

CANADA / JUDGMENT

Bordignon v. Bordignon

2025 BCSC 1899

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DECIDED

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2025 BCSC 1899 Bordignon v. Bordignon

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bordignon v. Bordignon,

2025 BCSC 1899

Date: 20251001

Docket: E127941

Registry: Kelowna

Between:

Lucille Bordignon also known as Lucille Puglisi

Claimant

And

Mark Angelo Bordignon, Giovanni Bordignon, Rebo Beton Pumping Ltd.,

461334 B.C. Ltd. and Rebo Beton Pumping Placing Finishing Ltd.

Respondents

Before: The Honourable Justice Hardwick

Reasons for Judgment

The Claimant, appearing on her own behalf:

L. Bordignon

Counsel for the Respondents, Mark Angelo Bordignon, and Rebo Beton Pumping Ltd.:

D.M. King

Place and Date of Hearing:

September 19, 2025

Kelowna, B.C.

Place and Date of Judgment:

Kelowna, B.C.

October 1, 2025

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Overview

- [1] In reasons for judgment released June 17, 2025, and indexed at 2025 BCSC 1113 (the "Support Reasons"), I made certain orders regarding child and spousal support, both prospectively and retroactively, in this high conflict family law proceeding (the "June 2025 Support Order"). In the course thereof, I determined the Guideline income of the respondent, Mark Angelo Bordignon ("Mark") for the periods July 1, 2024 to July 1, 2025, and July 1, 2025 to July 1, 2026.
- [2] I did so pursuant to the review of support specifically contemplated in the reasons for judgment resulting from the lengthy trial in this action. Those reasons, which were released back on July 10, 2024, by Mr. Justice Betton, are indexed at 2024 BCSC 1226 (the "Trial Reasons").

- [3] The key issue to be decided in determining Mark's Guideline income for the purposes of the support review was whether to include certain dividends that were declared in 2023 and 2024 by the respondent, Rebo Beton Pumping Ltd. ("Pumping") - a company owned and controlled by Mark. It was not disputed that the dividends were the result of shareholder loans that Mark took from Pumping since May 10, 2021, and which were not repaid. They were, to use the accounting vernacular, "deemed dividends".
- [4] Mark's argument was that the deemed dividends declared by Pumping should not be included as part of his Guideline income because they represent monies used during the course of this litigation for family debts, expenses and expert fees and not money he currently has available to pay support. Rather, Mark submitted that his Guideline income should be limited to his T4 income from Pumping: see para. 34 of the Support Reasons.
- [5] The fundamental flaw in Mark's argument, I found, was that what actually happened is exactly what Justice Betton contemplated might likely happen in the Trial Reasons at para. 334:

Shareholder loans are a balance sheet item, an amount owing to the company. Ms. Brunton [the joint business valuator] testified that shareholder loans are not income and remain owing to the company as a receivable. The claimant argues, however, that it is reasonable to anticipate those amounts will not be repaid and that they will appear in MB's income after trial. I am unable to determine if in fact that will be the case but it is neither necessary nor, in my view, appropriate to do so. If and when the loans are in fact designated as income, that will impact MB's support obligations. (emphasis added)

- [6] On this basis, I set Mark's 2024 Guideline income at \$208,946.88, including taxable dividends of \$84,456.00/actual dividends of \$61,200 and his 2025 Guideline income at \$277,391.45, including taxable dividends of \$149,040.00/actual dividends of \$108,000.00.
- [7] I then proceeded to determine Lucille's Guideline income, adjusted the amount of child support based on shared parenting under s. 9 of the Guidelines, and set the quantum of spousal support at the mid-point of the Spousal Support Advisory Guidelines range in accordance with the formula set out in the Trial Reasons.
- [8] As Mark had been paying support following the trial based on a Guideline income of \$125,000 per annum, in addition to his prospective support obligation being increased, there was a retroactive payment owing for the period commencing July 1, 2024, through to and including June 1, 2025. I provided Mark until September 30, 2025, to make that payment.
- [9] Mark has appealed the June 2025 Support Order, citing errors in the way I calculated his Guideline income.
- [10] Pending the appeal, Mark has applied pursuant to s. 234 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] that the orders pertaining to support be stayed pending the outcome of the appeal.

