

CANADA / JUDGMENT

St. Arnault v. Wareham

2025 BCCA 403

COURT

British Columbia Court of Appeal

DECIDED

4 November 2025

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2025 BCCA 403 St. Arnault v. Wareham

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

St. Arnault v. Wareham,

2025 BCCA 403

Date: 20251104

Docket: CA49814

Between:

Andre Jason St. Arnault

Appellant

(Claimant)

And

Kristy Lynn Wareham

Respondent

(Respondent)

Before:

The Honourable Madam Justice Fisher

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
March 19, 2024 (A.J.S.A. v. K.L.W., 2024 BCSC 453, Nanaimo Docket E94892).

Oral Reasons for Judgment

The Appellant, appearing in person

(via videoconference):

A.J. St. Arnault

Counsel for the Respondent:

J. Aucoin

Place and Date of Hearing:

Vancouver, British Columbia

November 4, 2025

Place and Date of Judgment:

Vancouver, British Columbia

November 4, 2025

Summary:

Application to remove an appeal from the inactive appeal list dismissed. The appeal is from all orders made in a family law trial that concluded in December 2023. The notice of appeal was filed April 17, 2024. The appellant filed a transcript in August 2024 but nothing further. The appeal was placed on the inactive list on April 22, 2025 and was set to be dismissed as abandoned on October 20, 2025, but this was extended until this application was determined.

The delay is inordinate. The appellant has not sufficiently explained the entirety of the delay, nor has he diligently attempted to pursue the appeal. There is prejudice arising from the delay given the children involved, the importance of finality in this context, and the continued expense and stress for all parties. The appellant's grounds of appeal are vague and have a weak chance of success. It is therefore not in the interests of justice to allow this appeal to proceed.

FISHER J.A.:

Background

- [1] This is an application to remove an appeal from the inactive appeal list.
- [2] The appeal emanates from orders made in a family law trial that took place in December 2023, between the appellant, Andre Jason St. Arnault, and the respondent, Kristy Lynn Wareham. The trial order, which was made March 19, 2024, addressed numerous issues determined at trial, including divorce, parenting terms and arrangements, conduct orders, child and spousal support orders, orders to pay retroactive child and spousal support, and property orders.

- [3] On April 17, 2024, Mr. St. Arnault filed a notice of appeal of "all orders" made by the trial judge. Since then, he sought and received the respondent's consent to extend the time to file transcripts, the appeal book and his factum. He filed the transcript on August 27, 2024, but nothing else. The last consent extension was to September 27, 2024. The respondent refused to agree to further extensions because she alleged Mr. St. Arnault was in breach of the trial order. By this time, Mr. St. Arnault had become self-represented.
- [4] During this time, the parties were embroiled in a disagreement about the terms of the trial order. They appeared before the judge on May 31, 2024, and settled most of the terms. At that time, Mr. St. Arnault still had counsel. However, it took many more months for them to finalize the order and it was eventually entered on October 30, 2024.
- [5] The respondent also took Mr. St. Arnault back to the Supreme Court in November 2024, seeking to find him in contempt. That application was dismissed, but the respondent was ordered to take steps to discharge a spousal lien on the former family property and Mr. St. Arnault was ordered to complete the necessary steps to transfer the title of the property. The spousal lien was discharged on December 4, 2024.
- [6] On April 22, 2025, this appeal was placed on the inactive list under R. 50(1) of the Court of Appeal Rules, B.C. Reg. 120/2022. After that, Mr. St. Arnault sought the respondent's consent many times to remove the appeal from the inactive list, but she refused. She says Mr. St. Arnault has been consistently underpaying support and is in arrears of about \$14,000 but acknowledges that this is disputed.

Inactive appeals

- [7] Under Rule 50(1), the registrar must place an appeal on the inactive list if a notice of hearing of appeal is not filed within one year after the notice of appeal is filed. Rule 50(3) allows an appeal to be reactivated with leave of a justice to proceed with the appeal.
- [8] There is no rigid test to restore or "reactivate" inactive appeals. The principal concern is whether it is in the interests of justice to do so. In making this determination, the following factors are to be considered:
1. the extent of the delay and whether it is inordinate;
 2. the explanation for the delay;
 3. the extent of prejudice resulting from the delay; and
 4. the likelihood of success on appeal.

