

CANADA / JUDGMENT

Wade v. Reinhart

2025 BCSC 1409

COURT

Supreme Court of British Columbia

DECIDED

5 June 2025

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2025 BCSC 1409 Wade v. Reinhart

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wade v. Reinhart,

2025 BCSC 1409

Date: 20250605

Docket: E65541

Registry: New Westminster

Between:

Shelly Leanne Wade

Claimant

And

Lee John Reinhart

Respondent

Before: The Honourable Madam Justice Hamilton

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

P. Ghai (via teleconference)

Counsel for the Respondent:

G.B. Sinclair (via teleconference)

Place and Date of Hearing:

New Westminster, B.C.

June 5, 2025

Place and Date of Judgment:

New Westminster, B.C.

June 5, 2025

[1] THE COURT: Because these are oral reasons, if somebody orders the transcript I reserve the right to fix any typos, grammar, or clarify language and insert full quotes. The result, however, will not change.

The Issues and the Parties' Positions

[2] This is a family law file. The parties lived in a marriage-like relationship from September 2007 through January 2013, according to Mr. Reinhart, or July 2014 according to Ms. Wade. The parties entered into an agreement entitled "Property Agreement" signed by both parties and dated July 8, 2015. The Agreement states the parties separated January 2013.

[3] Ms. Wade commenced this proceeding on August 19, 2022, seeking to set aside the Agreement pursuant to s. 93 of the Family Law Act, S.B.C. 2011, c. 25 ["FLA"]. Ms. Wade also seeks spousal support and child support in her pleadings. This application relates to her property and spousal support claims not child support.

[4] The respondent, Mr. Reinhart applies for three things:

- (1) an order dismissing Ms. Wade's claims for spousal support pursuant to s. 7 of the FLA based on her failure to commence an action within two years of separation contrary to s. 198(2)(b) of the FLA;
- (2) an order dismissing Ms. Wade's property claims under Parts 5 and 6 of the FLA as being statute barred by s. 198(2)(b) of the FLA for having been brought more than two years post-separation; and
- (3) an order for payment of the balance of the proceeds of the sale of property at 6799 West Coast Road, Sooke, B.C. out to him so he can pay off debt and taxes owing including:
 - (a) \$50,000 to pay off an unsecured line of credit used for renovations to the property;
 - (b) \$92,000 in GST due for using the Property as an Airbnb before the government restricted Airbnb rentals; and
 - (c) \$40,000 in capital gains owing on the November 2024 sale of the Property.

- [5] Ms. Wade opposes the application. She maintains that she filed spousal support and property division claims on time. She says that because the parties signed the Agreement, s. 198(3) applies to extend the time limit for applying for spousal support and property division until two years after she discovered or reasonably ought to have discovered the grounds to apply for spousal support and setting aside the agreement.
- [6] Ms. Wade maintains that she only discovered that she had grounds to apply for relief when she met with lawyer Ms. Morse of BTM Lawyers in September of 2020. As such, Ms. Wade submits that she had until September 2022 to commence the action.

