

CANADA / JUDGMENT

Adair v. Baryla

2025 BCSC 825

COURT

Supreme Court of British Columbia

DECIDED

1 May 2025

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2025 BCSC 825 Adair v. Baryla

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Adair v. Baryla,

2025 BCSC 825

Date: 20250501

Docket: E52330

Registry: Vernon

Between:

Clayton Adair

Claimant

And

Amber Lee Baryla, Gordon Paul Baryla, and JJ Family Farms Ltd.

Respondents

Before: The Honourable Justice Norell

Reasons for Judgment re: Reopening Trial

The Claimant, appearing in person:

C. Adair

The Respondent, appearing in person:

A.L. Baryla

The Respondent, appearing in person and on behalf of the Respondent JJ Family Farms Ltd.:

G.P. Baryla

Place and Date of Hearing:

Vernon, B.C.

April 22, 2025

Place and Date of Judgment:

Vernon, B.C.

May 1, 2025

- [1] In reasons indexed at 2024 BCSC 565 (the "Reasons"), I decided the trial of this family law action. I ordered that the claimant Husband pay retroactive child support since separation, commencing November 1, 2019. At trial there was evidence that the Husband had paid child support of \$2,000 per month since February 2023, pursuant to an interim order made in January 2023. There was no evidence that the Husband had paid any child support prior to the interim order. Hence, the order for past child support made a deduction for the payments made since February 2023, but not earlier. The amount owing to December 31, 2024 was \$83,886.
- [2] The Husband applies to reopen the trial to lead evidence of what he says are child support payments made prior to the interim order. He states that he paid \$29,693 between February 2020 and January 2023.
- [3] The respondent Wife opposes the order. While she concedes that the Husband made payments prior to February 2023, she contests that all of even most of these were child support payments. She argues that had the Husband led evidence of the amounts he alleges were child support, she would have cross-examined him on those as she incurred substantial expenses for the support of the children, as well as other expenses of maintaining, improving and staging the Farm for sale, while the Husband was living on the Farm without paying rent. She states that now that she has received the Reasons, she wishes that she had led other evidence as well, but the parties had their opportunity to lead evidence, the trial is over, the Reasons given, and the parties should move on.
- [4] For the reasons that follow, I dismiss the application to reopen.

Legal Principles

- [5] A trial judge who has pronounced judgment, but before a formal order is entered, has wide discretion to reopen a trial; however, the discretion must be exercised judicially and in a principled and consistent way: *Hansra v. Hansra*, 2017 BCCA 199 at para. 44.

- [6] The trial judge should address two primary considerations in deciding whether to reopen: (1) is it probable that a miscarriage of justice would occur without reopening; and (2) would a rehearing probably change the result: *Grewal v. Grewal*, 2016 BCCA 237 at paras. 70-71.
- [7] The discretion to re-open may be properly exercised by a trial judge who is satisfied that their original judgment contains material errors that may be corrected by further submissions, or where evidence has been overlooked or misconstrued, or where the law has been misapplied, or where the reasons for judgment failed to address an argument advanced at trial: *Grewal* at para. 86.
- [8] In *Mayer v. Mayer Estate*, 2020 BCCA 282 at para. 20, the Court quoted the main guiding principles as reviewed in *Moradkhan v. Mofidi*, 2013 BCCA 132 at para. 31:
- it is generally speaking in the interests of justice to consider that a trial is complete when each side has closed their case and the judge has delivered his or her judgment;
 - a judge's discretion to reopen a trial should be exercised with restraint;
 - a party may not use the rule to re-argue, re-cast, or re-state his or her case, rather the rule is available to remedy what might otherwise be a substantial injustice;
 - it is not intended that a party should be able to lead substantial new evidence, nor does the rule generally permit the leading of new expert evidence;
 - the reasons that the evidence was not led or submissions not made in the first place may be relevant to the exercise of the judge's discretion, particularly where the failure to do so in the first place was a considered or pragmatic decision; and
 - the discretion should only be exercised if the reception of the new evidence would probably change the result of the trial.

I would add to this list that a judge may reasonably exercise such discretion where a relatively discreet error in math or some mechanical consideration of the evidence is clearly in error. Finally, the overarching consideration is whether it is in the interests of justice that the court reopen the case. (See also *Brown v. Douglas*, 2011 BCCA 521, 314 B.C.A.C. 143.)

- [9] If further evidence is sought to be adduced, the trial judge considers whether the evidence, if presented at trial, probably would have changed the result, and whether the evidence could have been obtained before trial by the exercise of due diligence: *Hansra* at paras. 57-58. The Court will also consider the interests of finality, the cogency of the evidence, delay, fairness and prejudice, in determining whether it is in the interests of justice to reopen the trial: *Hansra* at para. 59.

