

CANADA / JUDGMENT

MacDonald v. MacDonald

2025 BCSC 629

COURT

Supreme Court of British Columbia

DECIDED

14 March 2025

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2025 BCSC 629 MacDonald v. MacDonald

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

MacDonald v. MacDonald,

2025 BCSC 629

Date: 20250314

Docket: E241396

Registry: Vancouver

Between:

Cathy Marjorie MacDonald

Claimant

And:

Timothy William MacDonald

and Ella Ventures Ltd., dba BC Upfitters and Line-X

Respondents

Before: Associate Judge Robertson

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

L.M. Newby

W.T.H. Lovatt

Counsel for the Respondent:

N. Chauhan

Place and Date of Hearing:

Vancouver, B.C.

March 14, 2025

Place and Date of Judgment:

Vancouver, B.C.

March 14, 2025

- [1] THE COURT: When I issued these oral reasons for judgment, I reserved the right to edit them as to grammar, background and citations should a transcript be ordered. I have made such edits, without affecting the substance or final disposition.
- [2] The application before the court today is for interim spousal and child support, with an adjournment being requested.

Adjournment Request

- [3] At the commencement of the application, the respondent sought an adjournment. In this respect, the application was filed relatively recently, February 21, 2025, and previously returnable with it then being adjourned over to today such that there has not been a long period of time for the respondent to respond, although more than that required under the Rules.
- [4] As a result, the materials before the court in response are sparse and largely relate to a disagreement or, as the respondent describes it, a stated intention to dispute the findings of a guideline income report. For that reason, the adjournment was being sought.
- [5] Having regard to the non-exhaustive factors for consideration in granting an adjournment as set out in *Navarro v. Doig River First Nation*, 2015 BCSC 2173, at paras. 18 to 22, I granted the adjournment but on the basis that I could address the prejudice to the applicant in having the determination of the issue of support delayed by making an interim, interim order for temporary support pending the application coming on for hearing, in order to bridge the gap between now and the full hearing date (the "Bridge Order").
- [6] In my view, that was the most just way to address the balancing of the prejudice between the parties. Specifically, I sought to address the prejudice in proceeding to hear an application where the respondent may not have had a full opportunity to provide an answer to all of the materials before the court today and respond accordingly, specifically with respect to opposition of an expert report, as against not proceeding today and the potential financial

detriment to the claimant as a result of not having any support from the respondent pending that determination, having regard to their history.

- [7] Notably, in this respect, it was the position of the respondent that a full two-day hearing would need to be scheduled for this matter. While I have concern that two days is necessary, and expressed to the parties my concern as to what is colloquially referred to as "defence by delay" in giving excessive time estimates, the inherent delay that scheduling a two day hearing will cause made it appropriate, in my view, an appropriate Bridge Order be made for the sole purpose to address that gap, enabling the parties to have the matter resolved on a complete evidentiary record.

Background and Parties' Financial Circumstances

- [8] For the purpose of these reasons, I have expanded the background which, in the interest of time, I only partially set out during my oral reasons.
- [9] The parties were married for approximately 22 years, having begun cohabiting in or about September 2001, marrying the following year, and separating about March 6, 2024. They have 2 children, aged 16 and 17 (collectively, the "Children"). The older child lives away from home most of the year playing Hockey but, when here, lives primarily with the respondent. The younger child lives primarily with the claimant.
- [10] The personal respondent is the sole shareholder of the corporate respondent. For the purpose of these Reasons, I will refer to the personal respondent as the "respondent" and the corporate respondent as the "Company".
- [11] The claimant left her employment after having their second child, and subsequently began working with the Company, she says, as part of an agreement to allow her to have a more flexible, part time schedule so that she could continue to provide care for the Children and undertake domestic duties. She continued to work for the Company post separation, but did so in a way to limit her contact with the respondent and to avoid them both being there at the same time. However, the claimant says, the income being paid to her was reduced by the respondent resulting in her eventually leaving the Company and securing alternative employment with L'Oreal, the company with which she worked prior to having the Children. She is now earning \$95,000 per year from that position.
- [12] According to her F8, the expenses for her and the child that lives with her are \$373,416.84 per year, or \$31,118.07 per month. Included in those amounts are holding costs relating to the former family home, in which she is living in and covering the costs of, including in respect of a mortgage and homeowner line of credit, and a vehicle that was leased pre-separation with no financial benefit to returning it given the costs consequences of breaking the lease. Those costs amount to approximately \$7,500 (rounded up), or \$90,000 per year.

