

CANADA / JUDGMENT

Castelli v. Paton

2025 BCCA 411

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 411 Castelli v. Paton

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Castelli v. Paton,

2025 BCCA 411

Date: 20251113

Docket: CA50055

Between:

Vittorio Mark Castelli

Appellant

(Claimant)

And

Alison Jane Paton

Respondent

(Respondent)

Before:

The Honourable Mr. Justice Groberman

The Honourable Madam Justice DeWitt-Van Oosten

The Honourable Justice Warren

On appeal from: An order of the Supreme Court of British Columbia,

dated July 12, 2024 (Castelli v. Paton, 2024 BCSC 1259,
New Westminster Docket E64854).

Oral Reasons for Judgment

The Appellant, appearing in person:

V.M. Castelli

Counsel for the Respondent:

M. Brandon

R.K. Mallhi

Place and Date of Hearing:

Vancouver, British Columbia

November 10, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 13, 2025

Summary:

The parties lived in a common law relationship beginning in 2013. The relationship was, at times, difficult. They separated in October 2016. They resumed a romantic relationship in early 2017. In October 2018, the parties again separated. The judge found that the marriage-like relationship ended, at the latest, with the October 2018 separation. The claimant filed a notice of family claim in April 2022 seeking equal division of family property, including an interest in a condo in Vancouver owned by the respondent and a share in the increase in the value of her U.K. investments. The judge held that the claim was statute-barred as it had not been brought within two years of October 2018. The appellant appeals, arguing that the judge erred in finding that the marriage-like relationship ended in 2018.

Held: Appeal dismissed. While it appears that the judge erred in focussing on the question of when the marriage-like relationship ended rather than on the date of separation, her findings of fact were sufficient to establish that the claim was not brought within the time limit set out in the Family Law Act.

- [1] GROBERMAN J.A.: This is an appeal from a trial judgment dismissing Mr. Castelli's claim for property division under the Family Law Act, S.B.C. 2011, c. 25, on the basis that it was not brought within the time limit set out in s. 198(2)(b) of that statute.
- [2] Mr. Castelli and Ms. Paton acknowledge that they were, at least at one time, spouses under s. 3(1)(b)(i) of the Family Law Act:

3 (1) A person is a spouse for the purposes of this Act if the person

- (b) has lived with another person in a marriage-like relationship, and
- (i) has done so for a continuous period of at least 2 years

[3] The evidence established that from November 2013 until the summer of 2015, the two cohabited in South Surrey in a marriage-like relationship. Thereafter, for several months, they had two residences, one in South Surrey and one in Vancouver. It is not disputed, however, that they continued to be in a marriage-like relationship, and that they cohabited in both places.

[4] The parties do not agree on the nature of their relationship from October 2016 onwards. Mr. Castelli maintains that they were in a marriage-like relationship, though he describes it as an "open marriage". Ms. Paton suggests that cohabitation ended in 2016, and while they were together from time to time, they were merely "friends with benefits" and were not in a marriage-like relationship.

[5] In April 2022, Mr. Castelli filed a notice of family law claim, maintaining that he had a right to 50% of property acquired by Ms. Paton during their relationship. He claimed that the parties separated earlier that month.

[6] The question for the trial judge was whether the claim was barred by s. 198(2)(b) of the Family Law Act:

198 (2) A spouse may start a proceeding for an order under Part 5 [Property Division] to divide property or family debt no later than 2 years after,

- (b) in the case of spouses who were living in a marriage-like relationship, the date the spouses separated.

[7] The parties appear not to have recognized that s. 198(2)(b) speaks specifically of the date of separation and not of the date that the marriage-like relationship ended. Probably due to the manner in which the case was argued, the judge also conflated the issue of the existence of a marriage-like relationship with the concept of separation, and her judgment considered, in detail, when the marriage-like relationship ended.

[8] I will, in this judgment, use the lay term "common law marriage" (and related terms) as a non-technical way to describe couples who live in together in relationships similar to marriage without being married. Where I use those terms, I do so without necessarily implying that the statutory tests for being spouses have been met.

[9] As I will explain, when unmarried persons who are spouses under the Family Law Act commence living apart due to a breakdown in their relationship, they are "separated" for the purposes of the Family Law Act, and, subject to the specific provisions of the Act dealing with separation, the two-year limitation period in s. 198(2)(b) begins to run. This is so even if some of the indicia of a marriage-like relationship subsist. It appears that the statute is

designed to promote certainty, and to provide a bright-line date on which the limitation period for bringing a property division proceeding may be commenced.

