

CANADA / JUDGMENT

MacDonald v. Lawrence

2025 BCSC 948

COURT

Supreme Court of British Columbia

DECIDED

1 April 2025

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2025 BCSC 948 MacDonald v. Lawrence

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

MacDonald v. Lawrence,

2025 BCSC 948

Date: 20250401

Docket: E68014

Registry: New Westminster

Between:

Daniel Glen MacDonald

Claimant

And

Suzanne Lawrence

Respondent

Corrected Judgment: The text of the judgment was corrected at
paras. 15, 16, 23, 29 and 36, where changes were made on May 27, 2025

Before Associate Judge Krentz

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

J. Foster

Appearing as Agent for

K.K. Dhahan

Counsel for the Respondent:

A.A. Athwal

Place and Date of Hearing:

New Westminster, B.C.

April 1, 2025

Place and Date of Judgment:

New Westminster, B.C.

April 1, 2025

- [1] THE COURT: This is my decision in this matter. As I am giving my Reasons for Judgment orally at the conclusion of the hearing, in the event that a transcript is requested, I reserve the right to edit the Reasons as necessary, but such editing would not change the reasoning behind or the outcome of my decision.
- [2] This is an application by the claimant, Mr. MacDonald, in this family law proceeding. The application is for exclusive occupancy of the residence located in Surrey that is currently occupied by the respondent, Ms. Lawrence.
- [3] The claimant is 68 years old and the respondent is 63 years old. They met in 2017 and they commenced a common-law relationship in May 2020. They separated in March 2023, so in total, it was about a three-year common-law relationship.
- [4] The claimant's occupation was a pilot. In 2022, he suffered a stroke and was forced to retire from that occupation. He had other personal events that occurred that affected his ability to work for a period of time leading up to that stroke. He lost his medical certificate and was forced to retire. He previously owned a house in Surrey that was purchased in or about 2008.
- [5] The respondent appears to have laid down roots in the Interior, either in the Kamloops or Merritt area, as she lived there for a number of years. She moved from Kamloops to Surrey in April 2020 to live with the claimant. After the claimant sold his house in Surrey, he purchased a townhouse and he is the sole registered owner of that property. He purchased that property outright using the proceedings from the sale of his previous property.

- [6] Due to an incident that occurred in March 2023, he has never lived in that residence. The incidents occurred on two occasions, that being March 18 and 30. The last incident appeared to have taken place at a hotel while the parties were in the process of moving into the townhouse.
- [7] It is alleged by the respondent, and she has described it in detail in her affidavit, that she was violently assaulted by the claimant and that she sustained significant injuries. She required surgery and the assault has now limited her ability to earn an income.
- [8] While the claimant does not acknowledge the degree of the assault, he did plead guilty. In the materials filed, it is referred to as a simple assault, although under the Criminal Code, R.S.C. 1985, c. C-46, I think that is referring to the offence of common assault. He did not plead guilty to nor was he found guilty of the more aggravated forms of assault, such as assault causing bodily harm or aggravated assault.
- [9] His guilty plea was in July 2024. He had already been on strict conditions pursuant to a release order that prohibited him from having any contact with the respondent or attending any place where she would be, such as the townhouse.
- [10] He received a conditional discharge and the terms of the conditional discharge would be similar to the release order. As a result, he is unable to return to the townhouse as it is currently occupied by the respondent.
- [11] The claimant's sources of income include Canada Pension Plan ("CPP") of about \$1100 per month and Old Age Security ("OAS") of about \$832 per month. He deposes that he does some part-time work for an airline and he earns about \$750 gross per month. He has been and continues to be solely paying the expenses related to the townhouse, that includes strata fees of \$427 per month; utilities of \$576 per month; insurance of approximately \$1,100 per year; and property taxes that in the most recent year was approximately \$1,400 per year.
- [12] As I indicated, the respondent says she was severely injured by the assault and it has affected her ability to work. She says she is unable to work full-time due to physical limitations. She works about 15 hours a week. She acknowledges that she is not paying the expenses related to the property, other than in 2023 when she opened her own hydro account.
- [13] The respondent says she can't leave the residence as she cannot afford to move or pay rent until this matter gets resolved. She has also started a tort action against the claimant for damages as a result of the assault. She says up until the time of the assault she was working as an Uber driver. She also had a business for a period of time that she had to close.
- [14] Currently, as set out in a letter from her employer, she is employed with Sources Community Resources Society. The employer confirms she works 15 hours per week. Some of that time is at Save-On-Foods where she organizes volunteers to assist with the shop-by-phone program. She does some work from home as that accommodates her physical needs. The manager says that from her observations the respondent has difficulty walking, sitting for

long periods of time and frequently mentions that she is experiencing pain. Her duties do not require any heavy lifting.

