

CANADA / JUDGMENT

Marchetti v. Lane

2025 BCSC 1740

COURT

Supreme Court of British Columbia

DECIDED

9 September 2025

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

2025 BCSC 1740 Marchetti v. Lane

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Marchetti v. Lane,

2025 BCSC 1740

Date: 20250909

Docket: E181603

Registry: Vancouver

Between:

Valentina Marchetti

Claimant

And

Thomas Frederick Lane

Respondent

Corrected Judgment: The text of the judgment

was corrected at paragraph [68] on November 12, 2025

Before: The Honourable Justice Wilson

Reasons for Judgment

Counsel for the Claimant:

J. Desilets

Appearing as agent for the Respondent:

C. Lane

Place and Date of Hearing:

Vancouver, B.C.

August 21 - 22, 2025

Place and Date of Judgment:

Vancouver, B.C.

September 9, 2025

Table of Contents

The Arbitration.. 4

This Application.. 9

ISSUES. 11

Should the Consent Order be varied as to final decision-making authority?. 11

Application for a variation of the Arbitration Award regarding summer break vacation plans and international travel. 13

Section 7 expenses. 16

Property claims. 18

Costs. 21

- [1] This is an application brought by the claimant in this family law proceeding for various items of relief following an arbitration decision from January 15, 2023.
- [2] By way of background, the parties separated in 2018 following a common-law relationship of less than three years. The parties have a child who was born in May 2016, and as such is currently nine years of age (the "Child"). The parties have an equal parenting schedule, one week on and one week off.
- [3] This family law proceeding was commenced shortly after separation, but as the trial date approached, the parties agreed to send their dispute to arbitration. The parties entered into a consent order on March 24, 2021, referring all of the matters that were to go to trial to an arbitration ("Arbitration Referral Order").

- [4] The first matter that the arbitrator, Morag MacLeod K.C., decided was the question of where the Child would go to school. Thereafter, the arbitration on the remaining issues proceeded in October 2022, with the arbitrator's decision released on January 15, 2023 (the "Arbitration Award"). A corrigendum was released in February 2023, wherein the arbitrator clarified the mechanics of the summer parenting schedule.
- [5] By way of this application, the claimant seeks the following relief:
- a) Parenting responsibilities: to amend a consent order made in this proceeding prior to the arbitration and to replace it with a provision that is consistent with the Arbitration Award, namely that the parties will share parenting responsibilities, but in the event of a disagreement, the claimant will be able to make the decision and the respondent would be at liberty to apply to court;
 - b) Summer travel: the claimant seeks to amend or vary the Arbitration Award such that the claimant would be able to travel to Italy for three weeks each summer with the Child, without the need for a court order and without the respondent's consent;
 - c) Expenses incurred: the claimant seeks an order that the respondent reimburse her for certain special and extraordinary expenses she has incurred;
 - d) Property claims: the claimant seeks an order that any claims pursuant to the Family Law Act pertaining to property be dismissed, or alternatively, that directions be given such that the property claims can be determined; and
 - e) the claimant seeks her costs.
- [6] The respondent, although served, did not attend at the hearing. Instead, he had his mother attend and make submissions on his behalf. I was told that the claimant's mother, Ms. Lane, made submissions at a prior court application as well. According to Ms. Lane, the respondent was not available for the hearing (even though notice was provided well in advance) and that it would "not be in the child's best interests for Mr. Lane to be here."
- [7] The claimant did not object to Ms. Lane making submissions on the respondent's behalf and the hearing proceeded accordingly.

The Arbitration

- [8] In general terms, in seeking the orders relating to final decision-making for parenting responsibilities and for the section 7 expenses, the claimant seeks orders that would implement the provisions of the Arbitration Award.
- [9] The relief sought relating to summer travel constitutes a variation application and as such the applicant must show there has been a material change in circumstances before such an award can be made.

