In the Court of Appeal of Alberta

Citation: Erickson v Erickson, 2026 ABCA 253

Date: 20260729
Docket: 2503-0001AC
Registry: Edmonton

Between:

Gregory Robert Erickson

Appellant

\- and -

Shelley Dawn Erickson

Respondent

The Court:

The Honourable Justice Kevin Feehan
The Honourable Justice Tamara Friesen
The Honourable Justice Karan M. Shaner

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Justice K.L. Becker Brookes
Dated the 26th day of November, 2024
Filed on the 21st day of December, 2024
(2024 ABKB 702, Docket: 4803-192278)

Memorandum of Judgment

The Court:

[1] This is an appeal from a judgment directing the appellant to make an equalization payment to the respondent in the amount of $340,017.50 under the *Family Property Act,* RSA 2000 c M-8 [*FPA*]. See ***Erickson v Erickson***, 2024 ABKB 702 [*Trial Decision*]. The appellant husband argues the trial judge made a calculation error in reaching her decision and she further erred in determining the amount of the exemptions to which the appellant was entitled. The respondent wife concedes the first ground of appeal regarding the calculation error, but she argues that no error was made in determining the value of the exemptions.

[2] For the reasons that follow, the appeal is allowed in part.

Background

[3] The parties began living together in September 2005 and were married in July 2006. They separated in February 2019. Their property claims went to trial in October 2024. They provided the trial judge with a list that identified the following parcels of land as disputed family property:

- NE-6-50-13, which was held in the appellant's name (NE-6)
- NE-25-49-14, which had been held as joint tenants with the appellant's father (NE-25)
- SW-36-49-14, which had been held as joint tenants with the appellant's mother and father (SW-36)
- SE-36-29-14, which had been held as joint tenants with the appellant's mother and father (SE-36)

(collectively, the Disputed Parcels).

[4] The key issues before the trial judge were the value of the exemptions claimed by the appellant and the tracing related to the Disputed Parcels, with most other issues having been resolved by way of agreement.

The Disputed Parcels

[5] The appellant owned NE-25 jointly with his father when the parties began living together. When the appellant's father died in 2010, the appellant became the sole registered owner. The parties agreed that NE-25 was worth $72,000 in 2005 (the date of cohabitation) and $400,000 in 2024.

[6] The appellant owned SE-36 jointly with his parents when the parties began living together. After his father died, the appellant owned it jointly with his mother, and he became the sole owner when his mother passed in 2014. The parties agreed that SE-36 was worth $72,000 in 2005 and $368,000 in 2024.

[7] SW-36 adjoins SE-36 and the appellant owned it jointly with his parents until he became the sole registered owner after his mother passed. The parties agreed SW-36 was worth $441,000 in 2014 and $575,000 in 2024.

[8] Finally, the appellant owned NE-6 when the parties began cohabiting. The agreed upon value of this property was $55,000 in 2005 and it was sold for $193,995 in 2022 when the parties began separating their finances. The sale proceeds were used to pay off the outstanding mortgage on another property and other expenses, which left a balance of $86,391, held in trust.

The Trial Decision

[9] The trial judge began by canvassing ss 7 and 8 of the *FPA* and the various presumptions that exist (or not) regarding property division upon marriage breakdown. She noted there is a presumption that family property not referred to in ss 7(2)-(3) of the *FPA* is divided equally between the spouses. There is no presumption of equal distribution of the increase of the value of exempt property but any increase is to be divided in a manner that is "just and equitable" taking into account the factors set out in s 8 of the *FPA*. *Trial Decision* at paras 40-50; ***Jensen v Jensen***, 2009 ABCA 272 at paras 17-18, 20-21; ***Mazurenko v Mazurenko***, 1981 ABCA 104. Those factors include the duration of the interdependent relationship/marriage and the contributions – both financial and non-financial – of each party to the acquisition of property and to the welfare of the family.

