

CANADA / JUDGMENT

Woodske v. Metzner

2025 BCSC 2468

COURT

Supreme Court of British Columbia

DECIDED

11 December 2025

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2025 BCSC 2468 Woodske v. Metzner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Woodske v. Metzner,

2025 BCSC 2468

Date: 20251211

Docket: S260090

Registry: New Westminster

Between:

Mark William Woodske

Plaintiff

And

Martha D Metzner doing business as Martha D. Metzner Law Corporation

Defendant

Corrected Judgment: The text of the judgment was corrected at paragraph 9(b) on December 16, 2025

Before: The Honourable Justice Hamilton

Reasons for Judgment

Appearing on his own behalf:

M.W. Woodske

Counsel for the Defendant:

D.A. Joyce

Place and Date of Hearing:

New Westminster, B.C.

December 1, 2025

Place and Date of Judgment:

New Westminster, B.C.

December 11, 2025

Overview

- [1] The Plaintiff filed his Notice of Civil Claim on October 14, 2025, seeking relief against the Defendant, a lawyer who acted as counsel for the Plaintiff's former spouse in family law proceedings. The Defendant applies to strike the Plaintiffs' pleadings pursuant to Rule 9-5(1) (a) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 [Rules] and dismiss the action with costs.

Background

- [2] The Plaintiff, Mr. Woodske, was previously involved in family law proceedings (the "Family Law Proceedings"). The opposing party in the Family Law Proceedings was Danielle Nicholson.
- [3] Mr. Woodske and Ms. Nicholson have a son together, S.
- [4] The Defendant, Ms. Metzner, was counsel for Ms. Nicholson in the Family Law Proceedings. I understand from the Plaintiff that he was represented by lawyer Michael Long in the Family Law Proceedings.
- [5] The Plaintiff represents himself in these proceedings.
- [6] The Plaintiff takes issue with the conduct of various professionals who were involved in the Family Law Proceedings including:
- a) Mr. Finlay, who authored a s. 211 report regarding parenting;
 - b) Counsellors Mr. Bock and Ms. Traschel, who I understand were involved in efforts to reunify the child S. with his mother, Ms. Nicholson;
 - c) His lawyer Michael Long; and
 - d) Ms. Nicholson's lawyer, Ms. Metzner.

- [7] The Plaintiff tells me that he has commenced separate Notices of Civil Claim against each of these professionals and says he wishes to have them all to be heard together, including these proceedings against Ms. Metzner. He says that all the claims against the various professionals represent "systemic negligence" that has caused him and his son harm.
- [8] The Defendant, on the other hand, applies to have this proceeding struck. She applies at an early stage of the proceedings in an attempt to avoid being dragged into the other proceedings and subjected to additional expense and delay in obtaining resolution.

Parties' Positions

- [9] Based on Mr. Woodske's submissions and my review of the Notice of Civil Claim, I summarize the Plaintiff's claims against Ms. Metzner as follows:
- a) Ms. Metzner released funds to Mr. Finlay on his request for a monetary retainer for preparing a supplementary s. 211 report before the parties had actually signed a retainer agreement. While not clear in the pleadings, Mr. Woodske's claim is that Ms. Metzner released these funds contrary to a term in the court order, which required a signed retainer agreement. Mr. Woodske says that as a result of Ms. Metzner's release of funds, Mr. Finlay prepared a report that was procedurally defective and ethically compromised, which caused Mr. Woodske and S. harm.
 - b) Prior to Mr. Woodske and Ms. Nicholson retaining counsellor Mr. Gerry Bock, Ms. Metzner told Mr. Bock to "monitor anger." Mr. Woodske says this was "improper interference" and a "conflict of interest."
 - c) Ms. Metzner, on Ms. Nicholson's behalf, actively advanced reunification between Ms. Nicholson and S. despite medical contraindications and prior violence between mother and child.
 - d) Ms. Metzner should have been aware that the reunification professionals that she relied on were unprofessional and unethical because:
 - a. Mr. Woodske had made a complaint against Mr. Bock;
 - b. Ms. Metzner "may not have known" this but Mr. Finlay offered to reimburse Mr. Woodske moneys in exchange for Mr. Woodske not suing or reporting Mr. Finlay to the BC Association of Clinical Counsellors ("BCACC").
 - c. Ms. Metzner "may not have known" this but Mr. Finlay withdrew from the file based on advice from his own lawyer regarding potential negligence claims; and
 - d. Ms. Metzner relied on false or incomplete materials at family law hearings;

