

SUPREME COURT OF NOVA SCOTIA

Citation: *Grosskurth v. Hamilton*, 2025 NSSC 364

Date: 20251110

Docket: Syd. No. 535861

Registry: Sydney

Between:

Kim Ann Grosskurth

v.

Robert Saunders Hamilton

DECISION ON MOTION TO DETERMINE VENUE
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Judge: The Honourable Justice Joshua M. Arnold

Heard: November 10, 2025, in Sydney, Nova Scotia

Bottom-Line Decision: November 10, 2025

Written Decision: November 18, 2025

Counsel: Duncan MacEachern, for the Plaintiff
Christopher Conohan, for the Defendant (moving party)

Overview

[1] Kim Grosskurth and Robert Hamilton were in a long-term domestic and/or business relationship. The parties are miles apart regarding the length and nature of those relationships. Ms. Grosskurth brought an action in the Supreme Court, in what is commonly called the “General Division”. She then applied for summary judgment. Mr. Hamilton has now applied to have this matter transferred to the Supreme Court (Family Division).

[2] Mr. Hamilton says that because of the domestic nature of their relationship and his claim of unjust enrichment the matter should be heard in the Family Division. He brought this motion to determine the appropriate venue. Ms. Grosskurth says the matters should remain in the General Division, as there is no mechanism in the Family Division for summary judgment and restarting her application in the Family Division will take time and effort.

[3] The motion was heard on November 10, 2025. At the end of the hearing I provided the parties with my bottom-line decision with written reasons to follow. I agreed with Mr. Hamilton that the appropriate court for these issues to be decided is the Family Division. These are my written reasons.

Procedural History

[4] On August 15, 2024, Ms. Grosskurth filed a Notice of Action and Statement of Claim in relation to a dispute over Mr. Hamilton residing at 40 Jesse Hardy Lane, Gabarus Lake, N.S.. On September 3, 2024, Mr. Hamilton filed a Notice of Defence and Counterclaim. On September 24, 2024, Ms. Grosskurth filed a Notice of Defence to Counterclaim. On June 17, 2025, Ms. Grosskurth filed a Notice of Motion – Summary Judgment, seeking an order requiring Mr. Hamilton to vacate the property. On September 11, 2025, Mr. Hamilton filed the Notice of Motion in relation to the present application moving “for an order transferring the adjudication of this dispute to the Supreme Court of Nova Scotia (Family Division). On October 7, 2025, Ms. Grosskurth filed a Notice of Contest in response to the Notice of Motion.

Facts

[5] Both parties filed affidavits on this motion and both were cross-examined. A trier of fact can believe some, none, or all of a witness’ testimony.

[6] Ms. Grosskurth currently lives in Ontario. Mr. Hamilton is living at 40 Jesse Hardy Lane, which was purchased in August 2022, and is registered in Ms. Grosskurth's name. Ms. Grosskurth says Mr. Hamilton is merely a tenant, and she wants him to leave.

[7] The parties agree that they have had an on-again off-again relationship for many years. They also agree that they started a common law relationship in the mid-1990s. Ms. Grosskurth says they stopped living together in 1996. Mr. Hamilton says it was 1999. Mr. Hamilton says he is part owner of various properties purchased jointly by he and Ms. Grosskurth, but due to his criminal past, the properties were always solely registered in Ms. Grosskurth's name. Ms. Grosskurth says the properties were hers alone. They resumed some sort of relationship between 2009 and 2022. The details of that relationship are in dispute. During the course of their relationship, until August 2022, various properties were explored, bought, and sold by either Ms. Grosskurth alone or together with Mr. Hamilton. Exactly who contributed to what, and how, is also in dispute. The evidence tendered on this motion, including a lease, rent cheques, along with the testimony of the parties, revealed that Mr. Hamilton lived at various times at properties that he says were jointly purchased with Ms. Grosskurth.

[8] As noted, there are multiple properties that Mr. Hamilton says he contributed to purchasing, but which Ms. Grosskurth says are exclusively hers. For example, 43280 Southdale Lane, St. Thomas, Ontario, was registered in Ms. Grosskurth's name, but Mr. Hamilton says he was part owner. The evidence on this application is that Mr. Hamilton lived at 43280 Southdale Lane between the date of its purchase in 2018 and August 2022, when he moved to 40 Jesse Hardy Lane. Mr. Hamilton was living at 43280 Southdale Lane without a lease between 2018 and June 2020. On June 1, 2020, Mr. Hamilton signed a lease with Ms. Grosskurth for the rental of 43280 Southdale Lane. Mr. Hamilton's landscaping company began paying the rent via company cheque. On cross-examination Mr. Hamilton was reluctant to identify the signature on the lease as his, nor all of the signatures on the cheques written for the rent as his, however his denials regarding the signatures were inconsistent. He says that he paid rent cheques from his landscaping company because that company was doing well and he wanted to find a way to inject money into the property while also enjoying a tax benefit. When Ms. Grosskurth was asked why a lease was signed in 2020, two years after Mr. Hamilton began living at the property, she said that in 2020 she was looking for financing to make other purchases, and needed to show lenders that she was actually earning a profit at the St. Thomas address.

