

CANADA / JUDGMENT

Taylor v. Forest Estate

2025 BCSC 401

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 401 Taylor v. Forest Estate

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Taylor v. Forest Estate,

2025 BCSC 401

Date: 20250307

Docket: E68603

Registry: New Westminster

Between:

Patricia Mary Taylor

Claimant

And

Gordon Albert John Brownbridge and Fraser Wilson Murphy, the Administrators of the Estate of
Jeffrey Vincent Forest, Deceased

Respondents

Before: The Honourable Justice Norell

Reasons for Judgment

Counsel for Claimant:

A. James

Counsel for Respondents:

E. Robinow

Place and Date of Hearing:

New Westminster, B.C.

February 12, 2025

Place and Date of Judgment:

New Westminster, B.C.

March 7, 2025

Overview

- [1] This is a family law proceeding. The respondents apply under Rule 18-2(1) of the Supreme Court Family Rules [SCFR] to strike the claimant's pleadings on the basis that this court has no jurisdiction over the respondents in respect of the claims made against them in this proceeding.
- [2] This application was heard in regular chambers and at that time, I dismissed the application with costs in the cause, with reasons to follow. These are those reasons.

Evidence

- [3] The claimant Ms. Taylor alleges that she was in a marriage-like relationship with the deceased Mr. Forest starting in about 2016. On November 23, 2022, Mr. Forest died while on vacation in Mexico. Mr. Forest died intestate.
- [4] In January 2023, two of Mr. Forest's friends, the respondents Mr. Brownbridge and Mr. Murphy, applied for administration of Mr. Forest's estate. Their application stated that there is no surviving spouse as defined by s. 2 of the Wills, Estates and Succession Act, S.B.C. 2009, c. 13 [WESA].
- [5] Ms. Taylor retained counsel, and her counsel wrote to the respondents setting out Ms. Taylor's position that she was Mr. Forest's spouse within s. 2 of WESA and that neither she nor Mr. Forest "had terminated the relationship prior to" Mr. Forest's death. Counsel requested that the respondents amend their application to reflect Ms. Taylor's status as the spouse.
- [6] In February 2023, the respondents wrote to Ms. Taylor's counsel disputing that Ms. Taylor and Mr. Forest had ever been in a marriage-like relationship, and setting out why they dispute Ms. Taylor and Mr. Forest were spouses. The respondents concluded that to amend the application to reflect Ms. Taylor's claimed status as a spouse "would be committing fraud".
- [7] In March 2023, Ms. Taylor filed a notice of dispute in the administration proceeding alleging that she was a person referred to in Rule 25-2(2)(b)(i) of the Supreme Court Civil Rules, namely a person who is an intestate successor of the deceased. Ms. Taylor alleged that she

was Mr. Forest's "common law spouse at his date of death" and that she and Mr. Forest "lived together in a marriage-like relationship for more than two years immediately preceding" Mr. Forest's death. Ms. Taylor alleged that pursuant to s. 130 of WESA, she was the person entitled to seek administration of the estate, and that pursuant to s. 20 of WESA, the entirety of the estate is to be distributed to her as she is the sole intestate successor.

- [8] In June 2023, Ms. Taylor withdrew the notice of dispute. Ms. Taylor does not explicitly state the reason for this, but it appears from her affidavit #2 filed in support of her response to this application, that she concluded that sometime between her last contact with Mr. Forest in July 2022 and his death on November 23, 2022, Mr. Forest formed the intention to end their relationship and they separated.
- [9] In October 2023, Ms. Taylor filed the notice of family claim ("NOFC"), at that time naming John Does as the administrators. She sought division of family property. In the NOFC, Ms. Taylor pleads that she was the spouse of Mr. Forest, they began to live together in a marriage-like relationship on May 1, 2016 and separated on November 23, 2022. This is the same day Mr. Forest died.
- [10] In December 2023, Ms. Taylor obtained a without notice order for production of Mr. Forest's cell phone records to assist in her claim. In her affidavit #1 filed in support of that order, she stated that she was the common law spouse of Mr. Forest, and they were in a relationship from approximately May 1, 2016 to November 23, 2022, that Mr. Forest died on November 23, 2022, and that she and Mr. Forest were spouses at the time of his death. She advised the court that Mr. Brownbridge and Mr. Forest had applied to become administrators. Those cell phone records were subsequently produced and they show communications between Ms. Taylor and Mr. Forest up to July 2022, and no communications after that until his death.
- [11] In June 2024, Mr. Brownbridge and Mr. Murphy were appointed as administrators of Mr. Forest's estate.
- [12] In July 2024, Ms. Taylor obtained an order to substitute the names of Mr. Brownbridge and Mr. Murphy in their capacity as administrators, as respondents in the family law action. In August 2024, Mr. Taylor filed an amended notice of family claim ("ANOFc") to reflect the substitution of parties.
- [13] In October 2024, the respondents filed a jurisdiction response, disputing the court's jurisdiction over the respondents for the claims in this proceeding, and filed this application to strike the ANOFc for want of jurisdiction.
- [14] In Ms. Taylor's affidavit #2, opposing this application, she recounts the history of her relationship with Mr. Forest starting in 2016, and the basis upon which she claims that they were spouses. The last time she and Mr. Forest spoke was on July 21, 2022. Ms. Taylor states that she did not break up with Mr. Forest or intend to leave the relationship but she was "essentially abandoned" by him after July 21, 2022 without explanation. She did not receive any communication from him about ending their relationship. She held out hope that Mr.

