

CANADA / JUDGMENT

Ivany v. Matson

2025 BCSC 2303

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 2303 Ivany v. Matson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ivany v. Matson,

2025 BCSC 2303

Date: 20251124

Docket: E58482

Registry: New Westminster

Between:

Tammy Ann Ivany

Claimant

And

Dustin Ronald Matson

Respondent

Before: The Honourable Justice Maisonville

Reasons for Judgment

The Claimant, appearing in person:

T.A. Ivany

The Respondent, appearing in person:

D.R. Matson

Place and Date of Hearing:

Chilliwack, B.C.

October 21, 2025

Place and Date of Judgment:

New Westminster, B.C.

November 24, 2025

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OVERVIEW

- [1] This is an application brought by the claimant in this family law matter.
- [2] The parties separated in March 2019 after a relationship of almost 13 years, almost 12 years of which they were married.
- [3] The parties had one child, E.M., who was born on June 15, 2008. She was 13 years old when the parties made the September 2021 order, which will be reviewed in these reasons below. She is currently 17.
- [4] The claimant has a son from a previous marriage, D., who resided with the parties during their relationship and now resides with the respondent. He is 23.
- [5] During their relationship, the parties resided in Port Moody. In June 2021, the claimant moved to 108 Mile Ranch and has resided there since.
- [6] There are two previous orders in this matter which are relevant to this application.

- [7] In September 2021, the parties were divorced and reached a final consent order pertaining to ancillary relief including parenting, child support, and spousal support (the "September 2021 order"). The claimant applied to have the September 2021 order set aside, but was unsuccessful: *Ivany v. Matson*, 2022 BCSC 2515. Justice Gibb-Carsley ordered it to be entered on May 12, 2022.
- [8] Pursuant to paragraph 11 of the September 2021 order, the respondent's obligation to pay spousal support ceased in September 2025.
- [9] In December 2023, Justice Matthews made an order following cross-applications pertaining to parenting time, spousal support, and certain financial issues, including Registered Retirement Savings Plan ("RRSP") rollover provided for in the September 2021 order, among other issues (the "December 2023 order"): *T.A.I. v D.R.M.*, 2023 BCSC 2155. The December 2023 order includes provisions regarding the primary residence of E.M., parenting time, child support, and special and extraordinary expenses.
- [10] The December 2023 order provides for the parties' parenting time of E.M. between E.M.'s primary residence with the respondent in Port Moody and with the claimant in 108 Mile Ranch. In addition to the parenting time set out in the order, the order provides that the claimant may have additional parenting time with E.M. when the claimant visits the lower mainland, provided that she gives seven days' notice to the respondent.
- [11] In this application, the claimant seeks orders:
- 1) varying parenting time provided for in the December 2023 order;
 - 2) finding the respondent in breach of the September 2021 order for failing to undertake spousal rollover of his RRSP;
 - 3) varying the September 2021 order to extend spousal support past September 2025; and
 - 4) finding the respondent in breach of the September 2021 and December 2023 orders by making late spousal support payments.
- [12] For the reasons that follow, I dismiss the claimant's application, save for the application to vary parenting time, which I adjourn generally.

DISCUSSION

Parenting Time

- [13] The claimant seeks to vary the December 2023 order to provide her with unlimited parenting time with E.M. without notice to the respondent. The claimant wishes to move to the lower mainland and plans to exercise this parenting time in the lower mainland.
- [14] The best interests of E.M. determine what parenting time she should have with each parent.

