

CANADA / JUDGMENT

McRae v. McRae

2026 BCSC 21

COURT

Supreme Court of British Columbia

DECIDED

7 January 2026

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2026 BCSC 21 McRae v. McRae

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

McRae v. McRae,

2026 BCSC 21

Date: 20260107

Docket: S57166

Registry: Vernon

Between:

Debra Lori McRae and

Carl Bennett Bachand

Plaintiffs

And

Dorothy Theresa McRae by her litigation guardian,

William McRae

Defendant

Before: The Honourable Justice Caldwell

Reasons for Judgment

Chambers Summary Trial

Counsel for Plaintiffs:

J.D. Keeley

Counsel for the Defendant:

L.D. Nykolaychuk

Place and Date of Chambers

Summary Trial:

Kelowna, B.C.

August 19 & 29, 2025

Written Submissions Received:

September 2, 2025

Place and Date of Judgment:

Vernon, B.C.

January 7, 2026

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- [1] This matter involves a cross-generational and intra-family dispute regarding property, its form and substance of ownership, and repercussions on estate disposition.

Background

- [2] Dorothy Theresa McRae ("Dorothy") and Robert McRae ("Robert") were married. Robert died in December 2019. Dorothy is currently 89 years old.
- [3] They have four children: Debra, William, James and David.
- [4] Debra is the first named plaintiff in this action. Carl Bennett Bachand ("Carl"), the other named plaintiff, is Debra's spouse.
- [5] David currently holds a Power of Attorney regarding Dorothy.
- [6] William is Dorothy's Litigation Guardian pursuant to the order of Associate Judge Schwartz, dated May 2, 2023.

- [7] Dorothy and Robert purchased property in Vernon in 1991. Over some years, they built their home on the property (the "Property"). Robert lived at the Property until his death and Dorothy continues to reside at the Property.
- [8] Over time, Dorothy and Robert's health declined.
- [9] In or about 2014, they approached James with an offer to transfer the Property to him in return for his moving onto the Property and caring for them in their declining years. A form of trust document was drafted by Ian Hawes, solicitor for Dorothy and Robert, to carry this plan into force. James refused the offer.
- [10] Throughout the discussions and preparation of documents, the instructions provided to Ian Hawes were clear: Dorothy and Robert intended to ensure that David would receive nothing from the estate of either Dorothy or Robert. It was understood, by Ian Hawes, that this was because Dorothy and Robert believed David had already received more than his share of their estate, in the form of financial assistance that they had previously provided him.
- [11] In January 2015, in the wake of James' refusal of the offer, Dorothy and Robert made an offer to Debra and Carl. Debra and Carl would transfer \$200,000 to Dorothy and Robert. In return, the Property would be registered in joint tenancy among Dorothy, Robert and Debra. Debra and Carl would move into the Property when Dorothy and/or Robert actually required assistance and would provide them with care and support for the balance of their lives. Upon the death of Dorothy and Robert, Debra would receive the Property as the surviving joint tenant.
- [12] Debra and Carl paid \$200,000 to Dorothy and Robert in late January 2015, and the title to the Property was registered in the names of Dorothy, Robert and Debra as joint tenants. Ian Hawes acted as solicitor for Dorothy and Robert regarding this transfer, and regarding other estate matters which were undertaken by Dorothy and Robert in January 2015. He prepared the documents to modify the title to include Debra as a joint tenant upon instructions from Dorothy and Robert.
- [13] Following the transaction, Dorothy and Robert paid \$100,000 to James and \$70,000 to William.
- [14] Also, in January 2015, Dorothy and Robert met with Ian Hawes specifically for the purposes of estate planning. They, again, indicated that David was to receive nothing from their respective estates as he had already received full payment of any interest he had coming. Ian Hawes' file notes confirm these instructions, and they were further confirmed in writing and signed by both Dorothy and Robert.
- [15] Wills were prepared. Dorothy and Robert each left their estate to the other and, in the event of the other's predeceasing, equally to James and his wife and to William and his wife.
- [16] Ian Hawes also prepared Enduring Power of Attorney documents. These documents named Dorothy and Robert as each other's first Attorney, with James as the alternate.

