

CANADA / JUDGMENT

P.R.C. v. C.K.C.

2024 BCCA 363

COURT

British Columbia Court of Appeal

DECIDED

29 October 2024

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

2024 BCCA 363 P.R.C. v. C.K.C.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

P.R.C. v. C.K.C.,

2024 BCCA 363

Date: 20241029

Docket: CA49763

Between:

P.R.C.

Appellant

(Respondent)

And

C.K.C.

Respondent

(Claimant)

Before:

The Honourable Mr. Justice Harris

The Honourable Madam Justice DeWitt-Van Oosten

The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated

February 20, 2024 (C.K.C. v. P.R.C., 2024 BCSC 279,
New Westminster Docket E64496).

The Appellant, appearing in person
(via videoconference):

P.R.C.

Counsel for the Respondent:

S. Oberoi

Place and Date of Hearing:

Vancouver, British Columbia

September 17, 2024

Place and Date of Judgment:

Vancouver, British Columbia

October 29, 2024

Written Reasons by:

The Honourable Madam Justice DeWitt-Van Oosten

Concurred in by:

The Honourable Mr. Justice Harris

The Honourable Justice Iyer

Summary:

This is an appeal from orders made after a family law trial. Among other things, the judge divided family property and debt. In the division, he gave the respondent credit for excluded property. He denied the appellant's claims to excluded property on grounds that he failed to meet his burden of proof. The appellant appeals the orders, alleging that the trial was procedurally unfair and the judge erred in rejecting his excluded property claims. HELD: Appeal dismissed. The trial was not procedurally unfair. Furthermore, the judge did not err in his property findings. The appellant voluntarily withdrew from the trial before the respondent completed her case and without advancing a case of his own. Consequently, the evidentiary foundation in support of his excluded property claims was found to be inadequate. In that context, it was not unreasonable for the judge to resolve the family law claim as he did. On appeal, the appellant applied to adduce fresh evidence to fill in the evidentiary gaps; however, the fresh evidence is not admissible. This evidence was available to the appellant and could have been adduced at the trial. Instead, he chose to withdraw. As such, his fresh evidence application fails the due diligence requirement of the Palmer test for admissibility. On appeal, the appellant seeks to advance a case that he chose

not to pursue in the Court below. This is not the proper role of an appeal, and the appellant has not established a principled basis for interference with the highly discretionary determinations made by the judge.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

- [1] In February 2024, the parties to this appeal were in the midst of a family law trial when P.R.C. (the appellant), announced that he was "done" and would no longer participate. He withdrew from the trial while in the process of cross-examining C.K.C. (the respondent), and did not return to court the next day.
- [2] The trial carried on in the appellant's absence. The judge decided the issues before him after the respondent closed her case. He treated a counterclaim filed by the appellant as having been abandoned and dismissed it. He granted a divorce and made various other orders, including orders specific to parenting time with the parties' young daughter, child support, and the division of family property and debt.
- [3] The appellant appeals from those orders. He alleges multiple errors by the judge. He says the trial was procedurally unfair and the outcome is not supported by the evidence. The appellant does not ask for a new trial. Rather, he applies to adduce fresh evidence in the appeal and asks that we vary the Supreme Court orders on the basis of that evidence, assessed in conjunction with the trial record.
- [4] In my view, the trial was not procedurally unfair. Nor has the appellant persuaded me of a material error, serious misapprehension of evidence, or error of law.
- [5] Specific to his claims for excluded property, the principal issue on appeal, it was open to the judge to find that the appellant did not meet his burden of proof under s. 85(2) of the Family Law Act, S.B.C. 2011, c. 25 [FLA]. The evidence did not establish the value of that property at the start of the parties' relationship. This was something the appellant was required to do before he could succeed in his claims. His choice to withdraw from the trial left an insufficient and untested evidentiary record in support of excluded property and, in that context, it was within the judge's discretion to rule as he did.
- [6] Accordingly, I would dismiss the appeal.
- [7] The respondent seeks a number of orders that give effect to the trial judgment. Relying on ss. 24 and 25 of the Court of Appeal Act, S.B.C. 2021, c. 6, I would grant some of those orders, as set out below.

Factual Background

[8] Reasons for judgment in the Supreme Court are indexed at C.K.C. v. P.R.C., 2024 BCSC 279. Given the primary focus of the appeal, it is not necessary that I detail the whole of the evidence at the trial.

[9] Instead, it is sufficient to provide a general chronology of the parties' relationship. In the course of doing so, I will refer to the main proprietary assets that were in issue at the trial. I have used the judge's findings to frame the chronology, supplemented by the trial record where necessary:

- At the time of the trial, the appellant was 51 years old. The respondent was 49.
- In 2004, the respondent purchased a condominium in Vancouver ("Richards Street"). It was registered solely in her name.
- The parties met approximately seven years later, in March 2011. They met in the United Kingdom ("U.K.") and began living together in December 2011.
- At that time, Richards Street had an appraised value of \$360,000. It carried a mortgage of \$40,000, leaving the respondent with \$320,000 in equity.
- The respondent also had a Registered Retirement Savings Plan ("RRSP") in her name, then valued at \$15,000.
- In May 2012, the respondent refinanced Richards Street and deposited £39,104 from those proceeds into a U.K. bank account.
- The parties married in the U.K. in January 2013.
- In May 2013, the respondent transferred £10,000 to the appellant. With an additional £40,000 of his own money, the appellant purchased gold ("Gold").
- In 2014, the parties bought a pre-construction apartment in London for £492,000 ("UK Property"). They took possession in 2015.
- The down payment for the UK Property was £271,005. The appellant paid 91% of that amount, which he claimed came from the proceeds of a house he purchased and owned prior to the relationship. The respondent paid the remaining 9% of the down payment.
- In 2016, the parties signed a "Declaration of Trust" ("Declaration") specific to the UK Property. The Declaration confirmed a purchase price of £492,000, the parties' contributions to the down payment, and financing in the amount of £219,965. The Declaration stated that the parties held the UK Property as tenants in common. It also contained this clause:

It is agreed between the Trustees that upon sale of the Property after repayment of the mortgage and any costs and disbursements attributable to the sale the balance proceeds shall be paid to the Trustees in the following shares:

91% to [P.R.C.]

9% to [C.K.C.]

- After purchasing the UK Property, the parties contributed equally to the related mortgage payments and other expenses.
- The parties moved to British Columbia in October 2016. Initially, they lived with the respondent's parents. They later moved to Richards Street. The UK Property was rented out. The rental income was used to pay expenses associated with the property.
- The parties' daughter was born in March 2017.
- In September 2017, the parties moved out of Richards Street and purchased a townhouse in Langley. This became their family home ("Family Home"). The purchase price was \$689,900, with a mortgage of approximately \$448,000. The parties' held the Family Home as joint tenants.
- After this move, Richards Street was rented out. The rental income was used to pay expenses associated with the property.
- The appellant claimed that the down payment for the Family Home (35% of the purchase price), came from the sale of a company he established prior to the relationship. That company ("CML") was incorporated in 2010. It was liquidated in 2016, approximately five years after the start of cohabitation. CML's value at the time of liquidation was £299,734.
- In 2021, Richards Street was refinanced and funds generated by the refinancing were used to pay down the mortgage on the Family Home, reducing it to approximately \$230,000.
- The parties separated in February 2022, although they both continued to live in the Family Home until March 2022.
- In April 2022, they entered into a consent order which, among other things, granted the appellant supervised parenting time and required that he pay \$1,309 per month in child support. By consent, his parenting time was subsequently changed to unsupervised.
- In November 2023, the appellant's child support obligation was reduced to \$365 per month.
- In January 2024, the appellant unilaterally sold some of the Gold and used £35,675 of those proceeds to discharge the mortgage on the UK Property. The Gold was left with a remaining balance of \$8,879.
- At the time of the trial, Richards Street (still rented out), had an appraised value of \$630,000; the respondent's RRSP was valued at \$26,507 (including \$5,446 contributed during the relationship); the UK Property was valued at \$952,000; and the Family Home was valued at \$1,050,000.
- Since the date of separation, the respondent has been primarily responsible for all mortgage payments and other expenses related to Richards Street and the Family Home.

