

CANADA / JUDGMENT

Kiss v. Leung

2024 BCSC 2335

COURT

Supreme Court of British Columbia

DECIDED

20 December 2024

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2024 BCSC 2335 Kiss v. Leung

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Kiss v. Leung,

2024 BCSC 2335

Date: 20241220

Docket: E230950

Registry: Vancouver

Between:

Zsolt Kiss

Claimant

And:

Christy Kit Hing Leung

Respondent

Before: The Honourable Madam Justice D. MacDonald

Reasons for Judgment

The Claimant, appearing in person:

Z. Kiss

The Respondent, appearing in person:

C. Leung

Place and Dates of Trial:

Vancouver, B.C.

October 1-4, 7-9, 11, 2024

Place and Date of Judgment:

Vancouver, B.C.

December 20, 2024

Table of Contents

Overview.. 3

Primary Issues. 3

Orders Sought. 4

Background Facts. 4

Legal Principles. 11

Credibility. 11

Marriage-like relationship. 11

Companion animals. 14

Certificate of Pending Litigation (CPL) 15

Analysis. 16

Credibility. 16

Did Mr. Kiss establish a marriage-like relationship with Ms. Leung?. 17

Property division. 22

Certificate of Pending Litigation. 22

Other Orders Requested. 23

Disposition.. 23

Overview

- [1] The claimant, Zsolt Kiss, claims entitlement to family property based on an alleged marriage-like relationship (also known as a common-law relationship) between 2017 and 2021 with the respondent, Christy Leung. He also alleges he was the step-father to the respondent's son.

- [2] The evidence suggests that the parties had a brief relationship which lasted less than one year. Ms. Leung denies that the parties were living together during this period of time, although she acknowledges that they were in a business relationship. As a result of the business relationship, Mr. Kiss would come to her home frequently to use her computer for business purposes. Ms. Leung adamantly denies that the parties were in a marriage-like relationship and that Mr. Kiss was the step-father of her son.
- [3] This family claim proceeded to an eight-day trial to determine whether the parties were involved in a marriage-like relationship pursuant to the provisions of s. 3(1)(b) of the Family Law Act, S.B.C. 2011, c. 25 [FLA].
- [4] For the reasons set out below, I dismiss the claimant's action on the basis that the parties were not spouses because they did not live together continuously for a period of two years. Moreover, viewed holistically, there was no indicia of a committed marriage-like relationship.

Primary Issues

- [5] There are two primary issues before me:
1. Were the parties in a marriage-like relationship?
 2. If so, what is the appropriate division of property and assets?
- [6] I have also been asked to determine whether Mr. Kiss has ownership of, or a right of possession to, the dog "Asha". I address this at the end of these reasons.

Orders Sought

- [7] The following orders are sought by the claimant, Mr. Kiss:
- 1) 50 percent of the increase in the value of the property at 402 - 5078 Irving Street, Burnaby, British Columbia, based on the parties being in a marriage-like relationship for a period of two years;
 - 2) exclusive rights to the dog Asha (also known as Bay Bay); and
 - 3) the money he put into the joint account.
- [8] The following orders are sought by the respondent, Ms. Leung:
- 1) to remove the Certificate of Pending Litigation (CPL) on her house at 5078 Irving Street, Burnaby, British Columbia;
 - 2) that the claimant remove all his stuff from two storage lockers located at 5078 Irving Street and 6455 Willingdon Street, Burnaby, British Columbia;
 - 3) that the claimant pay for the smoking violation tickets he incurred at 5078 Irving Street;
 - 4) that the claimant pay the storage locker rental fees;

- 5) that the claimant stop emailing and sharing videos to Ms. Leung's family members, friends, clients, company, church, or any real estate professional bodies; and
- 6) that the claimant not disturb the dog, Bay Bay (also known as Asha).
- [9] A number of these requests were not in the parties' pleadings.

