

CANADA / JUDGMENT

Garwasiuk v. Loewen

2025 BCSC 997

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 997 Garwasiuk v. Loewen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Garwasiuk v. Loewen,

2025 BCSC 997

Date: 20250603

Docket: E139075

Registry: Kelowna

Between:

Kory Damian Garwasiuk

Claimant

And

Tanya Janelle Loewen also known as Tanya Janelle Peters

Respondent

Before: The Honourable Justice Hewson

Reasons for Judgment

Appearing in Person:

K.D. Garwasiuk

Appearing in Person:

T.J. Loewen

also known as

T.J. Peters

Place and Dates of Trial:

Kelowna, B.C.

April 29, 30, May 1 and 2, 2025

Place and Date of Judgment:

Kelowna, B.C.

June 3, 2025

Introduction

[1] This is a ruling on an issue in a family law claim.

Nature of the Case

[2] The claim was brought by Kory Garwasiuk against Tanya Loewen. Mr. Garwasiuk and Ms. Loewen were once engaged to be married, and lived for a period of time in the same residence on Hidden Hills Drive, Kelowna, BC ("Hidden Hills Residence"). After he moved out of the Hidden Hills Residence, Mr. Garwasiuk claimed under the Family Law Act for equal division of family property and family debt, including an interest in the property, and other relief.

Parties

- [3] Kory Garwasiuk is the claimant. For many years, he lived in a residence in West Kelowna on Shamrock Drive. He had worked in a variety of trades, including as a hunting guide. Mr. Garwasiuk's father and mother also lived in the Okanagan. In 2018, he met Ms. Loewen and they started dating in November of that year. He was about 40 years old at the time.
- [4] Tanya Loewen is the respondent. She is the mother of two children from a marriage that has now ended. She and her children lived in the residence on Hidden Hills Drive. Ms. Loewen was the owner and operator of a chain of stores operating in several different shopping malls. She was in her late thirties when she met Mr. Garwasiuk. Her children were aged about 3 and 5.
- [5] Mr. Garwasiuk says that he sold his residence on Shamrock Drive in January 2020 and moved into Ms. Loewen's residence on Hidden Hills Drive. He says that from that time until he moved out in the summer of 2022, he and Ms. Loewen were spouses because they lived in a marriage-like relationship for a continuous period of at least two years. Mr. Garwasiuk points in particular to the energy he put into maintaining the home and working for her business, as well as the monthly amounts he paid to her for his share of household

expenses.

- [6] In response, Ms. Loewen says that the evidence fails to prove that on a balance of probabilities. In particular, she says that after a brief engagement in the spring of 2020, she no longer had any intention of entering into a lasting relationship with Mr. Garwasiuk. She says that they had no financial interdependence and their lifestyle included very few social interactions. She says that they lived together as landlord and renter rather than as a couple, and that after the spring of 2020 she was almost never intimate with him in the sense of engaging in sexual relations, sharing personal information, or feeling a sense of fidelity towards him.

Issues

- [7] Mr. Garwasiuk's claim initially raised a number of issues. A trial management conference held was on March 10, 2025. Associate Judge Schwartz ordered that the issues be bifurcated. Therefore, the question that came on for trial before me was just whether the parties were spouses within the meaning of the Family Law Act.
- [8] That question can be broken into two issues:
- a) Did Mr. Garwasiuk and Ms. Loewen live in a marriage-like relationship?
 - b) If so, did they live in a marriage-like relationship for a continuous period of at least two years?

General Outline

- [9] I will review the applicable law, and then apply it against the information admitted as evidence on the trial. I will then be able to determine whether Mr. Garwasiuk has met the burden of proof that falls on the claimant.

Overview of Applicable Law

- [10] Section 3 of the Family Law Act provides as follows:

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

- (a) is married to another person, or
 - (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, or
 - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
- (2) A spouse includes a former spouse.
- (3) A relationship between spouses begins on the earlier of the following:

- (a) the date on which they began to live together in a marriage-like relationship;
- (b) the date of their marriage.
- (4) For the purposes of this Act,
 - (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and
 - (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.

[11] In the circumstances of the case before me, the relevant portions of that section mean that Mr. Garwasiuk and Ms. Loewen would have been spouses if the evidence proved on a balance of probabilities that they had lived together in a marriage-like relationship for a period of at least two years. They were engaged, but never married, and they had no children together.

[12] Determining whether a relationship was marriage-like is a holistic exercise, and not a reference to any checklist. All of the relevant factors should be considered and weighed, but none of them are treated as being determinative of the question: *Dey v. Blackett*, 2018 BCSC 244 at para 192.

[13] The subjective shared intentions of the parties are important, but an absence of shared intentions is also important. Where a shared intention to pursue a relationship of indeterminate length is missing, the likelihood of finding that the relationship was marriage-like is greatly diminished. Objective evidence of the parties' interactions with each other, their domestic and financial interdependence and their day-to-day lives will also shed light on the question of whether the relationship was marriage-like.