- The judge found that the respondent's 2023 income was \$140,000. He imputed that same amount of income to the appellant, effective the date of separation.
- Based on the appellant's imputed income, the judge ordered that he pay \$1,278 per month in child support effective March 1, 2024. He also ordered a cumulative \$8,718 in child support arrears.

Trial Process

- [10] The trial was held in January and February 2024. The appellant was self-represented. The respondent had legal counsel.
- [11] Two parts of the trial carry particular relevance to the procedural fairness arguments advanced by the appellant: (1) the production and admissibility of documentary evidence adduced by the respondent; and (2) the appellant's withdrawal from the trial. It is helpful to set out some of that context.

A. Documentary evidence

- [12] At the start of the trial, the appellant raised concerns about the documentary evidence produced by the respondent. He said the documents he received from the respondent in the months leading to the trial did not "align at all with any of the evidence" that was delivered to him for use at the trial. He said he had not "prepared anything about any of [that] evidence".
- [13] Trial counsel for the respondent explained to the judge that they attempted to develop a documents agreement and joint book of documents with the appellant, however, they were not successful. As a result, the 11 binders of documents that were delivered to the appellant by the respondent on the eve of trial were put together solely by the respondent. All documents provided to the appellant in advance of the trial were contained in those binders, as well some additional material, but the documents had been organized differently.
- [14] The judge said they would deal with this issue in the course of the trial where necessary. The appellant had also prepared four of his own "sets" of material for use at the trial.
- [15] The appellant continued to voice concerns about the respondent's documents, at one point telling the judge that the respondent had "moved [them] around to the point [that he had] no way of knowing what document relates to what list of documents" previously given to him. In response, the judge reiterated that they would "cross that bridge" if and when they came to it.
- [16] The issue arose again after the respondent (the claimant in the action), began testifying. Her counsel asked the judge about how best to put documents to the respondent during the course of her evidence. She asked whether the 11 binders should be marked as exhibits for identification.

[17] The judge requested that the respondent's counsel speak with the appellant after court and report back as to whether the parties could agree to mark the 11 binders as a formal exhibit, rather than for purposes of identification:

THE COURT: If, at the end of the case, there is an issue over a document within those binders, we will deal with it; otherwise, they will stay in. If they are out for some reason, irrelevant or whatever, they will simply be removed from the binders.

Now, what I'm going to ask that you do, [P.R.C.], is at 4 o'clock -- normally all of this is agreed to before the trial so we don't have to deal with it during the trial, but for whatever reason, these sorts of fairly routine agreements weren't made in this case. So you're going to do them at 4 o'clock.

I want you to -- the two of you to roll up your sleeves and go through the 11 binders one by one and decide whether the document -- there's an agreement the document can go in, or there isn't. All right? And then for those documents that there is an issue over, I'll deal with it first thing Monday morning -- or first thing tomorrow morning.

[Emphasis added.]

[18] The next morning, respondent's counsel told the judge that the appellant had said he did not object to the respondent's documents, other than a video and transcript of an interaction between himself and the parties' daughter in March 2022, and one other piece of evidence (which the respondent subsequently withdrew).

[19] The judge confirmed this information directly with the appellant (referred to as the "respondent" in the transcript):

THE COURT: [P.R.C.]. My understanding is that there are 11 binders of documents that the claimant wants to submit.

THE RESPONDENT: Yes.

THE COURT: And that you have no problem having them marked as exhibits other than --

THE RESPONDENT: The transcript.

THE COURT: -- video.

THE RESPONDENT: The transcript of the video and the video.

THE COURT: So the transcript of the video and the video itself?

THE RESPONDENT: Yes.

THE COURT: Are there any other documents that you have concerns with?

THE RESPONDENT: No, I've -- I've been as flexible --

THE COURT: Okay.

THE RESPONDENT: -- as I can.

THE COURT: Well, let's get these marked then.

[Emphasis added.]

[20] The first five of the respondent's 11 binders consisted of affidavits produced by the appellant during the litigation. Ultimately, those binders were not marked as exhibits as part of the respondent's case. Rather, only binders 6-11 were entered as evidence. The respondent's counsel told the judge that her client was not intending to rely on the appellant's affidavits as evidence. Rather, they would be used for cross-examination where necessary.

[21] After admitting binders 6-11, the judge turned to the appellant's objections about the video and transcript. Ultimately, he ruled that evidence admissible.

[22] As noted, the appellant brought his own sets of documents to the trial. The judge declined to mark that material as a formal exhibit during the respondent's case. Instead, it would await the appellant's testimony:

THE COURT: We're not going to mark [P.R.C.]'s documents now. [P.R.C.], unfortunately, this is going to rest at your feet because you didn't take steps at the invitation of Ms. Oberoi earlier before the trial to organize with her, what's called, a common book of documents. So you've produced your own set; she's produced her own set. I've got 11 volumes of them. And then they're, for the record, 11 large volumes; so what I'm going to ask that you do is make sure that when it comes time for you to give evidence and have the documents that you want to rely upon marked or referred to, that there's no duplications. To the extent that those documents are included in these 11 big documents, I don't want another set.

[Emphasis added.]

[23] Consequently, the appellant's documentary evidence (other than a sworn F8 Financial Statement), was not before the judge for purposes of his factual or legal findings.

B. Withdrawing from the trial

[24] After the respondent finished her direct examination, the appellant began his cross-examination. On February 1, 2024, while part way through the cross-examination of the respondent, the appellant told the judge that he was "done". The judge asked him what he meant by that:

THE COURT: When you say you're done, does that mean you're finished your cross-examination? Or done on this issue?

THE RESPONDENT: I think I'm done generally.

THE COURT: All right.

THE RESPONDENT: I don't think I'll be putting forward any response. So you can continue.

[Emphasis added.]

[25] The court took a brief recess and the appellant returned to the courtroom. The following exchange took place:

THE RESPONDENT: You have my F8 document.

THE COURT: I do.

THE RESPONDENT: Do I get to -- do you --

THE COURT: Well, again, [C.K.C.] is in the witness stand. She has given evidence.

THE RESPONDENT: Yeah.

THE COURT: So this is your opportunity to test that evidence she's given, cross-examine her, bring up new topics as long as they're relevant.

THE RESPONDENT: Yeah. No, I'm --

THE COURT: I've had -- I know I've interrupted and I've had some concerns and difficulties with some of the questions that you've posed to her, but this is your opportunity to exhaust your concerns about anything she may have said or anything she might say. And if you are -- are you finished your cross-examination?

THE RESPONDENT: I'm finished completely. I won't be doing a response --

THE COURT: Well, let's take this one step at a time.

THE RESPONDENT: All right.

THE COURT: I told you I was a simple person. All right. Any re-examination?

CNSL S. OBEROI: At this stage, as of right now, Mr. Justice, I would have to look over my notes; however, I will say I would suggest that, you know, if -- if this is [P.R.C.]'s position right now, I would suggest that perhaps we break early for the day so we can think about it and actually determine if he's done with his cross-examination. And then -

THE COURT: I'm happy to do that if you would like, [P.R.C.]. The proposal is that rather than you saying "I'm done," why don't you take the evening to think it over, and then we can come back tomorrow and -- or you can --

THE RESPONDENT: Do I have to come back tomorrow if I do say I'm done?

