

CANADA / JUDGMENT

Gass v. Hill

2025 BCSC 2076

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Supreme Court of British Columbia

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2025 BCSC 2076 Gass v. Hill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gass v. Hill,

2025 BCSC 2076

Date: 20251006

Docket: E70687

Registry: New Westminster

Between:

Jennifer Anne Gass

Claimant (Appellant)

And

Brian Matthew Hill and Brian Hill as Litigation Representative

of the Estate of Sharon Hill, deceased

Respondent (Respondent)

Before: The Honourable Mr. Justice Brongers

On appeal from: Decision of an Associate Judge of the British Columbia Supreme Court, August 19, 2025 (Gass v. Hill, 2025 BCSC 1602)

Oral Reasons for Judgment

In Chambers

The Appellant, appearing in person:

J.A. Gass

Counsel for the Respondent:

J.J. Morneau

Place and Date of Hearing:

New Westminster, B.C.

October 2, 2025

Place and Date of Judgment:

New Westminster, B.C.

October 6, 2025

Introduction

- [1] THE COURT: This is an appeal of an Associate Judge's order, dated August 19, 2025, dismissing an application for interim care and possession of a companion animal pending trial. The Associate Judge's reasons for judgment are indexed as *Gass v. Hill*, 2025 BCSC 1602.

Background

- [2] The appellant is Jennifer Gass. She is the claimant in the underlying family claim. The respondent is Brian Hill.
- [3] Ms. Gass alleges that she and Mr. Hill were in a marriage-like relationship of sufficient duration to qualify as spouses, and that she should be awarded certain relief under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. While Mr. Hill disagrees with Ms. Gass' legal position, many of the background facts regarding the claim are not in dispute.
- [4] It is agreed that the parties finally separated in late January 2024 when Ms. Gass left the home in Cranbrook where she used to reside with Mr. Hill. Ms. Gass then relocated to the Greater Vancouver area, while Mr. Hill stayed in Cranbrook.
- [5] At the time of separation, four dogs were living in the Cranbrook home. One of them is named King. All of the dogs, including King, stayed with Mr. Hill in Cranbrook after Ms. Gass left, and they all remain there today.
- [6] Ms. Gass filed her notice of family claim on July 25, 2024. It made no mention of seeking any relief in respect of any of the dogs. On October 22, 2024, Ms. Gass amended her claim. It now includes requests for orders regarding possession and ownership of all four dogs. Mr. Hill subsequently filed pleadings contesting Ms. Gass' entitlement to this relief and seeking his own orders in respect of the dogs. It is clear that the issue of where the dogs are going to reside will be a significant one at trial, which has yet to be scheduled.

- [7] On May 21, 2025, Ms. Gass filed an application for an interim order that she be given sole care and exclusive possession of King until trial. Mr. Hill filed an application response opposing such relief on May 30, 2025.
- [8] The application was heard by the Associate Judge over two days on July 29 and August 7, 2025. It was dismissed on August 19, 2025.
- [9] The reasons of the Associate Judge indicate that she first rejected Mr. Hill's two preliminary objections to Ms. Gass' application. The Associate Judge did not agree that Ms. Gass cannot seek relief under the FLA since the parties were not "spouses" under the legislation, finding that Ms. Gass had made out a prima facie case to that effect. The Associate Judge also did not agree with Mr. Hill that the Court lacks jurisdiction to make interim FLA orders about companion animals.
- [10] The Associate Judge then turned to the substance of Ms. Gass' application. In particular, she considered all of the enumerated factors set out at s. 97(4.1) of the FLA, in order to decide whether an interim companion animal possession order should be made in this case.
- [11] Commendably, this portion of the Associate Judge's reasons is both comprehensive and relatively succinct, such that it is worth reiterating here in its entirety (although for clarity on appeal, I will identify the parties by their names rather than using the terms "claimant" and "respondent"):
- [24] Having addressed the first two grounds of objection, I turn to the factors to be considered under s. 97(4.1):
- a) the circumstances in which the companion animal was acquired - this factor weighs in favour of [Ms. Gass], as she owned King prior to the commencement of the parties' relationship;
 - b) the extent to which each spouse cared for the companion animal - this is a neutral factor. [Ms. Gass] solely cared for King after her separation from [her previous partner] and prior to moving in with [Mr. Hill]. During their relationship, both parties cared for King. Since the parties' separation, King has been solely cared for by [Mr. Hill];
 - c) any history of family violence - this is not a factor;
 - d) the risk of family violence - this is not a factor;
 - e) a spouse's cruelty, or threat of cruelty, toward an animal - this is not a factor;
 - f) the relationship that a child has with the companion animal - the parties have no children, and [Ms. Gass]'s child has no relationship with King. Accordingly, this is not a factor;
 - g) the willingness and ability of each spouse to care for the basic needs of the companion animal - this is a neutral factor, as both parties are willing and able to care for King's basic needs; and

