

CANADA / JUDGMENT

Ashley v. Ashley

2025 BCSC 1189

COURT

Supreme Court of British Columbia

DECIDED

25 June 2025

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2025 BCSC 1189 Ashley v. Ashley

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ashley v. Ashley,

2025 BCSC 1189

Date: 20250625

Docket: E136934

Registry: Kelowna

Between:

Ryan Phillip Ashley

Claimant

And

Taigen Claire Cian Ashley

Respondent

Before: The Honourable Justice Hori

Reasons for Judgment

Counsel for the Claimant:

M.A. Koochin

Counsel for the Respondent:

B.R. Montgomery

Place and Date of Trial:

Kelowna, B.C.

February 25-27, 2025

Place and Date of Judgment:

Kelowna, B.C.

June 25, 2025

Introduction

- [1] The parties in this family law action were married on August 17, 2014. They separated on March 5, 2023.
- [2] The parties have three children. The oldest child is nine years old. The middle child is seven years old and the youngest child is five years of age.
- [3] The parties have sensibly resolved the parenting issues. I understand that commencing on April 1, 2025, the parties will share parenting of the children equally.
- [4] The matters that remain for resolution by these reasons are:
 - a) The division of family property and family debt;
 - b) Establishing the incomes of the parties pursuant to the Federal Child Support Guidelines, SOR/97-175 [Guidelines];
 - c) Child support;
 - d) Spousal support; and
 - e) The divorce.

Background

- [5] The claimant is 43 years old. He is an optometrist who operates his own optometry clinic. The respondent is 37 years old and is a teacher.
- [6] The claimant graduated from the Okanagan campus of the University of British Columbia in 2010. In the fall of 2012, the claimant started optometry school in Arizona. He completed that schooling in 2016. While attending school, the claimant incurred significant debt in the form of student loans. Those student loans remain outstanding.
- [7] The respondent holds two post-secondary degrees. She holds a Bachelor of Arts degree which she obtained in 2011. She also holds a Bachelor of Education degree that she completed in 2012. During her time in school, the respondent also incurred debts in the form of student loans and a line of credit.

- [8] The parties met while they were living in Kelowna, British Columbia. They started dating in 2010. They stopped dating for a period of time in 2011, but started dating again in the fall of 2011.
- [9] The claimant left for optometry school in the summer of 2012, without the respondent. While the claimant attended school in Arizona, the parties maintained a long-distance relationship. They saw each other every one or two months, but talked to each other daily.
- [10] The parties were engaged to be married in the winter of 2013 while the claimant was home in Kelowna during a school break. The parties were married on August 17, 2014. After the wedding, the claimant returned to school in Arizona and the respondent remained in Kelowna living with her parents in Vernon, British Columbia.
- [11] When the claimant completed optometry school in 2016, he returned to Kelowna. The parties initially lived with the respondent's parents, but, in January 2017, they moved into a condominium in West Kelowna. Eventually, in March 2017, the parties purchased a home at 558 Gowen Place in Kelowna ("Gowen Place"). They lived in that home until they separated. When the parties separated, the claimant left Gowen Place and the respondent continued to reside there.
- [12] When the claimant returned to Kelowna in 2016, he commenced work as an optometrist. He worked as an employee in optometry clinics until he opened his own optometry clinic in 2020. The clinic operates as a corporate entity in which the claimant is the sole shareholder. The company is Dr. Ryan P. Ashley Optometric Corporation (the "Company").
- [13] In 2012, the respondent commenced work as a teacher for the Kelowna School District. She started as a substitute teacher working as a teacher-on-call. The respondent continues to work for the Kelowna School District in that capacity.

Duration of the Relationship

- [14] The duration of the parties' relationship is not a significant issue in this case. However, the claimant mildly suggested that the marriage-like relationship may have commenced in 2012. The evidence does not allow me to conclude that the parties were in a marriage-like relationship before the date of their marriage.
- [15] Therefore, I find that the relationship commenced on August 17, 2014, and ended on the separation date of March 5, 2023.

Family Debt

- [16] The debts in issue in this action are the following:
- a) the claimant's student loans;
 - b) the respondent's student loans and other educational loans;

- c) the claimant's CIBC personal line of credit;
- d) the claimant's CIBC Visa account;
- e) a shareholder's loan owed by the claimant to the Company;
- f) a debt owed by the Company to a company controlled by the claimant's father; and
- g) home improvement costs incurred by the claimant.

