 5 is based. This provision thus provides what is sometimes called a residual basis for territorial jurisdiction.
- [31] Section 106(3) sets out specific circumstances in which a real and substantial connection is presumed to exist. One of the enumerated circumstances is where property that is the subject of the proceeding is located in British Columbia. Since Mabry Road is located in British Columbia, there is a presumptive real and substantial connection between this province and the facts on which Ms. D'Aoust's notice of family claim is based, so as to give this Court the authority to make a property division order with respect to Mabry Road.
- [32] The presumption of a real and substantial connection may be rebutted by the party challenging the assumption of jurisdiction if they can establish that the presumptive connecting factor does not point to any real relationship between the subject matter of the litigation and the forum, or points only to a weak relationship between them: *Shinatani v. Tang*, 2017 BCSC 1938 at para. 42; *Carlson v. Phelan Estate*, 2016 BCSC 1256 at para. 96, quoting from *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at paras. 95-97.
- [33] In oral submissions, the respondents did not appear to be attempting to rebut this presumption. Regardless, in my view they have not succeeded in doing so, because all of the property that is the subject of the British Columbia proceeding is located in this province. This is not a case, like *Aleong v. Aleong*, 2013 BCSC 1428, where most of the property covered by the family law claim was located outside of the province. The analysis in *Shinatani* at paras. 42-45 thus applies, and I find that this Court has jurisdiction under s. 106(2)(d).

- [34] The question therefore becomes, whether having regard to the interests of Ms. D'Aoust and Mr. Dagesse, and the ends of justice, it is nonetheless more appropriate for jurisdiction to be exercised outside of British Columbia. If so, jurisdiction may be declined pursuant to s. 106(4).
- [35] The respondents carry the burden of proof to establish that the test for declining jurisdiction in s. 106(4) is met, which requires that they show that a forum other than British Columbia - here, Alberta - is "clearly more appropriate": *Jiang v. Shi*, 2017 BCCA 276 at para. 77; *Shinatani* at para. 46; *Y.Q. v. J.D.*, 2021 BCSC 943 at para. 44.
- [36] In determining whether to decline jurisdiction under s. 106(4), I must consider all of the following factors listed in s. 106(5):
- (a) [Repealed 2014-9-15.]
 - (b) the relative convenience and expense for the spouses and their witnesses;
 - (c) if section 108 [choice of law rules] applies, the law to be applied to issues in the proceeding;
 - (d) the desirability of avoiding multiple proceedings or conflicting decisions in different courts or tribunals;
 - (e) the extent to which an order respecting property or debt
 - (i) made in another jurisdiction would be enforceable in British Columbia, and
 - (ii) made in British Columbia would be enforceable in another jurisdiction;
 - (f) the fair and efficient working of the Canadian legal system as a whole;
 - (g) any other circumstances the court considers relevant.
- [37] Starting with the first factor in s. 106(5), Ms. D'Aoust does not intend to litigate any of the issues raised in the Alberta proceeding in her British Columbia action if it is allowed to continue. She merely seeks through this action to obtain in rem remedies as necessary to enforce the Arbitrator's award, and in the meantime to prevent the disposal of Mabry Road by means of the CPL.
- [38] To elaborate, if Mr. Dagesse succeeds in defeating Ms. D'Aoust's claim to any part of Mabry Road in the Alberta proceeding, then that claim in British Columbia and its associated CPL will also fail. On the other hand, if Ms. D'Aoust is successful in establishing an interest in the property, then her action in this province will in essence revive and assume the character of a collection proceeding, albeit with the added wrinkle of the fraudulent conveyance claim. In the meantime, the CPL will have ensured that Mabry Road remains available to her in this regard. See *Shinatani* at paras. 51, 54-56.