Forest would reach out to her or call her and their relationship would continue. She considered the date of his death to be the last possible point that he could rekindle their relationship. It was not "overtly apparent" to her, but something clearly had changed in their relationship after July 21, 2022 and to this day she does not know what.

[15] With respect to her conflicting affidavit #1, sworn in support of obtaining the cell phone records she states:

I have reviewed the contents of my earlier Affidavit #1, specifically paragraphs 8-10. This paragraph reflects how I personally felt in my mind about our relationship. Jeffrey did not communicate to me about ending the relationship and in my mind, I considered us never having broken up. I considered myself in a relationship with Jeffrey at his passing because he never officially broke up or ended things with me. However, there was a change in our relationship after July 21, 2022 because I never heard from him or saw him again.

Arguments

[16] Rule 18-2(1)(a) and (b) of the SCFR state:

- (1) A party who has been served with a notice of family claim, counterclaim or petition in a family law case, whether that service was effected in or outside British Columbia, may, after filing a jurisdictional response in Form F78,
 - (a) apply to strike out the notice of family claim, counterclaim or petition or to dismiss or stay the family law case on the ground that the notice of family claim, counterclaim or petition does not allege facts that, if true, would establish that the court has jurisdiction over that party in respect of the claim made against that party in the family law case,
 - (b) apply to dismiss or stay the family law case on the ground that the court does not have jurisdiction over that party in respect of the claim made against that party in the family law case, or

[17] The respondents argue that this court does not have jurisdiction for the following reasons. If only the ANOFC is considered and taken as true, Ms. Taylor's pleadings are an admission that she and Mr. Forest were spouses on November 23, 2022. As such, there cannot be a claim under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. To engage property rights under the FLA, the spouses must have been separated: s. 81(b) of the FLA. The death of a spouse does not constitute a separation within the meaning of the FLA. The respondents argue that if Ms. Taylor wishes to amend her ANOFC, she will have to apply to withdraw an admission.

[18] Alternatively, if the court considers evidence on this application, Ms. Taylor has sworn inconsistent affidavits and has not established a good arguable case that this court has jurisdiction. The respondents point to the differences between Ms. Taylor's allegations in her notice of dispute and the evidence in her first affidavit when she obtained the cell phone records, and her second and third affidavits she filed on this application.

- [19] Ms. Taylor's arguments in response are as follows. She agrees that death is not separation under the FLA, and that she and Mr. Forest must have been separated at the time of his death in order for her to maintain a claim for property division under the FLA. However, if only the pleadings are considered, all that is pleaded is that the separation occurred on November 23, 2022. There is no allegation that the death was the triggering event of the separation. For example, the pleading is not inconsistent with spouses separating on the morning of a spouse passing later that day. Ms. Taylor argues that at some point before Mr. Forest's passing, possibly including up until the day he died, Mr. Forest abandoned the relationship. Ms. Taylor refers case authorities where the Court has commented that it is difficult to pinpoint a separation date when one party has abandoned the relationship: *Sachdeva v. Sachdeva*, 2013 BCSC 313 at para. 93; and *Lee v. Chau*, 2021 70 at paras. 92-93. As Ms. Taylor does not know when Mr. Forest formed an intention to separate after July 2022, this is why the ANOFC was drafted as it was.
- [20] Ms. Taylor points out that after this issue was raised by the respondents, she offered to amend the ANOFC, but they refused to agree. She argues that the limitation period for a claim under the FLA has not expired. There is no allegation that she has not brought her claim within the limitation period, and so the separation date is not vital to the jurisdiction of the Court.
- [21] Alternatively, Ms. Taylor argues that if her pleadings are not sufficient to establish jurisdiction, the court can consider her evidence which establishes a good arguable case that the jurisdictional facts can be proven: *The Hershey Company v. Leaf*, 2023 BCCA 264 at paras 10-11. She argues that based on her evidence, she has met this low burden. Her evidence establishes a good arguable case that she and Mr. Forest were in a marriage-like relationship from 2016 until some point in 2022 and that they separated before his passing. At some point Mr. Forest formed an intent to leave the relationship. The precise date is not known but the fact that Ms. Taylor has pled the date of passing as the date of separation does not oust the court's jurisdiction.
- [22] Finally, Ms. Taylor argues that if the respondents wish to challenge her status as a spouse, their remedy is a summary trial on that issue, and not striking pleadings on a jurisdictional response.

