

CANADA / JUDGMENT

Wiggins v. Kitson

2026 BCSC 3

COURT

Supreme Court of British Columbia

DECIDED

5 January 2026

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2026 BCSC 3 Wiggins v. Kitson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wiggins v. Kitson,

2026 BCSC 3

Date: 20260105

Docket: E5268

Registry: Courtenay

Between:

Ashly Irene Wiggins

Claimant

And:

Michael Alexander Kitson

Respondent

Before: The Honourable Justice Young

Reasons for Judgment

The Claimant Appearing in Person:

A. I. Wiggins

The Respondent Appearing in Person:

M. A. Kitson

Place and Dates of Trial/Hearing:

Courtenay, B.C.

December 10 - 12, 2025

Place and Date of Judgment:

Courtenay, B.C.

January 5, 2026

Overview

- [1] The claimant filed a notice of family claim seeking a divorce and no other relief. The respondent filed a counterclaim seeking an unequal division of family property and family debt and filed a certificate of pending litigation against property located at 104-125 Back Road, Courtenay, B. C. where the claimant currently resides.
- [2] The parties had a very brief relationship. They began living together in a marriage -like relationship on July 1, 2022. They were married January 2, 2023 and they separated on March 10, 2024 after a violent altercation which resulted in criminal charges against the respondent. The respondent pleaded guilty and received a conditional sentence order.
- [3] The parties attempted reconciliation between July 2024 and October 2024 unsuccessfully.
- [4] Although I heard a great deal about relationship issues in this trial the legal issue that I am asked to determine is whether or not Mr. Kitson should receive any portion of the increase in value of the Back Road Property. He has not made a claim for spousal support or for division of any other assets. However in closing argument he did ask for reimbursement for the loss of his personal items.

The Relationship

- [5] The parties met online. The respondent was born in Jamaica and came to Canada to work as a farm worker in the Okanagan Valley. His work permit expired and he was attempting to renew it.
- [6] The respondent moved in with the claimant in Courtenay, B. C. on July 1, 2022. In November 2022 the respondent received a letter requiring him to leave Canada due to his lack of valid immigration status. The claimant sponsored the respondent for permanent residency so that he could remain in the country. The claimant paid for the associated fees for the permanent residency application and medical examination fees.

- [7] The claimant provided housing and daily living expenses to the respondent. The respondent says that he worked under the table for cash and gave cash to the claimant to help pay expenses. The respondent's evidence about his income is very unreliable. He swore a financial statement declaring that he only made \$635 per month from income assistance despite the fact that he testified he worked on construction sites in 2025 and he worked for Walmart in 2024. In 2024 he earned in excess of \$34,000 reportable income for the year.
- [8] From June 1, 2023 until the date of separation the parties were in a rental apartment in Courtenay where they lived with the claimant's two children from a previous relationship.

The Back Road Property

- [9] When the parties commenced cohabitation, the claimant was living with her two children in a house located on Panorama Road which she co-owned with her mother and stepfather. In May 2023 that property was sold and the claimant received approximately \$45,000 from the proceeds of sale. She used that money which she claims is excluded property to purchase the Back Road Property.
- [10] The purchase price for the Back Road Property was \$250,000. The claimant made the down payment of \$18,069.90 to purchase the property. All of the down payment came from her excluded property from the sale of the Panorama Road property. The respondent made no financial contribution toward the purchase of the Back Road Property.
- [11] In order for the claimant to obtain mortgage financing for the Back Road Property purchase the Canadian Western bank required that the respondent sign a waiver and postponement of any and all present or future entitlement he might have to an interest in the Back Road Property to the extent necessary to allow the mortgage and any renewal to constitute a valid mortgage charge over the property.
- [12] This document was presented to the respondent on or around February 26, 2024 for a closing on March 2, 2024. The respondent had no opportunity to obtain independent legal advice and did not understand the effect of the consent and waiver. His signature was witnessed by the Notary Public who was acting on behalf of the claimant. The respondent objected to signing the document but ultimately did sign it because he understood it was necessary for the claimant to obtain financing. Had he not signed the document she would have been unable to complete the sale and would have lost her deposit.
- [13] Under the circumstances I find this consent and waiver is unconscionable and unenforceable. The respondent did not understand the impact of signing such a document. He did not have the benefit of independent legal advice. He was under pressure to sign the agreement and did so under some duress.
- [14] The claimant took possession of the Back Road Property on March 2, 2024. It was in need of renovation before the family moved into it.