- [10] As for the property claims, the Arbitration Award makes no reference to there having been property claims advanced at the arbitration. According to the claimant, this was because neither party was interested in pursuing any property claims. The significance of the property claims at this time is that certain costs orders have been made, both following the arbitration and numerous intervening court applications, but the registrar is not in a position to assess those costs until such time as the proceedings are concluded. Because property claims were pleaded by both parties and were not dealt with in the arbitration, they remain extant on the face of the pleadings.
- [11] The arbitration proceeded by way of witnesses providing their direct evidence by way of affidavit and subject to cross-examination if the opposing party required it. Although Mr. Lane had his mother speak on his behalf at this application, he has had counsel at various times during the proceedings, including at the arbitration.
- [12] The arbitrator made the following observations in the Arbitration Award:
- [11] Pursuant to a Consent Order of the Court, made August 31, 2018 (the "Consent Order"), the parties are each guardians of the Child, who lives with both parents under a without prejudice interim shared parenting arrangement as set out in the Consent Order. No issues concerning guardianship were advanced for arbitration. The central issues are the parenting arrangements, including final decision-making, international travel with the Child, and the parenting schedule.
- ...
- [23] With these general principles in mind, I have significant reservations about the credibility of the Respondent and the reliability of his evidence. I find that the Respondent has engaged in obstructionist and combative behaviour, particularly with the Claimant in the course of this family law dispute, but also with third party professionals whose only interests have been to provide assistance to this family. In contrast, I find the Claimant to be, for the most part, credible and her evidence reliable.
- [24] Over the course of the hearing of this Arbitration, I observed that the relationship between the parties remains strained and marked by hostility, particularly on the part of the Respondent. He had significant difficulties with self-regulation, frequently dissolving into emotional outbursts and occasional weeping, and resorting to accusations, sarcasm, and personal attacks, all of which impeded the conduct of the case and added to the challenges of Counsel. On more than one occasion, the proceedings had to be paused to permit the Respondent time to compose himself.
- [25] The hearing was conducted over six days, one of which had to be ended at 11:15 a.m. due to the Respondent's state of distress under cross-examination. It is important to note that both Counsel conducted themselves in a thoroughly professional manner when faced with the inability of the Respondent to continue on October 20, 2022. Counsel for the Respondent, who took on the representation of his client late in the arc of this case, advocated

assiduously for him in the best traditions of the bar. Counsel for the Claimant dealt with inappropriate personal attacks by the Respondent on her firm, her reputation, and her professionalism with calm resolve, co-operating with opposing Counsel when the Respondent was too distraught to proceed.

...

[28] For example, under cross-examination of the parties the challenges and conflicting evidence concerning three areas of significant complaint by the Respondent, specifically:

[a] the abortive appointment of the Parenting Coordinator [Order of Master Dick, made August 1, 2019; Order of Adair, J., made Novembers, 2020; Affidavit #11 of the Claimant, sworn May 28, 2021, as paras. 41 through 80 and paras. 98 through 104, 109, at Exhibits "A", "B", "E", "I" "J", "K", "N", "S", "T", and "U"; Affidavit #17 of the Claimant, sworn September 14, 2022, Exhibit "EE", at paras. 42 and 43; Affidavit #16 of the Respondent, sworn February 28, 2021, at Exhibit "D"];

[b] the unnecessary controversy created by the Respondent in June 2021 over the Claimant's efforts to seek treatment for the Child's swollen eye [Affidavit #17 of the Claimant, dated September 14, 2022, at paras. 81 through 87; Affidavit # 20 of the Respondent, sworn October 13, 2022, at para. 27]; and

[c] the mischaracterization by the Respondent of the Vancouver School Board form submitted by the Claimant that omitted an address for him [Affidavit #16 of the Respondent, sworn February 28, 2021, at Exhibit "E"; Affidavit #17 of the Claimant, sworn September 14, 2022, at para. 95(h), Exhibits "U" and "I"];

I find that the Claimant's testimony conveyed consistent, unexaggerated and child-focussed evidence in accordance with her affidavit evidence, including the exhibited documents. By contrast, the Respondent's testimony under cross-examination on the issues in question was hyperbolic, focussed on his antipathy for the Claimant, often devolving into argument, and did not paint a convincing alternative narrative. These examples are not exhaustive.