THE COURT: I'm sorry?

THE RESPONDENT: Do I have to come back tomorrow if I say that I'm done?

THE COURT: You don't have to do anything.

THE RESPONDENT: Well, then, you can sort it out between you and let me know.

THE COURT: Well, I'm not entirely sure I understand exactly what you're saying.

THE RESPONDENT: I am not going to respond. I am not going to cross-examine witnesses. You'll take your position on this.

THE COURT: Well, I don't take positions. I --

THE RESPONDENT: Well, sorry --

THE COURT: -- decide cases. All right.

THE RESPONDENT: You'll --

THE COURT: So at the moment in this trial -- this is a trial. It will be -- it will lead to a final determination --

THE RESPONDENT: Yes.

THE COURT: -- of the issues. This is your opportunity to present your side of the story, your case -- [C.K.C.] is doing the same thing -- and do it in the order we're doing it in. Because she's the claimant, she goes first. You're the respondent; you go next. You then have your counterclaim. And so we're -- [C.K.C.] has given her evidence in chief or direct examination. You are -- were doing a cross-examination. I was interrupting a lot, I know, but I told you why. And now you're telling me that you are withdrawing from the case completely?

THE RESPONDENT: If that's -- is that -- is that the term that I used --

THE COURT: I don't know.

THE RESPONDENT: -- "withdrawn"? If that's the legal term I used, then that's what I'll say.

THE COURT: So you are risking, by doing that, not -- not putting forward any case on your own behalf.

THE RESPONDENT: Yeah.

THE COURT: You are risking not putting forward any submissions on your own behalf.

THE RESPONDENT: That's why I was asking just about the F8 document. Do I have --

THE COURT: You were asking about what?

THE RESPONDENT: The F8 document.

THE COURT: The F8 is here. It's filed. It's in evidence. It's sworn.

THE RESPONDENT: So this is --

THE COURT: Yes.

THE RESPONDENT: Okay. So would you -- will you take that into account in your determination?

THE COURT: I will take all the evidence properly before me.

THE RESPONDENT: Okay.

THE COURT: But if you're -- I mean, that affidavit is -- the F8 is an affidavit.

THE RESPONDENT: Okay.

THE COURT: It's here. It's in evidence. Well, is it? Yes, it is. It's a filed affidavit. But if you're not going to make yourself available to be cross-examined on that affidavit, then again you risk the appropriate findings. And you're shrugging your shoulders saying what?

THE RESPONDENT: I'm resigned to that. So --

THE COURT: You are what, sorry?

THE RESPONDENT: I'm resigned to that.

THE COURT: All right. All right. Well, what we're going to do, then, is we're going to adjourn for the rest of the day. We'll reconvene tomorrow here at 10:00. At 10:00 if you are here, I will -- you may have reconsidered. I'm giving you an opportunity to do that. If not, we will proceed with the trial in your absence. And you're nodding yes?

THE RESPONDENT: Yes. Yes.

THE COURT: All right. So you understand --

THE RESPONDENT: Sorry. I --

THE COURT: -- all of that?

THE RESPONDENT -- forget that it's being recorded.

THE COURT: All right.

THE RESPONDENT: Yes.

THE COURT: All right. Is there anything else that you want to --

THE RESPONDENT: No.

THE COURT: All right. You are sure?

THE RESPONDENT: Yeah.

THE COURT: Okay. All right. So tomorrow -- we're going to adjourn for the rest of the day, reconvene tomorrow at 10:00, and we will proceed at that time.

[Emphasis added.]

[26] When court resumed on February 2, 2024, the appellant did not attend. He left his copy of the respondent's documents behind. The judge exercised his discretion to continue with the trial:

THE COURT: Well, we are in the middle of a trial. He was here for the first four days. He announced late yesterday that he -- I think his words were "I am completely finished," and when pressed, he said he was resigning: He wasn't going to respond; he wasn't going to be calling any evidence. And we gave him the evening to think about it and advised him of his choices and the consequences of him not showing up. He isn't here, so we are proceeding with this trial.

[27] The respondent provided further evidence (in re-examination), and then called her mother as a witness. She closed her case after reading in portions of the appellant's examination for discovery. At discovery, the appellant said that the whole of his contribution to the down payment of the UK Property came from proceeds generated by the sale of a house he owned prior to cohabitation. However, he also acknowledged that he sold the house during his relationship with the respondent. He said it would not have increased in value during the relationship because the "market was stagnant".

Trial Judgment

[28] Upon completion of the trial, the judge made a number of orders. They are delineated at paras. 141-144 of his reasons for judgment. He dismissed the appellant's counterclaim in its entirety and awarded costs to the respondent: at paras. 145-146.

[29] It is not necessary to detail each of the orders. Instead, I will briefly address the judge's credibility findings and summarize the results of the division of family property and debt based on my interpretation of the judge's reasons. I have taken this approach because on appeal, the appellant's challenge to the judgment is predominantly focused on the division of property.

A. Credibility findings

[30] The judge heard from only two witnesses in the trial: the respondent and her mother. The rest of the evidence was documentary in nature (including a report prepared under s. 211 of the FLA). Because he withdrew from the trial, the appellant did not testify, nor did he tender any of the documentary evidence he brought to the trial. However, his sworn F8 Financial Statement ("F8") was before the judge and it is apparent from the reasons for judgment that the F8 was considered. The respondent also read some of the appellant's discovery evidence into the record.

[31] The judge found the respondent and her mother to be credible witnesses. He accepted the whole of their evidence: at paras. 51-52.

[32] Although the appellant did not testify, the judge engaged with him during the first part of the trial and made certain observations. This included a finding that he "demonstrated a willingness to suppress relevant, material information and displayed a carelessness with the truth": at para. 53.

B. Family property and debt

[33] The following chart reflects the net equity in the property owned by the parties at separation, based on values assigned at the trial:

Property

Gold

Family Home

Richards Street

UK Property

RRSP

Family Vehicle

UK Bank Accounts

Appellant

\$8,879

\$952,000

\$5,000

\$4,353

Respondent

\$887,493

\$502,861

\$26,507

\$4,353

[34] These numbers are not precise. Instead, they have been gleaned from the reasons for judgment and the trial record, considered as a whole. Taking this approach is consistent with the principles that an appellate court is duty-bound to apply when reviewing, assessing, and interpreting a trial judgment: *R. v. G.F.*, 2021 SCC 20.

[35] Based on my interpretation, the judge's division resulted in the appellant receiving a net value of \$970,232 in property. The judge ordered that the respondent make an equalization payment of \$43,937, which increased the appellant's net value to \$1,014,169. (Child support arrears and a 50% share of the costs for the s. 211 report were offset against the equalization payment.)

[36] The respondent received a net value of \$1,421,214 in property.

