

CANADA / JUDGMENT

R.A.K. v. V.J.S.

2025 BCSC 578

COURT

Supreme Court of British Columbia

DECIDED

28 March 2025

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2025 BCSC 578 R.A.K. v. V.J.S. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: R.A.K. v. V.J.S., 2025 BCSC 578 Date: 20250328 Docket: E63724 Registry: New Westminster Between: R.A.K. Claimant And V.J.S. Respondent Before: The Honourable Justice Caldwell Reasons for Judgment In Chambers Counsel for the Claimant: B. Kibur Counsel for the Respondent: S. Ahuja Place and Dates of Hearing: Port Coquitlam, B.C. February 27-28, 2025 Place and Date of Judgment: New Westminster, B.C. March 28, 2025 Table of Contents BACKGROUND.. 3 THE CLAIMANT'S POSITION.. 4 THE RESPONDENT'S POSITION.. 5 THE LAW.. 5 DECISION.. 11 COSTS. 11

- [1] This is a summary trial matter involving competing applications. The claimant, Mr. R.A.K., applies for a declaration that the parties were, prior to separation, spouses as defined by the Family Law Act, S.B.C. 2011, c. 25 [FLA], specifically for purposes of a claim for an interest in assets. The respondent, Ms. V.J.S., denies that the parties were ever spouses and applies to have the claimant's claim dismissed in its entirety. She also seeks to have the related CPL which is currently registered against her home cancelled.
- [2] The parties agree that the matter is suitable for determination by summary process and, in fact, entered into a Consent Order to that effect, and on terms, before Justice Norell on June 5, 2023.

BACKGROUND

- [3] The parties met in August 2015 and the claimant moved into the respondent's townhouse on or about September 6, 2016.
- [4] Later, the townhouse was sold and a home was purchased in Langley in the name of the respondent alone and without financial contribution by or on the part of the claimant. The claimant moved into that home following its purchase.
- [5] The parties have twins, born of their relationship on December 3, 2018.
- [6] The issues regarding parenting and support have been and are being dealt with in Provincial Court. The claimant currently owes approximately \$22,000 in arrears of child support.

- [7] The parties describe the relationship as tumultuous. They separated several times over the three years following September 2016. The claimant says that the final separation date was August 20, 2019.
- [8] In my respectful view, "tumultuous" is the kindest, gentlest word which could be used to describe this relationship.
- [9] The respondent says that the final separation date was October 22, 2018 on the occasion of the claimant being arrested for assaulting her by choking her and threatening her with a knife when she was 7-8 months pregnant.
- [10] By the claimant's calculations, they resided together in a marriage-like relationship for a total of 722 days between September 6, 2016 and August 20, 2019. By his evidence, they resided together for periods of 256 days, 106 days, 143 days, and 217 days with the intervening periods being times of separation.
- [11] By the respondent's calculations, they resided together in a marriage-like relationship for a total of 362 days between September 6, 2016 and October 22, 2018. By her evidence, they resided together for periods of 213 days, 66 days, and 83 days with the intervening periods being times of separation. THE CLAIMANT'S POSITION
- [12] The claimant acknowledges that, taken at its best, the total time during which the parties actually lived under the same roof in any fashion is 722 days - less than two full years. He says, however, that for purposes of determining him to be a spouse and having a claim regarding "family assets", the period of co-habitation is actually over three years and runs from September 6, 2016 to August 20, 2019. In this regard, he relies on s. 83(1) of the FLA which provides: 83(1) For the purposes of this Part, spouses are not considered to have separated if, within one year after separation,
- (a) they begin to live together again and the primary purpose for doing so is to reconcile, and
 - (b) they continue to live together for one or more periods, totalling at least 90 days.
- [13] He says that although they separated prior to living together for a year (7-8 months), they reconciled several times during the total of three years, and the reconciliations were for more than 90 days, thus they are not considered to have separated during that three-year period.
- [14] The claimant acknowledges that he has no records or even clear recollection of specific dates or periods of shared accommodation with the respondent. His estimates are, at best, just that - guesses based on hindsight and unsupported memory. One example of this difficulty is that his estimate of when the parties actually began living under the same roof ranges from July 2016 to September 2016 to October 2016. THE RESPONDENT'S POSITION