- e) Ms. Metzner knew or ought to have known that her client, Ms. Nicholson, attempted to interfere with Mr. Woodske's ICBC motor vehicle accident claim, and Ms. Metzner failed to prevent the interference. Ms. Nicholson shared Mr. Woodske's personal information with the ICBC lawyer and Ms. Metzner told the ICBC lawyer that Ms. Nicholson considered Mr. Woodske's injuries to be "frivolous."
 - f) Ms. Nicholson told Mr. Woodske that her lawyer (Ms. Metzner) told her she did not have to pay child support.
 - g) Rather than accommodate Mr. Woodske's disability, Ms. Metzner "weaponized" his disability in court submissions.
 - h) Mr. Woodske claims that after he reported Ms. Metzner to the Law Society, she engaged in "retaliatory behaviour" such as obstructing disclosure; and
 - i) Ms. Metzner failed to report Mr. Finlay, Mr. Bock, and Ms. Traschel to their regulatory bodies "despite her obligation as a practising lawyer."
- [10] Mr. Woodske goes on in his pleadings to claim damages, including punitive and aggravated damages, for physical and psychological harm caused to him and S. by Ms. Metzner's breach of the duty of care, negligence, breach of fiduciary duty, conflict of interest, misuse of trust funds, discrimination and "concealment rising to reckless indifference toward the child's safety and his rights as a disabled parent."
- [11] Ms. Metzner submits that the Plaintiff's Notice of Civil Claim ought to be struck pursuant to Rule 9-5(1)(a) because it does not disclose any reasonable claim against her. She says she cannot legally be sued for doing her job as Ms. Nicholson's counsel. Further, Ms. Metzner says that nearly all of the allegations are based on her actions during the course of representing her client, Ms. Nicholson, and are therefore covered by absolute privilege.
- [12] In response to the Plaintiff's allegation that she acted contrary to the court order by releasing trust funds to Mr. Finlay for his retainer, Ms. Metzner says that she followed the court order, which did not require her to confirm that there was a retainer agreement signed by Mr. Woodske and Ms. Nicholson.

The Applicable Rule

- [13] Rules 9-5(1) (a) and (2) of the Rules provide:
- 1) At any stage of a proceeding, the court may order to be struck out or amended the whole or any part of a pleading, petition or other document on the ground that
 - a) it discloses no reasonable claim or defence, as the case may be,
 - ..
 - 2) No evidence is admissible on any application under subrule (1)(a).

Does the Notice of Civil Claim Disclose No Reasonable Claim?

- [14] Rule 9-5(1)(a) provides that the court may strike the whole or part of a pleading on the ground that it discloses no reasonable claim. Under this particular subsection (1)(a), the court must generally only consider the pleadings, not evidence. In other words, I am to assume the statements of fact in the pleadings are true unless it is obvious that they cannot be true or it would be absurd to assume they were true.
- [15] In order for a pleading to be struck under subsection (1)(a), it must be plain and obvious that the claim has no reasonable prospect of success: *Nevsun Resources Ltd. v. Araya*, 2020 SCC 5 at para. 64.
- [16] Pleadings must set out the issues of fact and law to be determined by the court. Material facts should be set out simply and clearly. Pleadings will be struck where they do not establish a cause of action, do not advance a claim known to law, or are groundless and fanciful: *Stoneman v. Denman Island Local Trust Committee*, 2010 BCSC 636 at para. 27.

Analysis

- [17] For the following reasons, I find it is plain and obvious that the Plaintiff's Notice of Civil Claim has no reasonable prospect of success, discloses no legal claim and ought to be struck.