- [15] Although there was an allegation of extensive injuries, I have not been provided with any medical reports, other than a report from a chiropractor. The chiropractor says that the respondent has been under his care since 2021 and that she sustained a severe injury to her left hip with a fracture in four different places. He says the impact on her daily life has been profound. He describes the type of treatment that he provides for her. He says that he sometimes assists her just to put on her boots at the appointments. However, there is no direct comment upon her ability to work more than the 15 hours per week or any other type of employment that she is capable of performing.
- [16] There is an issue that has been raised by the claimant that he submits supports his position that he should have exclusive occupancy of the townhouse. Recently when he was going through the process of renewing the home insurance, he was told by his insurance broker that as he is no longer living at the residence or has any access to it, he is unable to insure the property.
- [17] The claimant has described in detail in his affidavit the efforts he has made to go through other insurance companies to see if he can get insurance, that expires today. He has provided some evidence from the property manager for the strata council that the inability to obtain insurance is a violation of the strata bylaws and that may result in fines. The claimant is adamant that he is unable to insure the property after today.
- [18] All of that is disputed by the respondent and it is difficult for me to resolve that controversy with the material I have before me. However, that may not be necessary based on my decision today.
- [19] The F8 financial statement of the claimant is quite dated as it is from February 2024. At that time, in addition to the equity in the home, he had non-registered financial assets of about \$111,000 and he had registered assets of about \$225,000. The property is clear title and he has no debt.
- [20] The financial statement of the respondent, which was recently signed by her, indicates that her income from employment is about \$15,000 per year and her pension income is about \$9,000 per year. She was receiving or may still be receiving a temporary disability of about \$4,000 per year, so her annual income was about \$28,000 per year. She has no assets, other than about \$1,700 in her bank account and she has significant debt.
- [21] It is deposed by the respondent that since the assault she has had a number of resources made available to her, including financial assistance from family members, many of them likely are in the Interior. The claimant has provided two reports from a private investigator that suggest the respondent is much more mobile than she has indicated.

- [22] Clearly, given the three-year relationship, the claimant has a strong excluded property claim with respect to the subject property. I find that to be an important factor in this case.
- [23] This is an application for exclusive occupancy and the test is as follows. First, the court has to find that the shared use of the property is a practical impossibility. That is not in issue in this case. The court then has to determine who is the preferred occupant on a balance of convenience.
- [24] Balance of convenience is based on an objective test. The factors to consider include, the economic position of the parties, alternate living accommodations available to either of the parties and other relevant circumstances such as health. Both of these parties have health issues that appear to be serious and it has affected them both significantly, if I accept their evidence.
- [25] As for alternate living accommodations, currently the claimant has relied upon the generosity of a friend who is allowing him to stay in his home by using a bedroom of a daughter who has moved out of the home. He pays some rent or room and board to that person and does some of the chores around the home.
- [26] The respondent deposes she does not have any alternative accommodations available to her at this time. I previously reviewed the economic position of the parties and they both have modest incomes. The difference, though, is that the claimant has significantly more capital than the respondent.
- [27] In his affidavit, the claimant deposes that the amount I referred to that he holds, particularly his registered financial assets, is for his retirement and he is going to be relying on that, so he does not wish to deplete it. That seems reasonable, to some extent.
- [28] In this family law proceeding, there may be grounds for spousal support if pursued by the respondent. The only grounds would be on a needs basis and any support that would be required to be paid by the claimant, would be rather minimal given the income he has.
- [29] There is a tort action, and, of course, I do not have any way of determining as to what the outcome may be. With respect to the subject property and for all of the assets of the claimant, he has a strong excluded property claim. I do not expect that the entitlement on the property division that would be realized by the respondent in this action would be significant. It may relate more to what she may receive in the tort action, if what she says is established at trial.
- [30] With respect to deciding who is the preferred occupant, there is the decision of Justice Smith in *Sun v. Cook*, 2007 BCSC 2045. She confirms that when dealing with the second prong of the test, factors taken into account may include acquiescence or delay. That has been explained by the claimant in that he had to deal with the criminal matter and although he got an exemption from the Judicial Case Conference ("JCC") last year, he was unable to pursue this application until now.

- [331] I have considered the conduct of the parties and their economic positions. However, in *Sun v. Cook* it was successfully argued that the applicant's interest in the property was such that it would be likely quantified at trial and the respondent would be able to buy out whatever that interest is. The judge concluded it to be inevitable that the applicant would have to move out of the property, so the respondent was successful in his argument that he should be the preferred occupant pending trial.
- [332] In *Sun v. Cook*, Justice Smith made a hybrid order. She ordered that the applicant have exclusive occupancy of the family residence for four months and during that time, would contribute \$500 towards the mortgage and other expenses. Then, after that four months, exclusive occupancy went to the respondent.
- [333] As well, it is notable that in *Sun v. Cook* it was a longer relationship of approximately eight years. As well, there is evidence that was accepted by the judge that the applicant had contributed to the property and during that period of time, renovations were done to it.
- [344] I find that it is inevitable that the respondent is going to have to vacate this property. It is highly unlikely she will be able to retain the property at trial. The parties have not yet had a JCC and there are no trial dates.
- [355] I find that for the reasons I have reviewed, the balance of convenience favours the respondent, particularly in light of the fact that the respondent will ultimately have to leave this property. In *Sun v. Cook*, that was taken into account in allowing the applicant another four months of occupancy, so that she could get on her feet and move on.
- [366] However, that does not end the matter. If I grant exclusive occupancy to the claimant, there are some authorities, including a more recent one that confirms the court has jurisdiction to include certain conditions. It is a decision of Justice Wolfe in *M.M.E. v. S.B.T.*, 2024 BCSC 1567 [M.M.E.] and in it she referred to some other earlier decisions as follows.
- [377] In *Dickenson v. Dickenson*, 2023 BCSC 1447, the claimant had left the former family home but then sought an order for exclusive occupancy. In opposing the order, the respondent offered to pay the claimant \$20,000 to assist with his moving and costs in finding alternate accommodations. The court denied the claimant's request for exclusive occupancy but ordered that the respondent pay the \$20,000 that was offered.
- [388] In *L.L.M. v. D.G.M.*, 2021 BCSC 1889, the claimant was granted exclusive possession of the family residence. While it was not sought in the application, the claimant agreed on a 'without prejudice' basis to release \$50,000 from funds that were being held in trust, to assist in the respondent finding other accommodations.
- [399] In another similar case, *Priebe v. Baker*, 2022 BCSC 306, the claimant offered to pay the respondent \$60,000, also on a 'without prejudice' basis to assist her in relocating. The court granted the application on the condition that the payment was made to the respondent.

