
CANADA / JUDGMENT

K.A.M. v. A.F.V.

2025 BCSC 985

COURT

Supreme Court of British Columbia

DECIDED

29 May 2025

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2025 BCSC 985 K.A.M. v. A.F.V.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.A.M. v. A.F.V.,

2025 BCSC 985

Date: 20250529

Docket: E213205

Registry: Vancouver

Between:

K.A.M

Claimant

And

A.F.V.

Respondent

Before: The Honourable Justice Walkem

Reasons for Judgment

In Chambers

Counsel for the Claimant:

M. Witzman

Counsel for the Respondent:

B.D. Easton

Place and Date of Hearing:

Chilliwack, B.C.

April 15-16, 2025

Place and Date of Judgment:

Chilliwack, B.C.

May 29, 2025

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- [1] This is an application for interim child and spousal support. A 15-day trial is set for November 2025.
- [2] The parties are Canadian citizens who spent a significant portion of their lives together living and working in Washington State.
- [3] The parties began living together in 2010 and married in Whistler, B.C in 2012. They separated around July 2021. Their daughter, A., was born in 2014 in Washington State.
- [4] The parties had significant property holdings in Washington State and a home in Whistler. In *K.A.M. v. A.F.V.*, 2022 BCSC 1682, Justice MacDonald ordered that Washington State law applied to property division between the parties.
- [5] Since early 2020, Ms. M. and A. have spent the majority of their time in Whistler. In 2021, A. was enrolled at a school in Whistler.
- [6] In 2021, the parties spent more time in Whistler in rough conjunction with the Covid-19 Pandemic. The parties disagree about whether they intended to permanently move to Whistler. The claimant argues they did, while the respondent suggests Whistler was more of a temporary safe harbour during the Covid-19 Pandemic.
- [7] Prior to A.'s birth, Ms. M. worked at Microsoft and earned approximately \$100,000 per year.
- [8] From A.'s birth, throughout the relationship and continuing to today, Ms. M. has been a stay-at-home parent and is not employed outside the home.

- [9] According to Ms. M.'s evidence, the parties decided together that she would care for their child instead of working outside the home, and this was made possible by Mr. V.'s income.
- [10] After separation, the parties sold two properties in Washington State and each received proceeds of approximately \$1.5 million. Ms. M. submits that they agreed to split these proceeds. Mr. V. disagrees and seeks to recover a portion of the money that Ms. M. received.
- [11] Since selling the properties in Washington State, Ms. M. says she has been living off her share of the proceeds, including investment income generated from them.
- [12] Up until 2019, Mr. V. was employed at Microsoft, most recently as a Partner-Engineering Manager. He moved to Amazon as a Director in 2019. By 2021, his income was more than \$1.5 million USD.
- [13] Mr. V. took a leave of absence from his employment with Amazon in November 2020, and retired in March 2021.
- [14] The claimant says Mr. V.'s pre-retirement earnings were as follows:
74. Before his retirement at age 51, Mr. V. reported the following amounts of income on his US tax return (he does not have a Canadian tax return) (AMOUNTS USD):
- a. 2018 - \$1,532,695 comprised of:
 - i. \$874,242 employment income;
 - ii. \$152 interest;
 - iii. \$53,693 dividends; and
 - iv. \$637,146 capital gains;
 - b. 2019 - \$1,052,246 comprised of:
 - i. \$991,297 employment income;
 - ii. \$5,634 interest;
 - iii. \$62,933 dividends;
 - iv. \$6,380 IRA distributions;
 - v. \$3,615 pensions and annuities;
 - vi. \$6,787 capital gains; and
 - vii. (\$24,400) business income deduction;
 - c. 2020 - \$642,672 comprised of:
 - i. \$667,303 employment income;
 - ii. \$1,499 interest;

