

CANADA / JUDGMENT

Wood v. Brooks

2025 BCSC 2637

COURT

Supreme Court of British Columbia

DECIDED

27 June 2025

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2025 BCSC 2637 Wood v. Brooks

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wood v. Brooks,

2025 BCSC 2637

Date: 20250627

Docket: E49936

Registry: New Westminster

Between:

Scott Michael Wood

Claimant

And

Lisa Monica Brooks

Respondent

Before: The Honourable Madam Justice Sharma

Oral Reasons for Judgment

Counsel for the Claimant:

M. Goyal

Counsel for the Respondent:

J. Bains

(Agent for S. Koop)

Place and Date of Trial/Hearing:

New Westminster, B.C.

June 27, 2025

Place and Date of Judgment:

New Westminster, B.C.

June 27, 2025

- [1] THE COURT: There are two applications in front of me, one filed by the claimant in January 2025, the other filed by the respondent in March 2025. Generally speaking, they address similar issues, including, primarily child support.
- [2] The claimant seeks a declaration that one of the parties' children is no longer a child of the marriage as of June 2023. He also seeks orders relating to the declaration of his Guideline income. Because he is seeking a declaration that one of their children is no longer a child of the marriage, in his view, adjustments are required to the amounts he paid in the past for that child's support. He also seeks other orders regarding what he says is the respondent's non-compliance with court orders.
- [3] For her part, the respondent seeks an order that there ought to be adjustments for past payments of child support and spousal support because of what she says is the claimant's non-disclosure of his real income. She also seeks findings of contempt for what she says are the claimant's breaches of the orders.
- [4] There is no dispute about the background.
- [5] The parties have four children together. Two of them are no longer children of the marriage. They also agree the youngest is still a child of the marriage.. The dispute is about the third eldest child, "M.". In addition, the claimant has another child from another relationship.
- [6] The parties were married in May 1996. There is some disagreement about the date of separation, although that is not something I have to decide. In any event, there is no doubt that as of December 2011, they were not married nor in a marriage-like relationship.
- [7] There have been several orders granted in this matter already. Additionally, there was a trial in January 2018. Judgment was granted, but then there was a reopening of the trial, and further submissions remitted. A further order was granted that addressed guardianship, parental decision-making, parenting time, child support, spousal support, and division of property. That is the order of Justice Riley entered around April 2018, which I believe addresses almost all of those issues.

- [8] Another issue today concerns the consent order granted in November 2019 by Justice Bernard. It includes certain conduct orders regarding the manner and method of the parties' communication. Both sides complain that the other side has not followed those conduct orders.
- [9] Most importantly, there was an application heard by Justice Blok. He granted an order in November 2022. At that time, the claimant sought declarations regarding the children including whether they were children of the marriage. I am not going to read out all the terms of that order. What is important is that the consent order of Justice Bernard from 2019 (which declared that the Guideline income of the claimant and the amount of child support payable) was varied. It was varied to read that, "[o]n a Guideline income of \$171,402, the Claimant will pay the Respondent \$2,411.54 for the support" of the two youngest children until further agreement or court order.
- [10] As is common in cases of court ordered child support, there remained in place an obligation on both parties to provide to the other party their income tax information in June of each year. The parties accuse each other of not meeting that obligation at all in some years or not meeting it in a timely way.
- [11] I thank counsel for being helpful with the material before me today. It is unfortunate that they have tried and been unable to be heard for a couple of times. So, today I am making an order based on submissions from counsel, which were helpful, and the material that I have been able to review.
- [12] The first issue is whether or not M. is a child of the marriage. M. is over 19 years old. The case law is relatively straightforward in terms of the legal test and the presumptions applicable to this issue. I rely primarily on the case of *Dring v. Gheyle*, 2018 BCCA 435. It helpfully refers to other cases. What is important is that once a child reaches the age of majority, there is a presumption that they are no longer a child of the marriage and child support is not required to be paid. But, as we know, often that is not the case. To remain a child for the purpose of child support, the child must be unable to withdraw from their parents' care or unable to obtain the necessities of life because of illness, disability, or another reason. The party applying for child support bears the onus of proving that child is still a child of the marriage.
- [13] Other cases have addressed situation where a child is living at home but is not ill or disabled or unable to withdraw from a parent's care for any other reason, that child is no longer a child of the marriage, so there is no entitlement to child support. In other words, the courts have noted that to remain dependent to obligate a parent to pay child support for a child who is over 19 years old, something more than a lifestyle choice must be present.
- [14] It is very common that the pursuit of post-secondary education does constitute a reason why an adult child is unable to withdraw from their parents' charge and that is what is being asserted in this case. With regard to that, in *Nordeen v. Nordeen*, 2013 BCCA 178, the court quoted extensively from Master Joyce, as he was then, in *Farden v. Farden* (1993), 48 R.F.L.

