

CANADA / JUDGMENT

Kaur v. Singh

2025 BCSC 1456

COURT

Supreme Court of British Columbia

DECIDED

29 July 2025

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2025 BCSC 1456 Kaur v. Singh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kaur v. Singh,

2025 BCSC 1456

Date: 20250729

Docket: E47421

Registry: New Westminster

Between:

Daljit Kaur

Claimant

And

Angrej Singh

Respondent

Before: Associate Judge Hughes

Reasons for Judgment

Claimant appearing in person:

D. Kaur

Counsel for Respondent:

S. Sehdev

Place and Date of Hearing:

New Westminster, B.C.

July 4, 2025

Place and Date of Judgment:

New Westminster, B.C.

July 29, 2025

- [1] The parties were married September 11, 2011, and separated in or about April 2014. They are the parents of twins born October 12, 2013 (the "Children"). The Children have been in the primary care of the claimant since separation, and the respondent currently exercises parenting time one day per week. He is not paying child support, aside from two recent payments, which is the crux of the issue now before the court.
- [2] On April 21, 2015, Master Baker ordered that income be imputed to the respondent in the amount of \$21,230 per annum based on full time minimum wage income, without prejudice to the respondent's ability to bring further and better medical evidence with respect to an alleged injury. The respondent was ordered to pay the table amount of child support in the amount of \$341 per month retroactive to November 1, 2014, plus \$531 per month as his 52% share of the Children's daycare expenses commencing May 1, 2015.
- [3] On May 27, 2015, Master Baker granted a further order varying the previous interim order with respect to the daycare expenses to \$276.12 per month commencing May 1, 2015.
- [4] As a result of the two interim orders of Master Baker (the "Baker Orders"), the respondent was obligated to pay a total of \$617.12 per month in child support to the claimant.
- [5] On July 19, 2017, Master Vos (as he then was) reduced the respondent's total monthly child support payments from \$617.12 to \$500, and dismissed the respondent's application to terminate all arrears (the "Vos Order").
- [6] Between November 8, 2018 and March 14, 2023, the respondent filed five separate applications seeking to reduce his ongoing interim child support and to reduce or cancel his arrears. He has also filed several applications related to the enforcement actions taken by the B.C. Family Maintenance Agency ("BCFMA"), specifically seeking a release of the hold on his driver's licence and passport.
- [7] The respondent's application filed March 14, 2023 sought to cancel the arrears of child support and s. 7 expenses and "that the child support be recalculated since April 2015 as per income of the respondent." That application came on for hearing before MacNaughton J. (then a judge of this Court) on April 13, 2023. Justice MacNaughton dismissed the application, and further ordered that the respondent "cannot apply for a further application for the next two years. He is banned from bringing an application for two years, and he is

only to bring an application after two years, once he provides production of a full F8, production of a real effort at a job search, and some effort to pay down the outstanding arrears" (the "MacNaughton Order").

- [8] The respondent, having waited the requisite two years, has now filed another application on June 27, 2025, in which he seeks to cancel the term of the Vos Order which requires him to pay \$500 per month to the claimant. In its place, the respondent seeks to have child support set at \$0 for the years 2017 through 2022, \$143.35 per month for 2023, \$298.94 per month for 2024, and \$100 per month going forward commencing May 15, 2025. He does not seek a variation of the Baker Orders.
- [9] Although no BCFMA account statement was provided, the parties advised that the arrears of child support now exceed \$60,000.
- [10] On this application, the respondent has provided his CRA notices of assessment for the years 2017 to 2023 which show that the respondent reported the following as his line 150 income:

2017 \$0

2018 \$0

2019 \$0

2020 \$12,000 (CERB benefits)

2021 \$4,889

2022 \$2,944

2023 \$13,887

He has not yet filed his 2024 income tax return.