Background Facts

- [10] Ms. Leung lives in a condominium in 5078 Irving Street, Burnaby, British Columbia (the "Property"). Ms. Leung is the registered owner of the Property and pays the property taxes, strata fees, and other maintenance fees for the Property. After filing his notice of family claim, Mr. Kiss registered a CPL on the title to the Property.
- [11] Ms. Leung has one child with her ex-husband. Her son was 18 years old at the time of trial.
- [12] Based on the evidence, I accept the following chronology:
 - i. The parties were business partners as of 2017 and Mr. Kiss had office space at Ms. Leung's house. He worked in construction but used Ms. Leung's computer for his construction business and also for buying and selling cryptocurrency.
 - ii. Between 2017 and 2021, Mr. Kiss was living with Juan, his former girlfriend. Between 2017 and 2020, Mr. Kiss registered his address as 7108 Collier Street, Burnaby, British Columbia. This is the building in which Juan's apartment is located. There are receipts showing he lived on Collier Street in 2019 and 2020 (e.g., a prescription dated December 16, 2019, a legal bill dated February 18, 2020, and a receipt for bear spray dated November 2, 2020, all listing Collier Street as his address). To bolster this, Ms. Leung relied on the fact that when Juan telephoned Mr. Kiss when he was at her home for business purposes, Mr. Kiss would run outside to talk to her.
 - iii. On February 14, 2017, Ms. Leung and her sister, Eva Leung, purchased an apartment at 16 Lakewood Drive, Vancouver, to fix up and sell. They purchased the apartment for \$190,000. Mr. Kiss had the initial contract to purchase the apartment, but he could not come up with the funds. Eva Leung was the primary mortgager but she and Ms. Leung both put in \$33,000 as a down payment. Mr. Kiss put only \$5,000 toward the purchase. Ms. Leung testified that he initially only had \$2,000 and had to later pay the remaining \$3,000.
 - iv. Between March and June 2017, after the sisters purchased the apartment, Mr. Kiss was hired as the contractor to do the renovations.
 - v. The Lakewood apartment sold on July 7, 2017, for \$365,000. Ms. Leung and her sister Eva paid \$66,942 to Mr. Kiss for his work. He paid off \$30,000 of debt with this money.
 - vi. In August 2017, there was some interaction between Ms. Leung's son and the police, of which Mr. Kiss was unaware.
 - vii. Between 2018 and 2022, Mr. Kiss's company was registered at 5078 Irving Street, Burnaby.

- viii. Between 2017 and 2019, Eva Leung visited Ms. Leung's house many times. Eva Leung testified that she rarely saw Mr. Kiss at the house. Moreover, she did not observe that Mr. Kiss kept any clothes or personal belongings in the house.
- ix. Ms. Leung testified that Mr. Kiss would drop by her place early in the morning or late at night. He was using her computer to buy cryptocurrency.
- x. In March 2018, Ms. Leung and her son were going to Thailand to meet Ms. Leung's brothers. Mr. Kiss came along as a friend. According to Eva Leung, Ms. Leung's brothers said Mr. Kiss treated Ms. Leung's son poorly on this trip.
- xi. Ms. Leung and Mr. Kiss dated briefly in or around 2020. Mr. Kiss was not living regularly at her place although he had slept over on occasion.
- xii. Mr. Kiss received an ICBC settlement of \$192,000 in 2020. He deposited it in the parties' joint business account. Mr. Kiss told Ms. Leung that he could not work at a job because working would compromise his ICBC settlement. Mr. Kiss received COVID benefits in 2020 and 2021.
- xiii. Ms. Leung says that Mr. Kiss made significant withdrawals from the parties' joint account to purchase Bitcoin. There is evidence of these withdrawals in the parties' joint bank account.
- xiv. Mr. Kiss, a regular smoker, received numerous smoking violation tickets from Ms. Leung's strata for violating the strata's no-smoking bylaw. However, there were no violations before October 1, 2020.
- xv. A dog, Asha/Bay Bay, was purchased at some point in the summer of 2020, which Mr. Kiss helped to care for. Mr. Kiss says the dog was purchased from the joint account. Ms. Leung says Mr. Kiss did not pay for anything. Ms. Leung provided evidence that she purchased a dog license and paid for a chip to be inserted under the dog's skin for tracking purposes.
- xvi. In September 2020, Ms. Leung's son requested that Mr. Kiss not spend time at the house.
- xvii. On December 7, 2020, Mr. Kiss sent an email to Ms. Leung's family saying that she had "kicked him out".
- xviii. Mr. Kiss continued to buy Bitcoin and Ms. Leung invested in it too. Ms. Leung said Mr. Kiss sold the cryptocurrency behind her back and as a result she lost money.
- xix. A file was opened by Child Protection Services (CPS) at the Ministry of Child and Family Development (MCFD) in early 2021 concerning the safety of Ms. Leung's son.
- xx. On March 27, 2021, Ms. Leung's son called the police because he wanted Mr. Kiss to leave their home.

xxi. On May 22, 2021, Mr. Kiss called the police. He told them Ms. Leung had mental health problems. Mr. Kiss advised the police that 5078 Irving Street was his home. In May 2021, Mr. Kiss also contacted MCFD and reported that Ms. Leung hit him, dealt drugs, was addicted to prescription medication, and did not keep adequate food in the home. He later entirely recanted this statement. MCFD staff state in writing that the file was closed due to "malicious/erroneous facts reported."