...

[30] I Have similar concerns with respect to the evidence of the Respondent's mother concerning the Child and the Claimant. Under cross-examination she did not testify in a straightforward manner. On more than one occasion, she delivered a tangential soliloquy and had to be directed back to the question that had been asked.

[31] While I accept her observations about her son's response to these proceedings, her evidence, including:

[a] her sharing of adult information about the school and his mother with the Child;

[b] the negative interactions of her and her husband with the Claimant at the school playground in the presence of the Child; and

[c] her characterization, after a vague and quickly retracted reference to "sexual abuse", of the shaving of the Child's head on February 22, 2021 without parental consent as a "cry for help" in the "hope that it would get issues in the open",

calls into question both her judgment and the reliability of her evidence concerning both the Child and the Claimant. I find the evidence of the Claimant concerning the Child and the parenting dynamics to be more reliable than that of the Respondent's mother where the evidence conflicts.

...

[34] I acknowledge that several of the FLA ss. 38(d) and (e) factors considered by the Court in TMH are present in this case, including:

[a] the Respondent's litigation conduct when self-represented which resulted in unreasonable delays and expense that could have been avoided, including the challenges he created for third party service providers engaged for the benefit of the Child;

[b] repeated court applications and threatened referrals to the police (unwarranted) when the Respondent did not get his way;

[c] refusal to adhere to expressed boundaries for inter-parent communication;

[d] the Respondent's demonstrated inability to control himself, or modify his behaviour, despite orders and arbitral awards made along the way when in pursuit of something that he wants and believes he is entitled to, and is not getting; and

[e] exposing the Child to the conflict created by his conduct and approach to the Claimant in this proceeding.

...

[55] Having considered all of the factors in FLA s. 37(2), particularly those in ss. (a), (e), (f), (g) and (i), I turn to address the "best interests of the child" factors highlighted in paragraph 14 of this award:

[f] given the observed inability of the Respondent to put aside his acrimony towards the Claimant, his ability to exercise child-focussed decision-making when the parties disagree on a significant decision affecting the Child, it is in the best interests of the Child that the Claimant have final decision-making;

...

[i] I consider, including having regard to the now dated comments of Dr. England, that it would not be appropriate or in the best interests of the Child to put in place an arrangement that would require the parties as the Child's guardians to cooperate on final decision-making in respect of significant decisions affecting the Child if the parties are unable to agree upon reasonable consultation.

- [13] The arbitrator directed that the Consent Order should be varied such that the claimant be given final decision-making authority on parenting matters. With regard to summer parenting time and travel, the arbitrator directed that the parties would provide notice to each other no later than May 1 and May 15 of each year with respect to their proposed summer holiday time, with the parties alternating as to which of them chose first. She also directed that the parties provide a minimum of 90 days written notice of any proposed international travel.
- [14] The arbitrator identified certain categories of special expenses and extraordinary expenses for the Child, as well as a mechanism for accounting and reimbursement that provided for adjustments to be made twice annually.
- [15] Finally, and following the completion of the arbitration, the arbitrator made a costs order in favour of the claimant.
- [16] Pursuant to s. 19.16 of the Family Law Act, the Arbitration Award is final and binding on the parties. The FLA does not permit appeals from arbitration awards on questions of fact. No appeal was ever brought from the Arbitration Award. Unfortunately, the Arbitration Award has not had the effect of reducing conflict between the parties, and there have been a great many court applications since.
- [17] The claimant is from Italy, and her family continues to reside there. In 2023, she sought to travel with the Child to Italy to see her family. The respondent did not consent and the claimant had to bring a court application in order to be able to travel.
- [18] In 2024, the claimant sought to travel to Italy with the Child again. The respondent again resisted. An order was made permitting the travel, but the order referred to "Italy" as opposed to "Rome, Italy". The respondent suggested that the claimant did not have authority to travel because she did not have a valid order. In 2025, the claimant once again sought to take the Child to Italy and again it was necessary for the claimant to apply to court because the respondent would not agree. Once again, the court permitted the claimant to travel with the Child.
- [19] Notwithstanding the respondent's professed concerns about whether the claimant would return to Canada with the Child, the claimant has travelled to Italy with the Child in each of the last three years and has returned him on every occasion.
- [20] Earlier this year, the respondent brought an application that sought a long list of relief, including the removal of claimant's counsel and the appointment of counsel for the respondent. The respondent also alleged various and sundry "irregularities" in the proceedings. All told, 13 items of relief were sought.

