

CANADA / JUDGMENT

Garousi v. Garousi

2025 BCCA 392

COURT

British Columbia Court of Appeal

DECIDED

28 October 2025

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2025 BCCA 392 Garousi v. Garousi

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Garousi v. Garousi,

2025 BCCA 392

Date: 20251028

Dockets: CA50191; CA50590

Between:

Vahid Garousi

Appellant

(Claimant)

And

Shilan Garousi

Applicant/Respondent

(Respondent)

Before:

The Honourable Justice Griffin

The Honourable Justice Winteringham

The Honourable Justice Gomery

On appeal from: Orders of the Supreme Court of British Columbia, dated

July 6, 2023 and September 16, 2024 (Garousi v. Garousi,
2023 BCSC 1143 and 2024 BCSC 1685, New Westminster Docket E66285).

Oral Reasons for Judgment

The Appellant, appearing in person
(via videoconference):

V. Garousi

Counsel for the Applicant/Respondent:

K.A. McGoldrick

L.N. Morgan

Place and Date of Hearing:

Vancouver, British Columbia

October 28, 2025

Place and Date of Judgment:

Vancouver, British Columbia

October 28, 2025

Summary:

The applicant/respondent objected to the Court hearing the appeal. The appellant failed to pay any child or spousal support, owing under a consent order, for over a decade. Held: application granted and appeal dismissed. The appellant failed to satisfactorily explain his persistent and ongoing noncompliance with the consent order. In the circumstances, the Court exercised its discretion to refuse to hear the appeal.

[1] WINTERINGHAM J.A.: Vahid Garousi appeals from the orders of Justice Lamb (pronounced July 6, 2023) and Justice Gibb-Carsley (pronounced September 16, 2024) dismissing his applications for variance of child and spousal support obligations. Justice Lamb declined to vary Dr. Garousi's obligations (aside from a minor variation with respect to extraordinary expenses) due to his failure to establish a material change in his financial circumstances. Justice Gibb-Carsley determined Dr. Garousi's second application was a collateral attack on the 2023 order and that he had once again failed to point to a material change justifying a variation.

- [2] The respondent objects to this Court hearing the appeal because Dr. Garousi has failed to comply with his child and spousal support obligations. In *Berry v. Berry* 2002 BCCA 129, Justice Lambert noted that "a party who wishes to appeal from a [support] order should make the payments ordered pending the hearing of the appeal" (at para. 1). The rule is not absolute and the Court will consider the interests of justice in determining whether the appeal should be heard.
- [3] A brief history of the proceedings provides context. On April 15, 2007, Dr. Garousi and the respondent were married in Alberta. Their only child was born in November 2007. Five years later, Dr. Garousi briefly moved to Türkiye while on a sabbatical from his position as a tenured professor at the University of Calgary.
- [4] In July 2013, the parties entered into a separation agreement (the "Agreement") that divided property and resolved issues of spousal and child support. On November 6, 2013, the Alberta Court of Queen's Bench issued a consent order incorporating the terms of the Agreement (the "Consent Order"). The respondent and the child of the marriage have since moved to Vancouver where they continue to reside.
- [5] In 2014, Dr. Garousi began working at a university in Türkiye. Thereafter, he remarried and in 2017, he moved to the Netherlands with his new spouse. In February of 2019, Dr. Garousi filed an application to vary support in Alberta, but he failed to pursue that application. In the summer of 2019, Dr. Garousi moved with his wife and their child to Northern Ireland--a reciprocating jurisdiction under the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 29. Neither Türkiye nor the Netherlands are reciprocating jurisdictions: *Interjurisdictional Support Orders Regulation*, B.C. Reg. 15/2003.
- [6] After he moved to Northern Ireland, Dr. Garousi filed applications in British Columbia to vary his support obligations. His applications coincided with enforcement undertaken in Northern Island. In October 2024, an order was made by a Belfast court requiring him to pay GBP 1,000 per month towards his support obligations. The respondent received the first of these payments in December 2024 and has received one payment approximately every month since. She asserts that these payments amount to approximately \$1,700 to \$1,800 CAD, and as of September 25, 2025, total \$18,578.73.
- [7] Dr. Garousi's first retroactive variation of child and spousal support application was dismissed by Justice Lamb. Dr. Garousi was ordered to pay costs in the amount of \$2,000 payable forthwith. His second application was dismissed by Justice Gibb-Carsley, who held that the application was a collateral attack on Justice Lamb's order. Dr. Garousi was ordered to pay costs in the amount of \$2,000 payable within 30 days of the date of the order.
- [8] He appealed the order of Justice Gibb-Carsley, which brought him into this Court. He was later granted an extension of time to appeal Justice Lamb's order.