Analysis

- [23] During the course of the hearing, I expressed concern that this was perhaps not a jurisdictional dispute to which Rule 18-2(1) applies. It appeared that the respondents were arguing that the pleadings did not disclose a reasonable cause of action under the FLA, rather than an issue of jurisdiction. As I understood the argument, it was that because Ms. Taylor's has pleaded that she was a spouse, her claim under the FLA was bound to fail and this court did not have jurisdiction. In my view, Rule 11-2 of the SCFR appeared to be the more appropriate Rule for such an argument. Under Rule 11-2(1)(a), a party may apply to strike pleadings as disclosing no reasonable claim or defence.

- [24] In response to my concern, counsel referred to *Weaver Estate v. Weaver*, 2021 BCSC 881, aff'd 2022 BCCA 79. In that case, the married spouses had separated years before. The wife died prior to any court proceedings, agreements, or court orders with respect to division of family property. A divorce order had not been made so there was no limitation defence. The administrator of the wife's estate commenced a family law action against the husband seeking division of family property. The husband filed a jurisdictional response and brought an application under Rule 18-2(1). Despite the jurisdictional response, the arguments of the parties centered on whether the administrator of the wife's estate could commence a family law action for property division when an action had not been commenced prior to death. This concerned interpretation of provisions of the FLA and the WESA. Justice Wilkinson held that the estate could do so, subject to any limitation period, and the Court of Appeal agreed.
- [25] Justice Wilkinson noted that the application had been brought under Rule 18-2. She stated that Rule 18-2 (and the equivalent Rule 21-8 in the Supreme Court Civil Rules), "deal with disputes arising over the court's territorial competence": at para. 10. The respondent husband had not set out in his application any material or authorities to support a territorial competence dispute. Rather, the husband's and the administrator's arguments were focused on the merits of whether the administrator could bring the action after the wife had died, as opposed to the territorial competence of the court. It appeared that the husband was actually seeking an order to strike the pleadings under Rule 11-2. Justice Wilkinson opted to address those arguments despite that the notice of application did not properly set out that basis: at paras. 10-11. Ultimately, Justice Wilkinson dismissed the application under Rule 18-2 and Rule 11-2: at para. 27.
- [26] On appeal the Court stated:
- [27] Mr. Weaver brought his application to strike relying on R. 18-2 of the SCFR. The judge concluded that R. 11-2 is the more appropriate section to invoke to resolve Mr. Weaver's argument, as the territorial competence of the Supreme Court was not at issue (at paras. 8-12). She dismissed the application to strike applying both R. 18-2 and R. 11-2 (at para. 27). On appeal, Mr. Weaver does not suggest the reliance on R. 11-2 provides a basis for overturning the dismissal. In principle, he disagrees with the judge's interpretation of R. 18-2 and says it was properly available to him; however, it is not necessary for us to resolve that issue in deciding the appeal.
- [27] In this case, the respondents argued that the Court of Appeal in *Weaver* found it unnecessary to decide whether Rule 18-2 applied only to disputes of territorial jurisdiction, therefore the issue is uncertain, and they could bring this application under Rule 18-2.

