

CANADA / JUDGMENT

K.A.N. v. N.L.

2025 BCSC 2477

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 2477 K.A.N. v. N.L. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: K.A.N. v. N.L., 2025 BCSC 2477 Date: 20251212 Docket: E171300 Registry: Vancouver Between: K.A.N. also known as K.N. Claimant And N.L. also known as N.C. Respondent Before: The Honourable Justice A. Ross Reasons for Judgment Counsel for the Claimant: C.E. Drake The Respondent, appearing in person: N.L. Place and Date of Trial/Hearing: Vancouver, B.C. September 10, 2025 October 22, 2025 Place and Date of Judgment: Vancouver, B.C. December 12, 2025 Table of Contents Introduction.. 3 Issues. 4 Factual Background.. 4 Issue 1. 9 Unreasonable Delay. 13 Blameworthy Conduct 14 Paramount Importance of the Children's Circumstances. 14 Hardship Caused by such an Order 14 Finding Re: Colucci Factors. 15 Issue 2. 15 Issue 3. 17 Is there support for the father's position?. 17 Summary and Order.. 19

Introduction

- [1] I have anonymized these reasons to protect the interests of the children. I refer to the parties as the father and the mother.
- [2] These reasons address an application by the claimant, who is the father, to review his income in the years 2022 through 2024 with the goal of retroactively and prospectively reducing his child support obligations.
- [3] The father also seeks two relatively novel orders:
- a reduction in his income to account for the legal fees that he incurred due to the respondent's misconduct; and
 - a reduction in his child support obligations on the basis that the respondent has been in breach of prior court parenting orders.

- [4] Focusing for a moment on the father's allegations of breach of prior orders, the father argues that those orders granted him primary parenting obligations. Those orders were made after a finding that the mother had taken steps to alienate the children from the father. On this application, the father argues that he should not be required to pay child support for periods when, by court order, the children were supposed to be either in his care, or in shared care.
- [5] With those arguments in mind, the father seeks credit for amounts that he has theoretically overpaid and, conversely, forgiveness for amounts he has underpaid.
- [6] The respondent, the mother, opposes all variations sought by the father. In the alternative, she says that the evidence establishes that, if there has been a change in the father's income, it has been an increase. Thus, she submits that the amount of his child support obligations should increase. I note that the mother also raised the issue of section 7 expenses that she has incurred since 2019. That issue was not properly raised before me, and I have not considered it.
- [7] The father's application is made pursuant to s. 17 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).

Issues

- [8] The issues for me to decide on this application are:
- a) Has the father established the evidentiary basis to retroactively change the child support payable? In that regard, has he met the test to be applied in *Colucci v. Colucci*, 2021 SCC 24 and *Cotter v. Cotter*, 2015 BCSC 1730, in respect of the "self-regulating regime" instituted by prior orders of Justice Groves and Justice Milman?
 - b) Since 2022, the father has withdrawn certain amounts from his Registered Retirement Savings Plan ("RRSP") in order to pay legal expenses. He says that those legal services were occasioned by the actions of the respondent in breaching orders of this Court. Once withdrawn from his RRSP, those amounts were included in his annual income for child support purposes. Should those amounts be excluded, or deducted, from his income for support purposes?
 - c) The child support payable by the father has been calculated on the basis that the children are 100% with their mother since January 2023. The claimant notes that the prior court orders that were in place during that period directed that the children be either 100% with the father or 50-50 shared parenting. He seeks to retroactively change the child support amount to reflect a 50-50 parenting situation that was ordered by the court. Is there support for that position? Factual Background
- [9] For context I must note that this litigation has a long and tortured history. The facts and, hence, the relief sought are extraordinary.

