

CANADA / JUDGMENT

MacDonald v. MacDonald

2025 BCSC 902

COURT

Supreme Court of British Columbia

DECIDED

24 April 2025

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2025 BCSC 902 MacDonald v. MacDonald

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

MacDonald v. MacDonald,

2025 BCSC 902

Date: 20250424

Docket: E62483

Registry: New Westminster

Between:

Daniel Jude MacDonald

Claimant

And

Anna Helen MacDonald

Respondent

Before: Associate Judge Nielsen

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

H. Middlemass

Counsel for the Respondent:

K. Wallis

Place and Dates of Hearing:

New Westminster, B.C.

April 23-24, 2025

Place and Date of Judgment:

New Westminster, B.C.

April 24, 2025

- [1] THE COURT: This is an application by the claimant, Daniel MacDonald, for sole conduct of sale of the family residence.
- [2] By way of background, the claimant, Mr. MacDonald, is 63 years old and the respondent, Ms. MacDonald, is 60 years old. The parties were married August 30, 2003, and separated in February of 2019. The parties reached two mediated settlement agreements dated September 27, 2023, and October 19, 2023. The settlement agreements were filed with the court by requisitions on April 10, 2025.
- [3] Pursuant to the settlement agreements, the family home was eventually listed for sale on June 6, 2024. Marketing of the home has been ongoing without success. It is the claimant's position that the lack of success is a direct result of the respondent's unreasonable positions taken during the past year and her most recent position of refusing to engage in any offers. The claimant agreed to one of the three realtors put forward by the respondent, a Ms. Morrison, who has been marketing the home since its listing on the basis that the parties have joint conduct of sale.
- [4] From the outset, there were problems in the marketing of the property. Initially, the respondent did not want a for-sale sign placed on the front yard nor did she want the realtor to take pictures of the interior of the home. The importance of these steps was explained to the respondent by the realtor and eventually rectified. There were also issues with decluttering the home and making other changes to improve its marketability. The respondent has made a demand for reimbursement of expenses to allegedly make the home showable, and more marketable. Consent of the claimant was not sought prior to incurring the expenses, and the disagreement has arisen concerning whether the alleged improvements were encompassed by the October 19, 2025, settlement agreement or whether they were matters recommended by a realtor.
- [5] The claimant alleges the respondent was also unable or unwilling to allow potential buyers to view the home except during very strict and limited times. In part, this was due to the respondent's desire to accommodate her renters in the home and to accommodate her various disabilities. The respondent also took the position that she would not agree to sell the family home without a "final order". However, what she meant by the term "final order"

was unclear. This did create difficulty in regard to making counteroffers to offers for purchase.

- [6] An offer was made on the family home in September of 2024. However, the respondent refused to sign the counteroffer unless the claimant met various demands, including the reimbursement of the expenses allegedly incurred by the respondent, changing the minutes of the mediated settlement agreements, and the claimant agreeing to reimburse her for her anticipated return from the sale which was less than she had expected. The potential sale collapsed as a result. The respondent was focused on what the sale price would net her, rather than on whether the offer was fair and reasonable in the context of the broader market.
- [7] In December 2024, a potential buyer sought to view the property at 3:15 p.m., but the respondent refused to allow the viewing before 3:30 p.m. and took the position that she would never allow a viewing before 3:00 p.m. However, in the circumstances, there was already a showing booked for the 3:15pm time slot, so the second potential purchaser was not accommodated.
- [8] A recent offer was made on the family home in January of 2025. However, the respondent took the position that she would not allow a sale of the family home until a final order was obtained, and she characterized ongoing emails from the realtor regarding the sale of the family home as harassment and advised she did not want the realtor to contact her further.
- [9] As a result, attempts to sell the family home have reached an impasse with the respondent refusing to engage in any offers. The realtor has expressed concern about the market and the potential impact of U.S. tariffs on housing sales, although no particulars were provided. There is some urgency to sell the home given the fact that the claimant has been laid off from his employment, and the respondent is likewise unemployed due to health issues. The 2023 and 2024 property taxes remain unpaid and are accruing interest. Further, there is an ongoing need for upkeep of the family home which encroaches on the parties' equity.
- [10] In the September settlement agreement dated September 27, 2023, the parties agreed as follows:
4. The Parties will list the Surrey Property for sale as soon as possible with the objective of listing by April 1st, 2024.
 5. The Parties will have joint conduct of sale of the Surrey Property and will use their best efforts to reach agreement on any disputes related to the sale through their respective counsel and, if necessary, with the assistance of the mediator prior to applying for court directions.
- [11] Supreme Court Family Rule 15-8(2) [SCFR] allows the court to grant sole conduct of sale to one party. There is no singular test for granting sole conduct of sale. In *Dhillon v. Kumar*, 2014 BCSC 2366, at paras 34-36, the court states:

- [34] As to whether the claimant should be given sole conduct of sale, while there is no singular test for granting sole conduct of sale, the Court should consider all factors including the willingness of a party to facilitate sale, the inability of the parties to agree on routine aspects of sale and the inability of the parties to cooperate: *McLachlan v. McLachlan*, 2013 BCSC 1733.
- [35] By his conduct since July, the respondent has not acted in a consistently responsible attitude towards the sale. Whether his failure to cooperate results from antipathy for the claimant, confusion as a result of his prescription drug use or other cause I am unable to say but it does seem to me that the sale of the Surrey Property will proceed in a more orderly and efficient manner if the claimant is given sole conduct.
- [36] Accordingly, I will order that the Surrey Property be listed for sale forthwith with the claimant having sole conduct of sale.
- [12] The issue was also addressed by the Court in *McLachlan v. McLachlan*, 2013 BCSC 1733, at paras. 66-68 and 72-74, where the court states:
- [66] I have also considered other recent decisions of the court where sole conduct of sale has been ordered. In *French v French*, 2013 BCSC 837 at para. 89, the court granted the wife sole conduct of sale because of the husband's unwillingness to facilitate the sale. In *Polich v Polich*, 2011 BCSC 949 at para. 10, the court granted the husband sole conduct of sale, because the parties demonstrated an inability to agree on routine aspects of the sale and the wife had taken what the court regarded as a "less than sensible attitude" toward resolving the issue.
- [67] There is no singular test for granting sole conduct of sale. Rather, the court considers all factors relevant to affecting a sale ordered, to determine whether granting sole conduct of sale is necessary or expedient. The parties' inability to cooperate or agree with one another may provide appropriate grounds.
- [68] In support of her application for sole conduct of sale, the claimant points to the respondent's alleged history of obstructing her efforts to sell the properties, most recently in 2013. She also provides detailed evidence regarding the respondent's frustration of her efforts to renew financing on the Matrimonial Home in 2003 and 2006. Further, the claimant argues that the need to sell is urgent. The state of the Matrimonial Home, in which the claimant continues to reside, is described as almost uninhabitable. The claimant's income from disability benefits is extremely low.
- [72] The parties' mutual mistrust and hostility towards one another continue to today. Their evidence makes it obvious that they would be unable to communicate and cooperate in the manner necessary for successful and efficient sales of their properties. The evidence also establishes that it is the claimant who has taken steps over the years to proceed with the sale of the properties.

- [73] Accordingly, pursuant to Sub-Rules 15-8(1), (2) and (3)(a) of the Supreme Court Family Rules, I grant the claimant's application that the Matrimonial Home and the Mahood Lake Property be listed forthwith for sale and sold. I further order that the claimant have sole conduct of sale for both properties.
- [13] The respondent references the B.C. Court of Appeal's decision in *Etemadi v. Maali*, 2021 BCCA 298, where the court found error in granting sole conduct of sale in the absence of evidence of the appealing party's inability to cooperate over the sale of the property and in the absence of an application. That is not the circumstances here. In my view, the circumstances in this case are more akin to those in *Dhillon and McLachlan*. The respondent has engaged in efforts to obstruct the sale of the family home, whether intentionally or not, with the result that a sale was rendered difficult to impossible and at least one offer fell through. Most recently, the respondent's position has culminated in her effectively refusing to engage in any offers.
- [14] The respondent is of the view that she is fighting for her survival. Her most recent F8 indicates she earns \$21,791.33 annually, comprised of \$15,964.44 in disability payments and \$5,826.89 in net rental income. The respondent emphasizes that she is reliant on the rental income from the family home to survive. In this regard, I note the approximation of equity in the family home, being roughly \$949,000. A mere two percent return on half of the equity would result in an income of almost two times the current rental income. The respondent also emphasizes that she suffers from significant disabilities, one of which she alleges makes her unable to make decisions under stress. The respondent's position is that the mediated agreements were unfair and ought to be varied, or set aside.
- [15] That may be, however, to vary or set aside the mediated settlement agreements that have been filed with the court pursuant to SCFR 2-1, the respondent would need to bring an application pursuant to SCFR 10-5(2). In *Kler v. Kang*, 2018 BCSC 1136, that particular issue was addressed. At para. 9, where the court stated in part:
- Rule 10-5(1)(a) requires that a party applying for an order referred to in subrule (2), which includes, pursuant to subrule (2)(c), orders to set aside or replace the whole or any part of a settlement agreement, must (emphasis on must) make an application in accordance with Rule 10-6. The procedure set out in Rule 10-5 is mandatory
- In that regard, the court quotes the case of *Halliday v. Halliday*, 2015 BCCA 82, and a similar approach was taken in *Hlus v. Hlus*, 2023 BCSC 835.
- [16] There is no application before me pursuant to SCFR 10-6. Presently, the mediated settlement agreements, having been filed in accordance with SCFR 2-1, cannot be varied or set aside except in compliance with SCFR 10-5(2)(c) which requires an application under SCFR 10-6.
- [17] In all the circumstances, I am left with the view that it is appropriate to order that the claimant have sole conduct of sale.

- [18] I also agree with the submission of the claimant concerning the need for conduct orders in the circumstances in order to facilitate the sale. Conduct orders were made by the court in *Kadyschuk v. Behan*, 2022 BCSC 1370, and accordingly, I order that:
- (1) the respondent shall keep the family home in good and salable condition and shall abide by the recommendations and requests of the realtor regarding keeping the property ready for showings; and
 - (2) the respondent shall reasonably facilitate viewings of the property upon 24 hours' notice by the realtor for the purpose of facilitating all showings.
- [19] I have made no order with respect to open houses, and that is intentional.
- [20] It has been brought to my attention that the respondent intends to challenge the September 27, 2023, and October 19, 2023, settlement agreements. Therefore, I further order that the final sale of the family home is subject to court approval, or agreement of the parties.
- [21] Further, I order that the parties' respective shares of the proceeds of sale be paid into claimant counsel's trust account pending agreement of the parties, or further order of the court.
- [22] As the claimant has been successful, they are ordinarily entitled to their costs of the application. There are written submissions in the application that reference special costs. In my view, they are not warranted in a case like this. The claimant, though, has been successful and he will have his ordinary costs of the application in any event of the cause.

"Nielsen A.J."

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