Release of Funds in Trust

- [18] The Plaintiff alleges that Ms. Metzner acted contrary to the court order by releasing trust funds for Mr. Finlay's retainer.
- [19] While I am not to consider evidence in the course of trying to understand Mr. Woodske's claim in paragraphs 2 and 3 of his Notice of Civil Claim, it became clear that Mr. Woodske was relying on a particular court order which he claimed Ms. Metzner breached when she released funds to Mr. Finlay. Unfortunately, the Notice of Civil Claim does not actually state which court order or which term of the court order Mr. Woodske was relying on. However, both parties agreed to provide me with a copy of the court order. On review, the court order does not require Ms. Metzner to confirm that there was a signed a retainer agreement with Mr. Finlay.
- [20] Therefore, Ms. Metzner could not have breached the court order by releasing the funds to Mr. Finlay for his monetary retainer.
- [21] In any event, there is no reasonable claim against Ms. Metzner based on flaws that Mr. Woodske alleges against Mr. Finlay. Mr. Finlay was the expert named in the court order to prepare the s. 211 report. If Mr. Finlay made procedural or substantive errors, that cannot be Ms. Metzner's doing. Such flaws, even if proven would not give rise to a legal claim against Ms. Metzner.

No Duty of Care Owed to Mr. Woodske

- [22] Ms. Metzner owed duties to Ms. Nicholson. Ms. Nicholson was Ms. Metzner's client, not Mr. Woodske. Ms. Metzner did not owe Mr. Woodske a duty of care, nor did she owe him fiduciary duties. Ms. Metzner was not in a conflict of interest - she only acted for Ms. Nicholson. Mr. Woodske and Ms. Nicholson were opposing parties in the adversarial Family Law Proceedings. Mr. Woodske had his own counsel. Mr. Woodske would have known that he could not rely on Ms. Metzner to protect his interests.
- [23] As Newbury J. A. stated at para. 13 of *Holland v. Douglas*, 2010 BCCA 345, a lawyer "cannot be sued for consequences that may be suffered by other parties as the result of the lawyer's doing his or her job." As set out by Justice Basran in *Durkin v. Crease Harman LLP*, 2020 BCSC 642, counsel owes no duty to an opposing party: at para. 13. Accordingly, there is no actionable breach of a private duty to the claimant which stems from opposing counsel misleading or intentionally deceiving the court to result in decisions or rulings unfavourable to the claimant: *Durkin* at para. 13.
- [24] Ms. Metzner asserts, as part of her defence, privilege over the discussions with Ms. Nicholson while acting in her capacity as Ms. Nicholson's legal counsel and a lack of duty of care owed to the Plaintiff. In *0976820 B.C. Ltd. v. Leung*, 2018 BCSC 1725, Justice Norell summarized the relevant law on this matter, as follows:
- [33] Statements made in the course of judicial proceedings are made on an occasion of absolute privilege. The privilege extends to pleadings, statements made in documents used in the proceeding, and statements contained in affidavits: *Bernstein v. Stoytcheva-Todorova*, 2007 BCSC 14 at para. 66; *Hamouth v. Edwards & Angell*, 2005 BCCA 172 [Hamouth] at paras. 2-3; *Schut v. Magee*, 2003 BCCA 417 at para. 15; *McDaniel v. McDaniel*, 2009 BCCA 53.
- ...
- [39] Counsel for the Law Firm submits that, generally, counsel do not owe a duty of care to opposing litigants. In *Awad v. Salna*, 2017 BCSC 429, the Court stated:
- [22] There is an absolute privilege extended to counsel for all communications made in the course of or incidental to their representation of clients in the judicial or quasi-judicial proceedings. In *Lawrence et al v. Sandilands et al*, 2003 BCSC 211, Madam Justice Wedge stated at paras. 77-80:
- [77] It is well established that in the course of counsel's representation of his or her clients interests, it is to be expected that "much may be done that is intentionally and necessarily directed toward injuring the opposing party's interests." (*Crooks v. Manolescu*, [1995] B.C.J. No. 17 (BCSC) at paragraph 10).
- [78] In *Kamahap Enterprises Ltd. V. Chu's Central Market Ltd.* (1989), 40 B.C.L.R. (2d) 288 (C.A.), the Court of Appeal said at page 291 and 292:

The cause of action asserted, were it to be upheld, would be one imposing on the solicitors for one party an obligation of care to all others involved in the transaction to see the transaction properly carried into effect, even though the solicitors were retained and paid only by one of them.

.where the only damage foreseeable is damage to another's pocket or estate--where there is no foreseeable risk of personal injury or physical property damage-foreseeability of such economic loss, while essential to the existence of a duty of care, cannot, it now seems clear, generally be regarded as sufficient to create proximity and thus impose such a duty.

