

CANADA / JUDGMENT

Papadogeorgos v. McMullan

2025 BCCA 439

COURT

British Columbia Court of Appeal

DECIDED

26 November 2025

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

2025 BCCA 439 Papadogeorgos v. McMullan

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Papadogeorgos v. McMullan,

2025 BCCA 439

Date: 20251126

Docket: CA50586

Between:

Panagiotis Papadogeorgos

Appellant

(Respondent)

And

Milissa Shirley Anne McMullan

Respondent

(Claimant)

Before:

The Honourable Mr. Justice Groberman

The Honourable Mr. Justice Butler

The Honourable Madam Justice Horsman

On appeal from: An order of the Supreme Court of British Columbia, dated

March 6, 2025 (McMullan v. Papadogeorgos, 2025 BCSC 379,
Victoria Docket 213432).

Oral Reasons for Judgment

Counsel for the Appellant:

J. Macdonnell

J.K. Ough

Counsel for the Respondent:

M. Scherr

T.D. Martens

Place and Date of Hearing:

Victoria, British Columbia

November 26, 2025

Place and Date of Judgment:

Victoria, British Columbia

November 26, 2025

Summary:

The appellant appeals the order of the summary trial judge equally dividing the parties' former family residence. The appellant maintains that the trial judge failed to properly address his claim for excluded property or, alternatively, erred in failing to order unequal division. Held: Appeal dismissed. The trial judge's rejection of the appellant's claim for excluded property was based on factual findings that have not been shown to reflect palpable and overriding error. The appellant has also not demonstrated any error in principle by the trial judge in declining to exercise her discretion to order unequal division of the family residence.

[1] HORSMAN J.A.: The appellant appeals the decision of the trial judge on a summary trial in a family law proceeding that concerned the division of family property. The trial focussed on the appropriate division of the former family residence in Victoria, B.C., that the parties jointly owned at the time of separation (the "Family Residence"). The trial judge dismissed the appellant's arguments that: (1) a portion of the value of the Family Residence consisted of his excluded property; and (2) alternatively, that an order for unequal division should be made to avoid significant unfairness. The trial judge concluded that the entire value of the Family Residence was family property, and she ordered that it be equally divided.

- [2] On appeal, the appellant asserts that the trial judge's conclusions reflect legal and factual errors. He seeks an order allowing his claim for excluded property or, alternatively, an order for unequal division of the Family Residence.

Background

- [3] I take the following chronology from the trial judgment.
- [4] In April 2010, the appellant and his parents purchased the Family Residence for \$560,000. The appellant's parents provided a downpayment of approximately \$350,000 towards the purchase price, with the remainder financed through a mortgage. The appellant and his parents were the registered owners of the property as joint tenants.
- [5] After the purchase, renovations were undertaken that were financed by a Royal Bank of Canada (RBC) line of credit that was secured against the property. The renovations created separate living spaces in the Family Residence. The appellant lived in an upstairs suite while his parents lived in a downstairs suite.
- [6] The appellant did not have funds to contribute to the downpayment for the Family Residence. It was a term of his agreement with his parents that he would assume responsibility for the entire mortgage and line of credit debt that was secured against the property.
- [7] On November 1, 2015, the appellant and the respondent began to live together in the upstairs suite. Both had children from previous relationships. Their children also lived in the Family Residence.
- [8] As of November 1, 2015, the appraised value of the Family Residence was \$550,000, and the total debt registered against the property was \$268,157.
- [9] Between November 1, 2015, and March 2018, the respondent made monthly payments of \$600 towards the mortgage. In March 2018, the parties opened a joint account, into which they deposited their employment income. Thereafter, the mortgage payments, and other family expenses, were covered by funds in the joint account.
- [10] Over time, the relationship between the appellant and his parents began to deteriorate. In 2019, the appellant's parents severed the joint tenancy by changing registered title to tenancy in common, with the appellant owning a one-third interest and his parents a two-thirds interest.
- [11] In May 2020, the RBC line of credit secured against the Family Residence was rolled into the mortgage. The total debt as of this date was \$285,584.
- [12] In June 2020, the appellant's parents filed a petition under the Partition of Property Act, R.S.B.C. 1996, c. 347, seeking to have the Family Residence sold. In her affidavit filed in support of the petition, the appellant's mother set out the circumstances of the parents' deteriorating relationship with the appellant. This included allegations that the appellant

had been violent towards them and that he had borrowed significant amounts from the RBC line of credit without making payments to reduce the debt. In the circumstances, the parents no longer wished to live in the Family Residence but could not afford to move unless the property was sold.