- iii. \$72,862 dividends;
- iv. \$820 capital gains; and
- v. (\$99,812) deductions;
- d. 2021 - \$1,561,378 comprised of:
 - i. \$105,312 employment income;
 - ii. \$145 interest;
 - iii. \$74,386 dividends;
 - iv. \$1,424,017 capital gains;
 - v. \$6 other income; and
 - vi. (\$42,488) deductions.
- 75. Mr. V's 3-year average income from 2019-2021 is \$1,085,432 USD. The 4- year average from 2018 - 2021 is \$1,197,248 USD. Mr. V. claims his (or the family's - this matter has yet to be determined). New worth has increased from \$14 million USD to over \$20 million USD as a result of his financial management.
- [15] Per an order of Justice Hori, the parties have a shared parenting arrangement, exercised on a week-on/week-off basis with parenting time occurring primarily in Whistler. Mr. V. can exercise parenting time in Seattle for one weekend per month.
- [16] Mr. V. has not paid child or spousal support since separation. Mr. V. claims a negative income of -\$317,623. He further argues that the parties' parenting time arrangements, which require him to travel from Seattle to Whistler, have limited his ability to work. He claims the purchase of a Whistler house following the couples' separation, an extra vehicle, and travel expenses associated with parenting time in Whistler, have increased his expenses. In his most recent Form 8 (January 22, 2025), Mr. V. claims approximately \$32 million in assets and \$6.7 million in debts.
- [17] Mr. V's residence in Whistler has a rental suite, currently unrented, which Ms. M. argues could generate \$3,000 a month. He also owns a property in Seattle where his adult daughter lives rent-free.
- [18] Ms. M. previously attended classes toward a Bachelor's degree in Architecture, but stopped studies upon separation, prior to completing her degree. She earned \$27,684 in investment income in 2023 from proceeds she received following the sale of a Washington State property (referred to above, in which either party kept approximately \$1.5 million from these real estate sales) after separation.

- [19] The respondent points out that the claimant transferred approximately \$500,000 of the real estate sale proceeds to her two grown children. As a result, these funds are not available to generate interest or investment income.
- [20] Each party argues that they are either restricted from working, or would achieve a very low income and time limited employment, if employed.
- [21] Ms. M. claims she is depleting her capital to care for herself and A., and claims annual expenses of \$218,856.
- [22] Ms. M. claims spousal support on both compensatory and non-compensatory grounds. Compensatory to reflect the homemaker role she played during the marriage, and non-compensatory because there is a significant disparity between the parties' standards of living.
- [23] Frankly, neither party's claims about their limited employment prospects or ability to earn income are believable on the evidence before me. This will need to be sorted out at trial, after a full examination of the evidence. However, on the limited evidence before me, I find that there is a significant discrepancy in income in favour of Mr. V., and this should be addressed by way of an interim and without prejudice order for spousal and child support.
- [24] Ms. M. says Mr. V. should pay \$11,510 monthly in child support under the Federal Child Support Guidelines, SOR/97-105 [Guidelines], dating back retroactively to August 1, 2021. This is based on an imputed income of \$1,500,000 for Mr. V. and an imputed income of \$40,000 for Ms. M. (this is based on the notice of family claim filed by Ms. M. on January 24, 2025, Part 1: Order(s) Sought, at paras. 1-2).
- [25] In her notice of family claim, Ms. M. claims \$39,729 in spousal support, retroactive to August 1, 2021: notice of family claim, Part 1 at para. 3.
- [26] Mr. V. opposes any interim orders for child or spousal support. He argues that he is unable to work, that he is currently living off a line of credit, and that his only income is from investments: application response filed February 3, 2025, Part 2 and Part 4 at paras. 8, 15.

Law

Interim Child and Spousal Support

- [27] Three fundamental principles apply to all child support applications: first, parents have a joint, ongoing, and legal obligation to support their children; second, it is the children and not the custodial parent who have the right to support; and third, support payments are based on earning capacity and not only on what a parent actually earns: *Bentley v. Bentley*, 2022 BCSC 1023 at para. 18.
- [28] The Supreme Court of Canada in *D.B.S. v. S.R.G.*, 2006 SCC 37 stated the core principles that animate child support at para. 38:

- a. child support is the right of the child;
 - b. the right to support survives the breakdown of a child's parents' marriage;
 - c. child support should, as much as possible, provide children with the same standard of living they enjoyed when their parents were together; and
 - d. the specific amounts of child support owed will vary based on the income of the payor parent.
- [29] When child support is sought against a spouse whose income is more than \$150,000, the amount of support is either a) determined on the basis of the Guidelines tables or, b) if the court considers the Guidelines tables amount inappropriate, determined on the basis of the Guidelines tables for the first \$150,000, and then at an amount the court considers appropriate for the balance of income above \$150,000: Guidelines, s. 4. In determining an appropriate amount of support in respect of the balance of the spouse's income, the court should have regard to the condition, means, needs, and other circumstances of the child and the financial ability of each spouse to contribute to support of the child: Guidelines, s. 4.
- [30] In *Kouznetsova v. Kouznetsova*, 2014 BCCA 160 at para. 44, the Court of Appeal emphasized that: " the primary purpose of interim orders in family matters is to maintain the status quo between the parties " The court further stated:
- [71] on interim applications such as this the courts seek to achieve rough justice because live issues that may be determinative as to the final resolution are better left for trial when credibility can be assessed.
- [72] The overall purpose of interim support orders is to serve the interests of the parties in a way that is consistent with the status quo until they can have the issues resolved on that full evidentiary record, while balancing the prejudice of each party should they ultimately be successful by giving full consideration of their respective means and needs.
- [76] Orders imputing income should not be made on pure speculation although, by its very nature, rough justice will inherently require that the presider make some reasonable assumptions.
- [31] Associate Judge Robertson set out factors to be considered on an application for interim spousal support in *Zhang v Chen*, 2023 BCSC 2206 at para. 56. To summarize: Interim spousal support should only be ordered where a prima facie case for entitlement is established. The court should not embark on an in-depth analysis, which is better left for trial. At this stage, the court may only be able to achieve a "rough justice", taking into account the applicant's needs, the respondent's ability to pay, and the level of support sufficient to allow the applicant to continue living at the same standard they enjoyed prior to separation, if the payor's ability to pay warrants it. Generally, interim support should be made on the basis of the Spousal Support Advisory Guidelines [SSAG], barring exceptional circumstances.

