

CANADA / JUDGMENT

A.A. v. Z.Y.Z.

2024 BCSC 152

COURT

Supreme Court of British Columbia

DECIDED

1 February 2024

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2024 BCSC 152 A.A. v. Z.Y.Z. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: A.A. v. Z.Y.Z., 2024 BCSC 152 Date: 20240201 Docket: E100816 Registry: Vancouver Between: A.A. Claimant And Z.Y.Z. Respondent Before: The Honourable Justice K. Loo Reasons for Judgment Appearing on her own behalf: A.A. Counsel for the Respondent Z.Y.Z.: J. Chow Place and Date of Hearing: Vancouver, B.C. January 24, 2024 Place and Date of Judgment: Vancouver, B.C. February 1, 2024 Table of Contents Background.. 3 Legal Principles. 4 Application to the Facts of this Case. 5 Conclusion.. 6

- [1] In this family law proceeding, the respondent Z.Y.Z. seeks to terminate a spousal support order which was made on August 5, 2010 by Justice N. Smith (the "Smith Order") following a three-day trial.
- [2] Those payments, in the amount of \$1,750 per month, have been made by Z.Y.Z. without fail, at least until November 2023 when this application was advanced.
- [3] Z.Y.Z. advances this application on the following grounds:
- a) The duration of support now exceeds the duration of the marriage;
 - b) Starting in 2018, A.A. has received a pension from China. In 2018, the amount was approximately 2000 RMB per month (about CAD \$400) and it increases every year. A.A. advised the court that the present pension is approximately \$600 to \$700 per month.
 - c) Z.Y.Z.'s present spouse, to whom he was married in 2011, is ill. Z.Y.Z. deposes that he took approximately five months leave from work in 2021 and approximately six months leave from work in 2022 to care for his wife. In 2023, he joined his employer's deferred salary program. As a result, he can take leave to take care of his wife when required but his income is reduced significantly - from about \$80,000 to \$44,000.

Background

- [4] The parties were married in September 1996 in China, immigrated to Canada in 2006, and separated in November 2009. As stated above, the Smith Order was made after a three-day trial in 2010. The parties were divorced in 2011. They are both approximately 60 years of age.

- [5] They have one child, C.Z., who is now 24 years of age. C.Z. works full time and lives independently in Vancouver. Legal Principles
- [6] Under the Family Law Act, SBC 2011, c. 25 (the "FLA"), the termination of spousal support is governed by s. 167, which states in part:
- (1) On application, a court may change, suspend or terminate an order respecting spousal support, and may do so prospectively or retroactively.
 - (2) Before making an order under subsection (1), the court must be satisfied that at least one of the following exists, and take it into consideration:
 - (a) a change in the condition, means, needs or other circumstances of either spouse has occurred since the order respecting spousal support was made;
- [7] Further, s. 169 is relevant in the circumstances of this case:
- (1) This section applies if an agreement or order does not address whether spousal support may be reviewed under section 168 [review of spousal support] and if
 - (a) a spouse who must pay spousal support starts receiving benefits under a pension, or
 - (b) a spouse who is entitled to receive spousal support becomes eligible to receive benefits under a pension.
 - (2) In the circumstances set out in subsection (1), a court, on application, may do one or more of the following:
 - (a) confirm an agreement or order respecting spousal support;
 - (b) set aside all or part of an agreement, or terminate an order, respecting spousal support;
 - (c) make an order under section 165 [orders respecting spousal support].
 - (3) In making an order under this section, the court is not required to consider any of the matters referred to in sections 164 [setting aside agreements respecting spousal support] and 167 (2) [changing, suspending or terminating orders respecting spousal support].
- [8] Further, and importantly, the Spousal Support Advisory Guidelines ("SAAG") (at para. 13.8) set out tests for the duration of indefinite support. The law is clear that "indefinite" does not necessarily mean that support is "permanent" or "infinite", only that the duration has not been specified.
- [9] The SAAG and other authorities provide that, subject to exceptions that are not applicable here, the duration of spousal support is informed by two "tests":

- a) The length of marriage test provides that the upper end for duration is one year of support for each year of marriage while the lower end is one-half year of support for each year of marriage. This will typically be the applicable test for longer marriages, marriage of ten years or more.
 - b) The second test for duration is driven by the age of the children of the marriage. It usually operates where the period of time until the last or youngest child finishes high school is greater than the length of the marriage. The upper end of the range for spousal support under this test is the date when the last or youngest child finishes high school.
- [10] As C.Z. is now 24 years of age and works full time, the test regarding the age of the children of the marriage is not applicable in this case. Application to the Facts of this Case
- [11] In my view, it is appropriate to terminate Z.Y.Z.'s spousal support obligations, for all of the reasons advanced by him.
- [12] First, and most importantly, the "length of marriage test" set out in the SAAG has now been exceeded. The parties were married for 13 years and two months - from September 1996 to November 2009 and Z.Y.Z. has now paid spousal support for at least 13 years and three months - from August 2010 to November 2023.
- [13] Second, the fact that A.A. is now receiving \$600 to \$700 per month in pension benefits from China is of significance. Section 169 of the FLA permits a review of Z.Y.Z. spousal support obligations in these circumstances, and A.A.'s pension - which is increasing year-to-year - weighs heavily in favour of terminating Z.Y.Z.'s spousal support obligations.
- [14] Third, the fact that Z.Y.Z. has taken substantial time away from work and has a significantly reduced income due to his wife's illness is clearly a change in circumstances within the meaning of s.167(2)(a).
- [15] Further, it should be noted that A.A. has professional training and experience as a journalist, although she testified at the trial before Justice Smith in 2010 that her qualifications were not easily transferrable to the Canadian job market, in part because of her limited English language skills. At the trial before Justice Smith in 2010, she testified that she had applied for jobs with Chinese language publications in Vancouver, but she could not take those jobs because they required night shift work and she needed to care for her daughter. A.A. testified at trial that in order to pursue a journalism career she believed that the entire process would take seven or eight years.
- [16] On this application, A.A. advised the Court of difficulties experienced by her daughter as a teenager. These difficulties resulted in A.A. having mental health issues of her own which prevented her from fully launching a new career, although she had a part time writing job between 2013 and 2017. She advised the Court that she is now writing online about Chinese culture and history.

- [17] Although it appears on the evidence that A.A. may not yet have become wholly self-sufficient, it is my view that she has had sufficient time to reasonably have done so. Her previous need to care for her daughter no longer limits the hours that she can work. In any event, she is on the path to self-sufficiency given her Chinese pension and her writing endeavours.

Conclusion

- [18] For all of these reasons, Z.Y.Z.'s obligation to pay spousal support to A.A. under the Smith Order is terminated as at November 30, 2023.
- [19] The parties have sought, and I have granted, an anonymization order in respect of the style of cause herein.
- [20] The need for A.A.'s signature on the court order arising from these reasons is dispensed with.
- [21] Given the financial circumstances of A.A., no costs shall be payable by either party as the result of this application: *Bredenkamp v. Bredenkamp*, 2020 BCSC 730 at paras. 73-75. "The Honourable Justice Loo"

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