- [15] The claimant alleges that E.M. is experiencing a decline in her mental health as a result of her recent separation from an abusive boyfriend. Since the separation, E.M. has received some mental health care for depression.
- [16] The claimant also expresses concerns with E.M.'s progress in school and, specifically, argues that E.M. has been absent a significant number of days in the current school year.
- [17] The claimant's position is that because she is on disability and does not work, she can be present for E.M., while the respondent cannot since he works full-time. Although the claimant experiences daily migraines and other health-related issues, which is why she is on disability, she states that this would not prevent her from supporting E.M. during her parenting time. The claimant argues that evidence of E.M.'s absences from school is indicative of the respondent's failure to support E.M.
- [18] The respondent's position is that E.M. is performing well in school and that he is equipped to support E.M., including with her mental health.
- [19] Based on the evidence and submissions from the parties, I see no concerns with E.M.'s education. E.M. is obtaining good grades. E.M. is in Grade 12 and is projected to graduate on time, if not early, and is planning to attend college next year.
- [20] It may be the case that E.M. is experiencing a decline in her mental health and would benefit from increased parenting time with the claimant. However, the claimant has not put a plan before the Court to assess if it would be in the best interests of E.M. to vary the parenting time provisions in the December 2023 order. E.M. lives and goes to school in Port Moody and plans to attend a college in the Lower Mainland. The claimant wishes to move to the Lower Mainland, but has provided the Court with no evidence of her plan to do so.
- [21] For these reasons, I adjourn this portion of the application generally until the claimant provides evidence from which a court could assess if it would be in the best interests of E.M. to vary parenting time provided for in the December 2023 order.
- [22] In any event, I note that the respondent has expressed no issue with the claimant having parenting time with E.M. The respondent deposed that he encourages parenting time between the claimant and E.M. and believes it is invaluable.

Spousal Rollover of the Respondent's RRSP

- [23] In the claimant's application before Matthews J., she alleged that the respondent failed to undertake the spousal rollover of his RRSP provided for in the September 2021 order. Justice Matthews concluded that there was no such breach and that the respondent had tried to arrange the spousal rollover but that the claimant had not cooperated:
- [121] T.A.I. asserts that D.R.M. has contravened the September 2021 order by failing to undertake the spousal rollover of his RRSP provided for in that order.

- [122] The evidence is that promptly after the September 2021 order was finally entered in May 2022, D.R.M. communicated with T.A.I. about that. The communications show that he has determined what steps have to take place to affect the rollover and has tried to arrange to do that with T.A.I. but she has not cooperated. He has tried both to communicate with T.A.I. and her lawyer about this to no avail.
- [123] D.R.M. points to the fact that he was awarded costs of the application before Justice Gibb-Carsley. He had prepared a bills of costs. The costs are slightly less than the RRSP roll-over. He sensibly suggests offsetting one against the other.
- [124] T.A.I. seeks reimbursement of dental invoices totalling \$1,547.30. She agrees to this being offset against her costs' payment. She does not agree to the RRSP rollover from being offset.
- [125] The RRSP rollover is provided for in the September 2021 order. If I make an order that it not be rolled over, with the amount of the rollover offset against a subsequent costs award, I would be varying the September 2021 order. Accordingly, I would have to be satisfied that a material change in circumstances justifies a variance. No evidence or submissions have been made to me that meet the test for a material change in circumstances in regards to the RRSP rollover.
- [126] I decline to make an order varying the requirement for D.R.M. to affect the RRSP rollover. I am also not going to make the order that T.A.I. seeks that it be done by a certain date. D.R.M. has attempted to do it. T.A.I. has frustrated those attempts. She should stop frustrating those attempts and cooperate with D.R.M. to affect the rollover.
- [24] In the application before me, the claimant alleges that the respondent gave falsified and misleading evidence before Matthews J. I have been provided with no evidence of any falsified or misleading evidence.
- [25] I see no basis to come to a different conclusion than Matthews J. On the evidence before me, the respondent has attempted to undertake the spousal rollover of his RRSP and the claimant has frustrated those attempts. The respondent has provided me with communications of his continued attempts to undertake the rollover since Matthews J.'s 2023 reasons were released. The respondent has provided the claimant with the necessary paperwork to effect the rollover. The claimant should fill out those forms and cease to frustrate the respondent's attempts to undertake the rollover.

Spousal Support

- [26] As noted by Matthews J., the September 2021 order does not stipulate whether the spousal support provision was made pursuant to the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.), or the Family Law Act, S.B.C. 2011, c. 25. For the same reasons as Matthews J., articulated in her 2023 reasons at para. 86, I approach this application to vary as if the spousal support provisions of the final order were made under the Divorce Act.