- [40] Justice Wolfe in M.M.E. noted that in these cases there was an offer to pay funds to the other party so that they could obtain alternate accommodations. Justice Wolfe went on to say:
- [54] there are several possible sources of authority under which an order could be made without consent.
- [55] First, under s. 227(c) of the FLA, the Court may make an order requiring a party "to do or not do anything, as the court considers appropriate, in relation to" a purpose set out in s. 222. One of the purposes for which a Court may make an order is "to facilitate arrangements pending final determination of a family law dispute" (s. 222(d)). Sections 222 and 227 of the FLA have been interpreted as giving the Court a "broad discretion to craft appropriate conduct orders."
- [56] More specifically, under s. 226(a) of the FLA, the Court may make an order to "require a party to make payments respecting rent, mortgage, specified utilities, taxes, insurance and other expenses related to a residence" (emphasis added). The wording indicates the payment can be required in respect of any residence. It is clear the Court has jurisdiction to make a conduct order that would require payment by one party to another to facilitate housing arrangements pending trial. Second, if the application is heard before a superior court justice, the Court has inherent jurisdiction to make an order as a corollary to another order being made, where the Court considers it necessary and in the interests of justice.
- [41] Justice Wolfe did refer to the court's inherent jurisdiction. Of course, I do not have inherent jurisdiction but she does say at para. 57, "Regardless of which source is relied on, it is clear that [she had] authority to make an order requiring Mr. T to pay Ms. E. for rent and other expenses associated with her finding alternative accommodations."
- [42] There are financial assets that are available to the claimant. I am going to craft my order this way, so it puts the matter clearly in the hands of the claimant as to what he wishes to do. If he takes exclusive occupancy of the home, the respondent needs time to find alternate accommodations and to make whatever necessary arrangements she needs to make. It may or may not include returning to the Interior.
- [43] Accordingly, I will grant to the claimant exclusive occupancy of the property but that will not commence until May 12, 2025, on the condition that he pays to the respondent the sum of \$10,000. Assuming that payment is made, the respondent will vacate the property by May 12 and she will leave the property in a clean and tidy condition. She will not remove or damage any of the claimant's personal possessions or items within the property and, through counsel, shall return to the claimant any keys or access fobs related to the property.
- [44] In the event that the claimant does not wish to advance those funds to her, the respondent may retain exclusive occupancy of the property pending further written agreement of the parties or court order but shall commence on May 12 and on the twelfth day of each month thereafter, pay to the claimant \$750 per month towards the expenses of the property.

- [45] I will leave it up to the trial judge to determine, if the payment of \$10,000 is made, as to how it would be treated. Presumably, it could be treated as an advance on her claim in this proceeding. That is my order. Clarification or anything you wish to say about costs?
- [46] CNSL J. FOSTER: Yes, Your Honour, just clarification. If the option is the \$750 a month, is that for the consideration of a trial judge as to ...
- [47] THE COURT: No. The \$750 a month is what she would be contributing starting May 12 because she continues in occupation of the home.
- [48] CNSL J. FOSTER: Thank you.
- [49] THE COURT: Because the claimant decided not to pay her the \$10,000 and take exclusive occupancy on that date. Costs?
- [50] CNSL J. FOSTER: Yes, Your Honour. The claimant submits that he be awarded costs for the application given that the orders to be sought were largely granted.
- [51] THE COURT: What do you say about costs?
- [52] CNSL A. ATHWAL: We say costs should be in the cause, Your Honour.
- [53] THE COURT: The parties are at the early stage of a litigation. There is some mixed success. I will leave costs of the application in the cause. This can go back to counsel.
- [54] CNSL A. ATHWAL: Sorry. One last clarification, Your Honour.
- [55] THE COURT: Okay.
- [56] CNSL A. ATHWAL: But the orders state that the \$10,000 is on a without-prejudice basis?
- [57] THE COURT: The \$10,000 payment, if made, is left to the trial judge to determine how it is going to be treated.

"Krentz A.J."

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