xxii. There is an ICBC letter addressed to Mr. Kiss from May 2021 that was sent to 2200 Dundas Street, Vancouver, British Columbia. In June 2021, Mr. Kiss sent a letter to numerous people saying his new address is 2200 Dundas Street.

xxiii. On June 27, 2021, Mr. Kiss signed a rental agreement with Ms. Leung to live at her place. The rental agreement was in evidence. Ms. Leung says he wanted to move in because the place he was living in was too small. In this agreement, Mr. Kiss stated he would pay Ms. Leung \$500 per month.

xxiv. In June 2021 Ms. Leung had surgery on her back. Mr. Kiss alleges he helped take care of her during this time.

xxv. In June 2021 Mr. Kiss received \$50,000 from Juan, his ex-girlfriend. There was a suggestion he extorted Juan for this money.

xxvi. On July 1, 2021, Ms. Leung asked Mr. Kiss to leave because he was abusing her son, he was not clean, and he was not paying the rent of \$500 per month. She issued him a Notice to End Tenancy for unpaid rent. There is no record in evidence of any rental payments from Mr. Kiss to Ms. Leung.

xxvii. On July 30, 2021, Ms. Leung called the police to have them remove Mr. Kiss from her house and to end the tenancy.

xxviii. In August 2021, Mr. Kiss told Ms. Leung to get him \$15,000. Ms. Leung gave him the money. In return, on August 19, 2021, Mr. Kiss agreed to the following: "With this refund, Zsolt has no further claims from Ms. Leung, this includes the property of [redacted] 5078 Irving Street in Burnaby. With this payout, Zsolt Kiss promises not to contact any of Ms. Leung's family members by email or otherwise ". Mr. Kiss withdrew the \$15,000 that Ms. Leung had deposited in the joint business account on the same day she deposited it.

xxix. According to an email sent by Mr. Kiss included in the MCFD file, on August 30, 2021, Mr. Kiss was not living with Ms. Leung.

xxx. On September 6, 2021, Mr. Kiss sent an email disputing the end to his tenancy with Ms. Leung.

xxxi. Ms. Leung testified that Mr. Kiss asked for \$50,000 from her family. Additionally, on October 3, 2021, Mr. Kiss sent an email to Ms. Leung's former husband, her sister Eva, and her brother Alex asking for \$180,000 to have him leave Ms. Leung. In this email he states: "E-transfer me the money, then I am gone."

xxxii. On October 6, 2021, Mr. Kiss called the police to have Ms. Leung removed from her own home. He claimed he was the landlord of 5078 Irving Street.

xxxiii. On November 5, 2021, Ms. Leung again called police to remove Mr. Kiss from her home on Irving Street.

xxxiv. On November 26, 2021, an upstairs neighbour called the police because she heard screaming coming from Ms. Leung's unit.

xxxv. According to the MCFD file, on December 2, 2021, Mr. Kiss allegedly threatened to kill Ms. Leung's son. The police became involved. A similar threat is noted in the MCFD file on August 19, 2022.

xxxvi. There are photos in evidence of Mr. Kiss with his new girlfriend on December 24, 2021. In one photo they are kissing.

xxxvii. Between January to May 2022, the MCFD file says Mr. Kiss was not living at Irving Street.

xxxviii. On January 24, 2022, Mr. Kiss sent an email to an employee of the MCFD, to Ms. Leung, and to one other individual. (I note that English is Mr. Kiss's second language.) The email stated:

You don't owe me money, but I would like answers

Christy,

You know that I will not collect from you, but at least an explanation would be good.

You don't need to pay me money, the support I gave you, was my choice.

I am just sad, because of everything happened.

I already decided not to collect from you either way.

I am just tired.

Zsolt

xxxix. On April 29, 2022, Mr. Kiss sent an email to Ms. Leung and her son. He copied many other individuals and said the following:

Christy and [son],

Let's sue the CPS together.

We can sue them for all the damages, because they say they will do something and didn't deliver that service. They also blackmail us and mislead [son] and Christy from day 1.

By misleading us, they didn't allow us to live our lives freely.

I have a winning case against the CPS, let's join together to sue them, then we divide the money we get from them. I can get 850K for my part plus Christy can get around 3-400K and [son] can get around 3-400K.

Together, we have a claim 1.5 million dollars.

It will take time, but in a few years, we have that money.

I can finance the whole thing.

Let's join together to sue the CPS.

I will have a draft of the lawsuit by May 2.nd.

You look it over and let me know if you want to proceed.