- [10] There have been no fewer than 25 prior court orders. Those prior orders primarily relate to parenting time and responsibilities. A number of them relate to the father's allegations against the mother of child alienation.
- [11] By way of general background:
- a) the parties were married in 2010;
 - b) they separated in February 2017;
 - c) they have two children aged 13 and 10;
 - d) they were divorced on July 22, 2019, with the order addressing both the division of assets and support payments; and
 - e) on October 19, 2019, they entered into a detailed final consent order which covered their parenting arrangements.
- [12] When the parties separated in February 2017, they both continued to reside in the family home. In 2017, the Ministry of Children and Family Development implemented a safety plan which called for the father to have primary care of the children. The mother was limited to supervised parenting, and she was required to refrain from physical maltreatment of the children. I understand there were concerns regarding the mother's psychological health at that time. I further understand that, thereafter, her health improved and there was a consent order on February 19, 2019, with the parties agreeing to equal parenting time.
- [13] In the period from 2019 until late 2021, while there was cause for concern, the parties were generally getting along, and parenting time was shared. In December 2021 the father applied to reduce his child support. That relief was granted on January 21, 2022. It appears that the problems arose after that order.
- [14] I find one application to be expositive. On January 27, 2022, the mother obtained an ex parte protection order in the Provincial Court, Vancouver registry. She submitted to the Provincial Court judge that the father had a history of anger and violence and had threatened her with a knife.
- [15] In February 2022, the mother applied (in this Court) to continue that protection order. That application came before Justice Coval. In reasons for judgment dated March 14, 2022, and indexed at 2022 BCSC 583, Justice Coval rejected the mother's allegations as false. He found that there was no basis for a protection order. Justice Coval, referring to the parties as Ms. L. and Mr. N, wrote:
- [40] In 2017 and 2018, Ms. L. made numerous reports against Mr. N. to the MCFD and to the RCMP, alleging physical and perhaps even sexual abuse. Investigations occurred, but nothing was found to warrant any steps against Mr. N. It therefore appears all such reports were found to be unwarranted.

- [41] One such allegation in the summer of 2017 was that Mr. N. had kicked R.N. in the back, causing bruising. This incident was relied on by Ms. L. at her ex parte protection order hearing and before me. She also reported it to the Special Victims Unit of the North Vancouver RCMP and to the MCFD.
- [42] This incident was video-recorded because it occurred while R.N. was face-timing with a friend. I was shown the video by counsel for Mr. N. I found it very revealing. In my view, the alleged bruising kick in the back was nothing like that. It was clearly no more than a nudge, even perhaps a friendly nudge, between parent and child. I find this video reveals a problematic tendency of Ms. L. to exaggerate and misrepresent Mr. N.'s behaviour with the children and falsely accuse him of violence.
- [76] In sum, I find Mr. N. poses no risk of violence, nor any risk of physical or emotional harm to his children or Ms. L. I therefore hereby refuse to continue the protection order. It is terminated and I find it was obtained on false pretenses and was neither needed nor justified.
- [16] Since January 2022, the parties have been embroiled in pitched litigation, with the father trying, unsuccessfully, to re-establish a relationship with his children.
- [17] I am informed that, despite the best efforts of multiple psychologists and members of this Court, the mother's steps toward alienation have been successful. At present, the children refuse to go to their father.
- [18] Justice Coval's reasons were provided to a psychologist for the preparation of an updated report pursuant to s. 211 of the Family Law Act, S.B.C. 2011, c. 25. That report made a number of recommendations which included:
- a) a residential treatment program which would incorporate a school program through which the father would be able to engage in reintegrating himself into the son's life;
 - b) a referral to the Children's Hospital P1 program (Child Psychiatry); and
 - c) placing the daughter in the care of the father was "recommended" and placing the son in the care of his father was "highly recommended".
- [19] By any definition, the s. 211 report made drastic recommendations. For example: It is recommended that [the daughter] be transferred to paternal care. She has a close bond with her brother and her difficulty committing to paternal involvement is influenced both by her mother and brother. [The mother's] parenting time with the children be under supervision for daytime supervised parenting time on alternating weekends for up to four hours each on Saturday and Sunday with professional supervision. It is further recommended that the supervisor be required to provide written reports to counsellors and professionals engaged in providing services to this family. It is recommended that protection order limit [the mother's] interactions with the children solely to the periods of supervision.

[20] The parties appeared before Justice Francis in July 2023. She ordered:

- a) that the daughter be placed in the father's care and the claimant have all regular parenting time; and
- b) that the son be referred to the residential "P1" program at BC Children's Hospital and then placed in the father's care for all regular parenting time.

