

In the Court of Appeal of Alberta

Citation: Lalonde v Waddell, 2026 ABCA 296

Date: 20260914

Docket: 2603-0029AC

Registry: Edmonton

Between:

Sherry Lee Lalonde

Appellant

- and -

**Sherry Lee Waddell in her capacity as the personal representative of the estate of Kevin
Scot Waddell**

Respondent

The Court:

**The Honourable Justice Jo'Anne Strekaf
The Honourable Justice Tamara Friesen
The Honourable Justice Joshua B. Hawkes**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice D.A. Yungwirth
Dated the 6th day of January, 2026
Filed on the 9th day of February, 2026
(Docket: 4803 198844)

Memorandum of Judgment

The Court:

[1] Sherry Lalonde and Kevin Waddell, now deceased, were married, but separated on July 13, 2022. Ms. Lalonde commenced an action for divorce and division of family property on November 29, 2022 (Family Property Action). Kevin Waddell did not file a defence, or counterclaim.

[2] Kevin Waddell died intestate on November 18, 2023 – less than two years after separation. On December 19, 2023, Ms. Lalonde (under her married name) was granted administration of his estate.¹ Subsequently, on behalf of Kevin Waddell’s estate, Ms. Lalonde filed an action for recovery against Scot Waddell, Ms. Lalonde and Kevin Waddell’s son, and Geoffrey Lalonde, Ms. Lalonde’s son, in relation to property previously owned by Kevin Waddell that had been transferred to them prior to his death (Estate Action).²

[3] Trial in the Estate Action was set for February 18-19, 2026, and on January 6, 2026, the parties participated in a pretrial conference. At the pretrial conference, the pretrial judge raised the subject of the Family Property Action. She expressed concern about proceeding to trial in the Estate Action without first resolving the division of family property. She said that her understanding was that because a family property action had already been commenced at the time of Kevin Waddell’s death, the estate was required to pursue and complete the division of family property. On this point, she said, “If you tell me I am wrong in law and can prove it to me, fine”. However, she reasoned that if she was right that the division of family property was required to occur, then proceeding to trial in the Estate Action prior to resolving the Family Property Action might be a waste of the parties’ resources.

[4] She repeatedly turned to counsel for the estate for submissions, asking how counsel wished to proceed and offering time for counsel to speak to her client privately. For example, she said to counsel for the estate:

[N]ow that we have gone through all of this, what do you suggest? Do you want a few minutes to talk alone with your client as to how to best move forward? Are you thinking at this point you still just want to proceed with the trial on February 18th

¹ Kevin Waddell was named as respondent in the notice of appeal. The style of cause in this Court is amended to name his estate, as represented by his personal representative, as respondent.

² Scot Waddell and Geoffrey Lalonde are not parties to the Family Property Action and have no standing in this appeal, which is from an order in the Family Property Action. However, Geoffrey Lalonde and counsel for Scot Waddell appeared at the oral hearing. They were permitted to address the Court as interested persons.

and 19th? What do you -- what are you thinking about what you would like to do?
Do you need more time?

[5] Counsel for the estate said she would have to speak with her client before informing the Court as to how they would proceed. The pretrial judge then adjourned the conference addressing counsel for the estate as follows:

... I have kind of sprung this on you and everyone today, but it is important that we explore what is going to happen and proceed in a way that is the most efficient for these parties. So if you talk to your client and you still need more time, then maybe this is going to have to be adjourned to another day [...].

[6] After the adjournment, counsel for the estate submitted: “[A]fter hearing the directions of the Court this afternoon, Ms. Waddell will not proceed with the trial in February, and we will proceed with the division of debt and assets under the *Matrimonial Property Act*”.

[7] The pretrial judge then made two related procedural orders. With respect to the Family Property Action, she made a procedural order addressing disclosure timelines and other issues, which essentially functioned as a court-ordered litigation plan. The order specified that Family Property Action had to be finalized before dealing with the Estate Action. With respect to the Estate Action she ordered the upcoming trial adjourned *sine die* to allow for resolution of the Family Property Action.