- [15] The respondent went to work right away on the day after possession and removed the flooring which included carpet laminate flooring and tile. It was a large job but he did almost all of it by himself. There was water damage in the bathroom and in the kitchen. The respondent removed a small section of drywall and replaced it and resealed a window leak. Two kitchen cabinets and the bathroom vanity and toilet were removed. The respondent did this work. The respondent also painted several rooms.
- [16] A certified plumber did plumbing work. The claimant paid for the plumber. All of the tools, equipment and supplies required for the renovation were purchased by the claimant and the respondent contributed his labour for eight days until the relationship ended.
- [17] The respondent videotaped his work using his telephone. As a self represented litigant he was unaware of the procedure for presenting videotape evidence in court. Fortunately, one of his witnesses had received copies of his videotapes and was able to share the videotape evidence using Microsoft Teams. I was unable to mark the videotapes as exhibits but I did review the videotapes in court. They show the bare floors after removal of the flooring in the painting done by the respondent. I accept his evidence that he did this work.
- [18] The claimant purchased the flooring and the flooring was installed by the claimant's friend Erin Newton and her husband after the relationship ended.
- [19] The claimant called evidence about the deficiencies in the respondent's work. She did not have any complaints about the removal of the flooring. She had many complaints about the painting done by the respondent. He did not properly cut the tops of the walls and so the old paint colour showed through along the seam between the wall and the ceiling. He did not properly sand patched areas of drywall. He rolled dark paint onto the ceiling. He painted over electrical receptacles.
- [20] I have seen photographs of the painting deficiencies and heard the testimony of Erin Newton who is the claimant's best friend of 10 years and James Hipwell who is the claimant's father. Both Ms. Newton and Mr. Hipwell have extensive experience in renovations and painting and were highly critical of the job done by the respondent. They were very biased witnesses who likely would not compliment anything done by the respondent even if warranted. Nonetheless, I accept Ms. Newton's evidence that there were painting deficiencies and that the painting needed to be redone. They were critical of the respondent painting over electrical receptacles rather than taping them off. I accept the respondent's explanation for this. He said that the receptacles were rusty and had to be replaced in any event so he painted over them anticipating that they would need to be replaced.
- [21] The point of this evidence is to show that the respondent's labour did not add value to the property because much of it needed to be redone. I accept that the painting needed to be redone and that the respondent was not a professional painter and that there were a number of painting deficiencies. There was no criticism over his drywall patching or removal of the flooring.

End of the Relationship

- [22] The claimant gave evidence that on March 10, 2024 she was assaulted and threatened by the respondent during an altercation in her rental home. She testified that the respondent became aggressive and elbowed her in the chest. He then forcibly pulled open the kitchen drawer with such force that it detached and fell to the floor. From the drawer he grabbed a knife, held it tightly in his fist, and lifted it toward her while making a stabbing motion. This occurred when the children were at home. Fearing for her safety, she left the situation and sought help. She filed a police complaint on March 10, 2024. She obtained a no contact order on March 10, 2024.
- [23] The respondent tells a different story. He says he lost his balance and elbowed the claimant in the chest and he knocked the drawer from the kitchen onto the floor while trying to regain his balance. He scooped up the contents from the floor which included knives. He denies threatening the claimant with the knife. He pleaded guilty to assault contrary to s. 266 of the Criminal Code because he did not want to take the chance of being convicted at trial and being deported.
- [24] The letters of apology from the respondent to the claimant suggest that he was aware that he had done something wrong and that he deeply regretted it. I prefer the evidence of the claimant about this incident. I accept the respondent's guilty plea as evidence that he committed assault.
- [25] The respondent is also guilty of several breaches of the no contact order which he tries to explain away by saying that he was living on the street and starving and he went to the house for food. Nonetheless these were breaches of the no contact order.
- [26] It appears that there were numerous contacts where the claimant did not file complaints.
- [27] The respondent has a conditional sentence order which will expire on May 1, 2026.

Valuation of the Back Road Property

- [28] The parties did not retain a joint appraiser to value the Back Road Property. Former counsel for the respondent approached the claimant to seek her consent to jointly retain an appraiser and the claimant refused. The claimant was under the impression at trial that the Family Law Act, S.B.C. 2011, c. 25 ("FLA") states that the valuation date of property is the date of separation. She obtained an appraisal of the property as at March 10, 2024. Neither party called the appraisers for cross-examination. I have admitted both appraisals.
- [29] The claimant's appraisal was prepared by Michael Mayhew of Precision Appraisal Group. Mr. Mayhew appraised the property at \$235,000 as at March 10, 2024 representing a decrease in value of \$15,000 since the purchase. As of the effective date of the appraisal the flooring, trim, two cabinets, the bathroom vanity and the toilet had been removed in preparation for renovations. The estimated cost of repairs was \$17,000. This figure was used to estimate the negative impact of the renovation preparation work. Mr. Mayhew did have access to the

interior of the Back Road Property.

- [30] The respondent obtained an appraisal in August 2025. It was prepared by Mark Elliott on August 20, 2025 appraising the property at \$285,000. Mr. Elliott did not enter the property and was not aware of the interior condition of the property. This was a desktop appraisal. No viewing of the property had been conducted.