(3d) 60, 1993 CanLII 2570 (B.C.S.C.). Master Joyce set out a number of factors that should be considered in deciding whether or not a child who is pursuing an education ought to be considered a child of the marriage. I am not going to read those out. They are reproduced at para. 16 of Nordeen.

- [15] Those factors are not meant to be a checklist or a set of mandatory criteria, but they are factors to assist a court to determine whether to find a child remains a child of the marriage. The factors include: (i) whether the child is enrolled full time or part time; (ii) has the child applied for financial assistance? (iii) what are the child's plans? (iv) is the schooling something that they are being successful at and pursuing legitimately? (v) is the child trying to find employment? (vi) what is the age of the child? (vii) what plans did the parents have for the child when they lived together? and, (viii) whether the child has unilaterally terminated a relationship with one of the parents.
- [16] There is no doubt in this case that there has been quite a fractious relationship between the parties, and their communication on the record is very disappointing. I understand why that is the case and I do not want to be seen as critical of either party. Nevertheless, I am being asked to make a decision, and their communication becomes important and something I have to look at.
- [17] I appreciate that there are always two sides to an issue. I am sure there are more issues under the surface that the court never knows about. However, my understanding is that one of the disputes between the parties is the claimant's belief that the respondent improperly shared with the children information about court applications the claimant has made, prompting them to write letters to him. There may be a different explanation as to what led to the letters. My point is that it is disappointing to see this level of discord because it appears that has become the source of fracture in the relationship between the claimant and at least some of his children.
- [18] However, none of that is determinative or relevant to the precise legal issue in front of me.
- [19] I find that M. is no longer a child of the marriage. The onus is on the respondent to establish and persuade this Court that he is. Unfortunately, the information she has provided is too vague and not specific enough to meet the legal test. He has moved out. There is no doubt about that. He is no longer living in the same house. As the case law says, even if he was living in the same house, that would not necessarily mean that he is a child of the marriage.
- [20] He is going to school, but the information about that, with respect, is vague and not specific enough for me to be satisfied that he is pursuing full-time studies, and it is unclear what the program is or what sort of plans he has.

- [221] He is working. There is no dispute about that. There is a dispute about whether it is full-time or part-time, but there is no information about his income. I am not suggesting that it could never be the case that a child going to school, working part time and living five minutes away from a parent, and could never remain a child of the marriage, but there is too much information missing in the material before me. Those are the factors that were brought to my attention.
- [222] The respondent made the reasonable argument that even if he is living somewhere else, there was a reason for that, which was not that he did not want to remain under her care; she said he still comes home for meals and laundry. Unfortunately, that information simply was not specific enough or detailed enough to meet the legal test.
- [223] Therefore, I am satisfied on the basis of the material that when M. moved out of the home, which I understand was in June 2023, he was no longer a child of the marriage. That means that the claimant's obligation to pay support for him terminated at that point.
- [224] The second question is what the claimant's Guideline income is. It has been an ongoing obligation for the parties to exchange quite specific financial information between them for the purposes of child support. There is no doubt that two orders require exchange of tax information, which is more than just a T1. It includes exchanges of the notice of assessment, and with the last order, exchange of the last pay stub. That is because the claimant's income is more complicated than simply a salary due to certain stock benefits he might have been able to take advantage of.
- [225] This Court stresses all the time the importance of financial disclosure, and repeats that sentiment again and again. No party should ever have to ask the other party for financial information. It does not depend on whether the other party sends you their tax information. You send it regardless. It should be sent as soon as possible, and that is an obligation that continues any time you have to pay support. They both accuse each other of not meeting that obligation fully.
- [226] There is no doubt that the claimant's obligation to disclose financial information is more important with regard to the determination of child support because his income greatly exceeds the respondent's. That does not mean she does not have to provide her information, but I am not prepared to find that her failure, if there was a failure, is material for the purpose of determining the amount of child support. It appears that she became legitimately frustrated at trying to get information from the claimant.
- [227] They have starkly different points of view about whether he is meeting his disclosure obligations. The claimant points to e-mails where he provided the information, as well as his updating her when he lost his job. It appears perhaps he did not send his notice of assessment when he should have for the year 2023, and that should be remedied immediately. Only recently, did he provide his 2024 notice of assessment.