- [13] The appellant filed a response to the petition opposing the relief sought.
- [14] In September 2020, the appellant negotiated a settlement of the petition with his parents without the involvement of the respondent. The appellant's parents agreed to transfer the Family Residence to him and the respondent as joint tenants in return for payment of \$250,000 to buy out their interest. The Form A transfer that was subsequently registered in the Land Title Office declared the value of the property as \$646,000, which was its assessed value at the time. The appellant and the respondent obtained a new mortgage on the property in the amount of \$550,450.
- [15] On December 22, 2020, the parties separated.
- [16] In January 2021, the respondent moved out of the Family Residence and into a rental unit. She stopped contributing to the mortgage.
- [17] On February 1, 2021, the Family Residence was appraised as having a value of \$825,000. An appraisal done in October 2024, valued the property at just over \$1 million.

The trial judgment

- [18] At trial, the appellant advanced two excluded property claims. First, he argued that he had acquired an interest in the Family Residence before the spousal relationship began, and this was excluded property under s. 85(1)(a) of the Family Law Act, S.B.C. 2011, c. 25. Second, he argued that the settlement with his parents, in September 2020, reflected their agreement to gift him their interest in the Family Residence to the extent it exceeded \$250,000, and this gift was excluded property under s. 85(1)(b.1) of the Family Law Act.
- [19] The trial judge dismissed both excluded property claims.
- [20] In relation to the appellant's claim that he had excluded property prior to the commencement of the spousal relationship, the trial judge's primary finding was that the appellant did not own any equity in the Family Residence when the parties began to live together on November 1, 2015. She reasoned as follows:
- on November 1, 2015, the Family Residence had an appraised value of \$550,000;
 - pursuant to his agreement with his parents, the appellant had a one-third interest in the Family Residence, which amounted to \$183,333 of the appraised value;
 - the appellant was also responsible for 100% of the debt registered against the property, which totalled \$268,157 as of November 1, 2015; and

- d) therefore, as of November 1, 2015, the appellant had no equity in the Family Residence that could be considered excluded property.
- [21] As for the appellant's settlement with his parents, the trial judge accepted that the parents settled the partition petition for less than their apparent entitlement based on their two-thirds interest in the Family Residence. However, she was not persuaded that the evidence established the parents intended a gift:
- [57] Other than what the [appellant] now says, there is nothing to support the [appellant's] claim that he received a gift from his parents. If the [appellant] did receive a gift, there is nothing supporting the amount of the gift or when the gift was given. Instead, the evidence demonstrates that the [appellant] negotiated a settlement of his parents' partition of property claim for \$250,000, and nothing more.
- [22] Accordingly, the trial judge concluded that the appellant had failed to establish there was a third-party gift constituting excluded property.
- [23] Finally, the trial judge turned to the appellant's alternative argument that an order should be made for unequal division of the Family Residence under s. 95(2) of the Family Law Act. The appellant argued that equal division would be significantly unfair due, in part, to the parties' differing financial contributions to the Family Residence. In rejecting his arguments, the trial judge stated:
- [68] With respect to contributions related to the Family Residence during the relationship, the [appellant] did not provide for any greater contribution than the [respondent]. During periods of time, the [respondent] was making larger contributions towards the mortgage than the [appellant]. The [appellant] was only able to pay out his parents and refinance the home with the assistance of the [respondent]. Further, the [respondent] assumed the mortgage obligations which included debt incurred by the [appellant]. I do not find that unfairness existed during the relationship.
- ...
- [70] Following the relationship, the [appellant] says that the [respondent] should not benefit from the increase in the market value of the Family Residence as she was not paying the mortgage. That fails to take into consideration the limits to the [respondent's] ability to otherwise enter the housing market as she is still a debtor on the mortgage. Further, the [respondent] was required to pay rent for her alternative housing while the [appellant] remained living in the Family Residence.
- [71] In assessing whether equal division would be significantly unfair, the courts have held that a party must demonstrate that their contribution was a cause of the property's increase in value as opposed to simply market factors: *Draper v. Smith*, 2022 BCSC 2133 at para. 77. The [appellant] has not demonstrated that he contributed to the increase in the equity. Any payment was routine and did not contribute to an increase in value.