- [11] The basis for the stay application is that Mark does not have sufficient income to meet the "attributed support obligations" I ordered. Specifically, Mark asserts that he does not have sufficient cash flow to pay the reasonable living expenses for himself and the parties' two children while servicing the significant family debt (which still has not been paid off and will not be paid off until the Former Family Home is sold).
- [12] The stay is strenuously opposed by the claimant, Lucille Bordignon also known as Lucille Puglisi ("Lucille"). Lucille maintains that Mark's financial woes are entirely contrived, that his claimed lack of access to funds is as a result of his intentional diversion of those funds to limit his support obligations and that he continues to live the same financially comfortable lifestyle he did previously. In contrast, she says that there will be irreparable harm to herself and the children if the stay were granted.
- [13] Mark further seeks an order further reducing the list price for the Former Family Home. This is also opposed by Lucille. In so doing, Lucille also takes issue with the current listing agent but does not presently have an application before me to change agents.

The Stay Application

The Law

- [14] Section 234 of the FLA provides as follows:

Despite any other enactment, if an order is made under this Act is appealed, the order remains in effect until the determination of the appeal unless the court that made it otherwise orders.

- [15] The support orders made at trial were made pursuant to the FLA. The subsequent supports I made in the June 2025 Support Order were pursuant to the review clause articulated in the Trial Reasons and were thus also made pursuant to the FLA.
- [16] Accordingly, Mark is correct that if a stay is to be granted pending appeal, that stay must be obtained in this Court.
- [17] The law regarding stays in family law proceedings was reviewed by the Court of Appeal in *Xu v. Chu*, 2021 BCCA 323 as follows:
- [20] Where the Court has jurisdiction, a stay may be granted to applicants that meet the test outlined in *B.C. (Milk Marketing Board) v. Grisnich* (1996), 70 B.C.A.C. 142 at para. 7 (Chambers):

The three stage test enunciated in *Metropolitan Stores (M.T.S.) Ltd. v. Manitoba Food & Commercial Workers, Local 832*, [1987] 1 S.C.R. 110, 38 D.L.R. (4th) 321 and re-affirmed in *RJR - MacDonald* has frequently been interpreted as requiring an applicant to show the following:

- (1) that there is some merit to the appeal in the sense that there is a serious question to be determined;
- (2) that irreparable harm would be occasioned to the applicant if the stay was refused;

- (3) that, on balance, the inconvenience to the applicant if the stay was refused would be greater than the inconvenience to the respondent if the stay was granted.
- [21] A successful plaintiff is entitled to the fruits of his judgment and should not be deprived of them unless the interests of justice require that they be withheld until the defendant's appeal is decided: *Voth Brothers Construction (1974) Ltd. v. National Bank of Canada* (1987), 12 B.C.L.R. (2d) 43. The court's power to grant a stay is discretionary and should be exercised only where it is necessary to preserve the subject matter of the litigation or to prevent irreparable damage or where there are other special circumstances: *Contact Airways Ltd. v. De Havilland of Aircraft of Canada Ltd.* (1982), 42 B.C.L.R. 141 at 142.
- [22] The financial position of the respondent is a relevant consideration in showing that there is a serious risk of harm that cannot be remedied: "If the appellant establishes that the respondent's modest means presents a real risk that the appellant would, if successful on appeal, be unable to recover a large portion of the funds paid to the respondent as damages, the appellant may have established that she could face irreparable harm in that sense": *Bancroft-Wilson v. Murphy*, 2008 BCCA 498 at para. 12 (Chambers), citing *Zylstra v. Hughes*, 2000 BCCA 8 at para. 5 (Chambers).
- [18] The law is similarly stated in the decisions of this Court relied upon by Lucille in her application response: see *Falkener v. Falkener*, 2020 BCSC 538; *Negus v. Yehia*, 2019 BCCA 307; and *Rotaru v. Rotaru*, 2009 BCSC 480.