[13] In or about November 2024, the claimant obtained a Guideline Income Report in respect of the respondent's income from the Company, which was finalized on January 24, 2025. The author's findings as to the respondent's income were based on four different scenario's which ranged from \$875,000 to \$1,318,000.

[14] Among other reasons for the dispute as to those conclusions, the respondent argues that they do not take into account the Company's financial status for 2024, which he says have deteriorated. Very little evidence is before the court as to the Company's current financial status. For example, no print outs of the general profit and loss statements, or balance sheets, were provided by the respondent. The only evidence on this point is an affidavit in which the Company's general manager deposes as follows:

The markup on larger clients is considerably less profitable per unit than with smaller clients as the larger clients can demand discounts for volume. The result of this is that we are less profitable regarding our margins than we were this time last year.

[15] In any event, for the purpose of these Reasons, given the dispute as to its admission I am not considering the conclusions from the Guideline Income Report.

[16] As to the 2023 status, included in the evidence is an email from the Company's accountant which summarizes the income, or personal benefit, derived from the Company that year as being \$150,000 paid for personal expenses, \$300,000 for T4 wages, and \$300,000 in profits thereafter to the Company. The accountant specifically notes that the Company made \$750,000 in 2023.

[17] In his F8 filed March 11, 2025, the respondent deposes that his income is approximately \$149,000, although it is acknowledged that there remain personal expenses that are still being paid through the Company, despite what he describes as ongoing attempts to reduce expenses generally, and specifically those being paid by the Company.

[18] The claimant disputes the respondent's F8 income as being accurate given the parties history of running considerable expenses through the Company. However, even if it is accurate as to declared income from the Company, as T4 earnings or otherwise, she has calculated a further \$300,000 in personal expenses being paid by the Company for that year based on a review of the Company's line of credit and visa statement alone.

Analysis on Adjournment Terms and Bridge Order

[19] The parties' arguments as to what would be an appropriate term for the Bridge Order mirrored the arguments for the support order as sought in the application itself.

[20] The argument of the claimant is largely based on what the status quo was both prior to the parties' separation and afterwards in that a great deal of their living and personal expenses has continued to be paid through the Company.

- [21] A frequently used description of the financial practices that the parties appear to have adopted is that they treated the Company, from a financial perspective, as their own personal piggy bank. The effect of that muddies the water considerably as to what the true income of the parties' may be. T4 income is not necessarily indicative of the parties' financial circumstances in cases such as this.
- [22] The financial records in the materials, in both the claimant's and the respondent's financial information, show numerous examples of such expenses being paid through the Company not only throughout the history of their relationship, but more recently, including personal expenses for the Children such as paying payment of hockey and travel expenses, clothing, legal fees (which include legal fees with respect to the respondent's criminal charges as a result of an allegation of family violence), and anger management courses. These expenses represent a small tip of the overall expenses which may be properly considered in an income analysis under ss. 18 and 19 of the Federal Child Support Guidelines, SOR/97-175.
- [23] Based on all of that, the claimant argues that the respondent's income for the purpose of the Bridge Order should be imputed at \$750,000.
- [24] The respondent argues that his F8 stated income should be used, that being \$149,000. However, he acknowledges that personal expenses are paid through the Company. Based on a very rough review of what appear to clearly be personal expenses being paid by the Company, an income of approximately \$149,000 is seriously underestimated.
- [25] In other words, it is obvious on the face of the documents that there are expenses being paid through the Company that would have to be included in the parties' income, at least when they shared income from the Company, and, now that the claimant is no longer an employee, the respondent's income, on an analysis for support purposes.
- [26] The calculation of the proper income to impute will be the subject of the final application. For the purpose of this application, I need not conduct a financial audit of the parties' finances, but rather make an order achieving rough justice. This is even more so the case as this is only intended to be a temporary Bridge Order.
- [27] Notwithstanding that this will be a Bridge Order, made as a term of an adjournment, para. 12 of *Robles v. Kuhn*, 2009 BCSC 1163 provides assistance as to the court's analysis:
- [12] On interim support applications, the application of these provisions must be qualified by certain established considerations:
1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
 2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);