- [79] While a solicitor may owe an ethical duty to the court to be candid and fair, the only party to whom a solicitor owes an actionable duty is his or her client (*Jensen v. MacGregor* (1992), 65 B.C.L.R. (2d) 224 at p. 228 (BCSC)).
- [80] The court in *Jensen* found that in the absence of a contractual obligation and any duty of care owed between counsel for one party and the party adverse in interest, there was no recognizable cause of action, no plausible argument and no triable issue raised on the pleadings.
- [23] In *Pearlman v. Critchley*, 2012 BCSC 1830, Mr. Justice Crawford stated at paras. 44 and 48:
- [44] I start with the settled law that Mr. Critchley, acting for an opposing party, owed no duty to Mr. Pearlman. No tort action could lie against him. As well, all communications made by a lawyer in the course of, or incidental to, judicial proceedings are protected by actual privilege: *Lawrence v. Sandilands*, 2003 BCSC 211.
- [48] I find Mr. Pearlman's claims in this regard are bound to fail in law, and furthermore are frivolous and vexatious.
- [40] In *Singh v. Nielsen*, 2016 BCSC 2420 the Court stated:
- [20] In particular, allegations that counsel for the opposing party has misled or intentionally deceived the court resulting in decisions or rulings unfavourable to the claimant do not found actionable breaches of any private duty owed to the claimant: *Gateway Building Management Limited v. Manjit Singh Randhawa*, 2013 BCSC 350, at paras. 23 - 26. If it were otherwise, there would be no end to such litigation.
- [42] Mr. Wong must plead facts that would establish a duty of care owed by the Law Firm to him. He has not done so. Simply alleging that the Law Firm filed affidavits or a notice of application which contained statements that they ought to have known were false because there is conflicting evidence between the parties, does not establish a duty of care. By filing the Third Party Application, the Law Firm was taking steps in furtherance of its client's position in the Underlying Action. Mr. Wong has not pled any facts which could found a duty of care owed by the Law Firm to him.

[Emphasis added.]

- [25] In *Young v. Borzoni et al*, 2007 BCCA 16 at para. 52, the British Columbia Court of Appeal favourably cited the decision of Master Bolton in an application brought to strike portions of the statement of claim in *Crooks v. Manolescu*, [1995] B.C.J. No. 17 (Q.L.) (S.C.). Therein, Master Bolton stated:
- [8] The existence of a fiduciary duty or duty of care is not an allegation of fact, however, but a conclusion of law which must depend on proof (or for present purposes, allegations) of fact. And particulars of the breach of a duty are not relevant to the question of the existence of the duty. Thus, while I accept as a fact, for example, for the purposes of this hearing, that [solicitor B] filed affidavits which she ought to have known were false, that fact is of absolutely no significance to the question of the existence of a duty of care to the plaintiffs.
- [10] the plaintiff's position is tantamount to an assertion that all counsel who represent litigants owe a fiduciary duty or a duty of care to the other party to the litigation. This is patently absurd, as in the course of counsel's representation of her own client, much may be done that is intentionally and necessarily directed toward injuring the opposing party's interests. On the facts as pleaded here, it is, to borrow the emphatic language of Taylor, J.A. in *Kamahap Enterprises Ltd. v. Chu's Central Market Ltd.* (1990), 40 B.C.L.R. (2d) 288, impossible that [solicitor B] could owe a duty of care to Ms. Crooks.
- [11] The impossibility arises out of the very nature of a solicitor's duty to her own client.
- [12] The impossibility of the existence of a duty of care that I referred to in paragraph 10 above is an impossibility on these pleadings. Clearly, a solicitor will in some circumstances be held to owe a duty to persons other than her own client, and so may be a barrister. I do not intend to say that [solicitor B] could in no circumstances be held to owe a duty of care to Ms. Crooks. But I do say that before such a duty can be found to exist, facts must be proved in evidence - and alleged in pleadings - which describe the relationship and the circumstances from which the duty arose.
- [15] It is not for me to speculate about what additional facts would support the existence of a duty of care in the case now before me. All that I can say is that on the facts as presently pleaded, no such duty could possibly be held to exist; the impugned paragraphs disclose no reasonable cause of action.
- [26] In *Young*, the Court of Appeal applied Master Bolton's decision in *Crooks* in upholding Justice Bouck's decision to dismiss the appeal.
- [27] The Plaintiff seeks to rely on para. 52 of *Young* to support his claims. I find that this argument must fail. As in *Young*, the Plaintiff has failed to present any material facts to support his claim that Ms. Metzner owed him a duty of any kind. As I have set out herein, I find that Ms. Metzner did not owe Mr. Woodske a duty of care as alleged in the Notice of Civil Claim, nor did she have a fiduciary duty to protect Mr. Woodske's interests.