[8] Ms. Lalonde appeals the Family Property Action Procedural Order, arguing first, that the pretrial judge erred in law by finding that she was obliged to pursue the Family Property Action to completion before proceeding with the Estate Action and second, that dealing with the Family Property Action without notice to the parties at the pretrial conference for the Estate Action was procedurally unfair.

[9] With respect to her first ground of appeal, Ms. Lalonde argues that her survivorship interest in Kevin Waddell’s estate is clearly determined by the *Wills and Succession Act*, SA 2010, c W-12.2 and further, nothing in the *Family Property Act*, RSA 2000, c F-4.7 requires family property matters commenced prior to one party’s death to be settled prior to pursuing a related estate action.

[10] We agree.

[11] Part 3 of the *Wills and Succession Act* governs the distribution of an intestate estate: s 59. Section 61(1)(a) of the *Act* states that “[s]ubject to s 63, if an individual dies leaving a surviving spouse and one or more descendants the entirety of the intestate estate goes to the surviving spouse ... if all of the intestate’s descendants are also descendants of the surviving spouse [...]”. Spouse means the spouse of a married person: *Interpretation Act*, RSA 2000, c I-8, s 28(1)(zz.1). Section 61 is expressly subject to s 63, which sets out circumstances in which a surviving spouse

will no longer be considered a spouse for intestate succession, by treating the surviving spouse as having predeceased the intestate:

Separated spouse deemed predeceased

63(1) For the purpose of this Part ... the surviving spouse of an intestate is deemed to have predeceased the intestate if the intestate and the surviving spouse

- (a) had been living separate and apart for more than 2 years at the time of the intestate's death,
- (b) are parties to a declaration of irreconcilability under the *Family Law Act*, or
- (c) are parties to an agreement or order in respect of their property or other marital or family issues which appears to have been intended by one or both of them to separate and finalize their affairs in recognition of their marital break-up.

(2) Subsection (1) does not apply to a surviving spouse who reconciled with the intestate if the reconciliation was subsisting at the time of the intestate's death.

[12] The pretrial judge erred in concluding that a surviving but separated spouse cannot rely on s 61(1) to claim the entirety of the deceased spouse's estate. The circumstances in which a surviving spouse will not be treated as a spouse for the purpose of intestate succession are set out in s 63(1)(a), none of which apply here. The parties in this case were separated for less than two years at the time of Kevin Waddell's death, no evidence has been provided to show that an agreement had been made with respect to their family property, and Kevin Waddell's descendant (Scot Waddell) is also Ms. Lalonde's descendant. Applying these sections to the agreed upon facts, it appears that Ms. Lalonde is entitled to the entirety of Kevin Waddell's estate, including all the property at issue in the Family Property Action.

[13] The pretrial judge further erred in concluding that the *Family Property Act* requires a surviving spouse to pursue and complete a family property action in progress prior to dealing with their property claim on behalf of, or against the deceased spouse's estate. Section 16(a) of the *Family Property Act* says that where one of the parties to a family property action dies "after commencing an action ... the action *may be* continued by the estate" for the benefit of the estate (emphasis added). Kevin Waddell did not commence the action in this case, nor did he file a defence or counterclaim to it prior to his death and in any event, this language is permissive, not mandatory. Further, ss 11 and 12 state that "an application for a family property order *may be* made or continued by the surviving spouse ... after the death of the other spouse" and "[t]he Court *may* make an order suspending in whole or in part the administration of the estate of the deceased spouse ... until an application for a family property order has been determined" (emphasis added).