- [15] The respondent acknowledges that, at various times, the parties lived in the same residence, had sexual relations which resulted in more than one miscarriage along with the birth of twins, and maintained a somewhat supportive relationship. She says, however, that the relationship was toxic and abusive, and that the parties' time in a "marriage-like relationship" was far less than two years in duration. She says that, at best, the time spent in a "marriage-like relationship" was less than one year, amounting in total to 362 days.
- [16] The respondent has provided a detailed, albeit self-generated, record of the dates and periods of the parties' shared accommodations. THE LAW
- [17] In addition to s. 83 of the FLA as referenced by the claimant, s. 3 of that Act provides: 3(1) A person is a spouse for the purposes of this Act if the person
- (a) is married to another person, or
 - (b) has lived with another person in a marriage-like relationship, and
 - (i) has done so for a continuous period of at least 2 years, or (ii) except in Parts 5 [Property Division] and 6 [Pension Division], has a child with the other person.
- (2) A spouse includes a former spouse.
- (3) A relationship between spouses begins on the earlier of the following:
- (a) the date on which they began to live together in a marriage-like relationship;
 - (b) the date of their marriage.
- (4) For the purposes of this Act,
- (a) spouses may be separated despite continuing to live in the same residence, and
 - (b) the court may consider, as evidence of separation,
 - (i) communication, by one spouse to the other spouse, of an intention to separate permanently, and (ii) an action, taken by a spouse, that demonstrates the spouse's intention to separate permanently.
- [18] Dealing first with the claimant's position regarding s. 83 of the FLA, I find that I must reject the interpretation suggested by his counsel.
- [19] Section 83 clearly states that "spouses" are not considered to have separated if, within one year following separation, they resume cohabitation with the primary purpose of reconciling and they, within that one-year period, live together for one or more periods totalling at least 90 days.
- [20] The section does not refer to persons, individuals, or parties - it refers specifically to spouses.

- [21] "Spouse" is a term clearly defined by the FLA in s. 3, as noted above. By that definition, for those who are not married, people do not become spouses until they have lived in a marriage-like relationship for a continuous period of at least two years. For issues concerning property or pension division, having a child and living together in a marriage-like relationship does not necessarily make two people "spouses": FLA, s. 3(1)(b)(ii).
- [22] Thus, for the issues before me in the instant case, it is only upon having lived together in a marriage-like relationship for a continuous period of at least two years that the claimant and respondent would become spouses and trigger the separation/reconciliation mechanism created and allowed by s. 83.
- [23] With regard to both ss. 3 and 83, in my respectful opinion, there is solid public policy for such provisions. The legislation is intended to protect parties who have committed to at least two continuous years of marriage-like relationship, and, if issues arise, who may need some time apart to seek assistance toward possible reconciliation. In such case, the legislation allows and, in fact, encourages parties to attempt reconciliation within certain defined bounds and without compromising their overall positions, rights, and responsibilities.
- [24] The legislation is not intended to be a mechanism whereby individuals can simply move in together for a few weeks, separate for months, move back in together for a few months, and continue that uncommitted, random pattern of residence over the course of two to three years so as to claim spousal status.
- [25] I find support for this assessment in the decision of Justice Baird in *C.F.M. v. G.L.M.*, 2018 BCSC 815:
- [10] A party to a relationship that lacks such characteristics is not entitled to pursue FLA remedies. A person is a "spouse" or not. There is no middle ground: *Gostlin v. Kergin* (1986), 3 B.C.L.R. (2d) 264 (C.A.) at para. 16. People may live together continuously and interdependently and yet fail to establish that they developed "the kind of psychological and emotional union" associated with marriage: *Takacs v. Gallo* (1998), 48 B.C.L.R. (3d) 265 (C.A.) at para. 55, leave to appeal ref'd, [1998] S.C.C.A. No. 238.
- [11] The "marriage-like" commitment must be combined with sufficient evidence of two years of continuous cohabitation. The FLA has no application to more transitory connections. There is, of course, substantial unpredictability in the progress of nascent relationships and this is why the legislature fixed a two year standard before imposing legal matrimonial obligations on common law couples without children: *Parke v. Veale*, 2015 BCSC 2554 at para. 79.
- [26] I find that, regardless of the nature and quality of the parties' relationship and whether it could be characterized as "marriage-like", they simply do not meet the definition of "spouse" as it is set out in s. 3 of the FLA because they did not live together for a continuous period of at least two years.

- [27] In addition, or if I am wrong as to that interpretation of ss. 3 and 83, I now proceed to address the question as to whether, or during which period or periods, the parties' relationship could be characterized as marriage-like.
- [28] While it is very clear that the Court must, in each case, assess the question of the nature and quality of an alleged marriage-like relationship on the facts of the individual case, previous authorities have provided some helpful comments and guidelines:
- courts must take a holistic approach in considering the evidence before them in the particular case: *Weber v. Leclerc*, 2015 BCCA 492; *Austin v. Goerz*, 2007 BCCA 586 at para. 62; *Dey v. Blackett*, 2018 BCSC 244;
 - a marriage-like relationship involves more than living together from time to time, taking vacations and buying and selling property together. There should be evidence that these parties intended to have a solid, devoted, long-term relationship with the psychological and emotional support of a relationship akin to marriage: *Voth v. Martin*, 2019 BCSC 834 at para. 69; and
 - a marriage-like relationship is not a tumultuous liaison frequently interrupted by sometimes lengthy hiatuses brought on by, for example, illicit infidelities and betrayals that were divisive and hurtful: *C.F.M. v. G.L.M.*
- [29] With these comments in mind, I move to assess the evidence presented to determine the nature and quality of the relationship of these parties from the fall of 2016 through to the fall of 2019.
- [30] While certainly not determinative, I note that while the claimant was in a previous relationship, he described himself on his tax returns as in a "common-law" relationship, whereas he described himself as "single" throughout the period of 2016, 2017, 2018, and 2019. I note that the claimant indicated that the respondent had prepared his tax returns during their relationship, but he does not offer any evidence of his attempts, if any, to correct those statements.
- [31] After approximately six months together, the parties clearly separated in the spring of 2017, probably in April of that year. Upon such separation, the claimant delivered his feelings about the relationship to the respondent in a series of revealing text messages, some excerpts of which I provide here. I have used asterisks in place of some of the offensive language:
- Well really your (sic) just a c**t! I tried to love you. You need help!!!!
 - Ok so drive the can up your c**t. Lots of things tend to die there!
 - I'm done with you.
 - F**k off!