Background Facts

- [10] It is common ground that the parties met in August 2012. At that time, Ms. Paton was on a months-long visit to Vancouver from Scotland, where she resided. Mr. Castelli was married and lived in White Rock. The parties were attracted to one another, and Ms. Paton encouraged Mr. Castelli to leave his wife. Ms. Paton returned to Scotland at the beginning of 2013, and Mr. Castelli separated from his wife at about the same time.
- [11] The parties continued a long-distance relationship (with a couple of vacations together) in the first part of 2013. In August 2013, Ms. Paton returned to Vancouver to be with Mr. Castelli. In November 2013, the parties purchased a residence as joint tenants in South Surrey and moved in together. In July 2014, they acquired a studio apartment in Vancouver, as well. Though they had initially planned to occupy it on a part-time basis, it was largely used as an income property and was almost always occupied by short-term renters.
- [12] In the summer of 2015, the parties purchased a second Vancouver property together--a condo. For the most part, Ms. Paton occupied the condo, and Mr. Castelli remained in the South Surrey residence. They continued their relationship, however, and they stayed together in each residence when it was convenient to do so.
- [13] The judge found that financial matters, especially matters concerning the real properties, caused conflict between the parties, and in March 2016, they sold the South Surrey residence and split the proceeds. Mr. Castelli used his share to buy an investment property in South Surrey and a townhouse in White Rock. The parties also sold the Vancouver studio apartment in 2016. In October 2016, Ms. Paton purchased Mr. Castelli's interest in the Vancouver condo.
- [14] After the October 2016 transaction, the parties ceased to own property together. They each owned a residence and did not share expenses. Ms. Paton lived in her condo in Vancouver, and Mr. Castelli lived in his townhouse in White Rock.
- [15] From that time, the parties had separate primary residences. The trial judge found that the parties had "a significant breakup". Indeed, quite apart from the change in living arrangements, the parties appear to have withdrawn from their relationship for a period of months. They severed financial ties, closing their joint bank account in early 2017. Over the Christmas period in 2016, Ms. Paton went to Scotland, not returning to Vancouver until February 2017. Mr. Castelli went to Mexico for Christmas in 2016 with his children and a former girlfriend.
- [16] Though the trial judge did not expressly state that the parties separated in October 2016, it is clear that they did. Indeed, Mr. Castelli concedes that he and Ms. Paton separated at the time.

- [17] After Ms. Paton's return in February 2017, the parties resumed what the judge referred to as "their dating relationship", spending about six days a month alone together, generally either in Ms. Paton's condo or travelling, though Ms. Paton did stay at Mr. Castelli's White Rock townhouse at times.
- [18] The parties were together for Christmas in 2017, spending five weeks together in Mexico.
- [19] In September 2018, the parties took a vacation to Hawaii, but the judge characterized the trip as one where "things went awry". On their return to Vancouver, they had a "huge argument" and Mr. Castelli "stormed out of Ms. Paton's condo." At the end of that month, Mr. Castelli removed his belongings from the condo, and after that time, neither party kept any property at the other's residence. On October 13, 2018, Mr. Castelli transferred the vehicle registration for the vehicle Ms. Paton had financed to her name.
- [20] The parties each joined internet dating sites in October 2018 and dated other people. In November 2018, Ms. Paton returned to the UK. She came back to Vancouver in March 2019 and began making arrangements to move her belongings to Scotland. The move was to take place in June 2019, when Ms. Paton would regain possession of her property in Edinburgh at the end of a lease.
- [21] The judge found that "from March 2019 to June 2019, the parties continued to see each other intermittently for hikes, dinner and occasional sexual contact". This included spending time together in the United States.
- [22] In June 2019, Ms. Paton moved to Edinburgh, as planned. Mr. Castelli began a serious relationship with a woman from Winnipeg. That woman moved in with Mr. Castelli in November 2019. Despite that relationship, Mr. Castelli and Ms. Paton spent a weekend together in London in December 2019.
- [23] It does not appear that the weekend together was indicative of a desire to reconcile or to resume their relationship. Ms. Paton was in a romantic relationship with a man in Edinburgh from January to July 2020 and Mr. Castelli continued to live in a marriage-like relationship with the woman from Winnipeg until August 2020.
- [24] Ms. Paton returned to Vancouver from July to November 2020. The judge accepted that there were two reasons for her return: to renew her permanent residence status; and to sell her condo.
- [25] The judge made the following findings with respect to that period:
- [69] While Ms. Paton was in Vancouver from July to November 2020, the parties socialized together, they travelled to Vancouver Island together for a week, and they were sexually intimate. Ms. Paton resided in the Keefer Street condo and rented an Airbnb for her last week in Vancouver after the condo sold. She stayed at Mr. Castelli's home in White Rock a few times, and he stayed with her a few times in Vancouver.