- [9] During the period of 2013 until now, Dr. Garousi has largely failed to pay the child or spousal support he owed to the respondent under the Agreement and Consent Order. In the most generous interpretation, he paid \$7,600 in 2013 and nothing after that until he moved to Northern Ireland. The respondent submits he paid only \$500 that was attributable to support payments. The respondent agreed that she received just over \$7,000 from Dr. Garousi in 2013 but claims this money did not constitute support--rather it was money from their rental property. In any event, after taking into account the compelled payments, the record establishes that Dr. Garousi's combined arrears are now approximately \$270,797.27.
- [10] In the early stages of the appeal, the respondent did not have counsel. The appeal was set for hearing on January 10, 2025. The day prior to the hearing, Ms. McGoldrick contacted the Court's Registry and advised that she would be representing the respondent. She informed the Registry (and by correspondence to Dr. Garousi) that the respondent would object to this Court hearing Dr. Garousi's appeal because he had failed to pay any support for over a decade and he owed significant arrears. Alternatively, counsel advised that she would seek to adjourn the hearing.
- [11] At the hearing on January 10, 2025, counsel objected, based on non-compliance with a court order, to the appeal proceeding. The Court did not rule on the objection. Rather, the Court adjourned the appeal and the matter was sent to case management. The parties were unable to resolve the outstanding substantive issues despite the assistance of a case management judge and the appeal was rescheduled.
- [12] By notice of application filed October 16, 2025, the respondent re-asserted her objection to this Court hearing the appeal--based on his non-compliance with the Consent Order and the Agreement. Dr. Garousi delivered an affidavit in response to the objection. In his latest affidavit, Dr. Garousi attempts to counter the respondent's suggestion that he earns more money than represented in his various filings. Dr. Garousi does not explain why he could not comply with the support orders. Rather, he justifies his ongoing non-compliance by: (1) focusing on a perceived lack of fairness in the Consent Order and the Agreement incorporated into it; (2) attempting to explain his earnings, including corporate earnings; and (3) responding to the respondent's submission that his financial situation is inconsistent with an ability to pay support. In his affidavit, Dr. Garousi asserts that "the accurate and fair amount for 2014-2024 is approximately \$80,925 CAD" based only on child support and his assertions of earnings over the years, ignoring entirely the Consent Order.
- [13] At the outset of the hearing, the Court requested that Dr. Garousi provide his response to the application about compliance. Despite ample notice from the respondent about her position, Dr. Garousi did not provide a reason why he could not comply with the support order in his responding affidavit. Significantly, he did not provide a reason, convincing or otherwise, explaining why he has not made any attempt to pay even a portion of the arrears or the ongoing child support obligation.