The Merits

- [19] Lucille fundamentally distrusts Mark with respect to all financial matters. Lucille believes that Mark is engaging in "tax fraud" and is continuing to "knowingly mislead the court" such that the appeal is frivolous and wholly without merit.
- [20] In one of her three affidavits opposing the stay application, Lucille appends a limited critique expert report prepared by Daniel Sturgess of Crowe MacKay LLP. This report was prepared for the purposes of trial but was not admitted into evidence by Mr. Justice Betton. In appending it, Lucille says she is not submitting it "to revisit trial evidence, but rather to protect her interest as a shareholder" because it shows that the "figures do not add up" and that "sales are being redirected".
- [21] Throughout her affidavits, Lucille also refers repeatedly to Mark's failings in providing financial disclosure and complains about the accuracy and reliability of what disclosure has been provided.
- [22] Lucille's submissions in this regard unfortunately fail to properly address the first element of the stay test - which is strictly limited to whether there is some merit to Mark's appeal of the June 2025 Support Order.

- [23] As I noted in the Support Reasons, I was satisfied that I had the necessary financial disclosure before me to make the orders I did. My determination of Mark's Guideline income turned on a consideration of that disclosure, the supporting evidence confirming the circumstances of the declaration of the deemed dividends, the relevant analysis of Justice Betton in the Trial Reasons on the issue of Guideline income determination and, of course, the applicable law.
- [24] Although I referred to there being a fatal flaw in Mark's argument that the dividends declared by Pumping should be excluded from his Guideline income in these circumstances, the argument was not fatally flawed in the sense of being frivolous or vexatious. It required thoughtful judicial consideration and was rejected on that basis.
- [25] Particularly in light of the low threshold for satisfying this element of the test for obtaining a stay of proceedings, I am satisfied that Mark has demonstrated that there is a serious issue to be tried.

Irreparable Harm

- [26] Irreparable harm is "harm which cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other". It does not include harm that is solely financial in nature: see *Negus* at para. 55 citing *Rotura* at para. 12 and *Bartch v. Bartch*, 2017 BCSC 1381 at para. 69.
- [27] There is no real merit to any suggestion in this case that the overpayment of support to Lucille, if Mark's appeal is successful, meets the threshold of irreparable harm. Leaving aside the fact that the Former Family Home has yet to be sold and that the substantive distribution of family property net of family debt has yet to occur, Mark has an ongoing child and spousal support obligation to Lucille. The increased support payable is not so significant that any overpayment pending the appeal (which Mark maintains can be done expeditiously given its narrow scope) could be quite easily factored into an ongoing monthly deduction to prospective support until such time as full credit for any overpayment is received.
- [28] Rather, the irreparable harm is that Mark really asserts that he has insufficient cash flow to continue to service the family debt, maintain the Former Family Home and pay for the children's private school tuition whilst paying the increased support.
- [29] While Mark continues to paint a very gloomy picture of his and Pumping's financial circumstances in his affidavits in support of the stay, the reality of the situation is, I find, that Mark currently can meet his prospective support obligations, service the family debt and maintain the basic household expenses by making use of the financial resources available to him. I am simply not satisfied on the evidence before me that the only monies Mark has available to him is the T4 income he receives from Pumping. In this regard, it must be recognized that Mark is the sole shareholder, sole director and effective operating mind of Pumping and he continues to operate that company as a going concern despite its alleged

deteriorating financial circumstances even leading up to the trial before Justice Betton.