Kar Recovery, Ltd. v. KDA, 2004 BCCA 503 at paras. 23-24 (Chambers); Mou v. Han, 2025 BCCA 347 at para. 8 (Chambers).

1. Extent of the delay

- [9] There has been inordinate delay since Mr. St. Arnault filed this appeal on April 17, 2024. The respondent's consent to extensions of time ended on September 27, 2024. During that period, the respondent asked Mr. St. Arnault to particularize his grounds of appeal, but he did not. Since then, he made no applications to the Court for the extensions he needed.
- [10] The appeal was, as I said, placed on the inactive list on April 22, 2025. Under the Rules, it was to be dismissed as abandoned on October 20, 2025.
- [11] Mr. St. Arnault brought this application on September 26, 2025. It came on for hearing before Justice Edelmann on October 17, 2025, but he adjourned the matter to today to permit Mr. St. Arnault to file additional materials that were to include an argument setting out his intended grounds of appeal. Justice Edelmann extended the period of time the appeal was to remain on the inactive list without it being dismissed as abandoned until this application has been determined.
2. Explanation for the delay
- [12] Mr. St. Arnault explains the delay as resulting from a combination of unavoidable procedural and financial circumstances, including the length of time required to obtain the full certified trial transcript, the refusal of the respondent and her counsel to consent to further extensions, and cost. Because he had to pay a substantial amount in legal fees and for the transcripts, Mr. St. Arnault had to take carriage of his own appeal as of September 2024. This, he says, has slowed his ability to proceed with the appeal.
- [13] He also blames much of the delay on the respondent's actions in refusing to consent to time extensions, refusing to cooperate on procedural matters (including, as I understand it, the settlement of the trial order and refusal to remove a spousal lien from the former family home), and taking him back to the Supreme Court in November 2024 on contempt allegations. He says this consumed his resources and time that could have otherwise been put towards the appeal.
- [14] Mr. St. Arnault submits that he has acted diligently, respectfully, and in good faith, and has remained fully committed to advancing the appeal.
- [15] Mr. St. Arnault's explanation does not explain the entirety of the delay. Transcripts were filed in August 2024. The trial order was settled and entered on October 30, 2024. The contempt application was heard in November 2024. Shortly after that, the respondent arranged to have the lien removed from the family property, which was discharged on December 4, 2024. Mr. St. Arnault's only explanation for the delay after November or December 2024, is that the respondent refused to consent to extensions of time or to consent to have the appeal removed from the inactive list.

[16] While I accept that self-represented litigants may require more time to prepare and file materials, the length of time here is excessive and, in my view, inadequately explained. I do not accept that the delay beyond the end of 2024 was due to "respondent-caused procedural failures" as asserted by Mr. St. Arnault. He could have taken steps to apply for an extension of time to file his factum and the appeal book long ago. He may have intended to pursue this appeal, but I am not satisfied that he has diligently attempted to do so.

3. Prejudice arising from the delay

[17] There is prejudice arising from this delay. The parties' marriage ended in July 2021. The family law trial took place for three weeks in December 2023. It was contentious and hard fought, with many issues in dispute, including support for three children of the marriage, parenting terms and arrangements, orders governing the parties' conduct and communications, spousal support and property division. His appeal appears to be focused on the orders relating to the children.

[18] The length of the delay is particularly serious here because of the importance of finality in cases involving children: see, for example, *Pratap v. Pratap*, 2005 BCCA 71 at para. 10 (Chambers). One of Mr. St. Arnault's grounds relates to the trial judge's variation of long-standing interim orders for shared parenting. However, the judge found that regime was not in the best interests of the children (RFJ at para. 78) and such a finding is given considerable deference on appeal. To prolong this appeal after such a long time would be prejudicial to this family and I agree with the respondent that it would be very difficult, stressful and expensive, to retry all these issues.