[21] The parties again appeared before Justice Francis in October 2023. A number of orders were pronounced including:

- a) an enforcement order requiring the mother to hand over the children to the father by 3 p.m. the next day, failing which a police officer was authorized to apprehend the children; and
- b) a fine against the mother for failure to abide by previous orders of the court.

[22] Despite these orders, problems continued. On November 7, 2023, the children were in the father's care. They ran away from him and ran back to the mother's residence. When the father called 911, an officer responded to his call and indicated that the mother had reported child abuse allegations. The police refused to return the children to the father.

[23] Thereafter, on December 19, 2023, Justice Francis pronounced a further order, by consent, giving the father full parenting time with the children for the next three months. The mother was to have no communication with the children except by telephone once per week.

[24] The enforcement of that order was short-lived. On December 25, 2023, the children again ran away from the father's home and back to their mother's residence. Again, the police were involved.

[25] I am informed that the father has only seen the children two times in the past 12 months.

[26] Now, after attempting to regain his relationship with the children for more than three years, the father is effectively giving up. I am advised by counsel that, recognizing the de facto situation, the father recently proposed a consent order whereby, on a without prejudice basis:

- a) the children would remain living primarily with the mother;
- b) the children could reside, or spend time, with the claimant if they expressed a desire to do so;
- c) certain provisions of prior orders of this Court would be vacated; and
- d) the parties would share parenting responsibilities (which responsibilities had previously been assigned 100% to the father).

[27] I am informed that the consent order has been submitted for filing.

- [28] I note that the mother, who is self-represented, describes the above facts in a completely different light. She blames the father for pushing the children away and she resurrects prior allegations of misconduct against him. I do not accept her submissions with respect to the history of this matter. I consider her submissions to be collateral attacks on prior decisions.
- [29] With that history explained, I proceed to discuss the issues. Issue 1
- [30] The first issue to determine is whether the father has established the evidentiary basis to retroactively change the child support payable. In that regard, the question is whether he has met the test as set out in Colucci.
- [31] First, I must address whether this is an "application to vary", a "review", or some other form of application. I note that the father's position on this application is, to some extent, against his own interest. By that I mean that if this application was considered a "review", there would be a lower test for him to meet.
- [32] The facts that are relevant to the distinction between a review and a variation are the following:
- a) I noted above that the parties were divorced by order of Justice Groves dated July 22, 2019 (the "Groves Order"). That order provided for child support. It also provided a process for altering the support payable: Child Support Review
39. BY CONSENT, commencing with the Child Support Review in 2020, the parties' guideline incomes for the purpose of child support shall be as follows:
- a. The Claimant's Guideline income shall be his previous year's Line 150 income, except that in the event that the Claimant is required to sell [his shares in his employer company] to his employer, any capital gain derived from that sale shall not be included in his Guideline income;
 - b. The Respondent's Guideline income shall be her previous year's Line 150 income or \$40,000, whichever is greater.
40. BY CONSENT the adjusted child support amount and the adjusted proportional share of Section 7 expenses shall take effect as of July 1 of each year.
- [33] The Groves Order was later varied by Justice Milman on January 21, 2022 (the "Milman Order"). Pursuant to the Milman Order:
- a) the claimant's guideline income for 2020 was set at \$216,943;
 - b) the parties would share custody within the meaning of the Federal Child Support Guidelines, SOR/97-175; and
 - c) the amount of the setoff child support was \$2,314 per month.