I draw up the claim for 1.6 million dollars, once we win, then we divide the 1.6 million by 3, and everyone gets equal share.

xl. On July 10, 2023, legal counsel for MCFD sent the following letter to Mr. Kiss to his Dundas Street address. This letter was included in the Ministry file upon which Mr. Kiss relied. The letter is hearsay so I cannot rely on it for the truth of its contents but I note it corroborates much of Ms. Leung's testimony. It also suggests that Mr. Kiss is a vexatious litigant based on his many complaints about Ministry employees and the numerous court proceedings that Mr. Kiss has commenced.

Legal Principles

Credibility

[13] When a case is largely determined on which version of testimony of two litigants the court is to believe, credibility and reliability are paramount. Credibility and reliability are distinct concepts: *R. v. Khan*, 2015 BCCA 320 at para. 44. Credibility concerns the veracity of a witness, while reliability involves the accuracy of the witness's testimony and engages a consideration of the witness's ability to observe, recall, and recount what occurred: *Khan* at para. 44.

[14] Credibility and reliability are not all or nothing concepts. A trial judge may believe some, all, or none of the testimony of a witness and attach different weights to different part of their evidence: *R. v. R. (D.)*, [1996] 2 S.C.R. 291 at para. 93, 1996 CanLII 207 (SCC), per L'Heureux Dubé, dissenting.

[15] Judges are permitted to use their common sense and life experiences when assessing credibility. However, judges are prohibited from relying upon unsupported stereotypical reasoning and speculation. Assessments of credibility must not be based on unfair or inaccurate external viewpoints that are not founded in the record: *R. v. Delmas*, 2020 SCC 39.

Marriage-like relationship

[16] A person must be considered a "spouse" in order to have a claim to family property under the FLA: s. 81.

[17] The criteria for establishing that a person is a spouse is found in s. 3 of the FLA, which provides:

Spouses and relationships between spouses

3 (1) A person is a spouse for the purposes of this Act if the person

- (a) is married to another person, or
- (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or
 - (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.

[18] Thus, in order for the claimant to successfully establish that he was the respondent's spouse under s. 3(1) of the FLA, he must establish:

- a) that the parties lived together for a continuous period of at least two-years; and
- b) that the relationship was "marriage-like".

[19] Whether a marriage-like relationship exists, in particular for the purpose of assessing entitlement to division of family property, is a question of mixed fact and law. The inquiry is contextual; it involves both parties' subjective intentions and the objective evidence before the court: *Jones v. Davidson*, 2022 BCCA 31 at para. 24.

[20] In *Bellerose v. Reda*, 2023 BCSC 748, citing Justice E. McDonald, Justice Brongers articulated the legal principles that apply to the question of whether a relationship was "marriage-like":

[48] The concept of a "marriage-like relationship" has been the subject of considerable jurisprudential consideration. Many of these authorities were brought to my attention by the parties. I found the most helpful one to be the relatively recent decision of Justice E. McDonald in *Armstrong v. Scholz*, 2022 BCSC 863. Paragraphs 29 to 35 of her reasons contain a thorough review of several of the leading cases that have discussed the principles and approach to be applied when deciding whether two persons have been in a marriage-like relationship. These principles can be summarized as follows:

- a) The burden is on the claimant to prove that they meet the definition of "spouse". The standard is on a balance of probabilities (*Voth v. Martin*, 2019 BCSC 834 at para. 8, citing *F.H. v. McDougall*, 2008 SCC 53 at para. 49).