- [26] Ms. Paton's permanent resident card renewal application was approved in November 2020, but she was advised in September 2021 that she would have to attend in person in Vancouver on October 7, 2021 to collect it, and would need supporting documents, including (for spouses of Canadian citizens) a spouse's Canadian and other passports.
- [27] When Ms. Paton came to Vancouver in October 2021, she stayed at Mr. Castelli's residence for a week and asked him to give her his passport to take with her to her meeting with immigration officials. It is clear that the immigration official was left with the impression, at that meeting, that Ms. Paton was in a marriage-like relationship with Mr. Castelli. Although it is not clear that Ms. Paton specifically told him that she and Mr. Castelli were in a marriage-like relationship, it is equally apparent that she was careful not to disabuse him of the impression that they were.
- [28] On this appeal, Mr. Castelli makes much of that incident, arguing that the judge ought to have found that it shows Ms. Paton not to be credible and proves that the two were in a marriage-like relationship.
- [29] The parties spent three nights together in London in November 2021 and did not stay together thereafter before the filing of the appellant's claim in April 2022.

The Scheme of the Statute

- [30] It is relatively easy, in most cases, to define with certainty the start and end date of a marriage. It will typically begin with a pronouncement of marriage at a ceremony and ends with either the death of one spouse or a court order for divorce.
- [31] Common law marriages are more complex. It is, of course, possible for parties to start cohabiting in a marriage-like relationship at a specific instant. It is also possible for such a relationship to unequivocally terminate on the occurrence of a specific event. Frequently, however, couples drift into a marriage-like relationship, gradually increasing the time they spend together and the connections between them that are the indicia of a "marriage-like" relationship. Equally, they may gradually drift apart. Often, important aspects of their relationship will subsist long after they have ceased to cohabit. There may be substantial periods when they, themselves, are unclear on the status of their relationship.
- [32] The ambiguity that may exist at stages of some common law relationships is problematic when it comes to establishing legal rights. Statutes dealing with the rights of spouses attempt to define specific circumstances for the commencement and termination of spousal status. Courts must do their best, paying close attention to the language of the specific statute in issue, to determine who is and who is not a spouse.

- [33] Section 3 of the Family Law Act defines spouse as including "a person [who] has lived with another person in a marriage-like relationship" for a continuous period of two years. Of course, not all marriages are the same, so there is some vagueness to the concept of a "marriage-like" relationship. Even if it were possible to define an archetypal married relationship, however, there would be degrees to which other relationships resemble and fail to resemble it.
- [34] The courts have identified a number of characteristics that are indicia of a "marriage-like relationship" but have also acknowledged that just as social norms surrounding marriage are not immutable, the concept of a "marriage-like relationship" is also subject to evolution: *Weber v. Leclerc*, 2015 BCCA 492 at para. 7.
- [35] This Court considered the concept of a "marriage-like relationship" thoroughly in *Austin v. Goerz*, 2007 BCCA 586 and in *Weber*. Both endorse, as a guideline, the discussion of the Ontario District Court in the older case of *Molodowich v. Penttinen* (1980), 17 R.F.L. (2d) 376.
- [36] In the case before us, the judge applied those criteria, citing from an accurate summary of the controlling caselaw in *Bellerose v. Reda*, 2023 BCSC 748 at para. 48.
- [37] Unlike other statutes (for example, s. 2(2) the Wills, Estates and Succession Act, S.B.C. 2009, c. 13), the Family Law Act does not explicitly set out the circumstances under which a common law spouse ceases to be a "spouse" for the purposes of the statute. It does, however, in s. 198, place limits on the commencement of proceedings by one spouse against the other. As I have indicated, property division claims must be brought within two years of "the date the spouses separated".
- [38] The case before us, then, is not about the existence of a marriage-like relationship, but rather about when Mr. Castelli's right to apply for division of property terminated. That depended on "separation" not on the complete termination of the relationship.
- [39] Typically, the concept of separation is straightforward. Where common law spouses who live together cease doing so by reason of a deterioration in their relationship, they are "separated". It is unnecessary, in determining whether parties are separated, to undertake a detailed analysis of all aspects of the "marriage-like relationship", nor is it useful to consider whether some elements of such a relationship continue to exist. Section 198(2) is a "bright line test" setting out when the right to commence an action for property division expires.
- [40] There can, of course, be factual scenarios where it is difficult to determine exactly when a couple separates. It can be particularly difficult, for example to determine whether a couple has separated when they continue to live in the same residence (s. 3(4)(a) of the statute). Section 3(4)(b) specifically deals with the role of evidence of communications and intentions in analysing difficult situations, including those referred to in s. 3(4)(a).

[41] The case before us also presents some challenges, because the parties had different primary residences before their relationship deteriorated and they separated. Nonetheless there were clear events that occurred that marked the beginning of the separation.

Should the Judgment be Overturned?