- [17] By 2016, Robert had experienced several falls, and it was determined that the time had come that he and Dorothy required more care. Debra and Carl moved into the basement of the Property shortly thereafter and began to provide personal care as previously arranged and agreed.
- [18] On May 30, 2017, Dorothy's longtime doctor advised in writing that she was suffering from dementia and was incapable of managing herself or her affairs.
- [19] In August 2019, Carl was added as a joint title holder of the Property. That transfer was also handled by Ian Hawes. After said transfer, Ian Hawes had no further involvement in the affairs of Dorothy and Robert.
- [20] In December 2019, Robert died.
- [21] In early 2020, David, having been somewhat estranged from his parents for some years prior to this, began contacting Dorothy.
- [22] In the summer of 2020, Debra and Carl became aware that Dorothy had:
- revoked the above noted Power of Attorney naming James as her Attorney;
 - executed a new Power of Attorney in favour of David and James (which was later revoked and replaced by a Power of Attorney appointing David and his wife Sandra as her Attorney); and
 - removed Robert from the title to the Property and severed the joint tenancy.
- [23] Subsequent discussions between Debra, Dorothy and David have revealed that Dorothy has revoked her previous will and has had a new will prepared naming David as her beneficiary.
- [24] Pursuant to the current Power of Attorney, David has hired full-time caregivers to be present with Dorothy in the upstairs of the Property, installed surveillance cameras in the upstairs area of the Property, and has prohibited Debra or Carl from being present in the upstairs area of the Property unless supervised by caregivers.

The Proceedings

- [25] Debra and Carl bring this action alleging that the interference with the joint ownership, occasioned by Dorothy severing the joint tenancy, is a breach of the agreement between Debra and her parents; an agreement which Debra has performed by payment of \$200,000 and provision of several years of personal care as directed by the agreement.
- [26] On May 2, 2023, Associate Judge Schwartz granted an order appointing William as litigation guardian for Dorothy, on condition that he retain his own independent counsel, which he has since done.
- [27] A second action, against David personally, was commenced but has since been discontinued.

- [28] The current application before me is brought via the summary trial process. It seeks to have the title to the Property transferred to Debra and Carl, subject to a life estate in favour of Dorothy. This application is supported by, and consented to, by William, in his role as litigation guardian.
- [29] When the matter came before me on August 19, 2025, I expressed my concern that David had not been served with notice of this application. He had appeared via counsel at the time of the May 2, 2023 Application, regarding the appointment of a litigation guardian, and appears to be the current holder of Power of Attorney authorization for Dorothy. He is clearly aware of the litigation and is, in my view, a person, other than a party, who may be affected by the orders sought as provided in Rule 8-1(7) of the Supreme Court Civil Rules, B.C. Reg. 168/2009.
- [30] Accordingly, I adjourned the hearing to August 29 and directed that David be notified of the application and given an opportunity to respond, or to at least appear and seek further directions regarding the hearing of the application.
- [31] On August 29, I was advised by counsel that notification had been provided to David, as directed by the Court. No response of any kind had been received from David or legal counsel on his behalf. Neither David nor legal counsel on his behalf appeared on August 29, 2025.
- [32] Counsel for the plaintiffs and for Dorothy by her litigation guardian renewed their request for the order sought in the application, it now being an unopposed application brought on notice, as directed by the Court.
- [33] I reserved to further review the materials and authorities but ordered that, in the interim, the Property be returned to joint tenancy and that the title not be further transferred or dealt with pending my decision. Provision was made in the order in the event of the death of any of the three joint title holders.

Discussion

- [34] At some point in this action, the live issue would have appeared to be the legitimacy of the oral agreement between Robert, Dorothy and Debra. However, given the appointment of William as litigation guardian, and his consenting to the order sought and not disputing the existence of the agreement, the Court must now consider whether to grant the unopposed order in the absence of an adversarial context.
- [35] Nevertheless, there is ample evidence to establish, on a balance of probabilities, that a valid oral agreement exists and is enforceable: Law and Equity Act, R.S.B.C. 1996, c. 253, s. 59(3).