- [37] The \$407,045 difference between net values is most likely explained by the judge's findings of excluded property in favour of the respondent, as well as findings made about events that occurred after separation.
- [38] The respondent succeeded in establishing excluded property claims to: (a) \$320,000 in pre-cohabitation equity in Richards Street; (b) £10,000 (\$17,000) contributed towards the Gold in 2013; (c) \$15,000 for the pre-cohabitation value of the respondent's RRSP; and (d) \$41,463 towards the down payment for the UK Property. These claims amounted to a cumulative \$393,463, and under the FLA, would be exempt from a presumptive equal division.
- [39] Although it is somewhat unclear from the reasons for judgment, the remainder of the differential between the net value awarded to each side (\$13,582), can likely be explained with reference to two additional findings by the judge.
- [40] First, he found that between the date of separation and the date of trial (effectively two years), the respondent paid the vast majority of mortgage and other expenses associated with both Richards Street and the Family Home: at paras. 133, 135.
- [41] Second, and more significantly, the judge found that post-separation, the appellant unilaterally sold some of the Gold and used a portion of those proceeds (£35,675) to discharge the mortgage on the UK Property: at para. 109. Applying the conversion rate adopted at the trial (1.7), those proceeds amounted to the equivalent of \$60,647.50 CDN. The appellant used the Gold while there was a court order in place prohibiting either party from disposing of family property: at para. 109. The respondent received excluded property credit for her initial contribution to the Gold. However, at law, she was also entitled to an undivided half interest in any portion of the Gold that was determined to be family property under the FLA. Logically, then, she would have been entitled to a portion of the total amount withdrawn by the appellant after separation. A banking statement attached to the appellant's F8 showed that the total amount withdrawn may have been as high as £54,784.35 (or \$93,133.40 CDN).
- [42] I cannot say for certain that these two features of the case, either alone or in combination, explain the \$13,582 differential. It would have been preferable for the judge to break down the net value of the distribution to each party and explain any differences. However, the judge cited s. 95(1) of the FLA in his analysis of the case, which allows for an "unequal division" of family property and debt if an equal division would be "significantly unfair": at para. 103. It is clear from his decision specific to the Declaration (which will be discussed later), that the possibility of "significant unfairness" to the respondent was a live issue for him and he was trying to avoid that result: at para. 120. In this context, I do not consider a differential of less than \$14,000 in the division of property and debt to reflect material error, deserving of appellate intervention. Because of the appellant's withdrawal from the trial and his choice to not provide testimony that either explained or supplemented the documentary evidence before the court, there were shortcomings in the record. In this scenario, the judge was entitled to do the best he could based on what was before him: *Chahal v. Chahal*, 2020

BCCA 147 at para. 66; leave to appeal ref'd, 2020 CanLII 102973 (S.C.C.).

- [43] In his response to the notice of family claim (filed in August 2022), the appellant pleaded that he contributed \$270,000 of his own funds towards the purchase of the Family Home. He also said the respondent agreed in the Declaration that he would retain 91% of any sale proceeds generated by the sale of the UK Property. These were the two pieces of property that he flagged as attracting excluded property status in his favour.
- [44] In his counterclaim, the appellant sought an unequal division of Richards Street and the Family Home based on " contributions brought from England and contributions made toward the mortgage[s] ". The counterclaim identified the UK Property as excluded property on the basis of the Declaration. It also identified 75% of the Gold as excluded property. However, because of the appellant's withdrawal from the trial, the counterclaim did not proceed. As such, the only excluded property claims that were properly before the judge specific to the appellant were the claims made in respect of the UK Property and Family Home.
- [45] The judge gave the appellant no credit for excluded property, finding that he did not meet his onus of proof under the FLA:
- [105] The [respondent] has provided clear and cogent evidence establishing her claim to excluded property. The evidence supporting any claim by the [appellant] for excluded property is entirely lacking. There is no evidence that the monies used by the [appellant] to purchase the Gold or the deposit monies for the U.K Property or the Family Home were derived from the [appellant's] excluded property.
- [Emphasis added.]
- [46] As made clear in *Parvizi v. Taherzadeh*, 2024 BCCA 205 at para. 18: " the party seeking to establish an excluded property claim bears the onus to prove both that the excluded property falls within the ambit of s. 85 of the FLA, and the value of the excluded property at the outset of the relationship, if that property is later used to acquire an asset that is family property at separation" (emphasis added, citing *Brazinski v. Brazinski*, 2023 BCCA 359). In this case, and for the reasons discussed below, the second part of this test presents a particular challenge for the appellant in the appeal.
- [47] Specific to the Declaration, the judge considered it unnecessary to interpret the terms of that document in light of the fact that the UK Property had not sold by the time of trial. He went on to find that in any event, he was satisfied on the evidence that the respondent did not understand the nature or consequences of the Declaration when she signed it. He set the Declaration aside pursuant to s. 93(3)(c) of the FLA (alternatively, s. 93(5)).

[48] There is no question that under the FLA, the judge had statutory authority to deal with the UK Property. Both parties were "habitually resident" in British Columbia when the respondent commenced her family law claim: FLA, ss. 106(2)(c). See, for example, *Singh v. Singh*, 2020 BCCA 21.

Issues on Appeal

[49] The appellant represented himself in the appeal. He appeared by video from New Zealand, where he currently lives.

[50] In his factum and oral submissions, the appellant claimed multiple errors by the judge. Those errors are far-ranging and it is difficult to discern their precise nature. Some of the alleged errors are factual. Others raise legal questions, including questions about the authority of the judge to make some of the findings and orders that he did.

[51] The appellant expresses dissatisfaction with almost every aspect of the trial's outcome, including: the terms of the parenting orders; the parties' income determinations; the amount of child support he is obliged to pay; the division of family property and debt; the excluded property findings; and the dismissal of his counterclaim, in which he sought spousal support. He also takes issue with the judge's adverse factual findings about his conduct as a spouse, parent, and litigant. See, for example, paras. 62, 63, 68, and 70 of the reasons for judgment. The appellant says these findings paint an unjust picture of who he is as a person and a father. From his perspective, it is the respondent who is the problematic party, not him.

[52] The principal substantive issue on appeal, as framed and presented by the appellant, is the division of property specific to the UK Property and Family Home. He considers the division unfair and submits that it has left him financially bereft. He says the division of property has rendered him unable to afford residency in Canada, and because of this situation, he cannot exercise parenting time with his daughter in any meaningful way, or maintain a loving, nurturing relationship with her.

[53] The appellant does not seek a new trial. Rather, the opening statement in his factum requests a:

comprehensive review and rectification of [the] injustices [he has faced]. He seeks to set aside the trial judgment, request retroactive adjustments to support payments, and hold [C.K.C.] accountable for the costs associated with the trial and appeal. He emphasizes the repeated procedural misconduct and its impact on his ability to defend himself effectively.

[Emphasis added.]

[54] Part of the "rectification" sought by the appellant is an unequal division of property in his favour "due to [his] significant financial contributions and damage suffered during the divorce". He also seeks orders for retroactive spousal support, a "suitable set of orders" for parenting time, costs of the trial, and a retroactive reduction of his child support obligation.

- [55] The appellant has filed a fresh evidence application, with multiple affidavits in support. Some of the fresh evidence speaks to the issue of procedural fairness, both at the trial and in the lead-up to the trial. Some of the fresh evidence is duplicative of material in the trial record. Other parts of the fresh evidence address the appellant's post-trial circumstances, or attempt to flesh out the trial record by either explaining or refuting evidence that was considered by the judge, including the respondent's testimony, or by filling in gaps left by the fact that the appellant chose to not advance a case.
- [56] In oral submissions, the appellant did not press each of the errors alleged in his factum. Rather, he focused predominantly on the adverse effects of the trial and its outcome on him as a person--financial, emotional, and psychological; the impact of the judge's orders on his relationship with his daughter; the fairness of the trial; and his excluded property claims specific to the UK Property and Family Home.
- [57] Having read his factum and after hearing the appellant's oral submissions, I do not consider it necessary to address each of the errors alleged by him. As discussed below, many of those errors consist of generalized assertions, unsupported by substantive analysis. Instead, I am of the view there are four main questions to answer in this appeal, appropriately stated as follows:
- A. Has the appellant shown that the trial was procedurally unfair?
 - B. Did the judge err in rejecting the appellant's excluded property claims?
 - C. Is there any other appellate basis for interference with the orders made by the judge?
 - D. If there is no basis for appellate interference, is the respondent entitled to the orders that she seeks?
- [58] I will address each of these questions in turn, with reference to the application to adduce fresh evidence where appropriate.
- [59] Before doing so, however, something must be said about the standards of review in family law appeals.