Student and other Educational Debts

- [17] Both parties borrowed money for educational purposes. The amount of the claimant's student loans are significantly higher than those of the respondent.
- [18] The respondent, in her opening comments, suggested that she was seeking a reapportionment of a portion of the claimant's student loans that could be considered a family debt. However, neither party made any submissions suggesting a division of the student loans as a family debt.
- [19] Therefore, each party will be responsible for their own student and other educational loans without contribution from the other party.

CIBC Debts

- [20] The claimant had a personal line of credit at the Canadian Imperial Bank of Commerce (the "CIBC"). The amount outstanding on this personal line of credit was \$28,326 as of the date of separation.
- [21] The claimant had a balance outstanding on a CIBC Visa account as of the separation date. The outstanding balance was \$13,521.
- [22] The claimant submits these CIBC debts are family debts. The respondent did not suggest otherwise. Therefore, I find that the balances owing on these two CIBC accounts as of the separation date are family debts. Therefore, the parties will each pay half of the total CIBC debts of \$41,947.
- [23] Since these are debts owed to CIBC, the sum of \$41,947 will be paid to CIBC from the proceeds of the sale of Gowen Place. Of this amount, the sum of \$28,326 will be paid to the claimant's line of credit and \$13,521 will be paid to the credit of the claimant's CIBC Visa account.

Shareholder's Loan from the Company

- [24] The claimant drew funds out of the Company to pay family expenses during the parties' relationship. Rather than record the payment of these funds as salary paid to the claimant, the Company recorded the payments as a shareholder's loan. I expect that the claimant elected to treat those funds as a shareholder's loan in order to defer the payment of personal taxes. The claimant now submits that this shareholder's loan is a family debt to which the respondent must contribute half.
- [25] The Company's treatment of these advances as a shareholder's loan and the treatment of these advances as a shareholder's loan by the Canada Revenue Agency does not bind the court to treat the advances in the same way. The circumstances of this case compel me to treat the funds advanced by the Company to pay family expenses as income to the claimant rather than a loan to the shareholder. The particular circumstances that lead me to this conclusion are:
- a) The claimant is the sole shareholder of the Company;
 - b) The claimant's only source of income is the Company;
 - c) The claimant provides a service by which the Company generates income;
 - d) The claimant takes no salary from the Company; and
 - e) As I will explain later in these reasons, even though the shareholder's loan is an asset for the Company, the respondent receives no benefit from the shareholder's loan in the valuation of the Company.
- [26] The claimant could have taken the funds from the Company as a salary or as dividends, but chose not to do so. The claimant should not be allowed to hide behind the construct of a shareholder's loan to compel the respondent to pay half of the family expenses when she would not have had to do so if the funds were taken as income from the Company.
- [27] Different considerations would apply if the funds were advanced by an arms length third party or if there were other shareholders in the Company. However, in this case, the Company is merely an extension of the claimant.
- [28] For these reasons, I find that the shareholder's loan is not a family debt. Therefore, the respondent will not share the burden of the shareholder's loan.

Company Debts

- [29] The Company has significant debts payable to a company controlled or owned by the claimant's father. The debts are for funds borrowed by the Company to pay its start up and operational costs.

[30] These debts are debts of the Company. Therefore, they will be part of the disposition of the Company later in these reasons.

Home Improvement Costs

[31] In order to make Gowen Place more marketable for sale, the claimant incurred expenses to renovate and clean up the property. Those costs were:

Wood

\$800

Ceiling Repair

\$2,000

Tile Work

\$2,500

Yard Work

\$100

Furnace Repair

\$300

Garbage Removal

\$500

Total

\$6,200

[32] The respondent does not contest that these renovation expenses are family expenses incurred after the separation which the parties must share equally. Since the claimant paid these renovation expenses, he will receive reimbursement for half of the expenses or \$3,100. Therefore, the respondent will pay \$3,100 to the claimant out of her share of the sale proceeds generated from the sale of Gowen Place.

Family Property

[33] The property in which the parties claim an interest consists of the following:

- a) the Company;
- b) the proceeds of a settlement received by the claimant for injuries suffered in a motor vehicle accident;
- c) Gowen Place;

- d) the parties' pensions; and
- e) the following items of personal property:
 - i. a Polaris all terrain vehicle;
 - ii. the parties' engagement/wedding ring;
 - iii. a 2005 Jeep TJ;
 - iv. a 2015 Jeep Wrangler; and
 - v. the claimant's firearms and scopes.