- I hope you die
- You always dismiss me and that's why we won't live happily ever after
- Stop being a [V.] and start seeing the big picture! That's my new word for C**T .HEHE I'm super clever
- I'm on my way. I still have a key. You should probably talk to me.
- Pull a zap strap right around your neck and a plastic bag over your head your (sic) almost where I felt I was!
- I told them your (sic) a cut (sic) and you hate them so you don't deserve thsm (sic)! [referring to his two other children]
- But I hate you so that doesn't go well.

[32] The tirade continued into December 2017:

- You **fking** ct bitch. If I ever see your face I will smash my fist into it like it is the last thing on earth I want to survive. You ruined my entire Christmas I want you to know I will never forgive you. And I will hurt you badly if you ever come withing (sic) 10 ft of me or my boys ever again. I **fking hate you. I want you to die you fking ct whore. If you ever walk withing (sic) the range of my fist you will lose your fking teeth!**

[33] I find these comments to constitute a clear and unequivocal repudiation of anything in any way resembling a marriage-like relationship, even if one had existed between the parties up to that point.

[34] Notwithstanding these vile, violent, and clearly threatening comments, the parties did resume some form of at least physical relationship in the early part of 2018, as the respondent became pregnant with twins who were ultimately born in December of that year.

[35] By October 2018, violence erupted within the relationship. The respondent alleges, and I accept on a balance of probabilities, that the claimant attacked her, choked her, and threatened her with a knife. She was approximately seven months pregnant at the time.

[36] The claimant was charged criminally and was released on fairly strict terms against contacting the respondent. The claimant may have breached those terms, but, if that was the case, it was probably with the assistance of the respondent.

[37] The evidence satisfies me that the claimant embarked on a campaign of manipulation and feigned contrition to convince the respondent to have the bail release terms relaxed and to influence an investigation by the Ministry of Children and Family Development which arose as a result of the criminal charges and affected his contact with his children from a prior relationship.

- [38] By November 2018, the claimant, in the guise of trying to assist the respondent, attempted to mislead his medical insurer into providing coverage for the respondent, as shown by the text messages exchanged between them: C: Have you done something for medical and dental for that time? R: I will be billed through Hyundai monthly and make a credit card payment. C: Can I change that and cover you on mine instead? R: No it's ok. I've mostly got it sorted. It will be tight but we'll be ok. C: Please? R: You can't do that unless we are common law which we are not C: They think we are. I had this in the works for your matt remember R: I know but the situation has changed C: Yes but they don't need to know that.
- [39] Ultimately, following the birth of the twins, the claimant did move back into the respondent's Langley home in early 2019.
- [40] He says that the return was a reconciliation of the marriage-like relationship and that it continued until the ultimate separation in October 2019.
- [41] The respondent says that it was not a reconciliation of any kind, but rather an accommodation to provide her with some assistance with the twins and to allow the claimant to be an active part in the twins' lives during their early months of life.
- [42] Where there is a conflict in the evidence, I prefer the evidence of the respondent. The evidence shows that the claimant will do or say virtually anything to harm the respondent, to manipulate her, or to gain favour or benefit by being untruthful. DECISION
- [43] These parties did not reside together for a continuous period of two years, as required by s. 3 of the FLA, and thus they never became spouses. In addition, theirs was a relationship of tumult, discord, violence, and threats which were and are the very antithesis of a marriage-like relationship. In spite of the various periods when they lived under the same roof, this was never a marriage-like relationship as contemplated by the legislation or the common-law authorities.
- [44] The claimant's application for a declaration that the parties were spouses is dismissed. The claimant's claim in action E63724 (New Westminster Registry) is dismissed, and the Certificate of Pending Litigation filed by the claimant against the respondent's home located at [address redacted], Langley, B.C., is hereby cancelled and ordered removed. COSTS
- [45] Subject to further submissions, should counsel wish to address matters of which I am unaware, the respondent is entitled to her costs to be assessed with this matter being described as a matter of ordinary difficulty. "Caldwell J."

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