Background and the Agreement

- [7] The parties were before Associate Judge Nielsen to address Ms. Wade's application for a retroactive increase in child support. Associate Judge Nielsen's reasons are included in the materials before me and helpfully outline some of the background.
- [8] The parties acquired the Sooke Property in 2008 in joint names, intending to construct their dream home. They disagree regarding who contributed what monies to the Property. However, Mr. Reinhart's mother appears to have provided a substantial amount. Mr. Reinhart says his mother lent him the monies. Ms. Wade maintains that the monies were a gift. Mr. Reinhart's mother died in 2010 and Mr. Reinhart and Ms. Wade repaid the mother's estate some of the monies. The parties moved into their new home on the property as of September 2010 after it was constructed.
- [9] The parties then tried to sell the Sooke Property, and after a while they realized a sale would not result in any equity at the time. At the time of the parties' separation (whether 2013 or 2014) and at the time of the Agreement being signed in 2015, it is clear that the Property had no equity. In fact, there was negative equity in the property after deduction for the mortgage and other debts totalling approximately \$1.1 million.
- [10] In this context, Mr. Reinhart offered to take over the property and the \$1.1 million of debt. The parties agreed to settle their family law matters on that basis. Other than the Sooke Property which had negative equity, the only other asset was approximately \$129,000 of RRSPs in Ms. Wade's name which Ms. Wade kept in the settlement. Ms. Wade also had approximately \$100,000 of additional debt in her own name which she retained. The parties signed the Agreement to reflect this settlement.
- [11] It is common ground that when the Agreement was signed, Ms. Wade planned to make a consumer proposal to rid herself of the \$100,000 debt in that was in her name in exchange for \$20,000. Mr. Reinhart provided Ms. Wade with \$20,000 to pay her creditors pursuant to the consumer proposal. Ms. Wade kept her RRSPs as her own property because RRSPs were exempt assets under the consumer proposal. The parties agree they entered into the Agreement at least in part in order to enable Ms. Wade to pursue the consumer proposal.

- [12] Ms. Wade brought these proceedings several years after the parties' Agreement. Ms. Wade now says she was rushed and pressured to sign the Agreement, did not have legal advice and did not understand the Agreement.
- [13] Mr. Reinhart's evidence is that Ms. Wade received legal advice behind the scenes before she signed the Agreement. He specifically highlights that Ms. Wade insisted on changing the wording of the release of claims contained in a draft of the agreement to state that the general release was subject to either party being able to make claims pursuant to Part 7 of the FLA in relation to the child. He says that she must have known about the Family Law Act because her requested change was to specifically refer to Part 7 of the FLA.

Terms of the Agreement

- [14] The Agreement states such things as follows. Under "Relationship Information" the Agreement states:

Shelly and me began living in a marriage-like relationship on September 2007. Shelly and me have been living separate and apart since January 2013. This agreement addresses property and debts. This agreement is a final agreement regarding property and debts.

It goes on to say that the parties own jointly the Sooke Property and states:

... when this agreement is signed, Shelly will immediately transfer her interest in the joint owned property to me. We will be responsible for preparing the transfer documents. After the jointly owned property is transferred we will take immediate steps to obtain new financing in his name and remove Shelly from the financing and charges in connection with the jointly owned property.

The Agreement goes on to list the debts which add up to approximately \$1.1 million and states:

We will be responsible for all charges relating to water, sewer, insurance, repairs, maintenance and any other outstanding expenses related to the jointly owned property not specifically noted and included in the \$1.1 million of debts. Lee is responsible for paying all the costs of the transfer of the jointly owned property into Lee's name. Except as otherwise provided in the agreement, each party will be the sole owner of personal clothing, jewellery, recreational equipment, vehicles, bank accounts and other assets in that party's possession. Except as otherwise provided in the agreement, each party will be responsible for paying any debts in their name.

The Agreement also contains a release that states:

Except as otherwise provided in this agreement, each party gives up any claim against the other's property and any right that may be claimed through the other than a claim with respect to Family Law Act (B.C.) Part 7 in relation to [the child].

The Agreement contains acknowledgments that state:

This agreement has been fairly negotiated and represents the intentions and expectations of the parties. Each of the parties acknowledges that they have read the agreement, the entire agreement carefully, knows and understands the contents of this agreement, is fully aware of the effect, purpose and intent of this agreement, is signing this agreement voluntarily without any undue influence or coercion by the other party or anyone else, and Shelly is aware that she is entitled to get independent legal advice but decided not to. Lee is aware that he is entitled to get independent legal advice but decided not to.

Under the heading "Disclosure" the Agreement states:

As required by the Family Law Act, the parties have provided full and true information to one another for the purpose of resolving their family law dispute. This includes but not limited to information about their assets, debts, income and prospects.

Before the parties' signatures, the Agreement ends as follows:

While negotiating this agreement we explored a variety of ideas and tentative arrangements but all of these are replaced by this agreement. This is the entire property and debt settlement agreement between the parties.