- [30] As it relates to the children's private school expenses, I made clear in the Support Reasons that I did not have before me an application from which I could make an enforceable order as to the sharing of special and extraordinary expenses. What I was limited to doing was setting out the proportionate sharing based on the parties' Guideline incomes, urging that efforts be made to reach consensus on what constitutes s. 7 expenses and ultimately granting leave to bring the issue back on for hearing before me.
- [31] It does appear from the application record materials that efforts have been recently made to have the children's private school directly apportion the costs between the parties in accordance with the percentages I established in the June 2025 Support Order. To the extent that Mark may have been continuing to pay the entirety of these expenses for some period following the release of the Support Reasons is thus not irreparable harm. It is not only repairable; that repair process is in motion.

Balance of Convenience

- [32] For most of the time that the parties have been separated, Lucille resided in a modest rented basement suite while Mark has had the benefit of living in the Former Family Home (and thus, as noted, being financially responsible for it).
- [33] In at least partial reliance on the increased support which I ordered back on June 17, 2025, Lucille has moved out of that basement suite and into a two bedroom/two-bathroom condominium in Kelowna's downtown core. Lucille maintains that she did so to not only improve her own living conditions but also to improve that of the children who reside with her half of the time. The rent on this condominium is \$2,400 per month.
- [34] Lucille's ability to afford this new accommodation is, I accept, closely tied to the amount of support that she receives from Mark as Lucille's Guideline income, which is based on full-time employment for an arms-length employer, is approximately \$60,000 per annum.
- [35] Furthermore, I accept that Lucille does not have the same access to possible other financial resources that Mark does.

Clean Hands and BCFMA

- [36] Lucille additionally raised in her opposition to the stay the fact that Mark does not come to court with clean hands: see *Alalouf v. Sumar*, 2023 ONSC 6604 at para. 26. In the same vein, Lucille alleges that there are special circumstances that merit dismissing the stay: see *L.R.V. v. A.A.V.*, 2005 BCSC 649 at para. 21.
- [37] In certain respects, some of Lucille's allegations mirror the concerns I have laid out above and addressed regarding her general distrust of Mark's financial dealings. Those suspicions do not amount to unclean hands or special circumstances.

- [38] Lucille also asserted that Mark is significantly in arrears of his support obligations. This is a significantly different consideration. Payors who deliberately avoid their court-ordered support obligations are generally viewed in an appropriately dim light when they subsequently come to court seeking orders relieving them of their obligations, even on a temporary basis.
- [39] However, Mark firmly asserts in his evidence that he is not in arrears of support notwithstanding what British Columbia Family Maintenance Agency ("BCFMA") records may suggest and includes in his Affidavit #27 certain correspondence he exchanged with BCFMA earlier this month in an effort to obtain clarity on this issue.
- [40] Reviewing what evidence I have in the application record in this regard, I will start by saying that it is difficult for even me, as a member of this Court, to understand certain portions of the response from BCFMA.
- [41] Before addressing that portion of BCFMA's correspondence, I should note that BCFMA's response to Mark as to the inability to enforce any obligation to pay s. 7 special and extraordinary expenses absent an order specifically articulating what these expenses are or quantifying a monthly amount to be paid on account of these expenses generally is in complete alignment with my above comments about the need to bring the matter back on before me for a further order if the parties cannot reach a written agreement in this regard.
- [42] As to the issue of Mark's alleged arrears of support, the best that I can ascertain is that as a result of the number of support orders which have been in place during the course of this litigation, extended delays in entering those orders and possibly a typographic error in one order, Mark has been noted to be in arrears, assessed default fees and had interest charged upon his arrears. Simply stated, it may be that Mark is in some arrears of support - but not only can I not determine that for certain on the material in the application record, it is not specifically before me. What I can conclude, however, is that I am not satisfied there has been a deliberate failure to pay which amounts to unclean hands or special circumstances such as to act as a bar to Mark obtaining a stay of the June 2025 Support Order pending appeal.
- [43] Further, while again recognizing that it is not before me, it does appear from the BCFMA correspondence that Mark has been assessed default fees and interest on support for the period commencing July 1, 2024. That should not be the case.
- [44] Mark paid support in accordance with the Guideline incomes determined by Justice Betton in the Trial Reasons. The specific quantum of support was not articulated in the Trial Reasons as it was expressly left to counsel to calculate. Notwithstanding that direction, the quantum of support was not actually included in the Final Order by virtue of the combination of the withdrawal of Lucille's counsel, the settling of the Final Order by Associate Judge Schwartz, the successful appeal of that settling by Lucille and the subsequent resettling of the Final Order by Justice G.P. Weatherill.