[42] As I have indicated, the parties did not focus on the language of s. 198 in their arguments, instead focussing on the "marriage-like relationship". Unfortunately, the judge erred by also focussing on the question of whether the relationship remained in various ways "marriage like" rather than whether there had been a separation.

[43] It is clear that the parties separated in October 2016, when their relationship deteriorated and they ceased all cohabitation for a period of time. While it is true that they later resurrected aspects of their relationship, that, in itself, did not serve to restore all spousal rights. Rather, the court ought to have considered whether the separation was nullified by s. 83(1) of the statute:

83 (1) For the purposes of this Part, spouses are not considered to have separated if, within one year after separation,

- (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
- (b) they continue to live together for one or more periods, totalling at least 90 days.

[44] If common law spouses separate, and do not engage in conduct that invokes s. 83, the right to bring an action will expire two years after the separation.

[45] Section 83 was the yardstick by which the couple's reconciliation efforts in 2017 should have been measured. Because the trial judge was not referred to s. 83, it is difficult to know how she would have evaluated the evidence in respect of the 2016 separation.

[46] The same cannot, however, be said of the period following October 2018. The judge's evaluation of the evidence makes it clear that while the couple saw each other occasionally, and were, from time to time, sexually intimate there was no effort to resume cohabitation, let alone cohabitation for the purpose of reconciliation.

[47] While I am of the view that the judge erred by focussing on the existence of a "marriage-like relationship" rather than on "separation" in deciding the case, the conclusion that she ultimately reached is unassailable. The appellant's family proceeding was brought well-beyond the limitation period set out in s. 198 of the statute.

Other Issues

[48] The appellant has raised a number of other issues on this appeal, but none are meritorious. In large part, they reflect a failure to appreciate that findings of credibility are the province of the trial judge. They cannot be overturned unless they reflect palpable and overriding error. Judges are entitled to accept none, all, or only part of a witness's evidence. They are

entitled to conclude that although a witness may have intentionally misled someone, including a government official, on one occasion, this fact does not undermine their evidence as a whole. Judges have considerable latitude in their assessment of evidence and it is not the role of this Court to substitute its view of the evidence for that of the trial judge.

- [49] I will address two other specific issues raised by the appellant. First, he says that he was prejudiced by a pre-trial order that required him to furnish security for costs. Although he applied to appeal that order, he abandoned the appeal. He now argues that the chambers judge's view that his case was weak must have prejudiced the trial judge.
- [50] Many pre-trial applications will require a chambers judge to take into account the apparent strength or weakness of a case. Judges invariably recognize that the assessment is preliminary, and is taken without the benefit of full evidence, final submissions, or extensive deliberation. Even if the judge who hears the trial was the judge who heard the pre-trial application, they will ignore the preliminary assessment when they make their trial decision.
- [51] In this case, the trial judge was not the judge who made the order for security for costs. If Mr. Castelli's assertion of bias were to succeed, it would mean that no judge of the court could ever hear a case where a preliminary assessment of the merits had been undertaken in a pre-trial motion. Clearly such a rule would be unworkable.
- [52] It is clear in this case that the trial judge based her decision on admissible evidence and the submissions before her. I would not give effect to the arguments of bias.
- [53] The appellant also suggests that in order for a "marriage-like relationship" to be terminated, one spouse must explicitly communicate the termination to the other, or there must be a specific action that serves to communicate the spouse's permanent intentions. He bases his argument on s. 3(4) of the Family Law Act, which allows a judge to accept evidence of specific communications or specific acts evidencing intentions in determining whether a separation has occurred.
- [54] Section 3(4) does nothing more than provide that evidence of intention to separate may be considered by the court. Such evidence may be critical in cases where the parties continue to live in the same residence, where it can be difficult to determine whether or not they have separated.
- [55] In most cases, however, specific evidence of an intention to separate is not necessary. Clear evidence that the parties have ceased cohabitation due to a breakdown in their relationship will suffice to establish separation. Such evidence was present in this case.
- [56] I note, finally, the appellant's comments on the costs order made at trial, a subject that he addressed both during the hearing of the appeal and in a written representation that he was allowed to file after the conclusion of oral argument. The trial order included a provision for double costs after the date on which an offer to settle was communicated to the appellant.

[57] While I accept that the appellant was particularly aggrieved by the judge's credibility findings and genuinely believes that the respondent's conduct during her interview with the immigration officer was worthy of rebuke, I am not satisfied that he has identified any error in the way the trial judge exercised her discretion in awarding costs. I would not interfere with the costs order.

[58] I would dismiss the appeal.

[59] DEWITT-VAN OOSTEN J.A.: I agree.

[60] WARREN J.A.: I agree.

[61] GROBERMAN J.A.: The appeal is dismissed.

"The Honourable Mr. Justice Groberman"

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