3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, 1998 CanLII 6440 (BC CA), [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
 4. The courts should not unduly emphasise any one of the statutory considerations above others;
 5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
 6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
 7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);'
 8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B.*
- [28] Given that this interim Bridge Order will be without prejudice and temporary until the main application can be heard, the factors that have greater emphasis are, as noted, the goal of achieving rough justice without a forensic audit of the parties' financial circumstances, with more reliance on the immediate means and needs of the parties.
- [29] I will just pause to note that the respondent here has indicated an intention to dispute spousal support on the basis of entitlement. However, he has not raised what are the more definitive bars to such claims, such as a defence based on a limitation period or argument that the parties were not in a marriage-like relationship. The issues raised (need for self sufficiency, and extend to which the claimant altered her financial position throughout the relationship) are not bars to this interim Bridge Order, particularly having regard to the length of the marriage and work history of the claimant.
- [30] Turning then to a remedy based on rough justice as to the means and needs of the parties, the following evidence is of note:
- a) The email from the accountant in which he confirms the 2023 year-end particulars of the Company, noting that there was corporate profit, pre tax, of \$750,000; and
 - b) The summary of personal expenses paid out of the Company to the respondent in the previous year at close to \$300,000. Even a cursory review of the credit card statements themselves show significant personal expenses for food, travel, and other items. Having regard to the stated income on the respondent's F8, and the claimant's calculation of personal expenses in the past year and grossing them up for the fact they would be paid in

after tax dollars, a finding of income of \$600,000 is not outside the realm of possible outcomes on the main application.

- c) Approximately \$7,500 per month is being paid by the claimant for fixed housing/debt costs that she is paying, before any personal living expenses are considered. At \$95,000 per year gross income, her net income after taxes is, roughly, \$4,750, which is clearly inadequate to cover even those costs.
- [31] The claimant argues that a Bridge Order of payment of \$18,000 achieves the parties' financial status quo. That is based on the amounts that historically were paid to the respondent after separation, which ranged between \$17,454 to \$20,000 per month. It is also consistent with guideline amounts which, with income of \$750,000 to the respondent and \$95,000 to the claimant would be \$5,133 for child support, and spousal support of \$12,280, at the mid level, for a total monthly payment of \$17,413.
- [32] The respondent has suggested that it ought to be \$4,000 submitting that, given this is a Bridge Order, the court ought to be incredibly cautious in making an order, particularly when it is not clear on the materials before me today as to the current financial status of the Company.
- [33] \$4,000 per month would not cover even the most basic living expenses and the fixed costs noted, even when added to the claimant's income.
- [34] Both parties agree that any Bridge Order can be made on a without prejudice and an unattributed basis, subject to the final classification and allocation at the main hearing.

Conclusion and Orders Made

- [35] I agree with the claimant that, in considering the means of the respondent, using an income of \$750,000 is supported by the email from the accountant summarizing the 2023 year-end financial status of the Company, and is a cautious approach. The amount of guideline support provides some support for an award of \$18,000 per month as being sought. The needs of the claimant show significant need as her current income provides no funds towards her or the younger child's living expenses, and is also supportive of that level of financial support.
- [36] I make the following orders:
 - a) The application filed February 21, 2025, is adjourned to a one or two-day date that the parties are to secure through scheduling.
 - b) Until that application can be heard, on an interim and without-prejudice basis until the hearing of the main application, further agreement of the parties, or further court order, the respondent shall pay to the claimant \$18,000 per month (the "Bridge Payment") in undifferentiated or unallocated support, subject to a final classification and allocation, or reallocation and adjustment, on the hearing of the application itself.

- c) The Bridge Payment shall be made on a monthly basis, with the liberty for the parties to insert into the order on its entry whether or not it is to be on a biweekly or monthly basis if they can agree. If the parties are unable to agree, the payment will be \$18,000 on the 15th day of each month starting March 15, 2025.

I note that the amount is higher than any e-transfer limits. I am not sure how, logistically, the payment will be made, and will leave it to the parties to confirm that, with leave to include such parameters in the court order if they feel it is necessary.

- d) If the parties require any further directions as to the timing and logistics in respect of the Bridge Payment, they are at liberty to seek further time before me.

[37] Anything else?

[DISCUSSION REGARDING TERMS OF ORDER]

[38] THE COURT: Let's leave the order on the terms that I have said. If you guys are able to come to an agreement about logistics that differ from that, then you generally have my approval to do so, and can just incorporate those terms into the order and submit it for entry with a letter asking that it be sent directly to me and I will sign it if you guys have agreement. If not, you can seek directions if need be.

[SUBMISSIONS ON COSTS]

[39] THE COURT: Thank you, costs of this attendance will be determined at the hearing of the main application.

"Associate Judge Robertson"

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