- b) Section 3 of the Act imposes both a two-year continuous "cohabitation requirement", and a marriage-like "relationship requirement". The cohabitation requirement is approached flexibly and may be satisfied even if the parties may have lived for extended periods at different locations (*Hu v. Lee*, 2022 BCSC 56 at paras. 41-42; *Thompson v. Floyd*, 2001 BCCA 78 at paras. 22-36).
 - c) The determination of whether a relationship was marriage-like requires a holistic approach in which all of the relevant factors are considered and weighed, but none are treated as being determinative of the question (*Austin v. Goerz*, 2007 BCCA 586 at para. 62).
 - d) While a "checklist" approach should not be employed, it can be helpful to consider the presence or absence of commonly accepted indicators of the sorts of behaviour that society, at a given point in time, associates with a marital relationship (*Weber v. Leclerc*, 2015 BCCA 492 at para. 25).
 - e) Such indicators of a marriage-like relationship may include: (1) shared shelter; (2) sexual and personal behaviour; (3) services; (4) social activities; (5) economic support and children; and (6) societal perception of the couple (*M. v. H.*, 1999 CanLII 686 (S.C.C.), [1999] 2 S.C.R. 3 at para. 59; citing *Molodowich v. Penttinen* (1980), 1980 CanLII 1537 (O.N.S.C.) at para. 16 - these are sometimes referred to as the "Molodowich factors").
 - f) Evidence of the subjective intentions of the parties is important to the determination of whether the relationship was marriage-like. However, this evidence must be tested against objective evidence of their lifestyle and interactions, which will provide direct guidance on the nature of the relationship (*Dey v. Blackett*, 2018 BCSC 244 at para. 195).
 - g) A person is either a "spouse" or is not. There is no middle ground. People may live together interdependently and yet fail to establish that they developed the kind of psychological and emotional union associated with marriage (*C.F.M. v. G.L.M.*, 2018 BCSC 815 at para. 10).
 - h) A marriage-like relationship is akin to a marriage without the formality of a marriage. However, it must be borne in mind that people treat their marriages differently and have different conceptions of what marriage entails (*Mother 1 v. Solus Trust Company*, 2019 BCSC 200 at para. 143).
- [49] Also worth mentioning are two recent "marriage-like relationship" decisions issued last year by our Court of Appeal, albeit in the context of estate litigation: *Coad v. Lariviere*, 2022 BCCA 222 at para. 127; and *Jones v. Davidson*, 2022 BCCA 31 at paras. 21-24. They effectively confirm that there is no specific definition of whether marriage-like relationships exist. In particular, such relationships are not simply defined by financial dependence, sexual relationships, or the mingling of property and finances. In sum, their existence ought not to be determined through a formulaic "checklist" approach, but rather through a contextual and holistic examination of all of the relevant aspects of the parties' relationship.

- [21] In other words, the courts take a holistic approach to determining whether a marriage-like relationship exists between two individuals. No single factor is determinative: *Austin v. Goerz*, 2007 BCCA 586.
- [22] In *Weber v. Leclerc*, 2015 BCCA 492, leave to appeal to SCC ref'd, [2016] S.C.C.A. No. 19, Justice Groberman, speaking for the Court of Appeal, emphasized that while the parties' intentions are relevant, they must be supported by objective evidence:
- [23] The parties' intentions - particularly the expectation that the relationship will be of lengthy, indeterminate duration - may be of importance in determining whether a relationship is "marriage-like". While the court will consider the evidence expressly describing the parties' intentions during the relationship, it will also test that evidence by considering whether the objective evidence is consonant with those intentions.
- [24] The question of whether a relationship is "marriage-like" will also typically depend on more than just their intentions. Objective evidence of the parties' lifestyle and interactions will also provide direct guidance on the question of whether the relationship was "marriage-like".

Companion animals

- [23] The FLA now provides for companion animals in the division of property. A companion animal is defined as "an animal that is kept primarily for the purpose of companionship": FLA, s. 1. The court may make an order to declare who has ownership of, or right of possession to, a companion animal: FLA, s. 97(d)(a). The court may also make an order regarding a companion animal, even if the companion animal is excluded property: FLA, s. 97(4)(b). In making such an order, the court must consider the following factors:
- a) the circumstances in which the companion animal was acquired;
 - b) the extent to which each spouse cared for the companion animal;
 - c) any history of family violence;
 - d) the risk of family violence;
 - e) a spouse's cruelty, or threat of cruelty, toward an animal;
 - f) the relationship that a child has with the companion animal;
 - g) the willingness and ability of each spouse to care for the basic needs of the companion animal;
 - h) any other circumstances the court considers relevant.

FLA, s. 97(4.1)

Certificate of Pending Litigation (CPL)

- [24] There are several ways that a party may challenge a CPL under the Land Title Act, R.S.B.C. 1996, c. 250 [LTA].
- [25] A party may argue that the threshold criteria to support a CPL has not been fulfilled, in particular, by failing to plead an interest in land: LTA, s. 215. Alternatively, a party may argue that the CPL causes significant hardship and inconvenience: LTA, s. 256. Section 252 of the LTA also allows for the cancellation of a CPL if no step has been taken in the matter for one year: LTA, s. 252. Finally, a party may apply to have a CPL set aside following the dismissal of the underlying claim: LTA, s. 254.
- [26] There is no allegation that Mr. Kiss has failed to meet the threshold criteria for filing a CPL under s. 215 of the LTA. Ms. Leung has also not argued that the CPL is causing hardship and inconvenience: LTA, s. 256. Therefore, I understand Ms. Leung to be requesting a removal of the CPL due to a dismissal of the underlying claim under s. 254.
- [27] This Court does not have jurisdiction to make an order immediately cancelling a CPL if the underlying action is dismissed at trial: *Berthin v. Berthin*, 2018 BCCA 57 at para. 44. Instead, where the underlying claim to an interest in land is dismissed, the registration of the CPL may only be cancelled in conformity with s. 254 of the LTA: *Berthin* at para. 44. Section 254 provides:

Cancellation of certificate of pending litigation if action dismissed

254 If an action in respect of which a certificate of pending litigation is registered has been dismissed, the registrar must cancel the registration as provided in the regulations, or, on

- (a) application, and
- (b) production of a certificate of the registrar of the court that issued the certificate of pending litigation, endorsed by the registrar of the Court of Appeal, certifying that
 - (i) the action has been dismissed and that the time limited for appeal has expired and no notice of an appeal has been filed with the registrar of the Court of Appeal, or
 - (ii) a notice of appeal has been filed and has been finally disposed of, and the dismissal of the action has not been set aside by the Court of Appeal or the Supreme Court of Canada.

- [28] The CPL must remain on title until the requirements of s. 254 are satisfied or a subsequent application under s. 256 establishes hardship or inconvenience: *Berthin*. This is to allow for the party whose claim has been dismissed to exhaust their avenues of appeal.

Analysis

Credibility

- [29] This case must be decided on a balance of probabilities. As explained in *F.H. v. McDougall*, 2008 SCC 53:

- [49] In all civil cases, the trial judge must scrutinize the relevant evidence with care to determine whether it is more likely than not that an alleged event occurred.
- .
- [86] However, in civil cases in which there is conflicting testimony, the judge is deciding whether a fact occurred on a balance of probabilities. In such cases, provided the judge has not ignored evidence, finding the evidence of one party credible may well be conclusive of the result because that evidence will mean explicitly or implicitly that the other party was not believed on the important issue in the case. That may be especially true where a plaintiff makes allegations that are altogether denied by the defendant as in this case.
- [30] This case is largely a determination regarding which witness I believe, Mr. Kiss or Ms. Leung. As a result, this dispute largely turns on my assessment of the credibility and reliability of the parties' evidence.
- [31] Applying the above legal framework and assessing each party's testimony in light of the evidence as a whole, I find Ms. Leung to be a credible witness. She had some inconsistencies in her testimony but none that were central to her position.
- [32] In contrast, I have significant concerns about Mr. Kiss's credibility. There were many internal inconsistencies in Mr. Kiss's evidence. He contradicted himself and his evidence was largely implausible. I note that he made a number of allegations against Mr. Leung and her son. Many of his allegations contain salacious details which are implausible and which I have not repeated in these reasons. Considering his evidence as a whole, and weighing it against the preponderance of the evidence before me, I find that he is neither a credible nor a reliable witness.
- [33] I conclude that I cannot rely on Mr. Kiss's evidence unless it is reasonable and likely in light of uncontroverted facts, has remained consistent despite meaningful and probing cross-examination, and harmonizes with other independent evidence I have accepted: *Bradshaw v. Stenner*, 2010 BCSC 1398 at paras. 186-188; *M.P. v. P.P.*, 2024 BCSC 2138 at para. 29.

Did Mr. Kiss establish a marriage-like relationship with Ms. Leung?

- [34] Mr. Kiss bases his claim on s. 3 of the FLA. He relies on the MCFD file, which appears to have been opened in early 2021, to establish that he was the step-father of Ms. Leung's biological son and was in a marriage-like relationship with Ms. Leung. He argues that the parties lived together in a marriage-like relationship commencing in 2017 and continuing until 2021.
- [35] Ms. Leung admits that she entered into a business relationship with Mr. Kiss in 2017. She denies that the parties lived as common-law partners. Ms. Leung claims that Mr. Kiss tried to control her home. She testified that the MCFD file was opened when her son ran away because Mr. Kiss would not leave her house. She testified that he would not leave her son alone. While she states he was overly involved with her son, she maintains that, for the most

part, Mr. Kiss was simply in business with her. However, there was some evidence before me that the parties dated on and off in 2019 or 2020.