- [34] Despite the heading of the section of the Groves Order ("Child Support Review") and the wording of the order, the father concedes, and I accept, that this application is akin to a variation of the prior child support orders.
- [35] The father's position is that, although provisions 39 and 40 in the Groves Order are described as a "Child Support Review", those provisions, in fact, describe a "self regulating regime" as described by the Court of Appeal in Cotter:
- [31] It is not as common to order a "review" of a child support order as was done in this case. The usual practice is that parties exchange financial information on an annual basis and adjust child support payments accordingly. If this type of self-regulating regime is not in place, or the parties cannot agree on the appropriate Guidelines incomes, then one or both parties applies to the court under either s. 152 of the FLA or s. 17(4) of the Divorce Act to vary the child support order. The same variation test described above regarding spousal support applies to child support variation applications: L.M.P. at para. 32. [Emphasis added.]
- [36] As noted, this is an application under s. 17 of the Divorce Act which provides: Variation order 17(1) A court of competent jurisdiction may make an order varying, rescinding or suspending, retroactively or prospectively,
- (a) a support order or any provision of one, on application by either or both former spouses; Factors for child support order
 - (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.
- [37] The father notes that in *Jennens v. Jennens*, 2019 BCSC 180, Justice G.C. Weatherill considered alteration of child support pursuant to a similar order. He determined that the proper approach was to pursue the application under s. 17 of the Divorce Act. Hence, the applicable test was higher than a "review".
- [38] As a result, I have approached this matter as though it is a variation. The law on retroactive variation of child support was set out by the Supreme Court of Canada in *Colucci*. Factors to consider are:
- a) unreasonable delay;
 - b) any blameworthy conduct by the payor;
 - c) the children's circumstances, which are of paramount importance; and
 - d) any hardship caused by a retroactive order within the broader family context.
- [39] On this application, the claimant's affidavit material establishes:
- a) For many years he was employed as a partner in an engineering firm.

- b) In late 2021, his employment with, and his partnership in, the engineering firm were terminated. This termination was not by his choice.
- c) He was 57 years old. He felt his employment prospects were limited.
- d) At that time, he reviewed his financial situation with his investment advisor and he decided to retire in early 2022.
- e) As a result of his termination, he was paid out by his former employer. His declared income for 2021 was \$373,079. Of that amount \$168,484 was an "eligible retiring allowance" from his severance pay.
- f) He further says that his annual income for the years 2022 through 2024 have not been as high as Justice Milman expected in January 2022.
- g) The evidence establishes that his income for:
 - i. 2021 was \$373,079, consisting of:
 - (1) \$114,460 in employment income;
 - (2) \$90,078 in profit-sharing allocations; and
 - (3) \$168,484 paid as an eligible retiring allowance.
 - ii. 2022 was \$109,257, consisting of:
 - (1) employment income of \$98,000; and
 - (2) RRSP income of \$10,000.
 - iii. 2023 was \$197,000, consisting of:
 - (1) RRSP income of \$187,000;
 - (2) other taxable income (Registered Retirement Income Fund, the "RRIF") of \$10,080;
 - (3) (but, as discussed below, he says he withdrew \$57,000 of the RRSP for legal fees).
 - iv. 2024 was \$212,000, consisting of:
 - (1) RRSP income of \$164,000; and
 - (2) other taxable income (RRIF) of \$47,707.
 - v. 2025 is expected to be in the range of \$120,000.
- [40] The father says, and I accept, that his high income in 2021 was due to a number of non-repeating payments. Specifically, the eligible retiring allowance constituted the severance he was paid by his former employer. Further, having been removed from the partnership, as of 2021, he ceased earning any profit-sharing amounts.
- [41] I also accept the father's evidence that, after 2021, his income has been determined by the amount that he decides to take out of his RRSP or his RRIF. To the extent that his custody battle has required him to withdraw funds to pay legal fees, those are withdrawals that he would not have made but for the mother's breach of court orders.