Protection of Ms. Nicholson's Interests

- [28] Ms. Metzner was entitled - indeed, it was her duty - to represent only Ms. Nicholson's interests. She was entitled to pursue reunification consistent with her client's instructions.
- [29] Ms. Metzner's role as Ms. Nicholson's legal counsel was to consider the interests of Ms. Nicholson, and not those of Mr. Woodske. Indeed, Mr. Woodske had retained his own legal counsel to represent his interests.

Flaws or Ethical Concerns

- [30] Even if there were flaws or ethical concerns with what the other professionals did, there is no reasonable basis for claiming that Ms. Metzner was somehow to blame for this. In fact, in portions of the Notice of Family Claim, Mr. Woodske concedes that Ms. Metzner may not have been aware of some of the alleged issues.

Child Support Claims

- [31] It seems highly doubtful that Ms. Metzner would tell her client she was not required to pay child support. Assuming Ms. Nicholson said this to Mr. Woodske, Ms. Nicholson would not be the first family law client to misquote their lawyer.
- [32] However, even if Ms. Metzner gave her client such advice, this does not give rise to an actionable claim of Mr. Woodske against Ms. Metzner.

Lack of Reporting Obligations

- [33] Despite Mr. Woodske's claims in paragraph 15 of his Notice of Civil Claim, Ms. Metzner has no "statutory" or other legal "obligation as a practising lawyer" to report Mr. Finlay, Mr. Bock, or Ms. Trachel to their regulatory bodies.
- [34] The Notice of Civil Claim is bound to fail; as opposing counsel, Ms. Metzner does not owe a duty to Mr. Woodske. At law, Mr. Woodske cannot sue Ms. Metzner because he does not like the way she did her job or the outcome of the Family Law Proceedings or the alleged failings of the counselling professionals in the Family Law Proceedings.
- [35] Further, suing opposing counsel for doing their job can be an abuse of process: *Geyer v. C.C.I. Merrit* (1979), 16 B.C.L.R. 27 (SC), aff'd Vancouver No. CA790733 December 19, 1980; *Pearlman*. It can also be an abuse of process for a plaintiff to make allegations against an opposing party's counsel. It is important not to curtail counsel's ability to act. Counsel may be prevented from fully and freely defending such a claim because of solicitor-client privilege: 0976820 B.C. Ltd. v. Leung, 2018 BCSC 1725, para. 53.
- [36] While not specifically argued, I also find that the Notice of Civil Claim represents an abuse of process under Rule 9-5(1)(d) because it is an attack on another parties' lawyer conduct in the course of doing their job.

[37] For the above reasons, I find that it is plain and obvious that the Notice of Civil Claim has no prospect of success.

What is the Appropriate Remedy?

[38] Rules 9-5(1) and 9-6 (5) are applicable.

[39] Where a claim is brought by a self-represented litigant, the court should consider whether a self-represented litigant's defective pleadings can be corrected by way of amendment.

[40] In *Olumide v. British Columbia (Human Rights Tribunal)*, 2019 BCCA 386, at para. 10, the Court of Appeal upheld the decision of the court below to strike a self-represent parties' claim where it was so defective as to be incapable of amendment.

[41] However, here, there is no legal foundation for the claims made in Mr. Woodske's pleadings. Because of this, the pleadings are so defective that they are not capable of amendment.

[42] As a result, I find that the remedy that does justice in the circumstances is to strike the Notice of Civil Claim and dismiss the action entirely.

Costs

[43] Ms. Metzner is the successful party and is entitled to ordinary costs at Scale B.

Conclusion

[44] The Notice of Civil Claim is struck and the action is dismissed. The plaintiff shall pay the defendant costs at Scale B.

"Hamilton J."

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