- h) any other circumstances the court considers relevant - these are set out below.
- [25] In my view it is relevant that this application was filed some 16 months after separation and did not come on for hearing until two months later. [Ms. Gass] has had absolutely no contact with King for the past 18 months. She had sufficient trust in [Mr. Hill]'s ability to care for King that she left King in his care when she moved out in January 2024.
- [26] [Ms. Gass] attempted to negotiate a resolution, first directly and then through counsel, but without success. The physical distance between the parties has made visits a practical impossibility. Regardless of the reason, the fact remains that King has had no contact with [Ms. Gass] since the parties' separation.
- [27] In the intervening 18 months, King has been living with [Mr. Hill] and the parties' three other dogs. There is no evidence that King is anything other than well cared for. To the contrary, he has acreage to roam and the company of other dogs with whom he is well bonded. [Mr. Hill] has attended to King's veterinary needs. [Ms. Gass]'s proposal would have King move across the province into a townhouse with [Ms. Gass]'s current partner, their infant child, and another dog whom he has never met. He would be removed from the home that he has known for the past 4 years into a completely new environment.
- [28] This is an application for an interim order. Both parties appear to be good "dog parents". Either party may end up being successful at trial in their claim for ownership of King. If I were to grant [Ms. Gass]'s application and [Mr. Hill] is eventually successful at trial, King would then be uprooted and relocated again.
- [29] In the circumstances of this case, given the passage of 18 months without any contact with [Ms. Gass], it is not in King's interests to remove him from the care of [Mr. Hill] on an interim basis.
- [30] [Ms. Gass]'s application for interim care and possession of King is dismissed.
- [12] Ms. Gass filed a notice of appeal from the Associate Judge's decision on September 2, 2025. The appeal was heard on October 2, 2025.
- [13] Ms. Gass has been represented by counsel throughout these proceedings, including when her application was presented before the Associate Judge, until she filed a notice of intention to act in person on August 27, 2025. Accordingly, she represented herself at the appeal hearing. Mr. Hill was represented by counsel.
- [14] At the conclusion of the hearing, I took this matter under reserve until today so that I could consider the parties' submissions and the voluminous documentary material that they presented.

Issues and Framework For Analysis

- [15] Ms. Gass raises numerous grounds of appeal. She listed 12 in her notice of appeal and then purported to add six more in her statement of argument. Yet, her notice of appeal indicated a hearing time estimate of just two hours.
- [16] The appeal was assigned to me as a chambers referral in the afternoon of October 2, 2025. I indicated to Ms. Gass that there was then only one and a half hours of hearing time available, and I gave her the option to adjourn the appeal so that she could have more time to present it. Ms. Gass declined, insisting that she would prefer to proceed immediately. I agreed to do so, but with the understanding that Ms. Gass could not then reasonably expect the Court to consider all of her written arguments that she would not have time to discuss orally.
- [17] I will therefore not be expressly addressing all of Ms. Gass' grounds of appeal in these reasons. Instead, my reasons will focus on just those grounds of appeal that were properly raised in the notice of appeal and which she explained to me orally at the hearing.
- [18] I will also not be addressing any of Ms. Gass' grounds of appeal that are founded upon new arguments and new evidence that were not made or presented before the Associate Judge. This is an appeal, not a "do-over". My role as a judge sitting in appeal is to review the reasons of the Associate Judge and the record before her to ascertain whether her decision is clearly wrong. If it is not, then I cannot interfere with it. In other words, I am not conducting a reconsideration of the Associate Judge's decision, and I cannot simply make my own decision about which of the parties should care for King until the trial.
- [19] The grounds of appeal Ms. Gass wishes to raise that are founded upon evidence that was not before the Associate Judge are particularly problematic. Unless leave to file new evidence on appeal is sought and granted first, a judge sitting in appeal cannot consider such evidence when assessing whether an associate judge made a reviewable error in their decision that is under appeal.
- [20] In this case, Ms. Gass did not bring an application for leave to file new evidence, even though Mr. Hill indicated in his statement of argument that he was objecting to the introduction of such evidence by Ms. Gass on both substantive and procedural grounds.
- [21] There is a further difficulty in that the new material that was not presented to the Associate Judge has not been properly tendered by means of an affidavit.
- [22] At the hearing, Ms. Gass suggested that such deficiencies should be overlooked because she is now a self-represented litigant. However, this would not be fair to Mr. Hill, who has chosen to continue to be represented by counsel. It is also not fair to the Court which must manage litigation files equitably and efficiently for the collective benefit of all. While the Court will grant a margin of leniency to self-represented litigants in order to ensure fairness, this does not relieve those who represent themselves from their obligation to comply with the rules of court: *Sandhu v. Mangat*, 2025 BCSC 920 at para. 47.