- [11] The respondent underwent back surgery in 2022. He received a "person with disabilities" ("PWD") designation from the Ministry of Social Development and Poverty Reduction effective August 1, 2023. Since that date, he has been receiving PWD income assistance benefits from the provincial government.
- [12] The respondent's application for PWD designation, completed by the respondent's family doctor, was in evidence. Dr. Dhillon says on the PWD application form that he has been the respondent's family doctor since October 2013. He lists the respondent's health conditions as depressive disorder with an onset date of January 12, 2023, dyslipidemia with an onset date of December 8, 2021, and lumbar spine sprain/strain with an onset date of March 5, 2022. Dr. Dhillon states the following under "Restrictions":

Mr. Singh has been burdened with financial limitations due to not being able to work following his back injury in March 2022. Additionally, he was diagnosed with depression, which in turn worsens his physical symptoms and the way he perceives pain.

- [13] Notwithstanding the PWD designation, the respondent's evidence is that he is seeking return of his driver's licence so that he can work part time as a driver. He says he was offered a part time position as a Class 1 truck driver for Seatac Transport Ltd. in February 2025, at a rate of \$20 per hour with duties that do not include lifting. He was unable to accept that position as he did not have a driver's licence due to the BCFMA enforcement action.
- [14] There are some discrepancies in the respondent's evidence at various times, of which the following are two examples.
- [15] The respondent's evidence in his affidavit #6 filed April 16, 2025, is that he was injured in an accident in April 2015, and that he received no compensation from ICBC for his injuries. The respondent's affidavit #4 filed on March 14, 2023, which would have been before MacNaughton J., provides a somewhat different explanation. In that affidavit, the respondent says that he was employed as a construction helper, and that on April 15, 2015 he was severely injured at work when he suffered a slipped disc in his upper back and neck. The respondent's evidence, both then and now, does not indicate whether he sought or received any compensation from WorkSafe BC for this workplace injury. This evidence also differs somewhat from that before Master Vos, discussed at para. 23 below.
- [16] The respondent's affidavit #4 also says that in 2019 he worked part time at Sunfarm Grocery store and earned \$6,301. That evidence is supported by a copy of his 2019 CRA notice of reassessment, showing line 150 income of \$6,301. However, in his affidavit #6 filed in support of this application, the respondent only attached his initial notice of assessment for 2019 which showed no income for that year, and did not provide the notice of reassessment or mention any employment in 2019.
- [17] For her part, it is clear that the claimant is frustrated with the respondent's almost complete lack of financial support for the Children over many years, despite court orders and enrolment with BCFMA. In oral submissions, the claimant alleges that the respondent has been working for cash, although she provides no evidence to support that allegation. She has been faced with supporting the Children for 11 years with almost no financial contribution from the respondent. The claimant's evidence is that she has been working full time in customer service at a fast food restaurant despite having her own medical issues. The Children are about to enter their teen years, when their expenses will undoubtedly increase.
- [18] The test for variation of an interim order under the Family Law Act, S.B.C. 2011 c. 25 [FLA] was discussed by this court in *M.A.F. v. J.C.F.*, 2021 BCSC 1447:

VARIATION OF AN INTERIM ORDER

[61] The relevant statutory provisions to vary an interim order are set out in the Family Law Act, S.B.C. 2011 c. 25 [FLA]. Section 216(3) states:

- (3) On application by a party, a court may change, suspend or terminate an interim order made under subsection (1) if satisfied that at least one of the following circumstances exists:
 - (a) a change in circumstances has occurred since the interim order was made;
 - (b) evidence of a substantial nature that was not available at the time the interim order was made has become available.

[62] Section 216(4) the FLA sets out that:

- (4) In making an order under subsection (3), the court must take into account all of the following:
 - (a) the change in circumstances or the evidence, or both, referred to in subsection (3);
 - (b) the length of time that has passed since the interim order was made;
 - (c) whether the interim order was made for the purpose of having a temporary arrangement in place, with the intention that the arrangement
 - (i) would not adversely affect the position of either party during negotiations, during family dispute resolution or at trial, and
 - (ii) would not necessarily reflect the final arrangement between the parties;
 - (d) whether a trial has been scheduled;
 - (e) any potential adverse effect, on a party or a child of a party, of either making or declining to make an order under subsection (3).