Standards of Review

- [60] Findings of fact and discretionary decisions made on substantive issues in family law trials (including the division of family property and debt) attract a deferential standard of review on appeal. This means the scope for appellate interference with a trial judgment is narrow.
- [61] In *Barendregt v. Grebliunas*, 2022 SCC 22, the Supreme Court of Canada emphasized that:
- [101] The trial judge is the fact finder and has the benefit of the intangible impact of conducting the trial

[102] An appellate court's role [is] generally one of error correction; it is not to retry a case. Permitting appellate courts to become venues for dissatisfied parties to relitigate issues already resolved at trial erodes the public's confidence in the judicial process and the rule of law. The proper functioning of our judicial system requires each level of court to remain moored to its respective role in the administration of justice.

[103] Therefore, an appellate court may only intervene where there is a material error, a serious misapprehension of the evidence, or an error in law

[Emphasis added, internal references omitted.]

See also, *Van de Perre v. Edwards*, 2001 SCC 60 at paras. 9-16.

[62] Questions of procedural fairness may also attract deference. However, it depends on the nature of the error that is said to have rendered the proceeding unfair: *L.D.B. v. A.N.H.*, 2023 BCCA 480 at para. 89 [L.D.B.], citing *Katz v. Zentner*, 2022 BCCA 371 at para. 44.

[63] If the alleged error involves a discretionary ruling made in exercise of a judge's trial management power, an appellant must show that the judge erred in principle or exercised their discretion unreasonably before an appeal court will intervene: *Katz* at para. 90. Where a claim of procedural unfairness is grounded in judicial bias (an allegation made here), a strong presumption of impartiality applies. In deciding whether bias has been established, the appeal court must ask whether "an informed person, viewing the matter realistically and practically -- and having thought the matter through [would conclude] that it is more likely than not that [the judge], whether consciously or unconsciously, would not decide fairly": *Yukon Francophone School Board, Education Area #23 v. Yukon (Attorney General)*, 2015 SCC 25 at para. 20. This assessment is done with reference to the record and the proceedings as a whole: *Yukon Francophone* at paras. 25-26.

Analysis

A. Has the appellant shown that the trial was procedurally unfair?

[64] The appellant alleges procedural unfairness on three bases.

[65] First, he says the respondent served him with 11 binders containing more than 5,500 documents on the eve of trial in a manner that did not comply with previously-made court orders. Moreover, he says those documents contained evidence he had not seen before and was not prepared to address. The documents were organized in a way that left him unable to effectively respond to the respondent's case. The appellant contends that he was "ambushed". In one of the affidavits filed in support of his fresh evidence application (Affidavit #1 filed July 18, 2024), he states:

the Appellants effort for 3 weeks to write his response prior to the 26th January was nullified by the changes in all the Documents numbering scheme. The Appellant cannot be expected to be served 5,500 pages of evidence 1 working date before the trial and be able to provide a response or even consume the sheer volume of material.

[66] Second, the appellant submits that he had no real option but to withdraw from the trial on February 1, 2024. He says that because of everything that had occurred to that point, including various pre-trial and interlocutory orders made against him, he was about to be rendered homeless. He was financially drained and emotionally overwhelmed, and there was little for him to do but to walk away from the trial. The appellant contends that withdrawing was not voluntary. Rather, he was "coerced" into doing so.

[67] Third, the appellant says the judge exhibited bias during the trial and it was obvious to the appellant that because of the judge's response to concerns he raised about the respondent's documents, he would not succeed at the trial--either in responding to the notice of family claim or in advancing his counterclaim. As a result, there was no point in continuing. From the appellant's perspective, a result in the respondent's favour was inevitable. In his Affidavit #1, he deposes that after the judge indicated a willingness to accept the respondent's late-delivered documents:

the Appellant had no chance of a fair trial [The judge's allowance of] this breach of [a previous order], along with the statement that its was the Appellants responsibility to read this material and prepare, which again shows bias towards the opposing council, this behaviour is deplorable and designed to allow lawyers to win the case, without the Appellant having any chance to prepare a defence.

This [as well as other things] ultimately ended up with the Appellant being forced to withdraw from a biased and prejudiced hearing held on the 29th January 2024 The final day that the appellant could attend the hearing was the 8th February 2024, when the [judge] gave his opinions on video evidence presented by the opposing council and stated that a 6 year old child was obviously reading out a statement that had been prepared.

This showed the [judge] had already pre judged the situation, without hearing both sides

[68] I appreciate it is not easy for self-represented litigants to navigate the litigation process. I accept there will be times when the process seems overwhelming. That is understandable. However, respectfully, this ground of appeal is not borne out by the trial record and there is nothing in the appellant's fresh evidence relevant to the issue of procedural fairness that persuades me otherwise.

- [69] As readily apparent from the earlier transcript excerpts, apart from a few pieces of evidence (which were either ruled admissible or withdrawn), the appellant agreed to the admission of the respondent's documents after receiving an opportunity to review them and speak with respondent's counsel. He also personally chose to withdraw from the trial after being encouraged to think about that choice. He was told of the risks of doing so.
- [70] I am satisfied from the respondent's submissions that the vast majority of documents in her 11 binders were ones the appellant had seen before (indeed, binders 1-5 consisted of his own affidavits). Changes between previous sets of documents provided to him and the 11 binders were primarily to the index, rather than additional evidence. There was some new material, but not much, and in that context, it was not unreasonable for the judge to expect the appellant to be able to manage the material.
- [71] I am also satisfied the appellant understood the consequences of withdrawing from the trial and made a voluntary and informed decision to do so. Rather than testify, explain his excluded property claims, and fill in any evidentiary gaps, he chose to walk away and rely on his untested F8. He was specifically told that not being available for cross-examination on his F8 risked the possibility of adverse findings against him. Nevertheless, the appellant did not return to court. This may not have been a prudent choice, given the potential implications, but it was nonetheless a choice, and I see nothing in the record to show that the appellant did not have the capacity to make that decision.
- [72] I see no indication of judicial bias. There was active trial management, which the judge acknowledged in his discussions with the appellant. However, this is not uncommon with self-represented litigants to ensure that the trial, including the examination of witnesses, remains focused and relevant to the factual and legal issues in dispute. See, for example, the discussion at paras. 87-92 of L.D.B.; Katz at para. 39.
- [73] The fact of active trial management does not render a judge biased or otherwise displace the presumption of impartiality. Nor can the appellant, in impugning the fairness of his trial, reach back to various interlocutory applications that preceded the trial and were decided by other judges, and claim that what happened in those applications and the surrounding circumstances makes the judge's handling of the trial unfair. The correctness of the pre-trial orders and the fairness of the pre-trial proceedings are not before us.
- [74] I would not accede to this ground of appeal.

B. Did the judge err in rejecting the appellant's excluded property claims?

- [75] Before addressing the substantive aspects of this ground of appeal, I will briefly discuss the appellant's application to adduce fresh evidence. He relies heavily on his fresh evidence in challenging this aspect of the trial judgment.