Analysis

- [10] The respondent states that either I erred, or was not aware that he had been paying child support payments since February 2020. He then states:

The evidence of the prior support payments may not have been entered into evidence because the subject of payments made before the interim Order of January 23, 2023 never came up. During trial, it was not indicated to me, as I can remember, that there would be any retroactive child support going back to November 2019. The only matter discussed was whether I had been paying the correct amount of child support since an interim child support order was issued on January 23, 2023.

- [11] The Husband is mistaken. Child support since the date of separation was in issue from the beginning of this lawsuit, was in issue at trial, and the Husband failed to lead evidence at trial of payments prior to February 2023.
- [12] The pleadings of both parties, filed soon after separation, claim child support. At trial, there was no evidence of, or suggestion of, child support payments prior to February 2023. In his direct evidence, the Husband referred to the interim order and testified that he had been paying "since the order". Similarly, when the Husband cross-examined the Wife, he referred to the interim order, and put to her that he had been paying child support "since then". The Wife agreed. In the Wife's closing submission, she claimed retroactive child support. The Husband never testified or argued that child support had been paid by him prior to February 2023. The parties' incomes since separation in 2019 were in issue, as was whether the parties had shared parenting in 2020 and 2024. The only reason shared parenting in 2020 would be in issue is if child support for that year was in issue. Retroactive child support was also in issue in the alleged separation agreement that the respondents unsuccessfully submitted was an accepted agreement.
- [13] In my view, none of the circumstances in *Grewal* are present. The evidence of prior child support payments was not tendered. Evidence was not overlooked or misconstrued, nor was there a failure to address an argument advanced at trial. I addressed support prior to February 2023: paras. 18 and 209 of the Reasons.
- [14] The issue is whether the Husband, at the expense of finality, should be given an opportunity to remedy his failure to lead evidence. I must determine whether a miscarriage of justice will result if the trial is not reopened, whether the result would be different, whether the evidence could have been led at trial, and overall whether it is in the interests of justice that the trial should be reopened to permit new evidence.
- [15] The discretion to permit reopening should be exercised with restraint. The Husband is wishing to lead new evidence that he had and that he could have tendered at the trial, and there is a strong interest in finality. He states that he did not realize that this was in issue, but it clearly was.
- [16] The Husband argues that not allowing the reopening of the trial would result in a miscarriage of justice in the form of the Wife receiving an unjustified \$29,693 windfall at his expense. From the Husband's perspective, the evidence is on a narrow point and there is no prejudice to the Wife as the payments were made.

- [17] However, the Wife disputes that these were all child support payments, and argues that she would be prejudiced because had the Husband led this evidence, she would have cross-examined him and tendered her own evidence on the expenses she incurred for the maintenance, improvement, and staging of the Farm for sale, which she paid from her own pocket, and the significant expenses she incurred for the children's support. She argues that the payments she received were going toward those expenses. I noted in the Reasons that the Wife did not claim what she stated were substantial s. 7 expenses up to the trial: at paras 215-216. The Wife gave evidence of her maintenance, improvement and staging of the Farm after separation without the assistance of the Husband, but not the amount of expenses. She did not claim those expenses.
- [18] Not all of the expenses the Wife refers to are child support expenses, however, I accept that the Husband's failure to claim these payments factored into her trial decisions and the claims she made, and that the \$29,693 is contested. I find that the Wife would be prejudiced if she were not also able to tender evidence of all the expenses she claims.
- [19] I have considered that the failure to lead the evidence was not an intentional tactical decision by the Husband, and that he was self-represented, as were all the parties. However, he had the able assistance of his mother throughout the trial, and being self-represented cannot be a free pass to reopen a trial to lead evidence that in retrospect a party wishes they tendered.
- [20] There is a strong interest in finality here. While the Wife has not applied to reopen the trial, her view is that if the Husband is permitted to reopen, it would be unfair because knowing the result of the trial, she also wishes that she had led other evidence. I fully expect that permitting the Husband to reopen would likely result in an argument by the Wife that she should also be permitted to reopen, possibly in other areas. Even if the reopening were permitted for the Husband to tender evidence of what he states were child support payments, and the Wife did not apply to reopen in other areas, it would in fairness, open up a wider area of all the other evidence of expenses the Wife states that she did not lead as a result of the Husband not tendering this evidence.
- [21] Considering all of the above, I find that a miscarriage of justice would not occur if this trial is not reopened. While a rehearing would possibly result in a different amount of past child support being owed, I am not persuaded that any deduction would be \$29,693, or necessarily anything close to it or any amount at all, once the other expenses the Wife states she incurred are factored in. There must be a substantial injustice to justify reopening the trial. The Husband has not provided any persuasive reason as to why the evidence was not led. Allowing him to reopen on this point risks reopening on other issues. There is a strong interest in finality, and it is in the interests of justice to dismiss the application.

"Norell J."

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