Steps Taken Subsequent to Agreement

- [15] The parties signed the Agreement on July 8, 2015. In accordance with the Agreement, Ms. Wade transferred the property to Mr. Reinhart's sole name before a notary on or about December 23, 2015. The notary signed a certificate of independent legal advice indicating that Ms. Wade understood the transaction. In accordance with the Agreement, Mr. Reinhart applied to refinance the property to remove Ms. Wade's name from the mortgages. The bank required Ms. Wade to confirm that she was not receiving or expecting spousal support and she signed a letter in November 2015 confirming she was not seeking spousal support. On that basis, Mr. Reinhart was able to remove Ms. Wade's name off the \$1.1 million of debt, including the mortgage.
- [16] After the Agreement was signed, as mentioned, Ms. Wade made a consumer proposal. In doing so, she worked with an administrator of the consumer proposal who was required to investigate and report on her assets, provide disclosure to her creditors of her recent transfer of her interest in the Sooke Property, her debts, her income and whether she received any child or spousal support payments. Ms. Wade was required to sign a statement that she fully and accurately disclosed her financial status to her creditors. She confirmed that she did not receive spousal support and that she did not own any interest in the Sooke Property.

- [17] The administrator's report specifically advised Ms. Wade's creditors that she transferred her interest in the Sooke property for \$1. The administrator confirmed that the property had no equity at the time of the transfer based on appraisals, the parties' previous attempts to sell the property and realtors' evidence. Ms. Wade proceeded with the consumer proposal in 2016 and specifically acknowledged she agreed to the administrator's report.
- [18] The consumer proposal was accepted and Ms. Wade was left with no debt and was able to keep her RRSPs of \$129,000. Her credit rating was only affected for a relatively short period of time.
- [19] At the same time as proceeding with the consumer proposal, Ms. Wade was dealing with BTM lawyers as a result of a 2014 motor vehicle accident. BTM Lawyers commenced pleadings for Ms. Wade in 2016 in relation to the MVA. That action was settled in 2019 for \$570,000 with Ms. Wade receiving just over \$300,000. There is evidence that Ms. Wade purchased real estate and incorporated a company after the settlement.
- [20] Meanwhile, after the parties separated, Mr. Reinhart lived in Edmonton because he was working there. He rented out the Sooke property as an Airbnb to help pay the debt. However, over time the government brought in legislation to restrict short term Airbnb rentals where the owner does not live in the property. Because of these restrictions, Mr. Reinhart was forced to sell the Sooke property in November 2024. By then, over nine years since the Agreement, there was approximately \$880,000 in equity before deducting the debts mentioned in the notice of application.

The Law

A. Time Limit for Ms. Wade's Spousal Support Claims

- [21] The parties disagree regarding whether s. 198(2) or s. 198(3) apply with respect to the time limit for Ms. Wade to apply for spousal support.
- [22] Sections 198(2) and (3) of the FLA state:

Time limits

198(1) . . .

- (2) A spouse may start a proceeding for an order under Part 5 [Property Division] to divide property or family debt, Part 6 [Pension Division] to divide a pension, or Part 7 [Child and Spousal Support] for spousal support, no later than 2 years after,
- (a) in the case of spouses who were married, the date
- (i) a judgment granting a divorce of the spouses is made, or
- (ii) an order is made declaring the marriage of the spouses to be a nullity, or