[14] Section 16 was enacted following recommendations of the Alberta Law Reform Institute in *Section 16 of the Matrimonial Property Act* (Report No. 57), 1990 CanLIIDocs 72; see generally ***Dressler v Dressler***, 2005 ABQB 93 at paras 13-18. The Institute noted the predecessor s 16, which provided that a person's rights under the legislation did not survive for benefit of their estate, was originally intended to ensure that family property would be available for the benefit of a surviving spouse but had the unintended effect of incentivizing defendant delay in family property actions while both spouses were alive. The Institute recommended that s 16 "allow an estate to continue an action already commenced by the deceased spouse" but not permit an estate to commence an action.

[15] Section 16 was interpreted in ***Coyle v Coyle***, 2005 ABQB 436, in which Greckol J, as she then was, considered whether a plaintiff was entitled to discontinue a matrimonial property action after the defendant's death. During his lifetime, the defendant had failed to file a statement of defence or demand of notice and was noted in default. The defendant died intestate, leaving the surviving plaintiff spouse and two children from a prior relationship. By operation of survivorship law, the plaintiff became the owner of most of the defendant's estate, which included two homes held jointly with the plaintiff. The plaintiff then discontinued the matrimonial property action without notice to the estate. The defendant's children applied to set aside the discontinuance, arguing the matrimonial property action should proceed, and the trial judge should determine if the plaintiff acquired the certain interests by right of survivorship, or if those interests were subject to matrimonial property division first, and then flowed into the estate for distribution between the plaintiff and the defendant's children on intestacy.

[16] The Court noted that under s 16 of the *Act*, "it is only where a person dies after commencing a matrimonial property action that the action may be continued by the estate of the deceased person": ***Coyle*** at para 27. On the facts, this had not occurred because the defendant had not commenced a claim or filed a counter claim; "failing to file a statement of defence to an action is not the equivalent of actively seeking relief from the Court in the form of a matrimonial property division": para 30. The Court refused to set aside the discontinuance. The Court also noted subsequent recommendations of the Institute in *Division of Matrimonial Property on Death* (Final Report No 83), 2000 CanLIIDocs 122 and reasoned that "amendment to the legislation" would be necessary to permit a deceased spouse's estate to file a statement of defence and counterclaim in a matrimonial property action brought by the surviving spouse before death. This contrasts with the treatment of surviving spouses in the scheme, who per s 11 may commence an application for a family property order after the death of their spouse, if they would have been entitled to do so immediately before their spouse's death, subject to a limitation period of six months after the grant of probate.

[17] Given our conclusion that the pretrial judge erred as a matter of statutory interpretation, it is unnecessary to address the appellant's second ground that the pretrial judge breached procedural fairness. We note, however, that the case relied on by the appellant on this point, ***Doroshenko v Villanueva***, 2026 ABCA 7, is distinguishable. In ***Doroshenko***, a chambers judge

sitting on an appeal from a Court of Justice trial decision rejected all the appellant's grounds of appeal but independently identified three additional grounds for intervention. These grounds were raised in the chambers judge's reasons without having afforded the parties the opportunity to make submissions on them. In contrast, the pretrial judge in this case raised an issue at the stage of a pretrial conference and repeatedly offered an adjournment to another day.

[18] Finally, we note that on these facts, proceeding with the Estate Action first will almost certainly result in Ms. Lalonde being entitled to the entirety of Kevin Waddell's estate, and in that case, she will have no need to pursue remedies under the *Family Property Act*. The Family Property Action can simply be discontinued.

[19] The appeal is granted, and the Family Property Action Procedural Order is set aside in its entirety.

Appeal heard on August 31, 2026

Memorandum filed at Edmonton, Alberta
this 14th day of September, 2026

Strekaf J.A.

Friesen J.A.

Authorized to sign for: Hawkes J.A.

Appearances:

E.G. Rice, KC
for the Appellant

Respondent S.L. Waddell in her capacity as the personal representative of the estate of Kevin Scot
Waddell (no appearance)

J. Beauchesne
for the Interested Person, Scot Aaron Waddell

Interested Person G.A. Lalonde