- [23] That said, there were a number of grounds of appeal that were properly raised by Ms. Gass and in respect of which she provided helpful and cogent submissions. They will be addressed in these reasons.
- [24] As several of the grounds overlap with each other, I find that they can be fairly summarized under three categories:
- 1) improper consideration of the length of King's separation from Ms. Gass;
 - 2) improper consideration of King's present circumstances; and
 - 3) improper weighing of the evidence and balancing of the statutory factors.
- [25] After briefly setting out the applicable standard of review and the law on companion animal orders, I will discuss these three categories of alleged errors in turn.

Analysis: Standard of Review and Applicable Law

- [26] The standard of appellate review that applies to interim orders issued by associate judges (formerly known as masters) is well established and has often been stated in the jurisprudence. It is the "clearly wrong test". One such formulation of the test was written by Justice Mayer, then of this Court, in *Jagpal v. Jagpal*, 2018 BCSC 1698 at para. 19. I reiterate it here, substituting the word "master" with "associate judge" to reflect the title change that occurred in January 2024:
- [19] The application of the clearly wrong test involves a high degree of deference to the decision of [an associate judge]. [An associate judge's] decision can only be found to be clearly wrong where the appellant can demonstrate, with necessary reference to the [associate judge's] reasons, that the [associate judge] did not consider relevant facts, issues and relevant law - which resulted in a flawed legal analysis
- [27] There is also no dispute regarding the test to be applied when considering an application for an order, be it interim or final, to declare who has ownership of or the right of possession to a companion animal, such as a pet dog. It involves a consideration of the following factors set out at s. 97(4.1) of the FLA:
- (a) the circumstances in which the companion animal was acquired;
 - (b) the extent to which each spouse cared for the companion animal;
 - (c) any history of family violence;
 - (d) the risk of family violence;
 - (e) a spouse's cruelty, or threat of cruelty, toward an animal;
 - (f) the relationship that a child has with the companion animal;

- (g) the willingness and ability of each spouse to care for the basic needs of the companion animal;
- (h) any other circumstances the court considers relevant.

Analysis: Length of King's Separation From Ms. Gass

[28] Ms. Gass' primary argument is that the Associate Judge erred by founding her decision in large part on the fact that Ms. Gass had not had any contact with King since the time of separation, a period of approximately 18 months at the time of the hearing. She argues that this was an error because this period of separation was "manufactured" by Mr. Hill and his counsel through their actions and conduct.

[29] Ms. Gass acknowledges that she temporarily left King with Mr. Hill when they separated out of necessity, but understood that they would subsequently negotiate a mutually acceptable arrangement regarding King's custody. When that did not happen, Ms. Gass was precluded from bringing her application sooner for various reasons. Ms. Gass says that it was wrong for the Associate Judge to attribute this delay to her and to then allow Mr. Hill to continue to possess King pending trial because of the delay.

[30] At first blush, I have some sympathy for Ms. Gass' argument regarding the fairness of "rewarding" a party who denies access to a companion animal sought by another party with an order that effectively authorizes a continuing denial of that access, on the basis that a change to the status quo would now be undesirable. However, it appears from her reasons that the Associate Judge was alive generally to this concern, but did not find it determinative in the circumstances of this case.

[31] In particular, the Associate Judge found that:

- a) when Ms. Gass left Mr. Hill in January 2024, she did not have a place to stay that could accommodate King and left him in the care of Mr. Hill on a temporary basis;
- b) the parties attempted without success to negotiate a more permanent resolution of the issue of King's care;
- c) there is now a significant geographical distance between the parties' residences;
- d) regardless of the reasons why, King has had no contact with Ms. Gass for 18 months; and
- e) if responsibility for the care of King were to be awarded to Ms. Gass now but to Mr. Hill after trial, King would be uprooted and relocated twice.

[32] As such, the Associate Judge concluded that it is not in King's interests to remove him from Mr. Hill's care on an interim basis.

[33] On my review of the record before her, I cannot say that the Associate Judge was clearly wrong in so concluding. In particular, all of these factual findings are supported by the evidence. Furthermore, the Associate Judge was not clearly wrong to take into account the

best interests of the dog as a relevant circumstance to be considered. To the contrary, given the legislative amendments to the FLA which provide that companion animals are not to be treated as ordinary chattels, an animal's best interests as a sentient being may certainly be relevant to a s. 97(4.1) analysis.