- (b) in the case of spouses who were living in a marriage-like relationship, the date the spouses separated.
- (3) Despite subsection (2), a spouse may make an application for an order to set aside or replace with an order made under Part 5, 6 or 7, as applicable, all or part of an agreement respecting property or spousal support no later than 2 years after the spouse first discovered, or reasonably ought to have discovered, the grounds for making the application.
- [23] In my view, s. 198(2) applies to Ms. Wade's application for spousal support, not s. 198(3) because the Agreement is not a spousal support agreement. It is entitled "Property Agreement" and does not contain specific clauses regarding spousal support.
- [24] As mentioned, in 2015 when Mr. Reinhart was refinancing the mortgage and other debt in order to remove Ms. Wade's name off the mortgage, the bank required Ms. Wade's written confirmation that she was not seeking spousal support payments from Mr. Reinhart. Ms. Wade signed a letter to this effect on October 15, 2015. If spousal support had been specifically addressed in the written agreement, the bank would not have needed to seek additional documentation from Ms. Wade.
- [25] Further, Ms. Wade's pleadings apply to set aside the Agreement pursuant to s. 93 of the FLA, which deals with the setting aside of property agreements, not s. 164, which deals with the setting aside of spousal support agreements.
- [26] For these reasons, I find that s. 198(2), not 198(3), applies to Ms. Wade's spousal support claims. As such, the two-year limitation period for claiming spousal support would start ticking as of the date of the parties separating pursuant to s. 198(2)(b).
- [27] I find the separation date was more likely than not January 2013 instead of 2014 as claimed by Ms. Wade. I rely on the following:
- (1) Both parties signed the agreement which states the separation date to be January 2013.;
 - (2) In January 2013 the parties ceased to live together in Sooke with them relocating, Mr. Reinhart to Edmonton and Ms. Wade relocating to Pitt Meadows; (3) Mr. Reinhart started paying regular payments of \$1,000 per month voluntary child support payments in 2013, not 2014;
 - (4) There is an email from Ms. Wade to Mr. Reinhart in which Ms. Wade acknowledges the parties were separated by 2013.
- [28] I therefore find that the 2-year limitation period expired by the end of January 2015.
- [29] However, regardless of whose separation date is used, the claim for spousal support became statute barred long before Ms. Wade commenced the proceedings in 2022.

[30] In the event I am wrong and s. 198(3) applies to delay the time limit for Ms. Wade's spousal support claims to match the time for setting aside the Agreement, for the reasons below, I still find that her claims for spousal support are statute barred.

B. Time Limit for Ms. Wade's Application to Set Aside the Agreement

[31] Mr. Reinhart relies on the following cases: *Y.T.C. v. J.C.V.*, 2018 BCSC 773; *Cao v. Wu*, 2022 BCCA 372; and *Dunphy v. Boulard*, 2021 BCSC 2506. However, those cases address circumstances where there is no agreement. Here there is an agreement. As such, I agree with Ms. Wade that s. 198(3) applies.

[32] Ms. Wade brought to my attention the case of *Halliday v. Halliday*, 2015 BCCA 82, which contains some helpful commentary in relation to s. 198(3). In *Halliday*, the appellant spouse was trying to set aside a spousal support agreement pursuant to s. 164, which relates to setting aside spousal support agreements, as opposed to s. 93, which relates to setting aside property claims. However, I find the Court of Appeal's comments are applicable here, too, as most of the factors the court must consider in deciding to set aside or replace a spousal support agreement are the same factors the court must consider in deciding whether to set aside a Property Agreement.

[33] In both s. 164 and s. 93, the court may only set aside or replace an agreement with an order when satisfied that one or more of the following existed:

- (a) a spouse failed to disclose income, significant property or debts, or other information relevant to the negotiation of the agreement;
- (b) a spouse took improper advantage of the other spouse's vulnerability, including the other party's ignorance, need or distress;
- (c) a spouse did not understand the nature or consequences of the agreement;
- (d) other circumstances that would under the common law cause all or part of a contract to be voidable.

[34] Alternatively, the court may set aside or replace the agreement even when the above circumstances do not exist but the agreement is significantly unfair on a consideration of a number of factors such as the length of time passed, the intention of the spouses to achieve certainty, the degree to which the spouses relied on the agreement, and in the case of a spousal support agreement there is an additional factor in considering the objectives of spousal support.

[35] The Court in *Halliday* cautions that given the language in s. 164 of the FLA, which is in my view equally applicable to s. 93 given it uses the same factors, determining when a party first discovered or reasonably ought to have discovered the grounds for making application is a matter of some complexity; *Halliday*, at paragraph 40. The Court of Appeal in *Halliday* goes further in paragraph 66 and states that:

. . . in most cases it will be exceedingly difficult, . . . , to determine in advance of the hearing on the merits, when an applicant first discovered or reasonably ought to have discovered that he or she had grounds for making the application.