- [36] I earlier set out my findings with respect to the parties' relationship. I relied on the chronology from Ms. Leung's submissions with a number of additions and subtractions based on the evidence at trial. Ms. Leung's version of events was largely uncontradicted - or at least in any believable way - by Mr. Kiss. This chronology was supported by the testimony of Eva Leung, who was involved in the business relationship with Mr. Kiss, as well as the documentary evidence.
- [37] I do not find Mr. Kiss's evidence of being in a marriage-like relationship to be persuasive.
- [38] I provide two examples. First, Mr. Kiss relies on the MCFD file to establish he was the step-father of Ms. Leung's son and the common-law partner of Ms. Leung. It is surprising that Mr. Kiss relied so heavily on this report. Not only is it hearsay, the MCFD file does not reflect well on Mr. Kiss.
- [39] To the extent that Mr. Kiss relies on the MCFD file to establish a marriage-like relationship, the CPS obtained the information that the parties were in a common-law relationship directly from Mr. Kiss. These are prior consistent statements which, unless they fall under an exception, cannot be relied upon. No exception was relied upon by Mr. Kiss. Even when admitted under an exception, a prior consistent statement can be used only for the purpose of the exception itself and not to bolster credibility or for the truth of its contents: *R v. Stirling*, 2008 SCC 10 at paras. 5, 7.
- [40] In addition, Ms. Leung pointed out that when she was interviewed by CPS, he was listed as her boyfriend. Although this is not conclusive that the parties were not in a marriage-like relationship, it indicates that Ms. Leung viewed the relationship as a casual one rather than a marriage-like relationship.
- [41] Second, throughout Mr. Kiss's testimony, there was no evidence presented to establish that the parties were in a marriage-like relationship. Mr. Kiss was unable to adduce any evidence of intimacy, joint family adventures, plans, or objectives. There was no evidence that the "family" had dinners out, much less ate dinner together at home. Mr. Kiss and Ms. Leung did not go out together as a couple, they did not go to movies together, and they did not take family holidays. There was one holiday to Thailand, but there was no evidence adduced that the parties shared a room or were there as a couple. There was no evidence of holiday celebrations, and the parties had no joint friends.
- [42] Mr. Kiss called one friend as a witness, Mr. Berlow, but his evidence was weak. He testified that Mr. Kiss had been in a relationship with Juan. He testified that Mr. Kiss moved to Ms. Leung's about five years ago, around 2019, after Juan tired of him. He acknowledged that Mr. Kiss received a \$50,000 payment from Juan. This is consistent with Ms. Leung's testimony.

- [43] Mr. Berlow testified that Mr. Kiss tried to act as a father to Ms. Leung's son, but the son was resistant and started to call the police on Mr. Kiss. At one point, Mr. Berlow testified that he went to a store with Mr. Kiss and Mr. Kiss bought a \$450 telescope for the son. He could not say when because, as he explained, he is not good with dates. He testified that he saw Ms. Leung at the house twice but did not observe whether she and Mr. Kiss shared a bedroom. He said that he is friends with Mr. Kiss, but that they did not talk about their relationships.
- [44] Lastly, Mr. Berlow answered in cross-examination that the dog was brown when, in fact, the dog is grey. When his answer was challenged, he stated: "At my age, my memory could be wrong." I find Mr. Berlow's evidence to lack reliability. In any event, it did not come close to supporting that the parties were in a marriage-like relationship.
- [45] The only photos Mr. Kiss put into evidence are of him and the dog. Ms. Leung tendered one photo of Mr. Kiss with the girlfriend he lived with on Dundas Street.
- [46] In May 2021, Mr. Kiss was listing his address as 2200 Dundas Street. In June 2021, he signed a rental agreement to reside at Ms. Leung's residence. These two pieces of evidence support other testimony that prior to June 2021, Mr. Kiss's primary residence was not at 5078 Irving Street with Ms. Leung and her son.
- [47] On August 19, 2021, Ms. Leung paid Mr. Kiss \$15,000. She received an email confirmation from Mr. Kiss, acknowledging receipt of the money and stating he would no longer contact her or her son. In an email dated March 19, 2022, Mr. Kiss wrote to Ms. Leung and others saying:

Christy,

Thank you for bringing me my stuff.

I obviously care about you, so I moved out to satisfy you, basically I was harassed out by you.

I suggest we be on good terms, even we don't agree on things.

Having said that, I will have to collect my share of the property value increase, and I will do so.

The lien is on title, so you can't sell without paying me out.

[Emphasis added]

- [48] It is important to consider the parties' intentions, particularly whether they saw the relationship as being "of a lengthy, indeterminate duration": Weber at para. 23. In addition, one would expect that a couple in a marriage-like relationship would be able to point to a series of social activities they enjoyed together over the period of time in which the alleged relationship took place. Those activities need not be formal; they could include something as routine as sitting in the media room together and watching TV.