Law of Credibility

[14] Mr. Garwasiuk and Ms. Loewen both testified at the trial. They both called their fathers to the stand, and Ms. Loewen also called her brother and one of her employees. That raises the question of the credibility of the witnesses, and the weight to be given to their evidence.

[15] The credibility of a witness refers to their honesty or truthfulness. Reliability refers to their accuracy. While related, these are distinct concepts. For example, a truthful witness may be mistaken about what they believe they saw or heard.

[16] The fundamental approach to assessing the credibility of a witness and the reliability of their evidence was articulated in *Faryna v. Chorny*, 1951 CanLII 252, [1952] 2 D.L.R. 354 (B.C.C.A.) at 357:

The test must reasonably subject his story to an examination of its consistency with the probabilities that surround the currently existing conditions. In short, the real test of the truth of the story of a witness in such a case must be its harmony with the preponderance of the probabilities which a practical and informed person would readily recognize as reasonable in that place and in those conditions.

- [17] All of the witnesses could be said to have had a personal interest in the outcome of the case. As such, I have to be alert to any indications in their evidence of intentional or unintentional bias towards one party or the other. The evidence of a witness with a personal interest in the outcome of the case is not automatically discredited, but must be weighed with appropriate caution.

Findings of Credibility

- [18] Mr. Garwasiuk and Ms. Loewen both testified on their own behalf. As they appeared without the benefit of counsel to direct their evidence in chief, they both relied on notes to testify from the stand. They were, however, cautioned against reading statements prepared before trial.
- [19] Both of them appeared to be trying to give evidence in a forthright manner, in spite of the emotions involved. Both of them were, on occasion, complimentary of the other. For example, Mr. Garwasiuk testified that Ms. Loewen was a good mother, and Ms. Loewen testified that she and her children appreciated much of the work that Mr. Garwasiuk did around their home while he was living there.
- [20] However, Mr. Garwasiuk testified that he had suffered dozens of concussions, and that he had a terrible memory. That makes it difficult to accept his evidence of past events where it is contradicted by the evidence of other witnesses, including Ms. Loewen.
- [21] Mr. Garwasiuk's father, Ken Garwasiuk, displayed a bias against Ms. Loewen. When asked if she was suffering a concussion following a particular incident, he scornfully denied any such knowledge of having asked her that question. Copies of text messages were then put to him that established that he had been aware. When asked by the claimant whether there was a marriage-like relationship, he answered, "Yes. Absolutely." However, in cross-examination he testified, "I never got involved with you guys that much. I tried to stay out of your business."
- [22] Jayson Loewen, the brother of Ms. Loewen, testified by video. His testimony was largely focused on the presence or absence of Mr. Garwasiuk from the Loewen family events during the time period in question. Although he clearly had a personal interest in his sister's case, his evidence was balanced and fair and he appeared to have resisted any bias he may have felt.

[23] Kylie Carlson, a long-time employee of Ms. Loewen, testified in person. Her testimony was largely focused on what she had observed while working in her employer's home. While there is a clear potential for bias in favour of her employer, her evidence was largely restricted to descriptions of events that she had observed. Like Jayson Loewen, she appeared to have resisted any bias she may have felt.

Was There a Marriage-like Relationship?

[24] Mr. Garwasiuk and Ms. Loewen went on their first date on November 20, 2018. Over Christmas that year he spent a considerable amount of time with her and her children, and in 2019 their relationship grew into what was clearly a boyfriend/girlfriend relationship.

[25] Over the course of 2019 they travelled together to a spa on Vancouver Island, a resort in Mexico, and to see her family in Calgary. In June 2019, Mr. Garwasiuk put his home on Shamrock Drive up for sale. He began to move some of his personal property to her residence, although he and Ms. Loewen disagreed on how much.

[26] By about January 2020, Mr. Garwasiuk had moved into Ms. Loewen's home. On February 6, 2020, he purchased a diamond engagement ring. In March, on another trip to Mexico, he proposed and she accepted. The COVID pandemic broke out before they returned to Canada, and they were required to quarantine together for two weeks. Mr. Garwasiuk had by now moved into her home, and they had purchased a vehicle together. In her testimony, Ms. Loewen conceded that in the months that followed the relationship may have been marriage-like.

[27] I am satisfied that Mr. Garwasiuk and Ms. Loewen lived together in a marriage-like relationship. The remaining issue is whether they did so for a continuous period of at least two years.

How Long Did They Live in a Marriage-like Relationship?

[28] Ms. Loewen's position is that she lost any intention of committing to a long-term, indeterminate relationship with Mr. Garwasiuk within a few months of returning from Mexico, because of changes in his behaviour towards her and her children and because of her concerns about the depth of his commitment. Mr. Garwasiuk's position is that their relationship was strained, but that they were working towards repairing it and that they both intended to follow through on their engagement, get married and raise a family together.