[34] In addition, while the Associate Judge's reasons do not say so expressly, it is also apparent that she was not persuaded by Ms. Gass' assertions to the effect that the 18-month delay was somehow "manufactured" by Mr. Hill. This is not clearly wrong either. In particular, I was not directed to any persuasive evidence that was before the Associate Judge as to why Ms. Gass was prevented from bringing this application shortly after she was in a position to accommodate King at her new home in Greater Vancouver. As for the parties' attempts to settle the issue, there is also no indication that Ms. Gass could not have filed her application sooner and then continued to negotiate with Mr. Hill while it was pending.

[35] In sum, I am of the view that this primary aspect of Ms. Gass' appeal is unfounded.

Analysis: King's Present Circumstances

[36] The secondary aspect of Ms. Gass' appeal relates to the Associate Judge's findings to the effect that King is being well cared for at Mr. Hill's residence in Cranbrook, a factor militating in favour of King remaining there until trial and not being subjected to the uncertainty of a new environment at Ms. Gass' residence in Greater Vancouver at this time.

[37] Once again, I can see nothing clearly wrong with the Associate Judge's analysis of this question. It is supported by the evidence in the record. While the relative suitability of the current conditions under which a companion animal is presently being cared for and the anticipated conditions under which it will be cared for if it is relocated is not an expressly enumerated factor under s. 97(4.1) of the FLA (although arguably it may fall within 97(4.1)(g)), it is a circumstance that the court can consider to be relevant under s. 97(4.1)(h).

[38] I therefore find that this secondary aspect of Ms. Gass' appeal is also unfounded.

Analysis: Weighing of Evidence and Balancing of Factors

[39] The final aspect of Ms. Gass' appeal that I will comment on expressly in these reasons is her allegation that the Associate Judge improperly weighed the evidence before her and failed to properly balance the s. 97(4.1) FLA factors.

[40] Simply put, such an argument cannot be successfully raised on appeal of an interim order issued by an Associate Judge that is entitled to deference on a clearly wrong standard. It is effectively an invitation to the appeal judge to reassess and reweigh the evidence in order to reach a different conclusion than that of the associate judge. While such an exercise may be done on a reconsideration at which the judge adjudicates the original application anew, it cannot be done on an interim order appeal.

- [41] Before concluding, however, I will also comment briefly on three other arguments made by Ms. Gass which, in my view, fall under this heading of "Weighing of Evidence and Balancing of Factors".
- [42] First, Ms. Gass alleges that the Associate Judge candidly acknowledged at the hearing that "this was her first companion animal case". Ms. Gass then suggested that this "admitted inexperience" may explain why, in her submission, there was an improper weighing of evidence and statutory factors leading to reviewable error. This argument is completely devoid of merit. A judicial decider's reasons are not deserving of heightened scrutiny on appeal because the area of law being considered is novel. Similarly, the extent of appellate deference to be afforded by a judge on appeal to a first instance decider is not dependent on their relative experience or expertise.
- [43] Second, Ms. Gass takes issue with the adequacy of the Associate Judge's reasons, asserting that they do not grapple with and weigh all of the evidence and arguments raised below. This, too, is an argument that must be rejected. It is trite law that reasons for judgment need not address every piece of evidence and every argument raised. Similarly, the length of a court decision does not necessarily have to match the length of the submissions made to the court.
- [44] Thirdly, Ms. Gass asserted that there was a certain duplication in some portions of the two affidavits tendered by Mr. Hill for the application. Ms. Gass submitted that, as a result, the Associate Judge erred by affording greater weight to this duplicative evidence based on its volume, in spite of its limited probative value. However, this purely speculative argument finds no support in the reasons for judgment or otherwise, and is rejected as well.

Disposition

- [45] For all of these reasons, Ms. Gass' appeal is dismissed.
- [46] With respect to costs, counsel for Mr. Hill indicated that she had been instructed to request an award of special costs on the basis that Ms. Gass' appeal amounted to an abuse of process or was otherwise deserving of rebuke. However, she did not press the point in oral argument.
- [47] In my view, she was right not to do so. While Mr. Hill is entitled to a costs award as the successful party, I do not find that Ms. Gass' conduct during the appeal warrants a special costs award. As such, Mr. Hill will be awarded his ordinary costs of this appeal, payable by Ms. Gass in any event of the cause.

[48] That said, I was troubled by some of Ms. Gass' criticisms directed personally at counsel for Mr. Hill, even though counsel exercised commendable restraint by not expressly taking offence to them at the hearing. On my assessment of just the evidence that is validly before me, I can see nothing objectionable about counsel for Mr. Hill's conduct. I therefore recommend to Ms. Gass that she think very carefully before choosing to make personal criticisms about counsel for Mr. Hill in open court in the future.

[49] I want to thank you both for your helpful submissions. This matter is now concluded.

"Brongers J."

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