- [27] Justice Matthews helpfully set out the law under the Divorce Act relating to variation of spousal support orders and whether disability of a spouse is a material change of circumstances:
- [88] Section 17(4.1) has been interpreted to require a material change in circumstances. A material change in circumstance is one which, had those changed circumstances been extant or anticipated at the time the order was made, the order would not have been made on the same terms.
- [89] If disability of a spouse is a material change of circumstances, then the court must go on to consider whether those circumstances justify a variation to the order.
- [90] There are divergent approaches to spousal support where there is postseparation illness and disability as described in *Marthinsen v. Marthinsen*, 2020 BCSC 619 at paras. 48-62. In *Marthinsen*, Justice G.C. Weatherill identified a number of cases, including *G.W.C. v. K.C.C.*, 2015 BCSC 1802 and *Firth v. Firth*, 2012 BCSC 857 where post-separation disability has been factored in when making spousal support awards, but considered these cases to be the exception rather than the rule.
- [91] In *Marthinsen*, G.C. Weatherill J. concluded that the dominant approach in British Columbia is to not make an exception to what the Spousal Support Advisory Guidelines would provide for spousal support even where there is post-separation illness or disability, citing *Powell v. Levesque*, 2014 BCCA 33. He also noted that the authors of the Spousal Support Advisory Guidelines endorse a "no exception" approach to disability cases as observed in *B.D.P. v. D.W.P.*, 2019 ONSC 949 at para. 75.
- [92] In *Fyfe v. Jouppien*, 2011 ONSC 5462, in which Justice Chappel identified some principles drawn from *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 1999 CanLII 715 to guide the assessment of spousal support in such cases, including whether it is reasonable to expect the parties to continue to be 'safety nets' for each other in the event of post-separation need, and if so, for how long.
- [93] A review of the jurisprudence on how to determine whether there should be an exception to the spousal support provided for in the Spousal Support Advisory Guidelines in the event of post-separation disability discloses the following relevant factors:
- a) whether there is a connection between the disability and the marriage;
 - b) whether the case is one where the maximum time for spousal support has ended;
 - c) mutuality and interdependence, including whether the circumstances are such that is reasonable to make one spouse the insurer of the other;
 - d) the length of the relationship;
 - e) the time since separation; and

f) the objective of promoting self-sufficiency.

[28] Based on these legal principles, the claimant must first establish a material change in circumstances. If this is proven, she must then establish that her circumstances are such that there should be an exception to the spousal support agreed upon.

Material Change in Circumstances

[29] The claimant submits that there are two material changes in circumstances: 1) that the September 2021 and December 2023 orders did not consider the amount of her medical expenses, which are especially significant when compared against her income; and 2) that she has been unable to return to work.

[30] The claimant has not proven a material change in circumstances with respect to either of these claims.

[31] The claimant's medical expenses were known and before the Court at the times of the September 2021 and December 2023 orders. The fact that the claimant's medical expenses continue to be high, especially when compared to her relatively low income, is not a material change in circumstances. I note that her income has been consistent during this period and she has not demonstrated that her medical expenses have significantly increased during this period.

[32] The claimant also alleges that it is a material change in circumstances since the September 2021 order that she has been unable to return to work. Her position is that the September 2021 order was based on the inaccurate premise that she would be able to return to work.

[33] Justice Matthews dealt squarely with this issue and concluded that the claimant's inability to return to work is not a material change in circumstances from when she agreed to the amount and duration of spousal support in the September 2021 order. Justice Matthews' comprehensive review of the facts and the evidence, and her conclusions on this issue can be found in Matthews J.'s 2023 reasons at paras. 95-115. In particular, I note the following from her reasons:

[95] T.A.I. submitted that the material change in circumstance that warrants an increase and extension in spousal support is that she has been unable to return to work.

[]

[113] Overall, it is impossible to say, on the medical evidence, that T.A.I.'s current health status and in particular being disabled from working was a circumstance that was not predictable in September 2021.

[114] At best, it could be said that at that time, T.A.I. held out the hope that resolution of the matrimonial issues would benefit her health so she could return to work part time. But that can only be viewed as a hope. The actual circumstances were there she had been disabled from working for over three years. A return to work program had not proceeded. No other

had been planned. No change in treatment or new treatment was planned. She and her doctors hoped that reduced stress would improve her situation but it did not. When considered with the evidence that the end of the conflict in these proceedings was the basis for the hope, it cannot be said that there has been a material change in circumstances given that T.A.I.'s conduct, at least in part, has prevented that hope from being realized.