Imputing Income on an Interim Application

- [32] The Guidelines set out a comprehensive and predictable regime for determining child support based on parents' incomes.
- [33] Under s. 16 of the Guidelines, a parent's annual income is generally determined by their total income on their tax return. Section 17 provides for consideration of the last three years of income to determine a fair and reasonable amount of income, in light of patterns of income, fluctuation in income or receipt of a non-recurring amount during those years.
- [34] Sections 19(1)(a) and (f) of the Guidelines authorize a court to impute income to a parent where:
- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse; [and]
- (f) the spouse has failed to provide income information when under a legal obligation to do so.
- [35] A court may impute income per s. 19(1)(a) of the Guidelines even absent evidence of bad faith: See also *Van Gool v. Van Gool*, 166 D.L.R. (4th) 528, 1998 CanLII 5650 (B.C.C.A.); and *Hanson v. Hanson*, [1999] CarswellBC 2545, 1999 CanLII 6307 (S.C.).
- [36] The overall Guidelines regime reflects the need for ongoing financial disclosure. In *Colucci v. Colucci*, 2021 SCC 24, the Supreme Court of Canada commented on the need for ongoing financial disclosure, noting:
- [49] The pivotal role of disclosure comes as no surprise since the premise underlying the Guidelines "is that the support obligation itself should fluctuate with the payor parent's income" (D.B.S., at para. 45). The structure of the Guidelines thus creates an informational asymmetry between the parties. In a system that ties support to payor income, it is the payor who knows and controls the information needed to calculate the appropriate amount of support. The recipient does not have access to this information, except to the extent that the payor chooses or is made to share it. It would thus be illogical, unfair and contrary to the child's best interests to make the recipient solely responsible for policing the payor's ongoing compliance with their support obligation.
- [50] This is why frank disclosure of income information by the payor lies at the foundation of the child support regime. In *Roberts v. Roberts*, 2015 ONCA 450, 65 R.F.L. (7th) 6, the Court of Appeal described the duty to disclose financial information as "[t]he most basic obligation in family law" (para. 11). A payor's failure to make timely, proactive and full disclosure undermines the policies underlying the family law regime and "the processes that have been carefully designed to achieve those policy goals" (*Leitch v. Novac*, 2020 ONCA 257, 150 O.R. (3d) 587, at para. 44). Without proper disclosure, the system simply cannot function and the objective of establishing a fair standard of support for children that ensures they benefit

from the means of both parents will be out of reach (Michel, at para. 32, per Brown J.; Brear, at para. 19, per Pentelechuk J.A.).

- [37] While, generally, the court will not impute income on an interim basis, it may be appropriate to do so if the court finds the payor parent is "playing fast and loose in representing income": Zhang at para. 65. Section 19 of the Guidelines grants the court broad discretion to impute income: Zhang at para. 64 citing Ouelette v. Ouellette, 2012 BCCA 145. In exercising this discretion, the court may "employ common sense": Zhang at para. 64, citing Riemersma v. Riemersma, 2013 BCSC 747.
- [38] Overall, the court should consider the capacity and responsibility of a parent to earn income. This includes factors such as health, education, skill and experience: Hanson at para. 14. A parent may have to seek employment in other places than their preferred or accustomed areas in order to meet their obligations to their child.
- [39] Courts have also considered circumstances in which a party has voluntarily retired early.
- [40] In McCallum v. McCallum, 2015 BCSC 837, Justice G.P. Weatherill noted that, generally, the court should only inquire into a spouse's decision to retire when they are acting in bad faith to frustrate the right of a former spouse to support: at paras. 41-42.
- [41] In Szczerbaniwicz v. Szczerbaniwicz, 2010 BCSC 421, Justice Punnett found that the court is likely to impute income if it finds a spouse's decision to voluntarily retire was motivated by a desire to avoid support obligations, or that they voluntarily retired even though they had the ability to continue earning income: at paras. 26-27.
- [42] More recently, in Graham v. Graham, 2018 BCSC 1888, Justice Maisonville set out the following principles surrounding voluntary retirement and spousal support:
- [82] Where there is a voluntary retirement, the court must consider the circumstances of the retirement carefully to ensure the payor was not prompted by an intention to avoid a support order ...
- [85] If the payor spouse has some capacity to work following retirement, it is appropriate for the court to attribute additional income: Gajdzik v. Gajdzik, 2008 BCSC 160.