[9] The parties were also jointly breeding and selling bulldog puppies during this time period. Ms. Grosskurth agreed that she advertised the puppies on Facebook under the name of Kim Hamilton, not Kim Grosskurth, but said she used Mr. Hamilton's name because she works in cyber-security and had no social media in her own name, not because they were in a relationship.

[10] On September 11, 2024, counsel for Mr. Hamilton, wrote to Ms. Grosskurth's lawyer, asking that Ms. Grosskurth preserve any electronic messages from 2009 onward with, or relating to, Mr. Hamilton. Ms. Grosskurth testified that notwithstanding the preservation request, she did not preserve any of her electronic communications with Mr. Hamilton. Identifying herself as working in cyber-security, and knowing that she had initiated litigation involving her relationship with Mr. Hamilton, her failure to preserve that evidence is curious. Mr. Hamilton attached numerous text messages exchanged between September 23, 2018, and June 6, 2023, between himself and someone he identifies as Ms. Grosskurth. When a selection of those texts were put to her during cross-examination, Ms. Grosskurth said that she did not recall many of those conversations, and at times denied that she was the party corresponding with Mr. Hamilton. However, many of the texts, on their face, do appear to be communications between her and Mr. Hamilton. Until August 2022, those texts mainly suggest a warm and affectionate personal relationship, and include personal chit-chat, affectionate interactions, business discussions exploring potential property purchases, and the puppy business.

[11] Essentially, Mr. Hamilton says he and Ms. Grosskurth were in a common-law relationship off and on for many years, that he provided funds to assist in the purchase of various properties that were registered in her name alone, and that he also made improvements to some of those properties.

[12] Ms. Grosskurth denies the ongoing relationship with Mr. Hamilton and denies that he provided any funds going toward the purchase of the properties (including 40 Jesse Hardy Lane), but does not deny that he was responsible for some of the improvements to the properties.

Appropriate Venue

[13] Section 32A(1)(w) of the *Judicature Act* states:

FAMILY DIVISION

Jurisdiction

32A (1) The Supreme Court (Family Division) has and may exercise in such judicial districts, or parts of a district, as are designated by the Governor in Council pursuant to Section 32H the powers and duties possessed by the Supreme Court in relation to, and has and may exercise jurisdiction in relation to, proceedings in the following matters:

...

(w) resulting trust or unjust enrichment involving persons who have cohabited including, but not limited to, relief by way of constructive trust or a monetary award...

[14] The Family Division was established in the late 1990s, initially in Halifax and Cape Breton. Only in recent years has the Family Division expanded to cover the entire province. The caselaw suggests that the issues of determining the scope of common law relationships, ownership of property in domestic disputes, and unjust enrichment claims where domestic relationships are involved, have essentially been exclusively dealt with in the Family Division, in accordance with s. 32A(1)(w) of the *Judicature Act* (see for example: *Bennett v. Pettipas*, 2023 NSSC 198; *MacIntyre v. Spooner*, 2022 NSSC 281; *T.M. v. R.R.*, 2021 NSSC 156).

[15] Ms. Grosskurth says her claim should continue in the General Division because there is no method in the Family Division for a summary judgment application, and that refileing her materials there will be costly, burdensome, and slow. No persuasive authority is cited for the submission that summary judgment is unavailable in the Family Division. The *Civil Procedure Rules* apply to Family Division proceedings: *Armoyan v. Armoyan*, 2015 NSSC 174, at paras. 62-64. But I do not need to rule on this issue – and choose not to – to resolve this motion.

[16] Regardless of whether summary judgment is specifically available, considering the nature of the issues raised by the parties, there is no question that the Family Division is the appropriate venue for this litigation. Just because Ms. Grosskurth filed her claim in the wrong court, and unwinding that error will take time and effort, does not supersede the clear intention of the *Judicature Act* that issues of the kind arising here should be dealt with in the Family Division.

Conclusion

[17] Ms. Grosskurth started this proceeding in the wrong court. If she wants to pursue her claim she must proceed in the Family Division pursuant to the relevant

Civil Procedure Rules. To avoid any possibility of ambiguity of the meaning of this decision, there should be no be parallel proceedings between these parties in the General Division.

[18] The parties agreed that if they cannot sort out the issue of costs on this motion by November 25, 2025, they will file written submissions in that regard.

Arnold, J.