- [28] I did not receive any submissions from the parties analyzing Rule 18-2(1) other than being referred to Weaver. Rule 18-2 is procedural, and its SCCR equivalent has been employed to challenge both territorial and subject matter jurisdiction: *Conor Pacific Group Inc. v. Canada* (Attorney General), 2011 BCCA 403 at paras. 38 and 50; *Gillis v Canada* (Attorney General), 2022 BCSC 604.
- [29] The respondents have not filed any evidence or authorities that raise an issue of this court's territorial jurisdiction over the respondents. Ms. Taylor has provided evidence that the relationship between her and Mr. Forest existed in BC, she and Mr. Forest lived in BC, the alleged family property is located in BC, and the grant of administration of the estate was made in BC. This court also has subject matter jurisdiction to determine matters under the FLA and WESA. The respondent's argument appears to equate subject matter jurisdiction with the merits of Ms. Taylor's claim under the FLA. As that is the basis upon which both parties proceeded, I will address those arguments, although in my view, Rule 11-2 was the more appropriate rule under which to bring such an argument.
- [30] I reject the respondents' argument that this court should strike the ANOFC for lack of jurisdiction because Ms. Taylor had pleaded that she was a spouse "at the time of death". Looking at the ANOFC alone, it does not allege that Ms. Taylor and Mr. Forest were spouses at the moment of death, or that the death was the triggering event of separation, although the ANOFC could certainly be more clearly drafted. However, on an application under Rule 18-2(1) (unlike an application under Rule 11-2(1)(a)) the court may consider evidence that has not been pleaded as material facts, in order to determine if there is a good arguable case that the court has jurisdiction: *Hershey* at para. 11; *Conor* at para. 50. It is a low threshold: *Hershey* at para. 13.
- [31] In my view, Ms. Taylor has met the low threshold of a good arguable case that this court has jurisdiction. Between her pleadings and the evidence in her affidavits, she has established a good arguable case that she was a spouse under the FLA, and that the parties separated sometime after July 2022 and before Mr. Forest's death. This court therefore has jurisdiction to determine that claim.
- [32] In determining whether parties are spouses, the court takes a holistic approach in which all relevant indicia that society may associate with a marital relationship, are considered: *Austin v. Goerz*, 2007 BCCA 586 at paras. 58, 62; *Weber v. Leclerc*, 2015 BCCA 492 at paras. 7-25, leave to appeal to SCC ref'd, 36812 (21 April 2016). The assessment is contextual and involves the subjective intentions of the parties and objective evidence: *Jones v. Davidson*, 2020 BCSC 1371, aff'd 2022 BCCA 31 at paras. 21-24. Living in the same home is not a prerequisite to find that two individuals were living in a marriage-like relationship: *Roach v. Dutra*, 2010 BCCA 264. Ms. Taylor provided evidence of factors that could support her position that she and Ms. Forest were spouses. For example, Ms. Taylor points to being a beneficiary of Mr. Forest's health and life insurance, and a 2017 declaration by Mr. Forest that she is his common-law spouse and that they had been living in a marriage-like relationship for at least 12 consecutive months. She attaches some of their text messages

showing a romantic relationship.

- [33] In determining whether spouses have separated, the Court may consider as evidence of separation, communication by one spouse to the other of an intention to separate permanently, and an action taken by a spouse that demonstrates an intention to separate permanently: FLA, s. 3(4). A physical separation, combined with one party's intention to live separate and apart, and an action consistent with that intention is sufficient: *Nearing v. Sauer*, 2015 BCSC 58 at para. 54. Ms. Taylor recounts Mr. Forest's physical and mental health decline commencing in about 2019 and worsening over time, and the subsequent "abandonment" of her by Mr. Forest which she argues was the separation.
- [34] The respondents have pointed to other factors in Ms. Taylor's affidavit that could support their position that Ms. Taylor and Mr. Forest were never in a marriage-like relationship. They also point to Ms. Taylor's alleged prior inconsistent statements. However, it is not this court's role at this application to determine which party will ultimately succeed, but only whether there is a good arguable case that the court has jurisdiction.
- [35] That is sufficient to dispose of the matter, but I make two other observations. First, there is an inconsistency in the respondents' positions. They wish to strike this claim on the basis of an alleged admission in the pleadings that Ms. Taylor was a spouse under the FLA at the time of Mr. Forest's death (which they would accept as true). However, they have taken the contrary position when they applied for administration of the estate, and in their February 2023 letter, where they stated that it would be "fraud" for them to represent that Ms. Taylor was a common law spouse. In saying that, I also recognize that Ms. Taylor has made prior statements that are inconsistent with her current position. The respondents will of course be able to raise these, and all the other circumstances they point to, when the claim is ultimately determined.
- [36] Second, Ms. Taylor argues that if she establishes that she and Mr. Forest were in a marriage-like relationship up until sometime between July 2022 and just before his death, the limitation period for a claim under the FLA has not expired. Ms. Taylor can apply to amend her pleadings and I expect she will be doing so now to clarify her position.
- [37] In summary, the respondent's application to strike the ANOFC under Rule 18-2 for lack of jurisdiction is dismissed. Although the ANOFC could be better drafted, Ms. Taylor's evidence sets out facts which if true, establish a good arguable case that the court has jurisdiction with respect to this claim.

- [38] Costs are in the cause.

"Norell J."

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