- [45] Upon hearing the support review, I specifically recognized that Mark ought to be given a reasonable opportunity to pay the retroactive support owing for the period commencing July 1, 2024, based upon my determination of his increased Guideline income. I, utilizing my judicial discretion, concluded that September 30, 2025, was a reasonable deadline.
- [46] Leaving aside the issue of the stay, there should be no interest or default fees payable by Mark for any support owing from July 1, 2024 to July 1, 2025 until after September 30, 2025. If the stay is granted, the issue of default fees and interest becomes moot pending the determination of the appeal. If Lucille is successful on appeal, however, then interest on those support arrears would appropriately be owing retroactive to September 30, 2025, as Lucille would otherwise have had the benefit of those monies.
- [47] Either Mark or Lucille is at liberty to bring on an application before me to obtain an order addressing these arrears/interest/default fee issues in due course in the event that it cannot be sorted directly with BCFMA.

Conclusion

- [48] Taking into consideration all of the foregoing, I am satisfied that the balance of convenience favours dismissing the application for the stay in respect of the monthly support, both child and spousal, payable by Mark to Lucille provided for in the June 2025 Support Order.
- [49] Lucille had to wait an entire year to have the 2024 support review contemplated in the Trial Reasons completed. Lucille succeeded in having the support payable increased based upon my determination of Mark's Guideline income. It was reasonable for her to organize her affairs in the expectation that she would receive that increased support over the course of the next year.
- [50] Lucille's decision to commit to renting a condominium was also, I accept, done partially with the children in mind as they benefit from her improved living conditions during her portion of the shared parenting schedule. Clawing back the increased support which is funding that new accommodation and thus potentially jeopardizing that accommodation pending the appeal would be irreparable harm.
- [51] Further, I am not satisfied that Mark will suffer irreparable harm by having to pay the increased monthly support pending the appeal despite his claims of financial hardship. I am satisfied that Mark can and will find the funds available to remain current on his support obligations during that time and if he succeeds on appeal, it will be a relatively simple exercise to reduce his prospective payments as necessary to offset the overpayment. This further tips the balance of convenience in Lucille's favour.
- [52] However, in contrast, I am satisfied that the balance of convenience favours granting the stay in respect of the lump sum payment for retroactive support which is presumptively owing by September 30, 2025.

- [53] The distinction between these two components of my support order is directly related to the irreparable harm portion of the analysis. Unlike a reduction to her ongoing monthly support, I am not satisfied that there is significant prejudice to Lucille by further postponing the payment of this retroactive support award until the appeal is heard and determined on its merits. It will certainly be an inconvenience to Lucille. Given her own significant personal debt load, she certainly could make use of these monies.
- [54] However, all of Lucille's secured debt is secured as against the Former Family Home and Mark is the one that is currently servicing that debt along with his own portion of the family debt secured against that property. I accept that the harm that would flow from Mark potentially defaulting on any of those obligations significantly outweighs the inconvenience to Lucille from deferred payment.
- [55] In conclusion, the stay application is dismissed as it relates to Mark's ongoing support obligations under the June 2025 Support Order. The stay application is granted in respect of the retroactive adjustment payment which was otherwise due on or before September 30, 2025.
- [56] Considering the delays associated with proceeding with appeals filed by both parties in respect of Justice Betton's Final Order resulting from trial, I am giving both parties liberty to vary the terms of this stay order if the appeal has not been heard by June 15, 2026. If the appeal has been heard and the decision remains under reserve by the Court of Appeal, the terms of this stay shall continue to govern until the reasons for judgment are released.