[10] The trial judge then turned to the framework set out by this Court in ***Hodgson v Hodgson***, 2005 ABCA 13 at paras 19-21, which sets out a four-step process of exclusion and qualification for determining the just and equitable division of family property. The parties agreed on the nature and current value of their family property, which was set out in an agreed statement of facts. The trial judge then turned to the exemptions claimed, as well as the increase in value of the exempt property.

[11] With respect to the exemptions, the trial judge noted the onus is on the party seeking to establish the exemption to prove both the entitlement to the exemption and the quantum thereof, and that it is generally accepted, an exempt asset is reduced to one-half its value if placed in joint ownership with the other spouse or if it was used for family purposes. *Trial Decision* at paras 63-68; ***Jackson v Jackson***, 1989 ABCA 197 at paras 10-11; ***Harrower v Harrower***, 1989 CanLII 221 (ABCA) at para 10; ***Lovich v Lovich***, 2006 ABQB 736 at paras 44, 57; ***McCulloch v McCulloch***, 2003 ABQB 432 at para 156; ***Beaudry v Beaudry***, 2010 ABQB 119 at para 96.

[12] In addressing the NE-25, SE-36, and SW-36 parcels, the trial judge found that after the appellant's father died, both the appellant and respondent took over farming the family farm, which included NE-25, SE-26, and SW-36. After surveying various case authorities, as well as the law respecting key aspects of a joint tenancy in land, the trial judge concluded the appellant received an unconditional legal and beneficial interest in the disputed parcels when joint tenancies with his parents were created. The trial judge concluded the value of the appellant's exemptions would be determined according to when cohabitation began in 2005 and set the values of the exemptions for NE-25 at $72,000, SE-36 at $72,000, and SW-36 at $200,000.

[13] The next issue before the trial judge was how to divide the increase in value of the exempt property. She again referred to s 8 of the *FPA* and found that the relevant factors were those set out in ss 8(a), (b), (c), (d), and (m).

[14] The trial judge found the parties' marriage was a "traditional, rural Alberta marriage", where the respondent primarily stayed home and worked on the farm, "helping out" with what needed to be done. She further found the appellant "very clearly demonstrated an intention to bring the family farm into the joint economic venture the parties had very consciously embarked upon" but recognized that this changed when the respondent moved to Viking in 2017 and stopped working on the farm. *Trial Decision* at paras 154, 158. The trial judge concluded that a just and equitable division of the increase in the value of NE-25, SE-36, and SW-36, would be 60% to the appellant and 40% to the respondent.

[15] The final parcel was NE-6, which, as noted, was owned solely by the appellant at the date of cohabitation and sold in 2022 for $193,995. The trial judge found that this parcel was used in furtherance of the family farming operation and, for the same reasons as NE-25, SE-36, and SW-36, she determined the increase in value should be divided with 60% to the appellant and 40% to the respondent.

[16] The trial judge ordered the appellant to make a total equalization payment of $340,017.50 in two parts: $86,391, which the appellant has paid, and the remaining balance of $253,626.50 to be paid within 60 days of judgment. The appellant says, and the respondent concedes, there was a calculation error and the remaining balance should have been $238,413.50.

Grounds of Appeal and Standard of Review

[17] The appellant argues the trial judge erred in assessing when the appellant acquired an interest in the Disputed Parcels he first owned jointly with his parents. He asserts that this is an extricable question of law and as such, her decision is to be reviewed on a correctness standard. See ***Housen v Nikolaisen,*** 2002 SCC 33 at para 36 [***Housen***]. We disagree. Family property division engages questions of mixed fact and law, which means this Court may only interfere with the trial judge's decision if there has been a palpable and overriding error or a readily extricable error of law. ***Housen*** at paras 27-36; ***Al-Erbawy v Al-Noami***, 2025 ABCA 103 at para 15; ***Walsh v Walsh***, 2025 ABCA 205 at para 7. Trial judges are afforded significant deference on

review because family property division is largely a discretionary exercise, warranting intervention if "the trial judge misdirected himself on the facts, or if the decision is so clearly wrong as to amount to an injustice". ***Morton v Morton***, 2008 ABCA 144 at para 4.