[63] The onus is on the party seeking a change to demonstrate that it is in the best interests of the children for that party to have primary residence of the children.

[64] Interim orders are stopgap measures, designed primarily to maintain the status quo and to provide short-term solutions until the issues can be fully canvassed at trial, on a full evidentiary record.

[65] In *Fitzgibbon v. Fitzgibbon*, 2014 BCCA 403 Madam Justice D. Smith noted:

[22] Interim orders are primarily designed to maintain the status quo and to provide short-term solutions until issues regarding the best interests of a child can be fully canvassed at trial: *Johnson v. Jessel*, 2012 BCCA 393 at para. 48; *Leung v. Leung* (1998), 44 R.F.L. (4th) 121 (B.C.C.A.) at para. 10; *Eaton v. Eaton* (1987), 11 R.F.L. (3d) 92 (B.C.C.A.); and *Prost v. Prost* (1990), 30 R.F.L. (3d) 80 (B.C.C.A.). In this case, the best interests of the child was at issue. The incident that gave rise to the supervision order was disputed. This raised issues of the

parties' credibility. The forum to resolve these issues and whether there is an ongoing need for supervision of the child are best resolved at trial and not by repeated interim applications. Appeals from interim orders on issues regarding the best interests of a child generally have been discouraged absent a compelling reason: see *Haigh v. Haigh* (1987), 9 R.F.L. (3d) 301 (B.C.C.A.).

- [66] In view of the fact that interim orders provide short-term solutions it is not contemplated that there be multiple interim applications. In *B.K. v. J.B.*, 2015 BCSC 1481 Madam Justice Holmes discussed the threshold for a variation application to proceed at para. 34:
- [34] [Section] 216(3) creates a threshold for an application to vary an interim order. If there is a material change in circumstances or new evidence of a substantial nature and the threshold [has been met], the court will determine the application according to the factors in s. 216(4).
- [67] Madam Justice Martinson noted in *Hama v. Werbes* (1999), 66 B.C.L.R. (3d) 120 (S.C.) at para. 12: "interim orders, once made, should only be varied when there is a compelling change of circumstances, such that one or both parties would be seriously prejudiced by waiting until trial."
- [68] In *Huculak v. Huculak* (1998), 103 B.C.A.C. 276 at para. 3, reference was made to the Manitoba Court of Appeal decision in *Coley v. Coley*, 20 R.F.L. (2d) 327, at p. 327 regarding variations of an interim order:

Applications to vary interim orders are rare. There is a heavy onus on the person who, instead of waiting until the trial takes place, brings on a motion to vary the interim order.

- [69] In summary, the onus is on the claimant to establish there has been a compelling change of circumstances, or evidence of a substantial nature not available at the time of the interim order that was made. If either is established, then s. 37 of the FLA sets out the criteria to consider in determining what is in the best interests of the children.
- [19] Although M.A.F. dealt with variation of an interim parenting order, the principles are equally applicable to variation of an interim child support order.
- [20] The Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) [DA] has no specific provision permitting the variation of an interim order. An interim order under the DA can only be varied under the court's inherent jurisdiction, and relief is generally limited to compelling changes in circumstances. The change threshold is the material change threshold but, in the case of an interim order, the consequence of leaving the change to be addressed at trial is a further consideration: *Young v. Young*, 2019 BCSC 1953 at paras. 32-34.
- [21] No submissions were made as to which of the FLA or DA applies, but in either event the tests are similar and lead to the same result in the case at bar.
- [22] In considering whether there has been a change of circumstances, the court must first consider the evidence that was before Master Vos in July 2017.

