

CANADA / JUDGMENT

Gass v. Hill

2025 BCSC 1602

COURT

Supreme Court of British Columbia

DECIDED

19 August 2025

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2025 BCSC 1602 Gass v. Hill

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Gass v. Hill,

2025 BCSC 1602

Date: 20250819

Docket: E70687

Registry: New Westminster

Between:

Jennifer Anne Gass

Claimant

And

Brian Matthew Hill and Brian Hill as Litigation Representative of the Estate of Sharon Hill,
deceased

Respondents

Before: Associate Judge Hughes

Reasons for Judgment

Counsel for Claimant:

M.K. Kooner

Counsel for Respondent, Brian Matthew Hill, in his personal capacity:

J.J. Morneau

Place and Date of Hearing:

New Westminster, B.C.

July 29 and August 7, 2025

Place and Date of Judgment:

New Westminster, B.C.

August 19, 2025

- [1] The claimant seeks an order, pursuant to ss. 97(2)(a) and 216 of the Family Law Act [FLA], that she have interim ownership and possession of a dog named King.
- [2] There are certain facts that are not in dispute. King, a terrier cross, was purchased as a puppy in September 2017 by the claimant's then partner, D. When the claimant and D. separated in March 2018, they agreed that the claimant would retain sole ownership of King.
- [3] The parties commenced cohabitation in November or December 2020 (the exact date is in dispute) when the claimant and King moved into the respondent's residence in Surrey, BC. The Surrey residence was owned by the respondent's mother, and shortly thereafter she sold the Surrey property and purchased acreage in Cranbrook, BC. The parties moved with the respondent's mother to Cranbrook in or about June 2021.
- [4] The claimant lost her job in 2020, and she remained unemployed throughout the parties' cohabitation. During this time, the respondent was primarily responsible for King's expenses, including food, equipment and veterinary care. The claimant provided financial assistance as she could, sometimes with help from her parents. Both parties were involved in caring for King and the parties' other dogs.
- [5] The parties disagree about the extent of their involvement in caring for the dogs. Each claims to have been the person primarily responsible for the care and training of the dogs, including King. Each claims that the other neglected the dogs' care at times, putting the dogs' health and safety at risk. The incidents of alleged neglect are relatively minor isolated incidents, such as leaving a gate open allowing the dogs to get out of the fenced yard, and leaving a door open allowing the dogs to potentially access hazardous materials.
- [6] The discrepancies about who was the primary caregiver for the dogs cannot be resolved on affidavit evidence. However, I am satisfied that both parties were extensively involved in caring for King, and both are capable of doing so.

- [7] In May 2022, the claimant moved out of the parties' shared residence and took King and the parties' other dogs with her, without notice to the respondent. The claimant returned to the family home with the dogs in September 2022. The respondent characterizes this period as a separation of 102 days. The claimant says that the parties did not separate during this period, but rather that they just needed some time apart and that their spousal relationship was ongoing while she lived elsewhere.
- [8] The parties finally separated in January 2024, when the claimant again moved out of the parties' shared residence. Her evidence is that she did not have a place to stay that would accommodate King, so she left him in the care of the respondent on a temporary basis. The respondent says that he agreed to look after King, and that the parties never reached an agreement as to what would happen with King on a long-term basis. Both parties agree that King provided therapeutic assistance to the respondent's mother in the last months of her life. The respondent's mother died in September 2024.
- [9] The claimant is now settled in a new home in the lower mainland and wishes to have King returned to her care. She is residing in a two-bedroom townhouse with a new partner, C. The claimant and C. adopted a rescue dog in October 2024, and are the parents of a baby born in May 2025. The claimant's evidence is that King has always been a source of comfort to her and helps her cope with depression and anxiety.
- [10] The FLA was amended in 2023 to add specific provisions regarding ownership and possession of companion animals. Companion animals, as defined in s. 1, are no longer treated as ordinary chattels to be divided in a family law dispute. Although the legislation still treats companion animals as property, it now requires the court to consider a non-exhaustive list of factors when determining ownership and possession of a companion animal.
- [11] Section 97 of the FLA provides:
- 97 (1) For the purposes of giving effect to a division of property or family debt under this Part or Part 6 [Pension Division], the Supreme Court may
- (a) determine any matter respecting the ownership, right of possession, or division of the property or family debt, and
 - (b) despite sections 94 (2) [orders respecting property division] and 215 (2) [changing, suspending or terminating orders generally], and subject to subsections (3) to (4.3) of this section, as applicable, make any order that is necessary, reasonable or ancillary to give effect to the division.
- (2) Without limiting subsection (1), the Supreme Court may make an order to do one or more of the following:
- (a) declare who has ownership of, or right of possession to, property, including a companion animal;