[36] I have reviewed the evidence provided and the authorities, including, particularly, the case of *Sojka v. Sojka*, 2023 BCCA 446, which deals with a similar type of dispute amongst family members, interests in property, and an oral agreement regarding that property. The Court found, regarding the decision at the lower court:

[15] The judge correctly set out the legal framework at paras. 50-54 of the reasons as follows:

- If a party to an oral agreement acts as though there were a binding contract or the other party relies on the agreement to their detriment the party is unable to rely of the lack of a written agreement as a defence: *Le Soleil Hotel & Suites Ltd. v. Le Soleil Management Inc.*, 2009 BCSC 1303 at paras. 342-345 [*Le Soleil*];
- An enforceable agreement is reached where parties have reached a meeting of the minds and the parties express themselves outwardly in a manner that indicates an intention to be bound: *Le Soleil* at paras. 322-323;
- Reasonable certainty of the terms of the agreement are required: *Le Soleil* at paras. 339-340;
- The existence of an oral agreement is determined by applying the objective reasonable bystander test to consider how the promisor's conduct would appear to a reasonable person in the position of the promise: *Le Soleil* at paras. 324-325;
- The party alleging the oral agreement must be able to prove its existence on the balance of probabilities: *Bell v. Bell*, 1998 CanLII 3194 at para. 14, [1998] B.C.J. No. 1457 (S.C.).

[16] This Court considered the application of these principles in the context of agreements between family members in *Suen v. Suen*, 2013 BCCA 313:

[40] A contract is promissory in nature, that is, it is an undertaking by the promisor to do something for the promise in exchange for something. The exchange of promises is enforceable only if there is an agreement or consensus on the "existence, nature and scope of their [respective] rights and duties" (G.H.L. Fridman, *The Law of Contract in Canada*, 6th ed. (Ontario: Carswell, 2011) at 6).

[41] Professor Fridman discusses the development of the doctrine of consideration, or the concept of a bargain, as an essential feature of the common law of contract at 8:

what is an essential ingredient of a valid, enforceable, legally acceptable contract, is an agreement that can be called "serious," that is, made with the kind of serious, binding intent that demarcates the casual promise, undeserving of legal recognition, from a promise which should be effective in law and should be obligatory on the future action, as well as the conscience of the promisor.

[42] The common law of contract is distinguishable from equitable or promissory estoppel where, absent consideration, reliance on a promise that is not fulfilled and gives rise to injury or damage, may be actionable. Consequently, if a promise is support only by "moral consideration", it is generally not enforceable at common law:

The idea that moral justification could be the basis of a contract, for example, where a promise was made because of the familial relation of the parties, or out of "natural love and affection," has long since been rejected by the common law (Fridman at 9).

[43] Communications in the family context are often no more than statements of intent or wishes. For a promise, in that context, to rise to the level of a binding enforceable contract there must be strict proof of the terms of the bargain including: the parties, the property, and the consideration. See *McKenzie v. Walsh* (1920), 61 S.C.R. 312 (S.C.C.), and *Ross v. Ross* (1957), [1958] O.R. 49, 11 D.L.R. (2d) 561 (Ont. C.A.)

Discussion

(1) Consideration

[17] George's challenge to the judge's conclusion that an enforceable agreement existed between him and Rick included the findings that:

- The consideration Rick provided was a clear and unequivocal support for George in defence of the Will Action;
- George agreed to divide the net proceeds of the insurance claim with Rick; and
- Pursuant to the Minutes of Settlement, Rick and George were jointly and severally responsible for paying their siblings \$575,000.

[18] The judge stated that the parties' "understanding" regarding that the Property was to be held jointly arose in 1998: at para. 43, and she found that the consideration given by Rick to George was the former's "clear and unequivocal support for George in the defence of the Will Action.": at para. 67. It was on this basis that she concluded:

I accept that Rick has proven on a balance of probabilities that the brothers had a valid verbal agreement that no matter what they decided to do with the Property they were the equal beneficial owners of the Property: at para. 65.