[36] I am mindful of the wise words of caution in Halliday. However, I find that this is one of those exceptional cases where I can determine on the affidavit materials before me when Ms. Wade ought to have reasonably been aware that she had the ability and grounds to set aside the Agreement.

[37] Ms. Wade claims that she only became aware of the potential grounds to set aside the Agreement in September 2020 when she consulted Ms. Morse of BTM Lawyers regarding child support. I do not accept Ms. Wade's evidence in this regard. I find that in this case Ms. Wade either knew or ought to have known of the grounds to set aside the Agreement by 2016 at the latest.

[38] Mr. Reinhart's evidence, which I accept, is that before Ms. Wade signed the Agreement she obtained some legal advice. This is consistent with her request for a change that specifically preserved the rights that the parties would have to child support. The change that was implemented specifically refers to s. 7 of the FLA, which also addresses spousal support. It makes no sense that Ms. Wade would come up with this change herself. She was dealing with her lawyers at BTM for her motor vehicle accident by 2015 or 2016 and I find it likely that her lawyers would have known about the separation and been available to advise her. BTM is the same law firm which Ms. Wade says told her that she had grounds to set aside the Agreement in 2020. She clearly had access to counsel long before 2020.

[39] I find it likely that Ms. Wade consulted a lawyer at BTM or another lawyer before she signed the Agreement in July 2015, and that they would have told her about her basic rights under the FLA, including child support, spousal support and property division, even though they did not witness the Agreement.

[40] Furthermore, and in any event, the Agreement itself is simple, written in plain language, deals primarily with one asset and contains an acknowledgement that Ms. Wade understood the Agreement. In the circumstances, it seems incredible to me that Ms. Wade would sign the Agreement and not understand it.

[41] Furthermore, Ms. Wade obtained advice from a notary regarding the transfer subsequent to signing the Agreement and the removal of her name from the property and the mortgage. The notary signed a statement that Ms. Wade signed these documents and understood them. The notary signed a certificate of independent legal advice. It is not credible that Ms. Wade would be unaware of the consequences of transferring the property to Mr. Reinhart's sole name. This is the very thing the Agreement provided for and was essential to Ms. Wade's consumer proposal.

- [42] Further, Ms. Wade signed a simple letter to the bank confirming she was not seeking or receiving spousal support. It is not credible that she did not understand she had a potential right for spousal support. She had to have known that that is why the bank needed her to sign the letter confirming that she would not seek spousal support.
- [43] Further, in her consumer proposal which was accepted in 2016, the administrator had to do an investigation of Ms. Wade's property, debts, income and financial affairs. The forms that Ms. Wade signed for her consumer report specifically address whether she receives child and/or spousal support. She indicated that she was receiving child support but not spousal support. She also mentioned that she transferred the property to Mr. Reinhart prior to the proposal as it had no equity. The report had to set out the settlement with Mr. Reinhart in some detail in order for Ms. Wade to proceed with her consumer proposal. Her creditors had to be satisfied that her income was below a certain level and the Property she transferred was not worth anything; i.e., that she was not trying to defeat her creditors and that her consumer proposal was fair.
- [44] Ms. Wade ought to have known by 2016 that she had grounds to set aside the Agreement and seek spousal support and/or property division pursuant to the FLA.
- [45] I am therefore granting the orders sought in paragraphs 1, 2 and 3 of the notice of application.
- [46] Given that Mr. Reinhart has been successful, he should have his costs of this application at Scale B.
- [47] Is there anything I have forgotten?
- [48] CNSL G. SINCLAIR: No, I believe you have everything I can think of, My Lady.
- [49] THE COURT: All right. Thank you. That concludes the reasons.
- [50] CNSL G. SINCLAIR: Thank you.

"Hamilton J."

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