- (b) require that title to a specified property granted to a spouse be transferred to, held in trust for, or vested in the spouse, absolutely, for life or for a term of years;
 - (c) require a spouse to pay compensation to the other spouse if property has been disposed of, transferred, converted, or exchanged into another form, or for the purpose of dividing the property;
 - (d) require partition or sale of property and payment to be made out of the proceeds of sale to one spouse or both in specified proportions or amounts;
 - (e) require property forming all or a part of the share of either or both spouses to be transferred to, held in trust for, or vested in a child;
 - (f) require a spouse to give security, in any form the court directs, for the performance of an obligation imposed by an order under this section, including a charge on property;
 - (g) require a spouse to waive or release in writing any right, benefit or protection given by section 23 of the Chattel Mortgage Act, R.S.B.C. 1979, c. 48, section 19 of the Sale of Goods on Condition Act, R.S.B.C. 1979, c. 373, or section 58 or 67 of the Personal Property Security Act;
 - (h) subject to subsection (3), declare that one spouse is responsible for payment of an item of family debt and must indemnify the other spouse for the item of family debt;
 - (i) require the sale of property for the purposes of paying an item of family debt;
 - (j) transfer property to a spouse.
- (3) An order in relation to family debt applies only as between the spouses and does not affect an agreement between a spouse and any other person.
- (4) Nothing in this section permits the Supreme Court to divide excluded property unless
- (a) division is permitted under section 96 [division of excluded property], or
 - (b) the excluded property is a companion animal.
- (4.1) In determining whether to make an order under subsection (1) respecting a companion animal, the Supreme Court must consider the following factors:
- (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.

(4.2) An order respecting a companion animal must not

- (a) declare that the spouses jointly own the companion animal, or
- (b) require the spouses to share possession of the companion animal.

(4.3) Sections 95 [unequal division by order] and 96 do not apply to the making of an order respecting a companion animal.

[12] The claimant says that the evidence regarding the factors set out in s. 97(4.1) supports an order that she have interim possession of King.

[13] The respondent opposes the order sought on three grounds.

[14] First, the issue of whether the parties were spouses as defined in s. 3 of the FLA is a live issue. If the respondent's characterization of the May to September 2022 period as a separation is correct, then the parties are not spouses as they did not live together in a marriage-like relationship for a continuous period of at least 2 years. If the parties are not spouses or former spouses, then the FLA does not apply to the division of the parties' property, including King.

[15] Second, the respondent says that even if the FLA does apply, there is no jurisdiction to make an interim order in relation to a companion animal. He took the position that as the legislative provisions regarding companion animals falls under Part 5 of the FLA, such an order can only be made at trial.

[16] Third, the respondent says that if the FLA applies and the court does have jurisdiction to make an interim order regarding possession of a companion animal, the considerations in s. 97(4.1) weigh in favour of the respondent.

[17] With respect to the issue of whether the parties were spouses, this court has decided in other contexts that interim relief is available so long as the applicant makes out a prima facie case that the parties were spouses. The court has followed this approach on applications for interim spousal support: *Yake v. Chamberlain*, 2014 BCSC 1582; *Holmes v. Fedoruk*, 2021 BCSC 442; and on applications for interim distribution of property pursuant to s. 89 and exclusive occupancy of the family home pursuant to s. 90: *Gallant v. Layco*, 2023 BCSC 2218.

- [18] There is a greater need for caution when, because of an interim order, money will be paid on a claim that may be without merit. Such funds may be difficult to recover after a trial if it is determined that the recipient was not entitled to the funds. In such cases, interim decisions should only be made where it can be said that a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, 2005 BCSC 1786 at paras. 14-17.
- [19] In my view, the same approach should be taken in this context. The applicant must make out a *prima facie* case that the parties were spouses before interim relief under the FLA can be considered. However, the same degree of caution is not required as would be the case on an application for interim spousal support or an interim distribution of funds. Here there is no risk of a wrongful payment of funds. The property in issue is the dog, King. The successful party will not receive funds but will instead be responsible for expenses incurred in caring for King. If the outcome changes after a trial, King can be returned.
- [20] The respondent has not raised any issue about the nature of the parties' relationship during their periods of cohabitation, but only about the length of the relationship in the context of the period in 2022 in which they did not cohabit. However, leaving the matrimonial home is not conclusive of an intention to end a relationship: *Lussier v. Ritchie*, 2023 BCSC 1817 at para. 27.
- [21] On the evidence, the claimant has made out a *prima facie* case that the parties were spouses and that the FLA provisions are therefore available on an interim determination of ownership and possession of King.
- [22] With respect to the jurisdiction of the court to make an interim order for possession of a companion animal, the claimant relies on s. 216 of the FLA, which provides in part:

Court may make interim orders

216 (1) Subject to this Act, if an application is made for an order under this Act, a court may make an interim order for the relief applied for.

- (2) In making an interim order respecting a family law dispute, the court, to the extent practicable, must make the interim order in accordance with any requirements or conditions of this Act that would apply if the order were not an interim order.
- [23] In her amended notice of family claim filed October 22, 2024, the claimant seeks an order that she be declared the sole owner of and have exclusive possession of King. Section 216(1) of the FLA permits the court to make an interim order for the relief applied for. This court can, therefore, make an interim order regarding care and possession of King.
- [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 the claimant, 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. The claimant solely cared for King after her separation from D. and prior to moving in with the respondent. During their relationship, both parties cared for King. Since the parties' separation, King has been solely cared for by the respondent;
- 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 the claimant'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. The claimant has had absolutely no contact with King for the past 18 months. She had sufficient trust in the respondent's ability to care for King that she left King in his care when she moved out in January 2024.

[26] The claimant 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 the claimant since the parties' separation.

[27] In the intervening 18 months, King has been living with the respondent 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. The respondent has attended to King's veterinary needs. The claimant's proposal would have King move across the province into a townhouse with the claimant'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 the claimant's application and the respondent 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 the claimant, it is not in King's interests to remove him from the care of the respondent on an interim basis.

[30] The claimant's application for interim care and possession of King is dismissed. As the successful party, the respondent is entitled to his costs in the cause.

"Associate Judge Hughes"

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