[37] In the present case, it is clear from the uncontested evidence that:

- Dorothy and Robert provided clear and unequivocal instructions to counsel regarding the transfer of the Property and the reasons for the transfer;
- Dorothy and Robert provided clear and unequivocal instructions regarding their estate plan and their reasons for such plan;
- such instructions were given when there was no question as to their mental capacity to provide such instructions; and

- Debra, Dorothy and Robert all acted in accordance with, and in reliance on, the agreement alleged: Debra paid \$200,000; Dorothy and Robert had their solicitor attend to the transfer of title of the Property to include Debra as a joint tenant and Debra, along with Carl, later moved into the Property as contemplated and in order to provide personal care to Dorothy and Robert, and continued to do so until ousted from such activity by David.

Decision

- [38] I am satisfied that the intention of the parties when the agreement was originally undertaken was to have Dorothy, Robert and Debra hold the Property as joint tenants. That agreement was carried into effect with the assistance of legal counsel for Dorothy and Robert, and I thus consider that the legal rights and consequences of such an agreement were made known to the parties.
- [39] I am also satisfied that the August 2019 addition of Carl as a joint tenant was done by agreement of Robert, Dorothy (at least by way of Robert acting under the Power of Attorney granted to him by Dorothy), and Debra. That was also carried into effect with the assistance of legal counsel for Dorothy and Robert.
- [40] The agreement exists, is enforceable and there is no credible evidence of undue influence in its creation.
- [41] However, in my view, the order now sought seeks to significantly rewrite and amend the agreement of the parties and to move it well beyond what was intended.
- [42] Joint tenancy carries with it the right of survivorship. It is clear that the parties intended that Debra, and later Carl, would receive the entirety of the title to the Property upon the death of Robert and Dorothy.
- [43] The current application before the court, suggests the substitution of a different method for assuring that title to the Property becomes fully vested in Debra and Carl upon Dorothy's death. However, the implicit assumption of this request is that Dorothy will not survive Debra and/or Carl.
- [44] Upon such assumption, the proposed order meets the practical intention of the parties. Dorothy would be unaffected if she were simply granted a life estate and continued to live in the Property until her death.
- [45] The difficulty arises when that basic assumption is challenged: while it is probable that Debra and Carl will survive Dorothy, it is not a certainty. If Debra and Carl predeceased Dorothy, Dorothy would be the sole remaining joint tenant and would therefore become the sole title holder by the same right of survivorship on which the original agreement rests. Depending on the estate arrangements of Debra and Carl, transferring full title to Debra and Carl at this moment, subject only to a life interest in favour of Dorothy, would not result, should Carl and Debra predecease Dorothy, in full title reverting to Dorothy, as would occur with joint tenancy.

- [46] The application seeks to accelerate Debra and Carl's claims to ensure that they receive full title to the Property, whether or not they survive Dorothy. That is not what was contemplated by the agreement. That is not what is contemplated by joint tenancy.
- [47] In my view, it would not be proper for the court to re-write the agreement to such a significant extent. The applicants have argued throughout that the agreement was for a joint tenancy. They are correct, but that also means that the agreement was not for joint tenancy plus the right to pre-emp the interests of one of the joint title holders, which is what their application seeks.
- [48] I order that, if it has not been done already, the title to the Property, located at 8165 Silver Star Road, Vernon, British Columbia and legally described as:
- Lot A, District Lot 3848, Osoyoos Division Yale District, Plan 29999,
- PID: 002-654-113
- be registered in the names of Debra Lori McRae, Carl Bennett Bachand and Dorothy Theresa McRae, as joint tenants.
- [49] I further order that, until the death of Dorothy, no person may alter or deal with, the title of the Property in any manner, including but not limited to, severing the joint tenancy, except by way of a transmission of the joint interest to the survivor or survivors upon the death of any one or more of the joint tenants or by the collective written agreement of Debra, Carl and Dorothy (via the holder of a valid Power of Attorney for Dorothy) or by order of the court.
- [50] In the circumstances, each of the parties shall have liberty to apply for directions or clarification of the terms of this order. Such application, if necessary, may be made by videoconference and arranged through Supreme Court Scheduling.
- [51] The application sought costs if it was opposed. It was not, and accordingly I make no order as to costs.

"Caldwell J."

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