[21] The matter proceeded before Justice Latimer on March 6, 2025, and her decision is reported at 2025 BCSC 716. Justice Latimer ruled against the respondent on every issue and ordered that the claimant was entitled to her costs of the application in any event of the cause and to be assessed as special costs.

This Application

[22] The claimant's notice of application in this matter seeks the following relief:

1. Pursuant to Paragraph 57 of the Arbitration Award dated January 15, 2023, paragraph 1(f) of the Consent Order pronounced by Mr. Justice Abrioux dated August 31, 2018 shall be amended to vacate the existing provision and replace it with the following:

f. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the claimant shall be entitled to make those decisions and the respondent shall have the right to apply for directions on any decision he considers contrary to the best interests of the Child, under s.49 of the Family Law Act.

2. Paragraph 67(d) of the Arbitration Award dated January 15, 2023 will be varied to read:

67(d) The claimant, upon receiving from the respondent, a notice of intention to travel with the Child, as; provided in Paragraph 67(c) of this award shall provide promptly to the respondent:

(i) A signed irrevocable travel authorization (in the form recommended by Consular Affairs Canada) for the specified travel; or

(ii) Written objection to the proposed travel, including the grounds for the objection; and

failing consent in writing of the claimant within 14 days of the notice provided for in 67[c], the respondent may make application to the Court for permission to travel with the Child outside of Canada upon such terms as the Court determines;

3. The Arbitration Award dated January 15, 2023 will be varied to include the following subsection:

67(e). The claimant does not require the respondent's consent to travel internationally with [the Child].

4. Paragraph 61(c) (Summer Break) of the Arbitration Award dated January 15, 2023 will be varied to read:

61(c). SUMMER BREAK - unless otherwise agreed by the parties in writing not later than March 30th each year, the parties shall share the Child's school Summer Break under the Regular Parenting Schedule; provided that each parent is entitled to two consecutive weeks of summer vacation with the Child unless otherwise agreed in writing in advance, ordered by the Court or awarded by an Arbitrator. The Claimant shall have the first choice of weeks in even numbered years and the Respondent shall have the first choice of weeks in odd numbered years. The party having first choice must advise the other party, in writing not later than March 1st each year and

the party having second choice must advise the other party, in writing, not later than March 15th each year.

5. The costs incurred by the claimant for child care, summer camp and tutoring are Special and Extraordinary Expenses pursuant to Section 7 of the Child Support Guidelines and the respondent will pay his proportionate to the claimant within 14 days.

[6]. The respondent will pay his proportionate share of childcare, being before and after school care, directly to the claimant on the fifteenth day of each month following the month they were incurred.

[7] Any claims pursuant to Part V of the Family Law Act, by either the claimant or the respondent will be dismissed as if there had been a trial on its merits; or

- a. In the alternative, the claimant seeks directions with respect to any property claims brought by the parties in the Supreme Court action.

[8] Costs.

[23] In general terms, and despite rulings of the court and including the very recent decision of Justice Latimer, the respondent continues to: suggest that there are irregularities in the proceedings; deny the validity of the Arbitration Award; complain (without merit) about the conduct of the claimant's counsel; seek to revisit or relitigate matters that have already previously been decided, whether in the arbitration or otherwise.

[24] For the reasons that follow, I am satisfied that the claimant is entitled to all of the relief sought.

ISSUES

Should the Consent Order be varied as to final decision-making authority?