[29] Ms. Loewen testified that after they returned from Mexico, Mr. Garwasiuk became increasingly agitated and verbally abusive towards her. She said that he suddenly could not tolerate her children. He started to push them around, and on one occasion he pushed her daughter to the ground. She discovered unexplained bruises on her son.

- [30] She testified that she confronted him about this behaviour, and demanded that he stop. They argued. She said that he told her that he had not meant everything he said when he proposed in Mexico, and that he had said those words because she expected him to. She decided, she testified, that a commitment to him would not be possible for her.
- [31] Mr. Garwasiuk moved into a self-contained basement suite in Ms. Loewen's home by the summer of 2020. She said that if it were not for the COVID pandemic she would have required him to leave.
- [32] In his evidence, Mr. Garwasiuk was focused on his financial contributions to the household. He had paid about \$2,500 per month toward household expenses, although the exact amount was sometimes more and sometimes less. He had also contributed a large amount of money towards the purchase of a recreational vehicle, and participated as well in the purchase of a pickup truck. He had performed many maintenance tasks around the household.
- [33] Mr. Garwasiuk testified before Ms. Loewen, but all of the significant parts of her testimony were put to him. In his evidence, Mr. Garwasiuk disputed few of the details put to him by Ms. Loewen in cross-examination.
- [34] The evidence of Jayson Loewen and Kylie Carlson tends to support Ms. Loewen. Mr. Loewen said that by the fall of 2020, his sister was no longer wearing the engagement ring. At an online birthday party on November 21, 2020, he did not see Mr. Garwasiuk at all. He did not wonder where he was. The next year, when the Loewen family organized a fortieth birthday party for Ms. Loewen, no one thought to involve Mr. Garwasiuk. It did not cross their minds, Mr. Loewen explained, because they were no longer dating.
- [35] Kylie Carlson said that when she stayed at the house to care for Ms. Loewen's children, Mr. Garwasiuk was living in the basement. She stayed in Ms. Loewen's bedroom. She never saw any of Mr. Garwasiuk's possessions in the bedroom, or in the en suite. Ms. Carlson did the laundry and the shopping for Ms. Loewen and her children. She said Mr. Garwasiuk did his own laundry. After 2020, she never shopped for Mr. Garwasiuk. By the summer of 2020, she was aware that Ms. Loewen was seeing other men. This did not strike her as unusual. It did not seem to Ms. Carlson that Ms. Loewen was in a relationship with Mr. Garwasiuk.
- [36] Except for the fact that Mr. Garwasiuk was employed by Ms. Loewen's business and that they purchased vehicles together, there was no evidence that Ms. Loewen and Mr. Garwasiuk had intermingled their financial or family affairs, or of any financial interdependence. He was not aware that she had deferred payment of her mortgage during the pandemic. Neither of them made the other the beneficiary of any will or insurance policy. Ms. Loewen appointed her brother Jayson as her power of attorney. He was also named as the guardian of her children in the event of her death.
- [37] Nor was there any evidence of any intimate relationship after the late spring or early summer of 2020. As a reaction to the fights that they had engaged in, Ms. Loewen testified that she limited the amount of personal information that she provided to Mr. Garwasiuk.

She did not discuss any medical matters. They hardly ever travelled or vacationed together, and when they did, they slept in different places. Within the house they both occupied, it was clear that Mr. Garwasiuk's place was in the basement and that he was only welcome in the main living area upon invitation.

Conclusion

- [38] This is Mr. Garwasiuk's application. He asserts that he and Ms. Loewen were in a marriage-like relationship for a continuous period of at least two years. The burden on him is to prove what he asserts on the balance of probabilities. When the objective evidence is combined with Ms. Loewen's evidence of her subjective intentions, I am satisfied that the evidence falls far below what Mr. Garwasiuk was required to prove. He has failed to meet the burden of proof.
- [39] The evidence establishes, instead, that the marriage-like relationship between Mr. Garwasiuk and Ms. Loewen lasted from March 2020 no longer than the summer of that year. They were not spouses.

Effect on Balance of Mr. Garwasiuk's Claim

- [40] All of the remaining relief sought in Mr. Garwasiuk's notice of family claim was contingent upon successfully establishing that he and Ms. Loewen were spouses. Since he has been unable to do that, the balance of the claim is dismissed.
- [41] Any certificate of pending litigation registered by Mr. Garwasiuk against the title to the Hidden Hills Residence will be cancelled.
- [42] Ms. Loewen counterclaimed for orders including child support and special or extraordinary expenses. Since Mr. Garwasiuk was not her spouse, there is no basis for those claims and they are dismissed.
- [43] Ms. Loewen is entitled to her costs.

"Hewson J."

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