- [14] At the hearing this morning, Dr. Garousi stated he could not pay because of his dire financial situation and because he was concerned that the respondent would not be truthful about receiving payments from him.
- [15] Justice Donald, in *Bullock v. Bullock*, 2008 BCCA 162, explained the Court's policy:
- [3] This notice is in accordance with the Court's policy expressed in such cases as *Elensky v. Elenskaya*, [1993] B.C.J. No. 2144, and *Berry v. Berry*, 2002 BCCA 129, [2002] B.C.J. No. 417.
- [4] In *Berry*, Lambert J.A. said for the Court:
- [1] LAMBERT J.A.: It is an important rule that a party who wishes to appeal from a spousal maintenance or child maintenance order should make the payments ordered by the Supreme Court of British Columbia pending the hearing of the appeal. In several cases the court has refused to hear an appeal where a maintenance order has been flouted.
- [2] Of course, the rule is not an absolute one, and in cases where the interests require it, usually the interests of justice as they affect the respondent, the court will hear the appeal.
- [16] It is within the discretion of the Court to refuse to hear an appeal from a support order with which the appellant has failed to comply: see *Larkin v. Glase*, 2009 BCCA 321 at para. 30; *Hokhold v. Gerbrandt*, 2015 BCCA 268 at para. 10.
- [17] Where the appellant has provided a convincing explanation (see e.g., *Morey v. Morey*, 2017 BCCA 439) or where it is in the interests of justice (see e.g., *Berry* at para. 2), the Court may exercise its discretion in favour of hearing an appeal despite the appellant's non-compliance: see *de la Fuente v. Breen*, 2022 BCCA 424 at para. 10.
- [18] Dr. Garousi has not provided a convincing explanation for failing to make any payments from 2014 until December 2024. He asserts that his earnings were dramatically reduced after he left the University of Calgary and the respondent received the benefit of the properties pursuant to the Consent Order. He acknowledges that he should pay about \$80,000 but has not taken any steps to transfer even this reduced amount to the respondent.
- [19] Dr. Garousi's financial disclosure was found to be deficient before Justice Lamb and similarly inadequate before Justice Gibb-Carsley.

Justice Lamb specifically addressed this deficiency in her reasons, stating:

- [43] Dr. Garousi says his income was significantly less when he was a professor in Turkey from 2014 to 2017 and somewhat less when he was a professor in the Netherlands from 2017 to 2019. However, Dr. Garousi has failed to prove a material change in income prior to December 2019. In particular, Dr. Garousi failed to meet the onus on him to provide sufficient reliable evidence of his earnings and the then-current exchange rate in order to establish his Canadian-equivalent earnings for those years. He also failed to provide sufficient reliable evidence to establish that his lower salary was not one of choice.

[44] Dr. Garousi failed to prove what he earned prior to 2019 and the Canadian equivalent of his line 15000 income for the years 2014 to 2019. He failed to provide tax returns for the years 2014 to 2019. The payslips he attached to his affidavit were not in English, and he failed to provide admissible evidence of currency conversion rates.

[Emphasis added.]

[20] When Dr. Garousi filed his second variation application, he provided additional income information relating to 2023. However, he did not seek to provide additional financial evidence to support his bald assertions about his earnings in 2014-2019. In other words, he did not attempt to correct the deficiencies identified by Justice Lamb in her reasons.

[21] In addition, Dr. Garousi failed to comply with Justice Lamb's costs order (\$2,000 payable forthwith) or Justice Gibb-Carsley's costs order (\$2,000 payable within 30 days of the date of this order).

[22] In my view, it is not in the interests of justice to hear this appeal from two orders dismissing Dr. Garousi's application to vary the Consent Order, entered into over a decade ago, and by agreement.

[23] The respondent was required to raise their child with virtually no financial support from Dr. Garousi after the divorce. Their daughter remained a child of the marriage and the support obligations for her remain intact. Since 2013, he has not made any voluntary payments. Through a foreign enforcement proceeding made possible by Dr. Garousi move to a reciprocating jurisdiction, the respondent has recently received some assistance. Even with enforcement, the amount received is well less than 10% of the arrears. The respondent has been required to respond to the two applications in the Supreme Court and has made multiple appearances in this Court. She received costs orders following both applications and Dr. Garousi has failed to comply with the costs orders.

[24] Dr. Garousi has not given a satisfactory reason why he continues in breach of the Consent Order.

[25] I would grant the respondent the application and I would dismiss the appeal.

[26] GRIFFIN J.A.: I agree.

[27] GOMERY J.A.: I agree.

[28] GRIFFIN J.A.: The respondent's application to dismiss the appeal is granted. The appeal is dismissed.

"The Honourable Justice Winteringham"

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Prepared on 29 October 2026 · Esheria