[25] Paragraph 1(f) of the Consent Order dated 2018 is as follows:

1 f. in the event that the parties are unable to agree on a "significant decision" (except in emergencies), the issue shall be referred to the Parenting Coordinator appointed in accordance with this Order for resolution. If the issue is outside of the jurisdiction of the Parenting Coordinator, the issue shall be referred for resolution in accordance with paragraph 19 of this Order;

[26] The claimant seeks to replace paragraph 1(f) of the Consent Order with the following term, which is in accordance with the Arbitration Award:

- f. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the claimant shall be entitled to make those decisions and the respondent shall have the right to apply for directions on any decision he considers contrary to the best interests of the Child, under s.49 of the Family Law Act.

- [27] Ms. Lane suggests that if the Consent Order is changed to provide for final decision-making to the claimant, she can relocate with the child to Italy without notice to Mr. Lane. I have read the Arbitration Award and there is nothing in it that would allow the claimant to circumvent the provisions of the FLA that proscribe notice for any proposed relocation (FLA, ss. 65-71).
- [28] Ms. Lane also argues that the arbitrator did not have the authority to vary the Supreme Court order, which she says was a final order. However, this argument is clearly unsustainable in the face of the record pertaining to the matters to be arbitrated.
- [29] The parties agreed by way of the Arbitration Referral Order to refer all matters that were outstanding for determination at the trial to arbitration. Issues pertaining to parenting, including parenting arrangements and final decision-making, together with child support and special and extraordinary expenses were the substantive disputes to be determined by the arbitrator: Arbitration Award at para. 2. Moreover, at para. 11, the arbitrator specifically identified the Consent Order as an interim without prejudice order.
- [30] As indicated earlier, s. 19.16 of the FLA provides for the finality of arbitration decisions. No appeal has ever been taken from the Arbitration Award, nor does it appear that it was ever suggested that the arbitrator did not have the authority to make a determination with regard to final decision-making authority. The respondent was represented by counsel at the arbitration and he made submissions regarding final decision-making, which were specifically addressed by the arbitrator at paras. 47 to 56 of the Arbitration Award. The arbitrator's decision on the issue is at para. 57, which mirrors the replacement paragraph proposed by the petitioner:
- [57] Commencing January 16, 2021, paragraph 1(f) of the Consent Order, made August 31, 2018, shall be amended to vacate the existing provision and replace it with the following:
- f. in the event that the guardians cannot reach agreement on a significant decision despite their best efforts, the Claimant shall be entitled to make those decisions and the Respondent shall have the right to apply for directions on any decision he considers contrary to the best interests of the Child, under s. 49 of the Family Law Act.

The parties shall co-operate to effect, and file with the Court, the foregoing amendment to the Consent Order.

- [31] As such, the decision of the arbitrator was clear - if the parties could not agree, final decision-making rests with the claimant, and the Consent Order was to be amended accordingly.
- [32] Because the arbitrator's decision is final and the proposed replacement paragraph is taken directly from paragraph 57 of the Arbitration Award, the order sought by the claimant in this regard is granted and the Consent Order is amended accordingly.

Application for a variation of the Arbitration Award regarding summer break vacation plans and international travel

[33] There are two aspects to the relief sought by the claimant:

- a) that the notice period for summer vacation plans be changed from May 1 for the party with first choice and May 15 for the party with second choice to March 1 and March 15, respectively, and
- b) that the respondent no longer needs to consent to international travel.

[34] The Arbitration Award includes the following at paras. 61(c) and 67(d):

61(c) Summer Break - unless otherwise agreed by the parties in writing not later than May 30th each year, the parties shall share the Child's school Summer Break under the Regular Parenting Schedule; provided that each parent is entitled to two consecutive weeks of summer vacation with the Child unless otherwise agreed in writing in advance, ordered by the Court or awarded by an Arbitrator. The Claimant shall have the first choice of weeks in even numbered years and the Respondent shall have the first choice of weeks in odd numbered years. The party having first choice must advise the other party, in writing, not later than May 1st each year and the party having second choice must advise the other party, in writing, not later than May 15th each year;

...

67. The parties are entitled to travel internationally with the Child on the following terms:

...