- [42] With that evidence in mind, these are my considerations of the Colucci factors.
Unreasonable Delay
- [43] The father initiated a variation application in late 2021. In early 2022, the focus of the litigation shifted to the claimant's attempts to enforce various parenting orders.
- [44] The father again attempted to initiate a review of child support in July 2024. However, at that time, he did not have financial disclosure from the mother, and the application was adjourned.
- [45] I am satisfied that there has not been unreasonable delay. Blameworthy Conduct
- [46] I note that, on this issue, the majority of the mother's submissions focused on prior conduct of the claimant. The entire theme of her submission was that any distance between the claimant and the children was caused by the fault of the claimant. In my opinion, those submissions are an attempt to relitigate the findings of Justice Coval and Justice Francis.
- [47] The father concedes that he has missed some child support payments. He notes that those payments were missed during periods when the children were supposed to be in his primary care pursuant to the order of Justice Francis, but were instead with the mother.
- [48] I find no blameworthy conduct on the part of the father. Paramount Importance of the Children's Circumstances
- [49] On this issue, the father says that the children are well cared for financially. He points to inconsistencies in the financial reporting of the respondent. In particular, he notes the mother declares relatively modest income but owns a home that is assessed in the range of \$3,000,000. Further, he notes that the mother proposed that the children attend private school on the North Shore. On her proposal, the mother would pay the entire cost. The yearly tuition would be in the range of \$30,000 per student. Those fees would far exceed the mother's ability to pay based upon her form F8 disclosure.
- [50] I am satisfied that a reduction in the amount of child support will not imperil any of the children's circumstances. Hardship Caused by such an Order
- [51] In this case, the request by the claimant would not result in any significant exchange of funds. Instead, the majority of the adjustment would result in a set-off against prior amounts owed. In my opinion there will be no substantial hardship. Finding Re: Colucci Factors
- [52] Based on my considerations above, I find that the father has established a basis to retroactively vary his child support obligations (both past and present). His actual income has not met the income predicted in the Milman Order. He meets the Colucci factors. Issue 2
- [53] As noted, the second issue relates to withdrawals from the father's RRSP.

- [54] Since 2022, the claimant's income has consisted entirely of amounts withdrawn from his RRSP and RRIF. On this application, he seeks to segregate certain amounts that were specifically withdrawn to pay legal expenses. He was required to incur those legal expenses to counteract the actions of the respondent. As noted above, the mother was in breach of parenting orders of this Court. The father sought to compel compliance.
- [55] Because he withdrew those RRSP amounts, they were included in the father's annual income for child support purposes. Hence, arguably, the mother benefits from her conduct in breaching prior court orders.
- [56] I start from the proposition that there is clear authority that a one-time withdrawal from an RRSP is not a regularly occurring event and, therefore, should not form part of the father's income for child support purposes: *J.P.G. v. V.S.G.*, 2012 BCSC 946 at para. 89.
- [57] The father relies on the decision in *C.C.B. v. A.V.B.*, 2022 BCSC 1453, where Justice Elwood wrote:
- [30] The law on whether RSP withdrawals will be included in income was explained by the Court of Appeal in *McKenzie v. Perestrelo*, 2014 BCCA 161 at para. 82, which reads in relevant part:
- [82] There is no clear rule about the inclusion of RRSP withdrawals in a payor's Guideline income; this is left to the discretion of the judge hearing the case [citations omitted]. . . some . . . principles [are] . . .
- RRSP income is presumptively part of a spouse's income for child support purposes because it forms part of a person's total income on a tax return and it is not listed as an exemption in Schedule III of the CSG. The spouse seeking to exclude the RRSP [income] bears the burden of demonstrating that treating his or her RRSP withdrawal as income would not lead to the fairest determination of income [citation omitted]. . .
 - Where RRSP withdrawals are regular and a spouse's only source of income they are more likely to be included as income for the purpose of determining support: for example, see *Edgar v. Edgar*, 2012 ONCA 646.
 - On the other hand, there is no presumption that "non-recurring withdrawals from RRSPs should be automatically excluded from income for child support purposes": *Fraser v. Fraser*, 2013 ONCA 715 at para. 105. . .
 - The court will consider the reason for the withdrawal. For instance, RRSP withdrawals have not been included as income where: o The amount has already been accounted for in the division of assets and was used to fund legal fees: *de Bruijn v. de Bruijn*, 2011 BCSC 1546 at para. 34. o The amount has been used to repay a debt incurred by the other spouse in their joint names: *K.A.M. v. P.K.M.*, 2008 BCSC 93 at para. 51.
- [58] The father accepts that he makes regular withdrawals from the RRSP. Further, he accepts that he bears the onus to satisfy the court.