The Company

- [34] The claimant opened his own optometry clinic in June 2020. He established the clinic with the financial assistance of his father and his father's company, Ashley Investments Ltd.
- [35] The claimant and his father documented the financial assistance from Ashley Investments Ltd. in a "Loan Agreement" between the Company and Ashley Investments Ltd. The claimant is a signatory to the Loan Agreement as the representative of the Company and as a guarantor. The difficulty with the Loan Agreement is that it is effective April 4, 2019, but it was not executed by the parties until August 15, 2023, after the claimant commenced this action.
- [36] In any event, the parties agree that the Company will remain with the claimant. There is no business or corporate valuation opinion for the Company, but the respondent agrees that the Company has no value. The debt created by the Loan Agreement is the Company's debt. The respondent has no obligation to share in the burden of the Loan Agreement or the guarantee.
- [37] Therefore, the claimant will retain the shares of the Company without any equalization payment required.

Proceeds of the Personal Injury Settlement

- [38] Section 85(1)(c) of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides that a settlement or an award of damages to a spouse as compensation for injury or loss is excluded from family property unless the settlement or award represents compensation for "lost income of the spouse".
- [39] The parties agree that the term, "lost income" in s. 85(1)(c)(ii), means past income loss.
- [40] The claimant was the victim of a motor vehicle collision in September 2017. In July 2023, the claimant resolved his injury claim from the collision with the Insurance Corporation of British Columbia ("ICBC"). The gross settlement amount was approximately \$560,000 (the "Settlement"). The initial position of ICBC was an offer to pay \$359,000, of which they allocated \$20,000 to past wage loss. The Settlement did not specify amounts for each

category of damages so there is no direct evidence of how much of the Settlement was for past wage loss.

- [41] The claimant submits that the past wage loss portion of the Settlement was \$20,000 because that was ICBC's initial position. The claimant also submits that the respondent should have no claim to the Settlement proceeds because the claimant overpaid child and spousal support by making "in kind" payments for the last two years.
- [42] The "in kind" payments refer to the payments made by the claimant for the mortgage, property taxes, insurance and utilities on Gowen Place while the respondent lived there after separation.
- [43] The mortgage payments, property taxes and insurance are payments that benefitted both parties in that they preserved Gowen Place as a family asset. Therefore, if the claimant receives credit against his financial obligations to the respondent for these payments, it should be credit for half of the mortgage, tax and insurance payments.
- [44] The payment for utilities benefitted only the respondent because the claimant did not reside at Gowen Place after the separation. Therefore, any credit for the utility payments should be off-set at their full amounts.
- [45] The respondent claims half of the past wage loss portion of the Settlement. However, the respondent submits that the \$20,000 past wage loss offer made by ICBC is not an accurate figure because ICBC would have increased the amount during their negotiations. I suspect that ICBC would have increased the past wage loss figure during their negotiations, but I have no evidence upon which I can rely to determine how much ICBC attributed to past wage loss in the final Settlement number.
- [46] The respondent urges me to make my own assessment of what the past wage loss ought to have been by comparing the claimant's anticipated, without injury, income to his actual, with injury, income, in the relevant time. After applying a notional tax rate and deducting legal fees, the respondent submits that the past wage loss component of the Settlement should be \$38,903.
- [47] The difficulty with the respondent's suggested approach is that she seeks to have me assess the claimant's past wage loss due to his injury without all of the necessary information. The only evidence about the collision before me is that it was a rear-end collision. I do not know whether ICBC claimed contributory negligence or whether there were allegations that the claimant failed to mitigate his loss. Therefore, I am not prepared to embark on an independent analysis of the claimant's past wage loss from his injuries.
- [48] Since the only clear evidence of the amount of past wage loss acknowledged by ICBC is \$20,000, I find that this is the amount of the Settlement that is not excluded from division.

- [49] I also find that the claimant has failed to prove that his "in kind" payments off-set the respondent's claim to an interest in the Settlement. I accept that the claimant made "in kind" payments of the type he described. However, I am not satisfied that those payments are sufficient to off-set the claimant's past obligations for child and spousal support as well as the respondent's interest in the Settlement.
- [50] The claimant admits that he has not made all of the required "in kind" payments over the last two years. He admits to being behind on some of those payments. In addition, the claimant should be entitled to credit for only half of the payments he made on the mortgage, for taxes and for insurance.
- [51] Since the claimant has not particularized in detail the value of his "in kind" payments, I find that he has not established that those payments have extinguished the respondent's claim to his past wage loss settlement.
- [52] Therefore, the respondent's 50% share in the Settlement is \$10,000.