- [72] From January 1, 2021 to present the [appellant] paid \$144,150.91 in mortgage payments. During this same period, the [respondent] paid between \$2,500 and \$2,640 per month for rent. At \$2,500 per month, that would be \$120,000. The difference is \$24,150.91 and the [appellant] had the benefit of a large house with an income-generating lower suite while the [respondent] was living in a two-bedroom rental suite. I do not find the difference in payments to fall into the category of being unfair. Further, I have considered the debt assumed by the [respondent] which, when the mortgage was taken out, included debts of the [appellant].
- [73] I am cautioned against taking an overly detailed review of the expenditures by one party over another. Relying too heavily on such an analysis risks departing from the strong presumption of equal division expressed in the FLA on a technical and narrow basis. The purpose of reapportionment is to remedy significant unfairness and not to achieve absolute equity: Draper at para. 75. I do not find that the difference noted above reaches a level of being significantly unfair when one considers the advantages the [appellant] had in remaining in the Family Residence while the [respondent] rented.
- [74] Courts have consistently held that, as a general rule, parties should share in the post-separation increase in the value of property independent of the parties' respective contributions to the increase in value: *Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 39; Draper at para. 76.
- [24] Therefore, the trial judge ordered the equal division of the Family Residence.

Discussion

Issues on appeal and standard of review

- [25] The appellant argues that the trial judge made a number of errors in her analysis that he characterizes as either errors of fact or of law. In my view, it is unnecessary to go through every ground of appeal. I will observe that at least some of his grounds of appeal appear to me to be unconnected to the trial judge's key findings.
- [26] In relation to the claimed exclusions, the trial judge made two key factual findings: (1) the appellant had no equity in the Family Residence as of November 1, 2015, and therefore there was no excluded property as of the commencement of the spousal relationship; and (2) the appellant's parents did not intend to gift him any portion of their interest when they transferred the Family Residence to the parties in September 2020. Unless the appellant establishes that these factual findings reflect palpable and overriding error, there is no basis for appellate intervention with the trial judge's conclusion that the appellant had no excluded property in the Family Residence.

- [27] The trial judge's dismissal of the appellant's claim for unequal division of the Family Residence under s. 95(2) of the Family Law Act involved an exercise of discretion. Appellate intervention is justified "only if the trial judge misdirects himself or herself or is so clearly wrong as to amount to an injustice": *Storey v. Terry*, 2020 BCCA 30 at para. 18.

The trial judge's factual findings on the claim for excluded property

- [28] I am not persuaded that the trial judge made any palpable and overriding errors in her two key factual findings.
- [29] While the appellant argued in his factum that the judge erred in finding that he had no excluded property in the Family Residence as of November 1, 2015, he did not explain the nature of the alleged error. In the course of oral submissions at the hearing, the appellant conceded that at the commencement of the spousal relationship he did not have equity in the Family Residence and therefore did not have excluded property at that time.
- [30] In relation to the transfer of the Family Residence to the parties in September 2020, the appellant takes the position that his parents intended to gift him their interest in the property to the extent that it exceeded \$250,000. However, the trial judge found that the evidence did not establish a gift. As she noted, the only evidence that the parents intended a gift came from the appellant in his affidavit. Notably, in his examination for discovery evidence, the appellant testified that he was not sure if the actual term "gift" was used in discussions with his parents, and he could not recall what was said. As such, even within the appellant's evidence, there was internal inconsistency. There was no direct evidence from the appellant's parents as to their reasons for settling the petition proceeding on the basis of what appears to have been a compromise of their entitlement. Although the \$250,000 payment was made, and the Family Residence was transferred, in the context of a contested petition proceeding, there was no documentation prepared to reflect that the parents intended to make a gift to the appellant alone.
- [31] The trial judge's finding that the appellant had not established a gift was open to her on the record. The appellant has not identified any palpable error in her factual finding, let alone an error that is overriding.
- [32] The appellant raises a number of other peripheral issues in his factum in relation to his excluded property claims that, in my view, do not assist him on appeal in light of the trial judge's factual findings. I will briefly address these other arguments:
- a) The appellant argues that the trial judge erred in failing to correctly apply the tests for calculating and tracing excluded property. However, the trial judge was not required to trace excluded property because she found there was no excluded property.