- [23] The respondent's evidence was contained in his affidavit #1 filed on July 5, 2017, and his Financial Statement filed June 30, 2017. The Financial Statement showed no income from any source, and did not append any of the required attachments. His Affidavit #1 says that in 2014 he gained steady employment as a general labourer for a residential framing company. On December 5, 2014, he fell off a ladder while working and was injured (the "Fall"). Subsequently, on or about April 15, 2015, he was involved in a motor vehicle accident (the "MVA"). The respondent swore that he was unable to work due to injuries sustained in the MVA and the Fall, and that the pain from those injuries prevented him from bending, lifting or being seated for a prolonged period. On February 6, 2016, he was diagnosed with an L4-5 disc herniation, and surgery was recommended. The respondent decided against surgery in favour of continuing with an exercise regime. He was unable to return to gainful employment due to pain and depression. He swore that he had not received any form of social assistance and had no source of income.
- [24] In her unnumbered affidavit filed July 11, 2017, the claimant submitted that she believed the respondent was working under the table since the parties' separation but provided no evidence of same. She questioned how the respondent could support himself with no income, and questioned the reason for the respondent's decision to forgo back surgery at that time as he provided no explanation. She also noted that the clinical records provided by the respondent did not indicate that he was prohibited from working.
- [25] The claimant's evidence on this application is very similar. In oral submissions she alleged that the respondent is working for cash but has provided no evidence in support of that claim.
- [26] The significant change from 2017 is that the respondent has now provided some medical evidence, although scant, that he is unable to work. He has satisfied the province's criteria for a PWD designation.
- [27] The Vos Order was made eight years ago and, as all interim orders are, was intended to be temporary. It is concerning that these parties have been separated since April 2014, with this action having commenced some five months later, and no trial date has ever been set despite 25 notices of application having been filed and 42 hearing dates scheduled.
- [28] I am satisfied that the respondent's 2023 designation as a person with disabilities, supported by medical evidence, constitutes a material and compelling change of circumstances as at the effective date of that designation being August 1, 2023. The respondent has received income assistance benefits since that date, although the evidence as to the exact amounts received at various times is unclear. He received a total of \$18,486 in 2024. The table amount of child support for two children based on an annual income of \$18,486 is \$298.94 per month. The claimant provided no evidence as to whether she is still incurring child care expenses that were the subject of the earlier orders.

- [29] With limited evidence from each party, it is important to bear in mind that on interim applications the court achieves rough justice at best: *Robles v. Kuhn*, 2009 BCSC 1163. I therefore order that the respondent's child support obligation is reduced to \$300 per month retroactive to August 1, 2023.
- [30] On this application, the respondent sought a recalculation of child support retroactive to 2017. He essentially seeks cancellation of virtually the entirety of the child support arrears which have accrued pursuant to the Vos Order.
- [31] As discussed at the hearing, the issue of cancellation of arrears and/or recalculation of child support for the period predating the MacNaughton Order is *res judicata*, at least on an interim basis. Justice MacNaughton dismissed the respondent's March 14, 2023 application for cancellation of arrears and recalculation of child support in its entirety. The respondent did not appeal that order. He cannot now seek the same relief that was dismissed by MacNaughton J.
- [32] If the respondent wishes to pursue a retroactive recalculation of child support for the period predating the MacNaughton Order, his remedy is to seek such relief at trial, whether that be in a conventional or summary trial, where fulsome evidence can be provided by both parties. The evidence available at trial may result in different support being ordered in a final order as compared to an interim order and may be adjusted retroactively: *Macdonald v. Macdonald*, 2002 BCCA 46 at para. 20; *K.S. v. C.W.K.*, 2024 BCSC 1459 at para. 58.
- [33] In summary, I make the orders set out below.
- [34] The Vos Order is varied, effective August 1, 2023, to reduce the respondent's monthly interim child support obligation to \$300 per month.
- [35] The respondent's application to vary the Vos Order and cancel his arrears of child support for the period prior to August 1, 2023 is dismissed.
- [36] The respondent is not to file any further interim applications to cancel arrears or reduce child support for the period prior to August 1, 2023. If the respondent wishes to seek such a recalculation or reduction, he is to set this matter for trial.
- [37] Paragraphs 4 and 5 of the respondent's notice of application filed June 27, 2025 were not spoken to and are accordingly adjourned generally. If that portion of the application is to be reset, it must be on notice to the BCFMA.
- [38] Each party is to bear their own costs of this application.

"Associate Judge Hughes"

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