[19] Although Mr. St. Arnault seems to be focusing on the parenting orders, the fact that he continues to seek to appeal all the orders made by the trial judge adds to the prejudice and leads into the next factor.

4. Likelihood of success

[20] Weak prospects of success on the appeal will be very significant where other factors do not support the application to reactivate the appeal: *Hung v. Li*, 2022 BCCA 395 at para. 53 (Chambers).

[21] In his affidavit, Mr. St. Arnault contends the appeal raises serious and arguable issues that include "discrepancies between written and oral orders and procedural fairness concerns", questions about the alteration of a long-standing consent parenting order, and uncertainty as to whether the judge applied the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) or the Family Law Act, S.B.C. 2011, c. 25 in determining parenting. He provided no articulation of his grounds of appeal in the argument he filed in preparation for the hearing before Edelmann J.A. Clearly, the justice was concerned that Mr. St. Arnault had provided insufficient information about the merits of his appeal, which is why Mr. St. Arnault was given an opportunity to file additional argument about this.

- [22] Unfortunately, the additional argument he filed for this hearing does not provide much more articulation of his proposed grounds of appeal. Mr. St. Arnault submits that the appeal has strong prospects for success on grounds that include:
- (a) The "final order" includes provisions never ordered by Justice Marzari, contrary to transcript record and Rule 17 vetting requirements.
 - (b) Justice Marzari explicitly refused to sign the draft order on 31 May 2024, stating it "will be much more skeletal than this" and that she "did not order" certain terms later included.
 - (c) The Respondent's improper settlement and failure to comply with vetting undermined procedural fairness.
 - (d) Parenting orders were altered substantially from three existing consent orders under the Divorce Act, despite no material change being pled or proven.
 - (e) Financial orders were based on imputed income that was unverified, inconsistent with CRA filings, and derived from valuation assumptions that changed between reports.
- [23] Much of Mr. St. Arnault's submission focuses on his contention that the final entered order of the trial judge did not reflect what she ordered. However, the materials before me also show that the parties worked hard to settle the terms of the order. As I said before, they appeared before the trial judge on May 31, 2024, and she settled most of the terms. The transcript of that hearing shows the judge expressed concerns only about the scope of the order that dealt with the calculation of Mr. St. Arnault's income. After that hearing, the parties continued to negotiate the rest of the terms until October 30, 2024, when counsel for the respondent appeared before the registrar to finally settle the order. Just before that hearing, Mr. St. Arnault signed the order and did not appear at the registrar's hearing. Although he now says he did not agree with the order, he signed it and it was then entered.
- [24] I appreciate that Mr. St. Arnault is self-represented, but he has not pointed to a specific error of law or fact by the trial judge. Rather, he has simply made assertions without foundation, and some of his grounds relate to the respondent's conduct rather than the judge's findings. Nor does Mr. St. Arnault appreciate the limitations of appellate review that does not allow this Court to substitute its view of the trial judge's factual and credibility findings without some material error. I note that the trial judge made some negative findings of credibility about Mr. St. Arnault's evidence and found she could not rely on it where it was contradicted by other evidence (RFJ at paras. 17-18). On the other hand, she found the respondent's evidence to be more even-handed and consistent with other evidence and generally preferred her evidence where it conflicted with Mr. St. Arnault's.

[25] I have already referred to the difficulties with Mr. St. Arnault's assertion that the judge was wrong to change the interim shared parenting regime. This trial was a contentious and intensely fact-based dispute. It bears repeating that the trial judge's findings on the best interests of children are inherently exercises of discretion and the standard of review on appeal is very high.

[26] In these circumstances, it is my view that his appeal is very unlikely to succeed.

5. The interests of justice

[27] None of the relevant factors weigh in favour of reactivating this appeal. There has been inordinate delay, much of it inadequately explained, there is prejudice to the respondent, and the appeal as articulated is unlikely to succeed. In these circumstances, I must conclude that it is not in the interests of justice to allow this appeal to proceed.

Disposition

[28] The application to remove the proceeding from the inactive list is therefore dismissed.

"The Honourable Madam Justice Fisher"

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Prepared on 25 October 2026 · Esheria