Admissibility of fresh evidence

- [76] The framework governing the introduction of fresh evidence in family law appeals was helpfully summarized in *Barendregt*:
- [29] Appellate courts have the discretion to admit additional evidence to supplement the record on appeal: *Catholic Children's Aid Society of Metropolitan Toronto v. M. (C.)*, [1994] 2 S.C.R. 165, at p. 188; *United States of America v. Shulman*, 2001 SCC 21, [2001] 1 S.C.R. 616, at para. 43. Whether in criminal or non-criminal matters (*May v. Ferndale Institution*, 2005 SCC 82, [2005] 3 S.C.R. 809, at para. 107), courts have typically applied the four criteria set out by this Court in [*Palmer v. The Queen* (1979), [1980] 1 S.C.R. 759, 1979 CanLII 8] when parties seek to adduce evidence on appeal:
- (i) the evidence could not, by the exercise of due diligence, have been obtained for the trial (provided that this general principle will not be applied as strictly in a criminal case as in civil cases);
 - (ii) the evidence is relevant in that it bears upon a decisive or potentially decisive issue;
 - (iii) the evidence is credible in the sense that it is reasonably capable of belief; and
 - (iv) the evidence is such that, if believed, it could have affected the result at trial.
- [30] *Palmer* applies when evidence is adduced on appeal "for the purpose of asking the court to review the proceedings in the court below": *Shulman*, at para. 44. *Palmer* does not, however, apply to evidence going to the validity of the trial process itself (*R. v. Taillefer*, 2003 SCC 70, [2003] 3 S.C.R. 307, at paras. 76-77), nor to evidence adduced "as a basis for requesting an original remedy in the Court of Appeal", such as a stay of proceedings for an abuse of process (*Shulman*, at paras. 44-46).
- [Citation added.]
- [77] Specific to the first of the *Palmer* criteria, due diligence, the Court said this:
- [36] Functionally, the first *Palmer* criterion -- that the evidence could not, by the exercise of due diligence, have been obtained for the trial -- focuses on the conduct of the party seeking to adduce the evidence. It requires litigants to take all reasonable steps to present their best case at trial
- [37] The relationship between due diligence, and finality and order are deeply rooted in our common law. The law generally "requires litigants to put their best foot forward to establish the truth of their allegations when first called upon to do so": *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 18
- [39] The principle of finality and order has both individual and systemic dimensions in this setting. On an individual level, it speaks to the profound unfairness in providing "a party the opportunity to make up for deficiencies in [their] case at trial": *Stav v. Stav*, 2012 BCCA 154, 31 B.C.L.R. (5th) 302, at para. 32. A party who has not acted with due diligence should not be afforded a "second kick at the can": *S.F.D. v. M.T.*, 2019 NBCA 62, 49 C.C.P.B. (2nd) 177, at

para. 24. And the opposing party is entitled to certainty and generally should not have to relitigate an issue decided at first instance, absent a reviewable error. Otherwise, the opposing party must endure additional delay and expense to answer a new case on appeal. Permitting a party in an appeal to fill the gaps in their trial evidence based on the failings identified by the trial judge is fundamentally unfair to the other litigant in an adversarial proceeding.

- [40] On a systemic level, this principle preserves the distinction between the roles of trial and appellate courts. Evaluating evidence and making factual findings are the responsibilities of trial judges. Appellate courts, by contrast, are designed to review trial decisions for errors. The admission of additional evidence on appeal blurs this critical distinction by permitting litigants to effectively extend trial proceedings into the appellate arena.
- [41] By requiring litigants to call all evidence necessary to present their best case at first instance, the due diligence criterion protects this distinction. This, in turn, sustains the proper functioning of our judicial architecture (R. v. Sipos, 2014 SCC 47, [2014] 2 S.C.R. 423, at para. 30), and ensures the efficient and effective use of judicial resources (see Housen v. Nikolaisen, 2002 SCC 33, [2002] 2 S.C.R. 235, at para. 16).
- [78] Applying Barendregt to this case, I would admit those parts of the appellant's fresh evidence (referred to earlier), that speak to the issue of procedural fairness at the trial. However, as noted, I have found that this evidence, considered in the context of the record and proceedings as a whole, does not justify appellate interference.
- [79] I would not admit the remainder of the appellant's fresh evidence. To the extent that this evidence duplicates material already before us, it is not necessary. To the extent that it seeks to make up for deficiencies in the trial record by introducing documents that the appellant could have adduced at the trial, but chose not to, the fresh evidence does precisely what Barendregt warns against: it reflects an improper attempt to obtain a "second kick at the can": at para. 39. It also fails the due diligence component of the Palmer test.
- [80] Through his fresh evidence, the appellant is attempting to advance a case on appeal that he should have martialed in the court below. He is also attempting to use evidence of post-trial circumstances to shed light on the impact of the orders made by the judge, demonstrate their unworkability given his current situation, or seek a variation. To allow this approach on appeal would be fundamentally unfair to the respondent. Importantly, it would also undermine the principles of finality and order on a systemic level by sending the message that fact-intensive family law disputes can be relitigated on appeal, even though the trial proceedings were not procedurally unfair. I am not prepared to send that message. Doing so would be contrary to well-established appellate jurisprudence. If there have been material changes in the appellant's post-trial circumstances that justify revisiting the parenting and support orders made below, that issue should be addressed through a variation application in the Supreme Court: Barendregt at paras. 73-80.

Division of family property and debt

- [81] I turn then, to whether the judge erred in his division of property and debt. That is the main complaint pursued on appeal. Given my conclusion on the fresh evidence application, the judge's findings specific to property (including excluded property) must be assessed exclusively within the context of the evidentiary record established at the trial.
- [82] The appellant's challenge to the division of property and debt is predominantly grounded in the judge's rejection of his claims to excluded property, specific to the UK Property and the Family Home. As noted, these were the two properties (or portions of them) that the appellant pleaded as exempt from equal division in his response to the notice of family claim.
- [83] The judge found that the evidence in support of the appellant's excluded property claims was "entirely lacking": at para. 105. The appellant submits this is a material error and to arrive at this conclusion, the judge must have ignored his F8. From his perspective, the F8 provided sufficient evidence to not only show that his contributions to the UK Property and Family Home met the criteria for excluded property under the FLA, but the amount of the exclusion.
- [84] It is apparent the judge was alive to the F8 in determining the division of property and debt. See, for example, para. 124 of his reasons for judgment. As such, it cannot be said that he ignored this evidence. Instead, the issue to be determined is whether the judge committed a material error, seriously misapprehended the evidence, or committed an error of law in concluding there was "no evidence" showing that monies the appellant put towards the purchases of the UK Property and Family Home were "derived from [his] excluded property": at para. 105.
- [85] I have reviewed the judge's findings about the UK Property and Family Home, the evidence relied upon in support of those findings and the appellant's F8, as well as the entirety of the appendices attached to the F8. This was the 4th F8 filed by the appellant and is dated January 2, 2024.
- [86] In his F8, the appellant made the following assertions about the UK Property and Family home: (a) that the £271,005 put towards the down payment on the UK Property (noted earlier), came from the "sale of 4 Rayleigh Road, Woodford Green" (a home previously owned by him); and (b) that the Family Home carried an excluded property value of \$332,000 in his favour, based on monies derived from CML.
- [87] In support of these assertions, the F8 attaches various documents. Specific to the assertions in question, the attachments contain the following:
- a document showing that a U.K. property at 4 Rayleigh Road, Woodford Green ("Woodford Green") was transferred by the appellant to a new owner for £266,000. However, the transfer document is not dated;

- a document stating that CML was wound up in February 2016, more than four years past the date the parties began living together;
- when it was wound up, CML carried a net value of £299,734;
- an "Abbreviated Accounts" produced for CML that puts its net value at £167,862 in April 2012. For the prior year (April 2011), the company's net value was stated as £91,419. This was eight months before cohabitation; and,
- a document dated December 14, 2016 and signed by the appellant, indicating an intention to transfer £270,000 from CML to a Canadian account.