[d] upon receiving a notice of intention to travel with the Child as provided in paragraph 67[c] of this award the non-travelling parent shall provide promptly to the travelling parent:

[i] a signed irrevocable travel authorization (in the form recommended by Consular Affairs Canada) for the specified travel; or

[ii] written objection to the proposed travel, including the grounds for the objection; and

failing consent in writing of the non-travelling parent within 14 days of the notice provided for in paragraph 67[c], the parent seeking to travel may make application to the Court for permission to travel with the Child outside of Canada upon such terms as the Court determines;

[35] The request for a change of the dates for notice from May to March was requested because the 90-day notice for international travel, if notice were given in May, means that the vast majority of the school summer holidays fall within the 90-day notice period. The respondent consented during the hearing to the change from May to March, and that order is made.

[36] The respondent opposes the change of the Arbitration Award that would do away with his consent to international travel, however.

[37] Section 47 of the FLA permits the court to change, suspend or terminate an order respecting parenting arrangements if there has been a change in the needs or circumstances affecting the child:

47 On application, a court may change, suspend or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.

[38] Because the waiver of the respondent's consent would constitute a variation of the Arbitration Award, the claimant is obligated to establish that there has been a material change in circumstances since the Arbitration Award was made.

[39] The claimant was born in Rome and her sister and parents continue to live there. She has chosen in each of the past three summers to take the Child to see her family during her permitted three weeks of summer vacation. This summer is the third consecutive year that the claimant has been forced to go to court, and on some years on more than one occasion, in order to be permitted to travel to Italy with the Child. There is no question that the Child has enjoyed his travels to Italy; however, each year the claimant has had to endure the uncertainty and the expense of court applications that are or at least ought to be not required.

[40] In *Williamson v. Williamson*, 2016 BCCA 87, the Court at para. 33, citing *Gordon v. Goertz*, [1996] 2 S.C.R. 27, held that the change must have altered the ability of the parents to meet the child's needs with the question being whether the previous order might have been different had the present circumstances prevailed at the time the earlier order was made:

[33] At para. 13, the Court summarized what the applicant must establish before proceeding on the merits of the application:

[13] It follows that before entering on the merits of an application to vary a custody order the judge must be satisfied of: (1) a change in the condition, means, needs or circumstances of the child and/or the ability of the parents to meet the needs of the child; (2) which materially affects the child; and (3) which was either not foreseen or could not have been reasonably contemplated by the judge who made the initial order.

[41] In *Friedlander v. Claman*, 2015 BCSC 2409, Madam Justice Gropper at paras. 79 to 82 referred to a number of Ontario authorities whereby ongoing conflicts between parents can constitute a material change. The Court's decision in *Friedlander* was upheld on appeal [2016 BCCA 434].

[42] In the Arbitration Award, the arbitrator ordered that the Child would only travel on a Canadian passport and that neither party can apply for any other passport, including an Italian passport without the consent of the other party. The Arbitration Award also ordered that the claimant would hold the Child's passport.

- [43] The respondent suggests that the claimant has, or has applied for, an Italian passport for the Child and that he is concerned that the claimant may not return the Child to Canada. However, these assertions about an Italian passport continue to be made without any evidentiary foundation on the face of the record. The claimant has lived in Canada for many years and has a good job as a research scientist. There is no evidentiary basis whatsoever to suggest that the claimant intends to breach the Arbitration Award as it relates to the shared parenting arrangement, or that the Child will not be returned from any international travel.
- [44] In the circumstances, I am satisfied that there has been a material change in circumstances since the Arbitration Award. The respondent has frustrated and obstructed the claimant's ability to travel internationally with the Child each year since the Arbitration Award.
- [45] At the time the Arbitration Award was made, I have little doubt that the arbitrator would have expected that the parties would act reasonably and that requests for international travel would be considered with due consideration to relevant factors. Upon receipt of a request, the Arbitration Award at para. 67(d) provides that the party receiving the request do one of two things:
- 67[d] [i] [provide] a signed irrevocable travel authorization (in the form recommended by Consular Affairs Canada) for the specified travel; or
- [ii] [provide] written objection to the proposed travel, including the grounds for the objection; and
- failing consent in writing of the non-travelling parent within 14 days of the notice provided for in paragraph 67[c], the parent seeking to travel may make application to the Court for permission to travel with the Child outside of Canada upon such terms as the Court determines;
- [46] One might have thought that it would have been obvious by now that the requests for international travel by the claimant to take the Child to Italy to see her family will be approved by the court - this has happened on three prior occasions, with costs ordered against the respondent on each occasion. I find that the respondent's repeated refusals to provide a revocable travel authorization, coupled with his refusal to provide reasonable and legitimate grounds to object, other than inferences of abduction without evidence, constitutes a material change.
- [47] I find that it is in the Child's interests to be able to travel internationally with his mother, I will therefore order that the claimant does not require the respondent's consent to travel internationally with the Child.