Assessing Undue Hardship

- [43] Mr. V. claims that he has a negative income, such that being required to pay monthly support would create an undue hardship for him.
- [44] When it comes to assessing undue hardship for child support, one must first look to the circumstances outlined in s. 10 of the Guidelines:
 - (2) Circumstances that may cause a spouse or child to suffer undue hardship include the following:

- a. the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;
- b. the spouse has unusually high expenses in relation to exercising parenting time with a child;
- c. the spouse has a legal duty under a judgment, order or written separation agreement to support any person;
- d. the spouse has a legal duty to support a child, other than a child of the marriage, who is
 - i. under the age of majority, or
 - ii. the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessities of life; and
- e. the spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.

[45] As the Court of Appeal outlined in *Kelly v. Kelly*, 2011 BCCA 173, a claim of undue hardship under s. 10 requires a two-step analysis: at para. 33. First, the parent seeking relief must demonstrate that paying the Guidelines support amount will cause undue hardship, based on the factors under s. 10(2): *Kelly* at para. 33. If the first branch of the test is met, then the court will compare the standard of living in each parent's household under s. 10(3) of the Guidelines: *Kelly* at para. 34.

[46] The threshold to show undue hardship at the first stage of analysis is high: *Kelly* at para. 33. It will only be met if the parent can show hardship that is "severe, extreme, improper, unreasonable, or unjustified": *Kelly* at para. 33.

Analysis

[47] The parties enjoy a lifestyle with associated expenses that would be considered beyond the means of most families.

[48] It is clear on a cursory review of the evidence at trial that the parties' financial and real estate holdings are complex, as they include assets and investments held in Canada and the United States. This will, no doubt, be subject to expert reports and considerable evidence and submissions at trial.

[49] Interim without prejudice orders must be made without the benefit of full evidence. They are an attempt to preserve the positions between the parties, and, at best, achieve "rough justice". This reflects the fact that the full picture of evidence has not yet formed, and has not been subject to examination in court. The interim and without prejudice support payments that I make here, will be adjusted based on an examination and weighing of the evidence at trial.

- [50] Child support is the right of the child. I find it is appropriate and in A.'s best interests to order child support on an interim basis.
- [51] On a prima facia basis, the claimant has a strong claim for compensatory and non-compensatory spousal support. The claimant left her job at Microsoft on the birth of A. Since that time, she was a stay at home parent and homemaker. The respondent continued to work and to rise within his role within the tech industry.
- [52] I find that the respondent is playing "fast and loose" with declarations of income. He has voluntarily retired and is living off a line of credit, which generates interest payments due, resulting in a negative income. It is clear he has other assets available to him and that he has made a deliberate choice to live off the line of credit, apparently for financial reasons, possibly taxation. I also find that he has failed to show, based on the factors in s. 10(2) of the Guidelines, that paying support would cause him to suffer undue hardship.
- [53] In light of the above, I find it appropriate to impute an income of \$1 million to the respondent. I also find it appropriate to impute an income of \$150,000 to the claimant.
- [54] I further find, given the resources of the parties, that, if it turns out I am mistaken that there are sufficient assets between them, that the errors can be corrected when the final division of assets occurs.
- [55] On an interim and without prejudice basis, I order that child support for the child, A., be calculated to reflect the parties' shared parenting arrangement based on imputed incomes of \$1 million for the respondent and \$150,000 for the claimant. These payments are retroactive to the date of the application, January 2025.
- [56] Child support payable as under the Guidelines is based on an imputed income to the claimant of \$150,000 (\$1,356 in child support per month), and to the respondent of \$1,000,000 (\$7,986 in child support per month), the respondent will pay child support to the claimant in the off-set amount of \$6,630 per month, retroactive to January 2025 and continuing on the 1st day of each and every month thereafter until further court order or written agreement of the parties.
- [57] On an interim and without prejudice basis, the respondent is to pay spousal support to the claimant at the mid-range. Based on the income I have imputed to the parties, the respondent owes the claimant spousal support, calculated under the SSAG of \$21,530 per month, retroactive to January 2025 and continuing on the 1st day of each and every month thereafter until further court order or written agreement of the parties.
- [58] The claimant is entitled to her costs of this application, payable forthwith.

"A. Walkem J."

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Prepared on 25 October 2026 · Esheria