Gowen Place

- [53] At the time of the trial, the parties had a contract to sell Gowen Place for \$1,080,000. As of the trial date, the sale of this property had not completed. The completion date was March 15, 2025. Since the sale had not completed, the parties did not know the amount of the net proceeds from the sale. Therefore, I cannot arrive at the final figures for distribution of the net sale proceeds to the parties. However, I will establish the principles that the parties will apply in distributing the proceeds.
- [54] When I refer to the "net sale proceeds" in these reasons, I am referring to the sale proceeds remaining after deduction of the usual adjustments and deductions in a real estate transaction.
- [55] Before dividing the net sale proceeds between the parties, \$41,947 will be deducted and paid to the CIBC in accordance with the orders I made with respect to the treatment of the CIBC debts.
- [56] Once deducting the CIBC debts from the sale proceeds, the parties will each receive half of the remaining net sale proceeds. However, the respondent will pay \$3,100 to the claimant out of her portion of the proceeds in satisfaction of her half of the renovation expenses. The claimant will pay \$10,000 to the respondent out of his portion of the proceeds in payment of the respondent's 50% share of the Settlement.

[57] The respondent claims an unequal division of the net sale proceeds from Gowen Place. She submits that I should divide the net sale proceeds 65% to her and 35% to the claimant. Section 95(1) of the FLA provides that the court may order an unequal division of family property if it would be "significantly unfair" to equally divide the property. The respondent has not satisfied me that it would be "significantly unfair" to equally divide the net sale proceeds from Gowen Place.

Pensions

[58] The parties did not present any evidence related to the division of their pensions. However, counsel for the respondent seeks orders with respect to pension division.

[59] I am not prepared to make orders related to the division of the parties' pensions without evidence on which to base those decisions. If the respondent requires an order for the division of pensions, she must do so with the consent of the claimant or apply further to the court with the necessary evidence.

The Remaining Personal Property

[60] The personal property remaining for division are the Polaris ATV, the two Jeep vehicles, the engagement/wedding ring and the firearms and related equipment.

[61] The parties have not presented any evidence with respect to the value of these items. Therefore, it is not possible to conduct a detailed analysis for their disposition. Further, the 2015 Jeep JK and part of the claimant's firearms collection, are excluded property.

[62] In my view, the only reasonable way to resolve the division of the remaining personal property is to order that whoever currently has possession of them may retain them. Therefore, the respondent will retain the engagement/wedding ring and the claimant will retain the Polaris ATV, the two Jeep vehicles and his firearms and related equipment.

Guidelines Income

Claimant's Guidelines Income

[63] The claimant's income is dependent on the success of his Company. The financial statements for the Company show that there has been limited net income for distribution to the claimant since 2020. The evidence is that the Company is able to continue operating by relying upon funds advanced to it by the claimant's father or his company. However, the Company is showing growth and will eventually generate a profit.

[64] Before deciding to establish his own optometry clinic, the claimant worked as an optometrist as an employee. He first worked for Stickle & Stawn from 2016 to 2018. He then moved to Armstrong Optometry until he opened his own practice in 2020.

- [65] In his 2019 personal income tax return, the claimant declared that he earned a gross amount of \$73,900 in professional income. In 2019, the claimant was working at Armstrong Optometry. However, he worked only part-time while at that clinic.
- [66] The respondent submits that on the evidence before me I should impute an annual income of \$100,000 to the claimant. Counsel for the claimant agrees.
- [67] Therefore, I will set the Guidelines income for the claimant at \$100,000 per year.

Respondent's Guidelines Income

- [68] The respondent works as a teacher-on-call for the Kelowna School District. The respondent's income from employment shown on her 2024 T4 documents, was \$25,300. Therefore, the respondent submits that I should set her Guidelines income at \$25,300 per year.
- [69] The claimant submits that \$25,300 per year in income does not capture the respondent's true capacity to earn. The claimant submits that I should set the respondent's income at \$52,000 per year based on the respondent's evidence that she works three to five days per week.
- [70] The respondent testified that since the parties separated, she works as a teacher-on-call three to five days per week. She agreed on cross-examination that there is no school for 12 weeks in a year and that she earns between \$300 and \$342 per day when she works.
- [71] If the respondent receives \$300 per day when she works and she works four days per week for 40 weeks in a year, her gross annual employment earnings would be \$48,000.
- [72] If the respondent receives \$342 per day when she works, then her gross annual employment earnings would be \$54,720.
- [73] I will accept the evidence of the respondent as to her average working capacity and set her Guidelines income at \$50,000.