- [115] T.A.I.'s health circumstances have not changed materially from when she agreed to spousal support at the amount she agreed for the duration she agreed and there was no identified medical rationale to expect that they would improve.
- [34] Since Matthews J.'s 2023 reasons, the claimant has obtained two letters from her neurologist, Dr. Gordon Robinson, opining on her condition and prognosis. The claimant argues that these letters support her position that it was always contemplated that she would return to work. I disagree. These letters confirm Matthews J.'s 2023 reasons and contradict the claimant's submissions.
- [35] In the more recent letter, dated August 20, 2025, Dr. Robinson opines that he believed that if stressors in the claimant's life resolved, such as from ongoing litigation, financial issues, and parental disagreements, then "under the circumstances [the claimant] probably could return to work as a nurse at least part-time with accommodation". This letter confirms and reiterates Dr. Robinson's opinion in his earlier letter dated March 22, 2024. This opinion affirms Matthews J.'s 2023 reasons at para. 114.
- [36] In addition to updated medical opinions, the claimant provided evidence that as of August 2023, her former employer, Fraser Health Authority, requires she complete re-accreditation and re-training to return to work. Her position is that this further prevents her from returning to work. While this may be true, this is not a material change in circumstances.
- [37] It is unclear to me whether this was before Matthews J. If this evidence was not before her, then it should have been. That matter was heard in October 2023 and decided in December 2023. In any case, in my view, it would not have changed the conclusion Matthews J. reached and does not change mine. It would have been predictable in September 2021 that if the claimant returned to work, she may be required to complete re-training and, potentially, re-accreditation given that she ceased working as a nurse in 2018 and was unlikely to recommence working as a nurse for an indefinite period.
- [38] For the same reasons as Matthews J. and my reasons above, I find that the claimant has not established a material change in circumstances that warrants a review of the September 2021 order for spousal support.
- [39] I also note that, since the hearing before Matthews J., the claimant's adult cousin, who continues to reside in the claimant's home without paying rent, is no longer working. While this does not affect my determination, the claimant would have needed to address this had I found a material change in circumstances. Had I found a material change in circumstances, the claimant would need to establish that the material change has caused a situation

requiring her spousal support to be extended. The claimant would need to address why she continues to let her cousin live with her when he is unemployed and not paying rent. As Matthews J. noted, if the cousin, or a different tenant, paid half of the utilities and the interest expense on the mortgage, this would bring the claimant a long way forward in making her monthly ends meet: Matthews J.'s 2023 reasons at para. 118.

[40] I dismiss the claimant's application for an increase to and extension of spousal support.

Late Spousal Support Payments

[41] The claimant alleges that the respondent has breached the September 2021 order by consistently making late spousal support payments.

[42] There is no merit to this allegation.

[43] As noted above, the respondent's obligation to pay spousal support ceased in September 2025. The respondent made spousal support payments to the claimant through the British Columbia Family Maintenance Agency ("BCFMA"). The respondent deposed that he made all payments on time and that any delay in the claimant receiving the payment is due to the time it takes BCFMA to process the funds. This is supported by communications from BCFMA to the claimant. I also note that there are no arrears of spousal support owing with BCFMA.

DISPOSITION

[44] The claimant's application to vary the December 2023 order to vary parenting time is adjourned until such time as the claimant can provide a court with her plan for moving and settling in the Lower Mainland.

[45] The claimant's application to find the respondent in breach of his obligation to undertake spousal rollover of his RRSP in the September 2021 order is dismissed.

[46] The claimant's application to vary the September 2021 order to increase and extend spousal support past September 2025 is dismissed.

[47] The claimant's application with regard to alleged late payments of spousal support is dismissed.

COSTS

[48] Should the parties be unable to agree on costs they may contact Supreme Court Scheduling, within 60 days of issuance of these reasons for judgment to arrange to address costs.

"Maisonville J."

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