- b) The appellant argues that the trial judge used the wrong valuation of the Family Residence to calculate the extent of the gift he received from his parents in September 2020. However, the trial judge found that the evidence did not establish a gift and therefore any error in the calculation of the amount of the gift--even if such an error were established--is immaterial.
 - c) The appellant argues that the trial judge erred in failing to apply the presumption of resulting trust to his parents' gratuitous transfer of their interest in the Family Residence to him and the respondent. However, no one argued that the parents continued to hold a beneficial interest in the property under a resulting trust, and therefore it was unnecessary for the trial judge to address this argument.
 - d) The appellant argues that the trial judge erred in failing to give proper weight to the presumption of indefeasible title in support of his excluded property claim. However, the trial judge found that the appellant had no excluded property in the Family Residence at the time of the commencement of the spousal relationship. Therefore, the state of title at that time was irrelevant.
- [33] For these reasons, I would not accede to the appellant's grounds of appeal as they relate to the dismissal of his excluded property claims. I am not persuaded that the appellant has identified any error that would warrant intervention by this Court.

The trial judge's dismissal of the appellant's claim for unequal division of the Family Residence

- [34] As I understand the appellant's arguments on appeal as set out in his factum, he says the trial judge made two errors in principle in declining to order unequal division: (1) she failed to account for the origin of the Family Residence as excluded property as permitted by *Venables v. Venables*, 2019 BCCA 281; and (2) she failed to properly account for the "relative contribution of spouses to the acquisition, preservation, maintenance, or improvement of family property during the relationship": Appellant's Factum at para. 92, citing *Singh v. Singh*, 2020 BCCA 21 at para. 139.
- [35] On the first argument, as I have explained, the trial judge concluded that the appellant had not acquired excluded property in the Family Residence by the time the spousal relationship commenced, because he had no equity. As such, it cannot be said that the trial judge erred in failing to account for the origin of the Family Residence as excluded property.
- [36] The appellant's second argument is based on the proposition that the trial judge "heavily relied on the contributions that [the respondent] made to the mortgage and property taxes" during the marriage, yet failed to recognize that it was the appellant's parents who paid the property taxes between 2010 and 2020.
- [37] However, the trial judge did not find that the respondent had contributed to property taxes during the marriage, let alone place heavy reliance on this finding. In addressing the parties' contributions during the relationship, the trial judge found that there were periods of time

that the respondent was making greater contributions to the mortgage than the appellant. She also referenced the fact that the appellant required the respondent's assistance to payout his parents and refinance the Family Residence. The appellant has not identified any factual error in this analysis.

- [38] As for the post-separation period, the trial judge accepted that the appellant alone was making mortgage payments on the Family Residence. However, she noted that the respondent was paying comparable amounts in rent, having moved out of the property after separation. The trial judge concluded that any difference between the mortgage payments and rental payments did not amount to significant unfairness having regard to the advantages to the appellant in remaining in the Family Residence after separation. Another factor relevant to her analysis was that the appellant's contributions in the post-separation period did not increase the value of the Family Residence beyond market trends.
- [39] In short, in considering the appellant's claim for unequal division of the Family Residence, the trial judge considered the factors under s. 95(2) of the Family Law Act, as she was required to do. The trial judge explained why she was not persuaded that equal division of the Family Residence would result in significant unfairness, having regard to these factors. The appellant has not identified any error in principle by the trial judge in her exercise of discretion in this case.
- [40] For these reasons, I would also not accede to the appellant's grounds of appeal as they relate to the trial judge's failure to order unequal division.

Disposition

- [41] I would dismiss the appeal.
- [42] GROBERMAN J.A.: I agree.
- [43] BUTLER J.A.: I agree.
- [44] GROBERMAN J.A.: The appeal is dismissed.

"The Honourable Madam Justice Horsman"

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/ca/25/04/2025BCCA0439.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/papadogeorgos-v-mcmullan-2025>

Prepared on 25 October 2026 · Esheria