Child Support

- [74] At the commencement of this trial on February 25, 2025, the children resided primarily with the respondent. The parties have resolved the parenting issues by agreement. Under the parenting agreement, the parties will share parenting time equally with the children commencing on April 1, 2025.
- [75] Based on the claimant's Guidelines income of \$100,000 per year, the child support payable by the claimant, while the children reside primarily with the respondent, is \$1,982 per month for the three children. Therefore, the claimant's child support obligation for March 2025 is \$1,982.

- [76] As of April 1, 2025, when the parties start the shared parenting arrangement, the claimant's child support obligation remains at \$1,982 per month. However, at the Guidelines income of \$50,000 per year for the respondent, the respondent's child support obligation is \$1,029 per month for the three children. After off-setting the two child support obligations, the net amount payable by the claimant is \$953 per month.
- [77] Therefore, for the month of March 2025, the claimant will pay child support to the respondent in the amount of \$1,982. Commencing on April 1, 2025, the claimant will pay child support to the respondent in the net amount of \$953 per month. The claimant will continue to pay child support in this amount on the first day of each month thereafter until further order of the court or further agreement between the parties.
- [78] The expenses payable for the children pursuant to s. 7 of the Guidelines will be shared by the parties in the proportions established by their Guidelines income. Therefore, the claimant will pay 2/3 of the expenses and the respondent will pay 1/3 of those expenses.

Spousal Support

- [79] The claimant concedes that the respondent is entitled to spousal support. The respondent claims spousal support on both the compensatory and non-compensatory principles.
- [80] On the issue of spousal support, the parties focussed on establishing the appropriate Guidelines income for the parties. Having established the Guidelines income for both parties, the assessment of spousal support relies heavily on the Spousal Support Advisory Guidelines [SSAG].
- [81] Applying the SSAG to the facts in this case, results in spousal support payable by the claimant of \$0 at the low end and \$406 at the high end. I find that awarding spousal support to the respondent in the amount of \$200 per month is appropriate in this case as it is essentially the mid-point between the low and the high ends of the range.
- [82] Therefore, commencing April 1, 2025, the claimant will pay spousal support to the respondent in the amount of \$200 per month. These spousal support payments will continue on the first day of each month thereafter until further order of the court of further agreement between the parties.
- [83] The SSAG suggests an "indefinite (unspecified) duration, subject to variation and possibly review, with a minimum duration of 4.25 years and a maximum duration of 13 years from the date of separation." I am not prepared to specify the duration of spousal support at this time. However, there should be a review of spousal support after the claimant has had time to more fully establish his optometry clinic and the respondent has had time to become more self-sufficient.

- [84] Therefore, I will order that the parties may apply to review spousal support after June 1, 2027. However, this review date will not affect either party's entitlement to vary spousal support based on a material change in circumstances.
- [85] The respondent made a submission for the payment of spousal support in a lump sum. However, she also made an alternative submission for the payment of monthly spousal support combined with the equal division of the net proceeds from the sale of Gowen Place.
- [86] In the circumstances of this case I find that the payment of spousal support in a lump sum is not appropriate because:
- a) the respondent's immediate needs can be satisfied by the distribution of a family asset;
 - b) the financial circumstances of the claimant will make a lump sum payment of child support difficult; and
 - c) I have ordered that spousal support be reviewed in two years.

Exchange of Financial Information

- [87] In order to ensure that each party is informed about any change in the other party's financial circumstances, the parties will exchange financial information on or before June 1 of each year. The parties will exchange financial information so long as any of the children are eligible to receive child support.
- [88] The financial information will include personal income tax returns with all attachments and personal notices of assessments. It will also include corporate financial statements and corporate T2 income tax returns.

Retroactive Support

- [89] The claimant had child support and spousal support obligations from the separation date. However, he claims that he fulfilled those obligations by paying the expenses related to Gowen Place.
- [90] The parties have agreed that there will be no adjustments for retroactive child or spousal support or for any contributions made by the claimant towards the expenses for Gowen Place. Therefore, there will be no award for retroactive support.

Divorce

- [91] Both parties seek an order for divorce. The parties separated on March 5, 2023. They have lived separate and apart since that date. I am satisfied that there is no prospect of reconciliation between the parties and that all other requirements for divorce have been satisfied.

[92] Accordingly, I order that the parties be divorced from one another and that the divorce take effect on the 31st day following the date of this order.

Costs

[93] If the parties cannot agree on costs, they have leave to make submissions on that issue. I will entertain oral submissions from the parties on costs provided that a hearing on the issue of costs be scheduled within 60 days.

"D.K. Hori J."

HORI J.

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