- [39] The added inconvenience and expense associated with preserving the British Columbia action for this limited purpose is minimal. This factor thus does not weigh significantly in favour of either side's position on the application before me. See *Shinatani* at paras. 50-53, 56.
- [40] Turning to the second factor in s. 106(5), there is no dispute that the law of Alberta, as opposed to the law of British Columbia, will govern the property division in this case, including the determination as to whether and to what extent Ms. D'Aoust has a family property interest in Mabry Road. In other circumstances, this factor might militate in a material way against assuming jurisdiction, but its weight is, once again, limited given that Ms. D'Aoust does not propose to litigate any substantive division of property issues in British Columbia. See *Shinatani* at paras. 57-63.
- [41] Moving on to look at the desirability of avoiding multiple proceedings or conflicting decisions in different courts, this factor would weigh heavily in favour of declining jurisdiction if Ms. D'Aoust intended to proceed with her claim in this province for the purpose of obtaining an order regarding the property division of Mabry Road, because that issue is the subject of ongoing proceedings in Alberta. However, she does not seek to proceed with her claim for this purpose. See *Shinatani* at paras. 72-84. There is accordingly no real potential for a multiplicity of proceedings or inconsistent results with respect to the property division of Mabry Road.
- [42] The next factor to consider is the extent to which orders in the Alberta proceeding would be enforceable in British Columbia. I agree with Ms. D'Aoust that, in the circumstances of this case, this factor favours this Court maintaining jurisdiction.
- [43] For one thing, Mr. Dagesse no longer owns Mabry Road and its current owners, his children, are not parties to the Alberta proceeding. Furthermore, and flowing from this same fact, the Alberta order restraining Mr. Dagesse from disposing of property does not apply to Mabry Road. Plus, there is no suggestion that the Arbitrator can make an in rem order regarding Mabry Road. Maintaining the British Columbia proceeding and permitting the associated CPL to remain on title therefore materially increases the degree to which Ms. D'Aoust's interests are protected if she obtains a favourable outcome regarding division of property in the Alberta proceedings, in particular regarding any interest in Mabry Road.
- [44] This conclusion is supported by the evidence on the application, including regarding: (a) the timing of Mr. Dagesse's transfer of title to Mabry Road to his children; (b) his attribution of a claimed two-year delay in effecting his intention to make this gift to a "back-up" experienced by his lawyers; (c) Ms. D'Aoust not having learned about the transfer until Mr. Dagesse's examination on his affidavit in January 2024; and (d) her evidence regarding the possible dissipation or hiding of other assets by Mr. Dagesse and concerns about disclosure in the Alberta proceeding.

- [45] I am not purporting to determine whether Mr. Dagesse has acted improperly in transferring Mabry Road or dealing with any of his other assets. But this is not a situation where there is a paucity of evidence to support the position that maintaining a registered CPL over property in British Columbia may be necessary to protect the registering spouse's ability to enforce a property-division determination made in a legal proceeding in another jurisdiction. Unlike in *Shinatani* at para. 92, the advantage to Ms. D'Aoust in preserving her British Columbia action and maintaining the associated CPL is not based on contingencies that appear remote.
- [46] The respondents say there is no realistic danger of Mark and Michelle disposing of Mabry Road, given they did not do so between the time it was transferred to them and the time Ms. D'Aoust filed the CPL. More particularly, they did not do so after she commenced the Alberta proceeding.
- [47] Given the evidentiary record before me, however, I am unable to accept this submission. The submission might also have been more compelling were there evidence that, to the respondents' knowledge, Ms. D'Aoust was aware of the transfer in title when it occurred. Instead, on the evidence I infer that the respondents likely believed that Ms. D'Aoust was ignorant of the transfer until Mr. Dagesse was asked about Mabry Road when questioned on an affidavit in January 2024.
- [48] The respondents also argue that the Arbitrator's award, once made, can be registered in British Columbia and attached to Mabry Road, thus protecting Ms. D'Aoust's interest in that property. However, the respondents' counsel was unable to provide me with any authority to suggest that this protective measure could be put in place on an interim basis so as to guard against the disposition of Mabry Road pending the Arbitrator making her award.
- [49] The respondents further contend that the Arbitrator will have the power to redistribute Mr. Dagesse's Alberta property in a manner that compensates Ms. D'Aoust for any interest she might have in Mabry Road. Yet this submission is unpersuasive absent evidence establishing that Mr. Dagesse's then-existing Alberta property will likely be sufficient to cover fully the value of any interest Ms. D'Aoust might be found to have in Mabry Road. In this respect, I note that at his January 24, 2024 examination Mr. Dagesse said that at separation Mabry Road had no mortgage and was worth about \$1 million.
- [50] The respondents also assert that, instead of starting a family law proceeding in this province to protect her interest in Mabry Road, Ms. D'Aoust could have applied to add Mark and Michelle as respondents in the Alberta action. However, counsel for the respondents did not refer me to any Alberta law on this point. For instance, it is unclear whether Alberta courts would have jurisdiction over Mark and Michelle, given the absence of any evidence that they are habitually resident or ever physically present in that province. Furthermore, there is no indication that, if added as parties in the Alberta proceeding, an interim order restraining Mark and Michelle from disposing of Mabry Road in that proceeding could attach to the property so as to stop that from happening.

