

CANADA / JUDGMENT

Deering v. Deering

2015 BCSC 1144

COURT

Supreme Court of British Columbia

DECIDED

2 April 2015

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2015 BCSC 1144 Deering v. Deering IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Deering v. Deering, 2015 BCSC 1144 Date: 20150402 Docket: ED72605 Registry: Nanaimo Between: Jacqueline Laurie Deering Claimant And: Russell Dennis Emel Deering Respondent Before: The Honourable Mr. Justice MacKenzie Oral Reasons for Judgment (In Chambers) Counsel for Claimant: K. Shupe Appearing on his own behalf: Russell Deering Place and Date of Hearing: Nanaimo, B.C. April 1, 2, 2015 Place and Date of Judgment: Nanaimo, B.C. April 2, 2015

- [1] THE COURT: This is a family proceeding, where the claimant Ms. Deering seeks a divorce and other orders, including sole conduct of sale of the matrimonial residence, which I believe is in Cassidy, B.C.
- [2] This relationship with Mr. Deering was an 11-year marriage. The parties separated in 2013. Since May 2014, pursuant to an order made by Master McCallum, Ms. Deering has had exclusive occupancy of the home. There is no issue in this case that Ms. Deering paid the full down payment of \$90,000 on the house, from an inheritance she received from her father in 2007. The home was purchased shortly after the parties reconciled after a brief separation.
- [3] As I have just stated, there really is no issue taken by Mr. Deering with respect to the orders sought by Ms. Deering, save and except for her asking for a declaration that she is the sole owner of a 1974 Dodge Charger, a vehicle she acknowledges she bought for Mr. Deering in 2007, again with funds received from the inheritance from her father.
- [4] At this point in time, Ms. Deering, through counsel, has stated that she is withdrawing the application for a declaration that she is the sole owner of the Charger and for transfer of the Charger into her name, for the simple reason that Mr. Deering, quite frankly and forthrightly, has stated and deposed in his affidavit that after receiving, apparently, some legal advice, he transferred the Charger into the name of his cousin, apparently in payment of some debts and for receipt from the cousin of an old Volkswagen Golf, I think it was a 1993.

- [5] Ms. Deering has stated she is withdrawing the application because she would prefer to pursue an application in another proceeding with respect to the appropriateness of that transfer, again, as I say, given Mr. Deering's forthright acknowledgment that he did so prior to this hearing, because he was concerned about losing what he has described as his car.
- [6] I will also state for the record, for what it is worth, that even if this is considered a gift from Ms. Deering to Mr. Deering, back in 2007, I am satisfied the Family Law Act does not provide for that to be excluded property, and will properly be considered a family asset, if in fact the matter did proceed today with respect to that issue. So it is unnecessary for me to go any further, given the position taken by Ms. Deering today with respect to the Charger and Mr. Deering's acknowledgment of the other applications by Ms. Deering.
- [7] So there will be an order for divorce. It will be pursuant to the appropriate certificate from the Registrar, as far as the time frame is concerned.
- [8] The order will also include the relief sought in paragraph 2 of the application: Ms. Deering is to have sole conduct of the sale of the residence at 1758 Vowels Road in Cassidy. The net proceeds of the sale will be provided to Ms. Deering, without any further claim from Mr. Deering.
- [9] Ms. Deering shall keep all other property in her sole name, free of any claim by Mr. Deering; and, likewise, any property in Mr. Deering's name will be his property. Each party shall pay any debt in their own name. I am satisfied, in the circumstances, that the overall debts accumulated by both parties during the relationship are basically such that that is an appropriate order.
- [10] There is a mutual dismissal of spousal support under either the Family Law Act or the Divorce Act.
- [11] That is everything that is before the court today, apart from the issue of costs, Ms. Shupe.
- [12] Now it is crystal clear that neither Ms. Deering nor Mr. Deering have much in the way of income or funds or assets. What is your position? Do you want to take a moment?
- [13] MS. SHUPE: Yes, perhaps, if I could.
- [14] THE COURT: I mean collecting is an issue, isn't it?
- [15] MS. SHUPE: Yes. I understand collecting would be an issue. I think the only most -- the most upsetting point, I think, Ms. Deering has had to deal with is that I think an honourable way to have dealt with dissolution of the marriage would have been for both the parties to sit down to figure out what their debts were and to use whatever assets they had in order to deal with that so they could move on their separate ways, salvaging whatever credit they had. Unfortunately, that did not happen. And in order for her to salvage whatever she could salvage, she has had to instigate these proceedings and move forward. It is a sad, sad point that, if someone is essentially judgment-proof, that the other innocent party has to suffer the loss. But ...

- [16] THE COURT: Why don't you go chat with your client for a second?
- [17] MS. SHUPE: Yes. Thank you, My Lord.
- [18] THE COURT: Whilst that is going on, Mr. Deering, generally speaking, the successful party is entitled to costs. But I am going to wait for the position taken by Ms. Deering, okay.
- [19] Ms. Shupe, before you say anything else, I also wanted to just mention that given that we have not dealt with -- by agreement, with the Charger, it seems that everything else we have dealt with today Mr. Deering did not oppose and it was only the Charger issue. So has Ms. Deering achieved substantial success? What is your position?
- [20] MS. SHUPE: Yeah. She will withdraw that application then, My Lord.
- [21] THE COURT: Okay.
- [22] MS. SHUPE: I think that a proper avenue to pursue the costs will be in the subsequent application.
- [23] THE COURT: All right. So in these circumstances, each party will bear their own costs. "B.D. MacKenzie, J." The Honourable Mr. Justice B.D. Mackenzie

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