- [28] One of the concerns is the parties' dysfunctional communication. I am going to order that the parties communicate about financial matters by e-mail only and that they will identify an e-mail address that they will keep active so long as they have an obligation to exchange financial information to one another. I will dictate the terms of that order in terms of what they can say in that e-mail and that they can say absolutely nothing else. It is disappointing to this Court has to do that, but I think that is the only way we are going to clear that issue up.
- [29] The claimant's position is that his financial statement was in front of Justice Blok and it included his most recent notice of assessment, and following what happened there, will give the roadmap for how to determine his income when he has these RSU. He has included a table where he explains that, and counsel took me through that.
- [30] That table relies on information that is in the record and it appears to accord with what was ordered in that the salary was identified at a certain rate, and added to that was a vehicle allowance and RSU value to come up with an income to be used for child support payments. As I said, when they were before Justice Blok, the income was \$171,402. That is a number that is different from what was on his T1, so it is clear that Justice Blok obviously took some other things into consideration and did not just merely repeat the number that was from the tax return.
- [31] On the basis of that, the claimant then provides, using the same formula, that for 2022, his Guideline income was \$167,868 and for 2023, it was \$163,716. His income dropped significantly in 2024 and 2025 because he lost his job, but he found other work, and he provided a calculation based on averaging out the income, including his severance payment, and the partial payments he got to come up with the figures.
- [32] Those figures were before Justice Majawa who made an order as of August going forward, but that was based on imperfect information because we now have the claimant's more recent information.
- [33] I understood the respondent to acknowledge -- at least that according to the tax documents that have been provided - that the claimant's Guideline income without imputation based on the 2024 notice of assessment would be \$87,472 which for one child would result in a payment of \$836.34. However, she does not agree that that is appropriate and submits a great income should be imputed.
- [34] The respondent indicates today that in her view there ought to be an imputation of income. That notice was not given to the claimant. That is a very different form of relief from what she seeks. It would be prejudicial to the claimant for me to consider that argument, and I decline to do so.
- [35] I make no comment on whether she can go forward and seek that order. It is not clear to me that she can, but I will leave that for another day even though I do not encourage these parties to continue to litigate these issues.

- [36] The respondent's position about what the claimant's Guideline income is that should be based on the notice of assessment and, therefore, she says for 2023, it would be \$255,776.
- [37] I do not agree with that. The income for the claimant has been a calculation that takes into account a couple of things. I am satisfied that the calculations that he included in his affidavit are the appropriate ones. From paragraphs 18 and 19 of his affidavit filed March 24, 2025, I agree that his income for 2022 was \$167,868, which as I understand it means there was a slight overpayment. For 2023, he says his income was \$163,716, which means that there would have been an overpayment not only because of the adjustment to income, but because of my declaration now that M. was no longer a child of the marriage. Going forward, there is a recognition that his income is much lower.
- [38] However, I order that the respondent should not have to pay back those overpaid amounts. Instead, there should be a reasonable adjustment made to future amounts to gradually account for the overpayments. I do not want her to be burdened to have to pay money back. I expect counsel to work cooperatively to make a reasonable adjustment in that manner. For instance, if there was an overpayment of \$500 for one year to someone with much lower income, we would suggest that future payments are reduced by, say, \$50 for 10 months to recoup that amount. That is the type of adjustment that should be made, and I rely on counsel to make that in a reasonable manner.
- [39] I believe that addresses everything. I am sorry, Registrar, in keeping you late.
- [40] All other relief is being adjourned. I did not have time to fairly consider the issues of non-compliance but let me make these comments to the parties. I think they are here in the courtroom.

[COMMENTS TO THE PARTIES BY THE COURT]

[SUBMISSIONS RE COSTS]

- [41] THE COURT: The claimant seeks costs because he has been successful with some of the relief that he has sought. I have adjourned the other relief with the strongest possible terms that it not be pursued. The respondent says that her financial means are very limited, and all the relief was not granted and suggests that costs not be awarded.
- [42] It is appropriate to award costs when a party is successful. I appreciate that you have been here a number of times. My preference is to award a lump sum of a lesser amount than normal. And I do not remember what the normal amount is for half a day.

[FURTHER SUBMISSIONS RE COSTS]

[43] THE COURT: I have ordered costs. The claimant has been successful, but not on everything because I have adjourned other relief. In any event, in light of all the circumstances, I order costs in the amount of \$750. I will ask the claimant to be generous in allowing the respondent to pay that by way of reduced child support going forward, but that is not an order.

"Sharma J."

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