- [88] This material, other evidence before the judge, and the respondent's testimonial acknowledgements of contributions made by the appellant to the UK Property and Family Home, provided a sufficient evidentiary basis from which the appellant could raise the issue of excluded property for consideration at the trial. Indeed, before us, the respondent accepted that the potential for excluded property status in the appellant's favour was a live issue (albeit disputed).
- [89] However, I am also satisfied it was open to the judge to find that on the whole of the record, including the January 2024 F8, the appellant's excluded property claim had not been proved on a balance of probabilities.
- [90] First, the judge concluded there was insufficient evidence to establish an ascertainable link (or tracing) between funds put towards the purchases of the UK Property and Family Home and their originating source. The appellant did not testify to support the linkage. Nor did he adduce documentary evidence showing that the funds used for the down payments were, in actuality, the very assets that were converted to cash and now claimed as excluded property.
- [91] Second, and more importantly, even had there been a proved link between the appellant's contributions and their originating source, I am satisfied the F8, standing alone, was insufficient to show the value of the originating source at the time of cohabitation. Under s. 84(1)(g) of the FLA, property that is presumptively subject to equal division includes the amount by which the value of excluded property has increased since the later of the date the relationship began or the date the excluded property was acquired. The property that the appellant asserts was used to fund the purchases of the UK Property and the Family Home (Woodford Green and CML, respectively), was disposed of after the parties began living together. To succeed in his excluded property claims, the appellant was required to establish the value of that property at the beginning of the relationship and at the time of sale to determine if and to what extent they had appreciated during the relationship. This is because under the FLA, the respondent would have a claim to the appreciation.

- [92] The appellant's F8 indicated that Woodford Green was sold in 2013, perhaps 2014. This was after the parties began living together. At his examination for discovery, he acknowledged that Woodford Green was sold during the relationship. This evidence was read in at the trial. The appellant said in his discovery evidence that Woodford Green had not increased in value since the start of the relationship; however, this was simply a bald assertion. There was no independent evidence showing that such was the case.
- [93] The appellant's F8 indicated that CML was wound up in 2016. He did not adduce expert opinion evidence to quantify the value of CML as at December 2011. At best, there was an indication of its value eight months prior. The judge made specific note of the inadequacy of the evidence in his reasons:
- [131] Although there is a distinct lack of evidence regarding the genesis of the funds used for the down payment of 35% (approximately \$241,000), the claimant apparently concedes that it was funded by way of the sale by the respondent of CML, which he incorporated in April 2010 and used as the vehicle through which he earned his income. There is no evidence as to the value of CML as at the date of cohabitation or that any of the sale proceeds are excluded property.
- [Emphasis added.]
- [94] On the evidence then, the actual value of property held by the appellant at the start of the relationship was unclear.
- [95] Without evidence of the value, the judge was understandably left unable to determine what proportion of the proceeds upon disposal of that property appropriately attracted excluded property status. Specific to CML, for instance, the company's net value in April 2011 (eight months pre-cohabitation), was £91,419. In February 2016, more than three years post-cohabitation, its net value was £299,734. There was considerable growth between April 2011 and February 2016. For most of that period (more than four years), the parties lived together. Under the FLA, the respondent was entitled to a presumptive equal division of any growth after December 2011. On the record in this case, quantifying the amount of growth was, at best, guesswork.
- [96] The party that advances an excluded property claim bears the onus of proving that claim: Parvizi at para. 18. It must be proved on a balance of probabilities. It is not necessary that the claim be established with "precision" or "mathematical certainty": Shih v. Shih, 2017 BCCA 37 at para. 40. However, bald assertions, circumstantial coincidences in timing, and a cryptic documentary foundation will not suffice. The evidence in support of excluded property must be "clear and cogent": Shih at para. 43; Zhao v. Fang, 2022 BCCA 227 at para. 25. If documentary evidence is not available, "the party bearing the onus of proof will need to testify as to their recollection of the transactions in dispute": Shih at para. 43. In turn, that evidence will be "scrutinized for credibility": Shih at para. 43.

- [97] The judge was alive to these principles: at para. 104. It was up to him to determine whether the appellant met his onus under s. 85(2) of the FLA. He considered, assessed, and weighed the evidence before him, including the appellant's F8. Ultimately, he was not satisfied that the appellant had proved the amounts claimed as excluded property. I cannot say this finding was unavailable to the judge in the context of this case. The appellant chose to withdraw from the trial and did not provide testimonial support to ensure a "clear and cogent" basis for his assertions. He claimed the whole of his contributions to the UK Property and Family Home as excluded property without quantifying (or accounting for) any appreciation in value during the relationship. In this context, it is not surprising the judge ruled as he did.
- [98] On the face of it, I see nothing about the judge's division of property and debt that reflects material error. The judge did the best he could with what he had. Had the appellant continued his participation in the trial and advanced a more robust evidentiary foundation on his own behalf, he may have been able to meet the proof requirement under s. 85(2) of the FLA. However, he did not do so and he cannot now use the appeal process to fill in the gap.
- [99] Accordingly, I would not accede to this ground of appeal.
- C. Is there any other appellate basis for interference with the orders made by the judge?
- [100] At the start of these reasons, I identified the division of family property and debt as the primary substantive issue raised on appeal.
- [101] In advancing his appeal, the appellant also placed considerable emphasis on the procedural fairness of the trial.
- [102] I have addressed both issues and found no basis for appellate interference with the trial judgment.
- [103] There are many other errors alleged in the appellant's factum. It is difficult to discern the exact nature of them and there is considerable overlap. He did not press these errors in his oral submissions.
- [104] Among other things, the appellant says the judge: (a) erred in setting aside the Declaration on the basis that the respondent did not understand the nature or consequences of the document; (b) erred in dividing the value of the UK Property in a manner "not in line with the terms of the Declaration"; (c) erred in "relitigating" the Declaration after an unsuccessful pre-trial attempt by the respondent to sell the UK Property; (d) was wrong to impute \$140,000 in income to him; (e) erred in his findings about the appellant's conduct during the marriage; (f) ordered "excessive" child support; and (g) failed to conduct the "full and sensitive" enquiry that is mandated of judges in family law cases.

- [105] Unfortunately, these errors have largely been asserted without substantive supporting analysis--either factual or legal. Instead, the appellant's factum consists of many generalized or conclusory assertions. It also challenges the judge's findings of fact without an appreciation of the applicable standard of review. Factual findings can only be set aside on the basis of palpable and overriding error.
- [106] The appellant views the evidence differently than the judge and alleges error based on his interpretation. His position in the appeal does not account for the fact that in deciding the issues raised at the trial, the judge was entitled to accept all, none, or only part of the evidence before him, including the appellant's F8. He was entitled to assess the evidence for credibility, reliability, and cogency, and assign it the amount of weight he considered appropriate. The fact that the judge viewed the evidence differently than the appellant, assigned it less weight, or drew inferences in the respondent's favour, does not mean he committed palpable and overriding error: *Mother 1 v. Solus Trust Company Limited*, 2021 BCCA 461 at para. 52, leave to appeal to SCC ref'd, [2022] C.S.C.R. no 33, 2022 CanLII 69781 (SCC).
- [107] When explaining the outcome of the trial, the judge was not obliged to mention every piece of evidence, acknowledge all possible competing interpretations, or detail the parts of the record that supported the factual conclusions he reached: *Mother 1* at para. 60, citing *R. v. J.M.H.*, 2011 SCC 45 at para. 32. The fact that he did not refer to a particular piece of evidence does not mean he must have ignored it.
- [108] As noted by the judge, there has been extensive litigation between these parties since separation. Between March 2022 and January 2024, the appellant filed 14 notices of application in the Supreme Court. In May 2023, a Supreme Court judge issued an order under s. 221(1) of the FLA, prohibiting the appellant from making further pre-trial applications without first obtaining leave (there were defined exceptions). These orders are generally made when a judge finds that a party has filed trivial applications, is conducting a proceeding in a manner that misuses the court process, or is otherwise acting in a manner that frustrates or misuses the court process.
- [109] In addition to the order under s. 221(1), the appellant was ordered to pay special costs to the respondent to discourage him from bringing unmeritorious and time-consuming applications (Docket E64496, New Westminster Registry). In the accompanying reasons, the judge noted that among other things, the appellant sought to re-litigate issues already decided. An application for leave to appeal the special costs award has been filed in this Court (CA49254), but is inactive.
- [110] Intending no disrespect to the appellant, the position taken on appeal appears reminiscent of the way he advanced issues in the litigation below. It is obvious he feels aggrieved by the outcome of the trial. However, he has not persuaded me of a material error, serious misapprehension of the evidence, or error of law that properly allows for intervention by this Court. Instead, I agree with the respondent that the appellant is attempting to use this