- [51] In sum, based on the evidence before me I find that there is a viable concern that Mabry Road may be transferred to a third party if Ms. D'Aoust's British Columbia action is dismissed.
- [52] This finding segues to my consideration of the penultimate factor under s. 106(5), namely, the fair and efficient working of the Canadian legal system as a whole.
- [53] In *Shinatani* at paras. 93-102, Justice Milman held that commencing an action for the sole purpose of registering a CPL and securing a claim to property in this province, where that property will in the future be dealt with as part of the property division in a family law proceeding in another jurisdiction, is not as a matter of course conducive to the fair and efficient working of the legal system as a whole. However, he observed that commencing an action for this purpose may be appropriate where the security is shown to be necessary to preserve the property. For the reasons already given, I find this is to be the case with respect to Ms. D'Aoust's action in British Columbia.
- [54] The final factor for consideration under s. 106(5) is any other circumstance that the court considers relevant. In my view, no other such circumstances are materially relevant in this case.
- [55] Having considered the factors in s. 106(5), I have concluded that the respondents have not established that Alberta is the more appropriate forum to exercise jurisdiction given the limited purpose for which Ms. D'Aoust seeks to proceed with her British Columbia action. This Court should therefore not decline jurisdiction under s. 106(4).
- [56] Necessarily implicit in my conclusion is the finding that it would be inappropriate for Ms. D'Aoust to proceed with her action for the purpose of litigating the property division matters that will be decided in the Alberta proceeding.
- [57] As proposed by Ms. D'Aoust in her application response, I am therefore staying her family law proceeding in this province until the Alberta proceeding is concluded with respect to all property division matters, absent agreement between the parties or further court order. Should those property division matters be determined so as to give Ms. D'Aoust an interest in Mabry Road, the stay will end and she can proceed with her action in this province to the extent that in doing so she does not seek any rulings that would be inconsistent with rulings made in the Alberta proceeding.
- [58] Staying Ms. D'Aoust's action on these terms finds support in *AtriCure, Inc. v. Meng*, 2020 BCSC 341 at paras. 45-56, 77, 84.

Conclusion

- [59] I am dismissing the respondents' application to dismiss Ms. D'Aoust's family law action in this province.

- [60] Ms. D'Aoust's action is nonetheless stayed until the Alberta proceeding is concluded with respect to all property division issues, absent agreement between the parties or further court order.
- [61] Should the property division issues in the Alberta proceeding be determined so as to give Ms. D'Aoust an interest in Mabry Road, the stay will end and she can proceed with her action in this province to the extent that in doing so she does not seek any rulings that would be inconsistent with rulings made in the Alberta proceeding.
- [62] I am not granting Ms. D'Aoust's request for special costs, which she did not push in oral submissions, because in my view the test for special costs has not been met.

"D. Layton J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/25/19/2025BCSC1984.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/d-aoust-v-dagesse-2025>

Prepared on 27 October 2026 · Esheria