- [59] As noted, the mother's submissions primarily focused on the alleged misdeeds of the father. I did not find them to be relevant.
- [60] In exercising my discretion on this matter, I note the following:
- a) The factual matrix in this case is extraordinary.
 - b) The pattern of the father's RRSP withdrawals indicates that additional withdrawals were made during years when he was attempting to counteract the mother's successful attempts to alienate the children.
- [61] In my opinion, it would be unfair to use those RRSP withdrawals as income for the calculation of child support. That would end up providing the mother with the benefit of her bad behaviour. I find that the withdrawals were made to pay legal fees occasioned by the mother's breaches.
- [62] On that basis, I am satisfied that, for the years 2023 and 2024, the father's income should be reduced by the following amounts that represent RRSP withdrawals made specifically to pay legal fees associated with the mother's misconduct:
- a) 2023: \$57,000; and
 - b) 2024: \$7,645.
- [63] I return to this calculation below. Issue 3
- [64] As noted above, the third issue relates to whether child support should be payable based on the orders that were in place, rather than the reality that unfolded.
- [65] The child support owing by the claimant has been calculated on the basis that the children are 100% with their mother since January 2023. The father notes that the court orders that were in place during that period directed that the children be either 100% with the father or 50-50 shared parenting. He seeks to retroactively change the child support amount to reflect a 50-50 parenting situation that was ordered by the Court. Is there support for the father's position?
- [66] The father relies on a number of cases and propositions:
- a) In *Williamson v. Williamson*, 2016 BCCA 87 at paras. 42-43, the Court stated that a finding of alienation does not "pre-determine one particular remedy". The Court noted that, among the possible legal responses, the remedy could be suspension of child or spousal support as a sanction to enforce more engagement with the other parent.
 - b) In *Brownell v. Brownell*, 82 N.B.R. (2d) 91, 1987 CanLII 7635 (K.B.), the Court ordered that child support be suspended while access to the child was denied.
 - c) In *G. (R.L.) v. F. (S.A.)*, [1999] 12 W.W.R. 25, 1999 CanLII 12847 (S.K.K.B.), the Court stated at para. 41: It is clear to me that unless the respondent mother, and, in turn, the children, are motivated to comply with the orders of this Court, compliance will not be forthcoming. If

these children, with the support of their mother, persist in insisting on their "right to choose" not to have a relationship with their father, it will be a choice, like all important choices in life, clearly attendant with consequences that must be taken into account in exercising that choice.

- d) In *Jones v. Anhorn*, 2000 BCCA 213, the Court found that it would be grossly unfair to enforce the father's arrears of "maintenance" when the mother had departed British Columbia with the intention of denying the father any access to the child.

[67] Although these cases are somewhat dated, the father relies on them as support for these positions:

- a) Despite the efforts of this Court, the mother has been successful in alienating the children from the father.
- b) If this Court's orders had been followed, there would have been (at least) shared parenting. Hence, his obligation to pay child support would have been reduced.
- c) An order for payment of child support based on a shared parenting model would encourage the mother to commit herself to the restoration of the father's relationship with the children.
- d) The mother has financial resources that she is not disclosing (as evidenced by her desire to place the children in private school).

[68] I accept the father's submissions on this point. Again, I consider this to be an extraordinary case of long-term alienation. To be clear, this is not a remedy that should be available except in the most extreme cases. However, I find that standard is met on these facts. Summary and Order

[69] On the basis of my findings above:

- a) I find the father has established the factual basis to vary his child support obligations (both past and present). His actual income has not met the income predicted in the Milman Order.
- b) Further, I am satisfied that, for the years 2023 and 2024, the father's income should be reduced by the following amounts which represent RRSP withdrawals that were made specifically to pay legal fees associated with the mother's misconduct:
 - i. 2023: \$57,000; and ii. 2024: \$7,645.
- c) Further, the child support payable for the years 2023, 2024, and 2025 should be adjusted and based on a 50-50 shared parenting model.
- d) Moving ahead, despite the consent order that will be in place, the father's obligation to pay child support will continue on the basis that the parties are in a shared care situation. This may encourage cooperation from the mother and children.

- e) I will leave it to the father's counsel to make the calculations reducing the arrears and the ongoing support payments.

[70] The father has been successful on this application. He is entitled to his costs, which, once assessed or agreed to, can be set off against future support payments. "A. Ross J."

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