The List Price Application

- [57] The Former Family Home was originally listed for sale with the parties having joint conduct of sale by way of a consent order I brokered at a judicial settlement conference back in March 2025.
- [58] As part of the consent order, the list price for the Former Family Home was set at \$1,900,000 at the very strong insistence of Lucille. Cal Chepil was also the listing agent suggested by Lucille.
- [59] On July 4, 2025, Mark applied to reduce the list price of the Former Family Home down to \$1,500,000 as he was permitted to do under the terms of the consent order.
- [60] In brief unreported oral reasons for judgment delivered on July 17, 2025, I reduced the list price of the Former Family Home down to \$1,750,000. I did do on the basis that there had only been one showing to date and the feedback received was that the property was significantly overpriced given the current state of the market. I was not prepared to reduce the list price further as I viewed it as constituting a fire sale versus a motivated seller situation. I also relied significantly on an email from Mr. Chepil sent on March 24, 2025, wherein he stated that he believed that the Former Family Home would be "priced to move at \$1,750,000".

- [61] I did, however, give Mark liberty to bring on a further application to reduce the list price of the Former Family Home after 60 days.
- [62] Mark has taken advantage of that opportunity and now applies to again reduce the list price of the Former Family Home, this time down to \$1,525,000.
- [63] It is supported by an email from Mr. Chepil dated September 10, 2025. This email confirms that there have been no showings in the last 55 days and recommends a reduction of the listing price to \$1,525,000. It does include certain market comparables, which I have reviewed but will not detail.
- [64] Lucille is opposed to the price reduction. She firmly believes that Mark continues to want to fire sale the Former Family Home because he has the assurance of ongoing financial security from his parents and the reduction of the sale price accordingly does not impact them equally.
- [65] Lucille also takes issue with the listing agent and complains he is not responsive to her and does not regard her as a client because although the parties have joint conduct of sale pursuant to a court order, title to the Former Family Home is in Mark's name alone.
- [66] I accept there might be some potential merit to Lucille's concerns about the lack of responsivity by Mr. Chepil to her. However, having regard to the lack of apparent market interest in the property, that is an issue independent of pricing. Moreover, at present I do not have an application before me to change the realtor, although I have some indication that one might be forthcoming.
- [67] In my view, the evidence supports a further reduction to the list price for the Former Family Home. However, I am again not satisfied that the reduction should be as dramatic though as Mark urges the court to accept.
- [68] Having previously reduced the list price by \$150,000 on July 17, 2025, I consider it a reasonable and appropriate step to lower the list price of the Former Family Home another \$100,000 at this time. That will reduce the list price of the Former Family Home to \$1,650,000.
- [69] As with my previous order, Mark will be at liberty to apply, subject to any intervening court order, to reduce the list price of the Former Family Home after 60 days.

Costs

- [70] The overarching issue of costs in this action as between Lucille and Mark/Pumping remains under reserve; at least partially because this application took priority over completing those reasons.
- [71] This is a stand-alone post-trial application, however, and I am in a position to address the issue of costs accordingly.

[72] As I articulated in the Support Reasons, Rule 16-1 of the Supreme Court Family Rules and Appendix B of those Rules govern costs in family law matters and the general rule is that costs should be award to the successful party unless otherwise ordered: see paras. 71 and 72 of the Support Reasons.

[73] In this instance, I am satisfied that there has been divided success and that the parties should bear their own costs. Further, even if there was not divided success as that term is defined in the applicable caselaw, I would exercise my discretion to otherwise order that the parties bear their own costs of this application in all of the circumstances.

"Hardwick J."

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