Section 7 expenses

- [48] The claimant argues that the costs incurred by her for childcare, summer camp and tutoring are special and extraordinary expenses and that she is entitled to reimbursement from the respondent of his proportionate share based upon their incomes.

[49] Paragraphs 79 and 80 of the Arbitration Award provide as follows:

[79] With respect to s. 7 expenses, the parties must have regard to the directions of the Court in *Wiebe v. Treissman*, 2017 BCSC 1523 (fl 119 through 124), I find that the s. 7 expenses include:

[a] childcare expenses incurred as a result of a custodial parent's employment, illness, disability or education or training for employment;

[b] that portion of the medical and dental insurance premiums attributable to the Child;

[c] the Child's health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment (if any), professional counselling provided by a psychologist, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy as agreed by the parties in advance, and prescription drugs, hearing aids, glasses and contact lenses;

[d] extraordinary expenses for primary and secondary school education and for other educational programs that meet the Child's particular needs as agreed by the parties in writing in advance;

[e] reasonable expenses for post-secondary education, after consideration of RESPs, the Child's earnings, student loans, gifts, and all other funds available to the child for post-secondary costs, unless otherwise agreed by the parties in writing in advance; and

[f] extraordinary expenses for extracurricular activities as agreed by the parties in writing in advance of the expense.

[80] The parties shall conduct an accounting of their respective proportionate shares of the Special Expenses twice a year, in February and August, and any amount found due from one party to the other shall be paid within seven (7) days of receiving proof of the expense having been incurred or proof of the payment being due. Neither party shall incur any expense for the Child for which reimbursement is sought without the prior written agreement of the other parent, order of the Court or arbitral award.

[50] The claimant has provided expenses incurred by her for afterschool care and summer camps. She has also submitted expenses for tutoring. The difference between tutoring and the afterschool care and summer camp costs are that the respondent's consent is required for tutoring, but it is not required for the child care expenses.

[51] On the issue of tutoring, the claimant referred the court to an exchange of communications regarding tutoring using the Our Family Wizard program. I am satisfied that the respondent consented to tutoring, and there is no question that the tutoring actually occurred. I assume that the Child benefited from the tutoring he received.

[52] The income tax returns of both parties for the years 2022 and 2023 are in the materials.

Tax Year

Claimant's Income

Respondent's Income

Percentage

2022

\$140,346

\$106,742

57/43 (2023)

2023

\$160,373

\$120,362

57/43 (2024)

[53] The claimant seeks an order that the respondent pay his 43 percent share of the expenses incurred by the claimant in 2023 and 2024.

[54] The expenses the claimant has produced for 2023 and 2024 total \$14,212.50 and the respondent's 43 percent share totals \$6,111.37.

[55] I therefore order that the respondent reimburse the claimant the amount of \$6,111.37, representing his proportionate share of the special and extraordinary expenses incurred for the 2023 and 2024 years.

Property claims

[56] The parties both included claims for a determination of property in their pleadings in this family law case.

[57] In his counterclaim filed July 17, 2018, the respondent sought the following orders under Schedule 4-Property:

- a. Each party will keep all assets registered in his or her name as the sole property of that party, and that each party will be solely responsible for any debts in that party's name.
- b. Each party will keep all personal effects of that party and all assets owned by that party prior to the commencement of cohabitation as the sole property of that party.
- c. Subject to paragraphs (a) and (b), the parties will divide any household contents as agreed to between the parties and failing agreement, as ordered by this Honourable Court.