Legal Principles

Family Property

- [31] The FLA defines two classes of property: "family property" and "excluded property". Under s. 84(1), family property is defined broadly as all real and personal property that, at the date of separation, is either owned by a spouse or in which the spouse has a beneficial interest. Section 84 is subject to s. 85, which lists the categories of property that are excluded from the pool of family property. Property acquired by a spouse before the relationship, gifts from a third party, and inheritances are among the categories of excluded property. However, s. 84(2)(g) includes in family property the amount by which the value of any excluded property has increased since the later of the start of the relationship or the date of acquisition of the excluded property (Family Law Source Book).
- [32] Since the Back Road Property was purchased with funds owned solely by the claimant prior to the marriage it is excluded property but any increase in its value is family property.

Valuation Date

- [33] Section 87 of the FLA provides that the presumptive valuation date for family property is the date of trial or the date of an agreement dividing family property and family debt, and that value must be based on fair market value.
- [34] In this case the value of the excluded property had decreased by the date of separation but increased again 18 months later, likely by market forces. The issue is whether that increase in value should be divided between these parties.
- [35] In *Kumagai v. Campbell Estate*, 2018 BCCA 24, the court confirmed that "[a] departure from the presumptive date for valuation of family property is effectively a reapportionment or unequal division of the family property" (see also *Namdarpour v. Vahman*, 2019 BCCA 153 at para. 59).
- [36] Departing from an equal division of family property should be done under s. 95 of the FLA (at para. 76). Section 95(1) of the FLA "imposes a threshold finding that an equal division of the net family property would be 'significantly unfair' before any reapportionment of the net family property can be ordered" (at para. 76).

- [37] Section 95 of the FLA requires significant unfairness on specified grounds before the court may order an unequal division of family property. This should be determined first before the court departs from the date of trial as the valuation date pursuant to s. 87: *Blair v. Johnson*, 2015 BCSC 761, at para. 69, cited with approval in *Banh v. Chrysler*, 2022 BCCA 74 at para. 26, leave to appeal refused 2023 CanLII 570 (SCC).
- [38] In other words, before I can value a property at the date of separation instead of the date of trial which is the presumptive rule, I must be satisfied that it would be significantly unfair to equally divide the increase in value of the property as at the date of trial: *J.D.G. v. J.J.V.*, 2016 BCSC 2389 at para. 139.

Unequal Division Under s. 95 of the FLA

- [39] The term "significantly unfair" has been interpreted to mean "unfairness [that] is compelling or meaningful having regard to the factors set out in s. 95(2)" (*Remmem v. Remmem*, 2014 BCSC 1552 at para. 44), and "something objectively unjust, unreasonable or unfair in some important or substantial sense" (*Jaszczewska v. Kostanski*, 2016 BCCA 286 at para. 42).
- [40] The relevant subsections of s. 95(2) are set out below:
- (2) For the purposes of subsection (1), the Supreme Court may consider one or more of the following:
- (a) the duration of the relationship between the spouses;
- ...
- (e) if the amount of family debt exceeds the value of family property, the ability of each spouse to pay a share of the family debt;
- (f) whether a spouse, after the date of separation, caused a significant decrease or increase in the value of family property or family debt beyond market trends;
- ...
- (i) any other factor, other than the consideration referred to in subsection (3), that may lead to significant unfairness.
- [41] There are cases where the court has used a different valuation date than the date of trial. In *Slavenova v. Ranguelov*, 2015 BCSC 79, the court ordered a valuation of real property at the date of separation rather than at trial because the claimant had been solely responsible for preserving and maintaining the family property, which had increased in value since separation. In *Davie v. De Mark*, 2017 BCSC 872, the court used a valuation date a few months after the date of separation because the claimant had made no contributions to the condominium post-separation, financial or in-kind, and the respondent had been solely responsible for all the costs, including the mortgage, taxes, management fees, insurance, and maintenance (at paras. 165-169). In *Bamford v. Mulyati*, 2017 BCSC 945, the court used

the separation date as the valuation date because the wife had not made any contribution to the preservation or maintenance of the family property and the husband had made considerable efforts and contributions to maintaining the family property since separation. The court also unequally divided the family property in the husband's favour. In *D.L.M. v. A.L.F.*, 2022 BCSC 1874 at para. 116, the court relied on post-separation renovations and the short (two-year) duration of the relationship to divide a home's value 70/30.