[18] The second ground, which the respondent concedes, is that the trial judge mistakenly attributed a property value to the appellant which should have been attributed to the respondent, resulting in the equalization payment reflected in the judgment being higher than it should have been.

Discussion

[19] The appellant argues that because he was put on title to NE-25, SE-36, and SW-36 for "estate planning purposes" only, he did not acquire complete legal and beneficial ownership in them when he was first put on title. Rather, he received only a gift of the "right of survivorship". Because, in the appellant's view, the trial judge conflated "an *inter vivos* gift to [inherit] the land through the right of survivorship" with a complete transfer of legal and beneficial ownership, she selected the wrong date to determine the value of the appellant's exemptions. He asserts he did not "acquire" the properties for the purposes of division under the *FPA* until his parents passed, leaving him as the sole owner.

[20] The appellant points to the Ontario Court of Appeal's comment in ***Jackson v Rosenberg***, 2024 ONCA 875 at para 10 [***Jackson***], aff'g 2023 ONSC 4403, that "[t]here is strong authority for the proposition that a gift of a right of survivorship may be made without any gift of other rights associated with joint ownership". In that case, Mr. Jackson added his great niece, Ms. Rosenberg, to the title of his property as a joint tenant, in 2012. Subsequently, Ms. Rosenberg's husband advised Mr. Jackson that Ms. Rosenberg intended to realize on her claimed legal and beneficial interest and sell her interest in the property during Mr. Jackson's lifetime. Mr. Jackson claimed he did not understand he was transferring an immediate interest in the property to Ms. Rosenberg at the time it occurred. Rather, he claimed he was making a gratuitous gift of a right of survivorship. An applications judge accepted Mr. Jackson's evidence and found he had made a gratuitous gift of a right of survivorship. Among other things, he found Ms. Rosenberg had not contributed to the property, nor did she ever reside at it.

[21] The appellant says the finding in ***Jackson***, that there exists an ability to gift only the right of survivorship, supports his position that he did not obtain full beneficial and legal ownership of NE-25 until 2010, when his father passed away, and for SE-36 and SW-36 until 2014, when his mother passed away. He says this is the case because his parents, like Mr. Jackson, only ever intended to give him the right of survivorship at the time the transfers occurred. We disagree.

[22] The conclusions in ***Jackson***, which are not binding on this Court, ultimately turned on factual findings which do not exist here and accordingly, it does not assist the appellant. Unlike ***Jackson***, the trial judge, relying on ***Pecore v Pecore***, 2007 SCC 17 and others, found the transfers were *inter vivos* gifts that vested full legal and beneficial interest in the appellant as a joint tenant

immediately and unconditionally. Importantly, the trial judge found that “[w]hile the transfers of these three properties into [the appellant’s] joint name were made without any consideration at the time of the transfer, <u>they were not gratuitous</u>. [The appellant] ultimately gave value for the property he acquired” by continuing to work the family farm, renovating the houses, and otherwise maintaining the properties. *Trial Decision* at para 115. This was a question of mixed fact and law, and the trial judge’s decision discloses no palpable or overriding error. These factual findings were available to the trial judge based on the record before her, and they are entitled to deference. It follows that the chambers judge did not err in determining when the appellant “acquired” these properties for the purposes of determining the value of the exemption.

Disposition

[23] The appeal is allowed in part to correct the calculation error. Accordingly, we confirm the remaining balance of equalization payment is $238,413.50.

[24] The appeal is otherwise dismissed.

Appeal heard on February 4, 2026

Memorandum filed at Edmonton, Alberta
this 29th day of July, 2026

Authorized to sign for: Feehan J.A.

Friesen J.A.

Shaner J.A.

Appearances:

R. Bell
for the Appellant

J. Waldie
for the Respondent