[49] From the above chronology, and the testimony of the parties and their witnesses, I summarize the facts I have accepted. In my view, these facts establish that the parties were not living in a marriage-like relationship for two consecutive years:

- i. Mr. Kiss shared some parenting responsibility with respect to Ms. Leung's son. However, it appears he took on this responsibility on his own initiative and against the wishes of Ms. Leung.
- ii. There is no evidence that the parties' on-again-off-again romantic relationship in 2019 or 2020 was a serious or committed relationship. Moreover, there is no evidence that the parties lived together during this time. There was no evidence of any intentions with respect to their relationship. There is no evidence that the parties shared a bedroom on a regular basis or had sexual relations throughout that period.
- iii. There are no photos of the parties together, much less family portraits displayed in the home. There is a photo in evidence of Mr. Kiss with another woman during this period. There was also evidence that he had been living with his girlfriend Juan and that he regularly took phone calls from her when he was working at Ms. Leung's house.
- iv. The parties had contact with extended family during a family holiday to Thailand. However, there was no evidence that the parties were anything but friends on this holiday. There was also evidence that Mr. Kiss did not treat Ms. Leung's son well. I am not aware of any contact between Ms. Leung and Mr. Kiss's family.
- v. The parties did not visit family and friends together. The parties did not go out together as a couple for dinner or go to dinner parties with friends. The parties did not exchange birthday or holiday gifts. Mr. Kiss and Ms. Leung did not discuss marriage.
- vi. The parties did not purchase property together apart from the Lakewood property, for which Mr. Kiss put in only \$5,000. This was part of the parties' business relationship; it was not a property in which they ever intended to reside.
- vii. The title of the home in which Mr. Kiss alleges they lived as a family is in Ms. Leung's name. The evidence before me did not establish that Mr. Kiss made any contribution to its purchase or to the mortgage payments. There was no evidence that he paid property taxes or utilities. Rather, the evidence was that Eva Leung pays the mortgage and Ms. Leung pays the strata fees, property taxes, and utility bills.
- viii. The only expenses the parties shared were reflected in the parties' joint business account.
- ix. Apart from the business account, the parties kept their finances separate. Ms. Leung assisted Mr. Kiss by loaning him money from time to time. Mr. Kiss repaid some of these loans through the business account.
- x. There is no evidence that Mr. Kiss and Ms. Leung referred to each other on their tax returns.

xi. The parties did not spend their evenings together, go to movies, or even watch television together. Ms. Leung says that Mr. Kiss would arrive early in the mornings to work on her computer and then disappear on most days. He would then return late in the evening to again work on the computer.

xii. Lastly, there was no evidence before me that the parties had any shared plans for the future.

[50] Viewed holistically, I find there is no indicia of a marriage-like relationship between the parties. I accept that the parties were in a business relationship and, for a brief period of time, a romantic relationship. However, there was no persuasive evidence that the parties lived in a marriage-like relationship for two continuous years as required by s. 3(1)(b) of the FLA.

Property division

[51] In light of my conclusion that the parties were never spouses within the meaning of the FLA, I cannot make any orders for property division under the FLA. I therefore make no order with regard to the dog or with respect to Ms. Leung's property on Irving Street.

[52] I am satisfied that the dog belongs to Ms. Leung, given that she contacted the breeder, her name is solely on the dog's registration forms, she arranged for the dog to be spayed, and she paid for the dog's veterinary bills. These transactions were in evidence on Ms. Leung's Visa statements. Although Mr. Kiss did take the dog to veterinary appointments, Mr. Kiss was not even listed as the alternative contact on the dog's registration forms (Ms. Leung's sister is).

[53] The dog will remain in Ms. Leung's possession as the parties were not spouses, and have no rights to each other's property under the FLA.

Certificate of Pending Litigation

[54] Given the principles articulated in Berthin, I am unable to immediately cancel the CPL on Ms. Leung's property following the dismissal of Mr. Kiss's claim. Instead, Ms. Leung may apply to cancel the CPL pursuant to the requirements in s. 254 of the LTA.

Other Orders Requested

[55] Ms. Leung requested a number of other orders, namely that Mr. Kiss retrieve his stuff from her storage locker, pay off smoking violations, and other similar orders. Ms. Leung did not file a counterclaim and these requests are not otherwise found in her pleadings. As a result, I cannot grant these orders.

[56] The same may be said for Mr. Kiss's extra requested orders, such as alleging he is owed money from the joint account. These requests are not in his pleadings so even if he had proven his claims, I cannot grant the orders requested.

Disposition

- [57] I find the claimant has not proven that the parties lived together in a marriage-like relationship sufficient to support an interest in Ms. Leung's property or in her dog.
- [58] I dismiss Mr. Kiss's claim in its entirety.
- [59] Given that the action is dismissed, Ms. Leung may apply to the registrar to cancel the CPL against the property at 5078 Irving Street, Burnaby, pursuant to s. 254 of the LTA.
- [60] Costs are awarded to Ms. Leung.
- "D. MacDonald J."
-

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/24/23/2024BCSC2335.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/kiss-v-leung-2024>

Prepared on 26 October 2026 · Esheria