- [42] In this case I consider the very short relationship and the fact that the property decreased in value at the date of separation, and that the claimant was solely responsible for purchasing the property and maintaining the mortgage payments. The claimant paid for all the renovation supplies, worked with the respondent on the renovations and completed the renovations at her own expense after the separation including repairing the deficiencies in the respondent's work. I do not believe that the modest updating of the property increased its value but the value increased due to market forces. The second appraiser did not view the property so had no idea what impact the updating had on value.
- [43] I am also influenced by the fact that the claimant has a negative net worth. Her only significant assets are the Back Road Property which is mortgaged and has little equity, her car which has a loan registered against it and a small municipal pension. Her secured and unsecured debts total \$310,000 which exceeds the value of her assets. I am also concerned about the contingent liability the claimant faces as a result of sponsoring the respondent's permanent residency status in Canada.
- [44] The respondent was approved for permanent residency on December 5, 2023. As a sponsor the claimant is financially responsible for the respondent for a three-year period. The confirming letter dated July 17, 2023 says:

The undertaking you signed is an unconditional promise to financially support and provide basic requirements for your sponsored relative. This undertaking is not broken by such changes that the granting of Canadian citizenship, divorce, separation, relationship breakdown, moving to another province, or a change in your financial situation. Furthermore it cannot be cancelled once a final decision is made on their application for permanent residence.

- [45] Because the respondent is now receiving income assistance the claimant may be responsible for reimbursing all the money he receives from income assistance to the provincial government pursuant to her sponsorship agreement. Demands have not been made yet but this is a contingent liability which she faces. The sponsorship papers are very clear that obligation is unconditional in that it is not affected by separation or divorce.
- [46] For all these reasons I find an equal division of the increase in value of the Back Road Property by the date of trial would be significantly unfair and warrants reapportionment. In order to reapportion the family property I rely on the authorities stated above and value the property at the date of separation. The Back Road Property had decreased in value by the date of separation. There will be no division of that property with the respondent.

- [47] During his testimony the respondent said he was making no claim for any of the kitchen appliances or items he purchased for the family during the marriage. He bought those items out of the goodness of his heart and did not seek their return. He complained about the fact that he had left two large suitcases full of clothes at the property. The claimant attempted to return these items to the respondent. At one point she had them packed and sitting on the front step of one of the properties. I am not sure of the date she did this but the respondent did not pick them up. When the respondent was asked why he did not pick up his items he said his lawyer told him to wait until he had a place to live and then to retrieve his items. He has not had a permanent residence since the date of separation. The claimant finally disposed of the items when the respondent did not pick them up. The respondent asked for \$3000 to compensate him for the loss of his clothing. In my opinion, he is the author of his own misfortune and I will not make such an award.
- [48] The respondent is very vague about his living situation. At one point he said he was living on the street still and starving. His financial statement says that he has living expenses of \$3,436 per month which he borrows from his mother, his sister and his brother. He is not forthcoming about his income. I find any of his evidence about his financial situation to be most unreliable.

Conduct Order

- [49] The respondent is under the terms of a conditional sentence order until May 1, 2026. After that there will be no restriction on his contacting the claimant. Although he says he has no intention of contacting the claimant again I have concerns that he may do so if he feels he is justified. He felt he was justified in breaching his no contact bail orders several times when he was hungry.
- [50] He complains that the claimant is either posting derogatory statements about him on line or making comments on other people's posts.
- [51] On my own initiative I am making a conduct order under s. 225 of the FLA and ordering that neither party contact the other directly or indirectly and neither party post or comment about the other on social media.
- [52] The parties have met the requirements under the Divorce Act and are entitled to their divorce.

Orders

- [53] The respondent's counterclaim is hereby dismissed.
- [54] The certificate of pending litigation registered against the Back Road Property legally described as:

PID: 018-905-269

STRATA LOT 4, SECTION 16, COMOX DISTRICT, STRATA PLAN VIS3384 TOGETHER WITH AN INTEREST IN THE COMMON PROPERTY IN PROPORTION TO THE UNIT ENTITLEMENT OF THE STRATA LOT AS SHOWN ON FORM 1

shall be removed from title forthwith.

- [55] Subject to s. 12 of the Divorce Act (Canada) the claimant Ashly Irene Wiggins and the respondent Michael Alexander Kitson who were married at Courtenay, British Columbia on January 2, 2023 are divorced from each other, the divorce to take effect on the 31st day after the date of this order.
- [56] Under s. 225 of the FLA neither party shall have direct or indirect communication with one another and neither party shall post or comment on posts on social media about one another.
- [57] The respondent shall pay the claimant the cost of these proceedings on a scale of ordinary difficulty.
- [58] The claimant shall prepare this order for entry in the Courtenay Registry. The requirement to obtain the respondent's signature approving the final order is dispensed with. Accordingly when she has prepared the court order, she can file it in the court registry with her signature only.
- [59] I direct that these reasons be delivered to the parties by email and that the entered order also be delivered to the parties by email.

"B. M. Young, J."

The Honourable Justice Young

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