- [58] In her further amended notice of family claim filed November 13, 2020, the claimant sought an equal division of family property and family debt.
- [59] The import of the outstanding property claims is that the claimant has received orders, including arising out of the Arbitration Award, for costs against the respondent. However, when the claimant went to assess her costs, the registrar pointed out that the property claims remained extant and, as such, the proceeding was not at an end, and the assessment of costs therefore could not proceed.
- [60] It is common ground that the Arbitration Award contains no orders with respect to property matters, and there is no evidence that either party tendered evidence or made submissions with respect to a division of property. I note there is also no suggestion that the arbitrator failed to address an issue that had been put before her for determination.
- [61] When the parties entered into the Arbitration Referral Order of March 24, 2021, that referred the matter to arbitration, they agreed that the arbitration would deal with all matters that were subject to the trial:
2. BY CONSENT the arbitrator will be Morag MacLeod, Q.C. (the "Arbitrator") and she will deal with all matters scheduled to be adjudicated by a trial commencing March 29, 2021.
- [62] The parties agreed to refer the matter to arbitration shortly before their trial originally scheduled for March 29, 2021. In their respective trial briefs, both parties had included division of property as an issue for determination at trial.
- [63] The first issue to be arbitrated was the choice of school. Thereafter, there was at least one application before the arbitrator relating to disclosure of documents and, in her application ruling dated June 4, 2021, the arbitrator at para. 3 summarized the issues to be determined in the arbitration:
- [3] This is a family law dispute which the parties agreed to submit to arbitration before me pursuant to an Arbitration Agreement made March 17, 2021. The Claimant and the Respondent have one child, [redacted] Frederick Lane, born May 8, 2016 (the "Child"). The issues for Arbitration include the usual suite of claims including parenting arrangements (including foreign travel with the child, child support, division of family property and debt, other property claims, family property preservation and compensation for any properly dissipated or transferred away, and costs.
- [64] I am satisfied that the issue of division of property was an issue that was expressly referred to the arbitrator by virtue of the Arbitration Referral Order. Both parties had counsel when the pleadings were drafted, the trial briefs were prepared and the Arbitration Referral Order referring the matter to arbitration was entered into. Both parties also had counsel at the arbitration itself.

- [65] In all of the circumstances, and in particular recognizing that both parties were represented by counsel in the arbitration, I am satisfied that the reason the Arbitration Award contains no orders with respect to property is that neither party tendered any evidence, and I infer that the reason there was no evidence tendered was that neither party sought any orders regarding property. It follows that since neither party led any evidence to support any relief regarding property claims, those claims must necessarily have been abandoned. To put it another way, if the arbitrator were asked to render a decision on property matters based on the evidence before her, both parties' claims would have been dismissed as both parties would have failed to satisfy their burden with regard to any relief.
- [66] I conclude this was not a situation whereby the parties, subsequent to the Arbitration Referral Order, decided to resolve their property issues outside of the arbitration process; rather, both parties were satisfied that no remedies with regard to property would be pursued and each would keep what they had. As I indicated earlier, the only relief sought by the respondent with regard to property was that each party keep their own property.
- [67] I note that even now, some seven years after separation and two-and-a-half years after the Arbitration Award, neither party referred the court to any evidence that would suggest there was any family property (or family debts) that ought to have been divided or still need to be divided.
- [68] It follows that there will be an order that all claims pursuant to Part 5 of the Family Law Act, both by the claimant in her further amended notice of family claim, and the respondent in his counterclaim, will stand as dismissed.

Costs

- [69] Because the claimant has been wholly successful on this application, she would ordinarily be entitled to her costs. If either party wishes to address the question of costs, they may do so by contacting Supreme Court Scheduling, within 21 days of these reasons.

"Wilson 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/25/17/2025BCSC1740cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/marchetti-v-lane-2025-bcsc-1740>

Prepared on 25 October 2026 · Esheria