appeal to " re-litigate matters because he is not satisfied with the decision". This, he cannot do.

D. Is the respondent entitled to enforcement orders?

[111] The respondent asks that the appeal be dismissed. In addition, she seeks various orders to assist with enforcement of the trial judgment. She makes these requests citing ss. 24 and 25 of the Court of Appeal Act.

[112] As I understand it, the appellant has not co-operated with giving effect to the judgment. Before us, he acknowledged that such is the case, although he explained his conduct by saying, among other things, that he considers the trial outcome to have been unfair. Specific to the UK Property, he is of the view that both parties remain bound by the terms of the Declaration.

[113] I have determined that the trial was not unfair and the judge did not err in his division of property and debt. This includes the decision to set aside the Declaration and find that the UK Property constitutes family property under the FLA.

[114] The orders sought by the respondent consist of:

- an order cancelling certificates of pending litigation the appellant has filed against Richards Street and the Family Home;
- an order authorizing the respondent or a "district registrar" to execute all documents necessary to transfer title in the Family Home to the respondent, with all transfer expenses payable by the appellant;
- an order authorizing the respondent to execute all documents necessary to transfer her interest in the UK Property to the appellant, with all transfer expenses payable by the appellant;
- an order authorizing the respondent or a "district registrar" to execute all documents necessary to transfer ownership of the family vehicle to the respondent for the purpose of sale and offset against monies owing in respect of the appellant's support obligations, with all transfer expenses payable by the appellant; and,
- an order varying para. 17 of the final order specific to the daughter's s. 7 expenses [Federal Child Support Guidelines, SOR/97-175], " so as to enable enforcement of the Final Order by the BC Family Maintenance Agency" ("BCFMA").

[115] The final order in the court below stipulates that the parties must execute the documents necessary to transfer the UK Property and Family Home in accordance with the terms of the judgment. It is in everyone's best interests that the parties cooperate in giving the judgment meaningful effect so they can achieve much-needed finality and event certainty.

[116] In light of that fact and given the current circumstances, I consider it appropriate to grant some of the orders sought by the respondent. Others are either unnecessary or insufficiently supported for purposes of this Court's discretion.

[117] Starting with the certificates of pending litigation, I do not consider it necessary to make cancellation orders. The appeal has been dismissed and the whole of the appellant's claims and/or entitlements to Richards Street and the Family Home have been determined on appeal. In these circumstances, I presume that s. 254 of the Land Title Act, R.S.B.C. 1996, c. 250 and/or s. 25 of the Land Title Regulation, B.C. Reg. 334/79 are available to the respondent:

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.

25 If a person applies to cancel the registration of a certificate of pending litigation following a dismissal of the proceeding, the registrar may cancel the certificate

- (a) on production of a consent to cancellation signed by the party who filed the certificate of pending litigation, or
- (b) on giving notice to the party who filed the certificate.

[118] Alternatively, with this Court's judgment in hand and any required additional information, the respondent can seek cancellation of the certificates of pending litigation in the Supreme Court pursuant to s. 256 of the Land Title Act.

[119] Specific to the Family Home, I consider it appropriate to order pursuant to ss. 97(2)(b) and 230(2)(b) of the FLA, that title in this property be transferred to the respondent and the appellant be responsible for all administrative expenses arising from the transfer and any registration. Section 97(2)(b) allows a court to "require that title to a specified property granted to a spouse be transferred to or vested in the spouse". Section 230(2)(b)(i) allows a court to require of a party that they pay the other party for "all or part of the expenses reasonably and necessarily incurred as a result of the party's actions".

[120] I would decline to make the order requested specific to the UK Property. To obtain this order, the respondent must show that it would be enforceable in the U.K. Section 109(2)(b)(iv) of the FLA stipulates that a court may provide for "any matter in connection with [an]

extraprovincial property"; however, before doing so, the court must be "satisfied that [the order] would be enforceable [against a spouse] in the jurisdiction in which the extraprovincial property is located", s. 109(2)(c). The respondent has not filed any material or authorities specific to the enforceability in the U.K. of the type of transfer document she seeks to execute. In my view, the threshold test for invoking s. 109(2)(b)-(c) has not been met.

- [121] In relation to the family vehicle (which the appellant left with the respondent as partial payment for his outstanding support obligations), I would grant the respondent's request for a transfer of ownership, applying s. 97(2)(j) of the FLA. This provision authorizes a court to "transfer property to a spouse".
- [122] Finally, the final order below stipulates that the parties will share their daughter's special and extraordinary expenses in proportion to their "Guidelines incomes". It goes on to say (at para. 17), that for the purpose of determining their share of these expenses, "any associated tax benefit or subsidy will be taken into account". The respondent has advised the Court that the uncertainty of this language renders the BCFMA unable to enforce the appellant's s. 7 obligation. She asks that we vary the final order to remove para. 17. I would do so, having received no argument to the contrary from the appellant, even though he received notice of the respondent's request for a variation in her factum.

Disposition

- [123] For the reasons provided, I would admit only those portions of the appellant's fresh evidence that are relevant to the issue of procedural fairness at the trial. I would dismiss the remainder of the fresh evidence application.
- [124] I would dismiss the appeal.
- [125] Pursuant to ss. 24 and 25 of the Court of Appeal Act, I would grant some of the orders sought by the respondent, but only to the extent set out earlier in these reasons.
- [126] I would award the respondent costs of the appeal on Scale A in accordance with Schedule 1, payable by the appellant. These costs are to be offset against his share of the division of family property and debt, where available.
- [127] I would deny the respondent's application for special costs. I agree that the manner in which the appellant approached the appeal bears similarities to the approach taken in the court below, including unfounded and disparaging comments about the respondent and her legal counsel. However, specific to this proceeding within a finite context, I am not persuaded of reprehensible conduct within the meaning of *Garcia v. Crestbrook Forest Industries Ltd.* (1994), 9 B.C.L.R. (3d) 242, 1994 CanLII 2570 (C.A.).

[128] Finally, given the history of the litigation in this case and the appellant's acknowledged lack of co-operation post-trial, I would dispense with his approval as to the form of the order dismissing the appeal in accordance with R. 66(1)(c) of the Court of Appeal Rules, B.C. Reg. 120/2022.

"The Honourable Madam Justice DeWitt-Van Oosten"

I AGREE:

"The Honourable Mr. Justice Harris"

I AGREE:

"The Honourable Justice Iyer"

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/ca/24/03/2024BCCA0363.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/p-r-c-v-c-k-c-2024>

Prepared on 27 October 2026 · Esheria