
CANADA / JUDGMENT

A.B. v. C.D.

2011 BCSC 603

COURT

Supreme Court of British Columbia

DECIDED

3 February 2011

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2011 BCSC 603 A.B. v. C.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.B. v. C.D.,

2011 BCSC 603

Date: 20110203

Docket: E100878

Registry: Vancouver

Between:

A.B.

Plaintiff

And

C.D.

Defendant

Corrected Judgment: The text of the judgment was corrected at paragraph 75 on August 24, 2011

Before: The Honourable Madam Justice Dardi

Oral Reasons for Judgment

BAN: Exhibits 7, 12, 13 sealed and not to be opened without Court Order

Counsel for the Plaintiff:

P. Boles

Appearing on his own behalf:

C.D.

Place and Date of Trial:

Vancouver, B.C.

November 29-30, and

December 1-3, 2010

Place and Date of Judgment:

Vancouver, B.C.

February 3, 2011

INTRODUCTION

- [1] The parties are the parents of a young child, Y. As of the date of trial, Y. was almost 18 months old. The principal focus of the trial was child support and the parenting arrangements for Y.
- [2] Y. has been in the sole custody of the claimant mother, A.B., since the parties' separation in February 2010. Although the respondent father, C.D., exercised access immediately following separation, since April 2010 all access by C.D. has been in the presence of a professional supervisor.
- [3] The action proceeded to a five day trial. A.B. was represented by counsel at trial. C.D. represented himself: however, he had been represented by counsel until shortly before trial.
- [4] At the commencement of trial, by consent I dismissed C.D.'s counterclaim for an interest in A.B.'s real property.
- [5] I will briefly set out the background, the position of the parties, and refer to the applicable legal principles. I will then discuss some aspects of the evidence as it relates to Y. and give my decision on the question of custody and access. Finally, I will set out my decision regarding child support.

BACKGROUND

- [6] For purposes of context, I will give some general background and highlight some aspects of the evidence. I do not propose to review the evidence in detail.
- [7] The parties commenced cohabitation on July 1, 2004. They ceased cohabiting on February 3, 2010. The parties never married. Neither party is making any property claims, and neither seeks any orders for spousal support.

- [8] A.B. is 41 years old. She obtained a university teaching degree and since 1995 has been employed as a teacher at a high school in Metro Vancouver. She owns a two-bedroom condominium in Vancouver in her own name, into which she moved in September 2009. Her parents live in Vancouver and although they did not testify it can reasonably be inferred on the evidence that they are very supportive of her.
- [9] The respondent father C.D. is 40 years old. After high school, he attended two different colleges. He obtained a hospitality business administration diploma in 1998. In the past, he has been employed in the catering business in Vancouver and Whistler. He found the food service industry stressful, and made an attempt at distributing and importing skateboards and snowboards, which businesses were ultimately unsuccessful. Since December 1999, he has been employed as an inventory controller with his current employer. Between 2000 and 2008, he pursued some part-time studies and completed 11 college courses.
- [10] The history of the couple's relationship and the circumstances of the breakdown of that relationship generally are not relevant considerations in this type of proceeding. However, in this case, C.D.'s conduct is relevant to the extent that it potentially impacts the best interests of Y.
- [11] The evidence establishes that C.D. is in the grips of a serious addiction to alcohol and pornography, including teen pornography. I do not propose to review this evidence as it is not in dispute. C.D. has admitted to these addictions in the face of overwhelming evidence.
- [12] C.D. has, for a significant period of time, been suffering from alcohol addiction. C.D.'s evidence describing the frequency in which C.D. drank alcohol, the quantity of his alcohol consumption and the impact on his functioning was uncontroverted. He admitted to his difficulties controlling his urges to drink. He also has driven while under the influence of alcohol.
- [13] I accept A.B.'s evidence that during their relationship, C.D. spent the substantial portion of his evenings pursuing internet activities. A.B. eventually discovered that his internet activities pertained to pornography and soliciting sex, including soliciting teenage girls for pornographic shoots and sex. A.B. was not aware of the nature of these activities until shortly before the separation. Her discovery of his sexual activities and the nature of his internet pursuits led to their separation shortly thereafter.
- [14] While his extensive participation in these activities significantly impaired his relationship with A.B., the crucial consideration for this Court is whether these addictions impair his judgment and ability to care for Y. independently and responsibly. The evidence supports a finding that C.D. cannot control his impulsive urges. He assumed the risk of engaging in his pornographic pursuits at his place of employment. I accept A.B.'s evidence in which she described the incident when C.D., who was wearing a head-set and pursuing his internet activities, ignored the cries of his infant child. The obvious risk is that when he is engrossed in his internet pursuits, those pursuits would take priority over his parenting of Y. Furthermore, when he has consumed excessive alcohol he is not in a position to care for Y.,

which also presents a risk to her safety and well-being. Such risks cannot be countenanced.

- [15] C.D. did not seek any significant treatment until shortly before this trial. As of the trial, he was pursuing treatment and indicated that he had not consumed alcohol for 11 days.
- [16] The timing of his treatment efforts do not lend much confidence to this Court accepting his stated intentions that he is committed to rehabilitation. Nonetheless, he has expressed significant remorse and shame for his past conduct and has the support of his family. Hopefully on account of wanting to be a father to Y., he has the genuine motivation to follow through with his stated intentions. I do emphasize that the permanency of a change in his lifestyle cannot be based on hope alone but rather on his commitment to a structured treatment plan.
- [17] This Court nonetheless recognizes that it is important that Y. have a relationship with her father. This Court accepts that C.D. clearly loves Y. He is articulate, possesses some fluency in the French language, has accomplished culinary skills, and is active in athletic pursuits. It is uncontroverted that he has a genuine bond and loving relationship with Y.

After Separation

- [18] After their separation, A.B. typically facilitated C.D.'s access by making arrangements for C.D. to see Y. at the local community centre. A.B. attended the community centre during these visits. However, one access visit which took place outside the community centre resulted in an unfortunate confrontation in A.B.'s condominium. On this particular visit C.D. kept Y. longer than anticipated and he did not telephone A.B. to apprise her of their whereabouts.
- [19] As a result of alleged breaches of an agreement between the parties, a consent order was entered on June 11, 2010, restraining C.D. from being within a two block radius of A.B.'s residence and restraining him from communicating with her.
- [20] The parties currently communicate only by way of a journal that accompanies Y. on her visits with her father. The parties have agreed that their communication in the journal is not a violation of the restraining order.
- [21] It is also appropriate at this stage to address matters regarding C.D.'s reliability and credibility. The evidence establishes that in this proceeding he has:
- (i) not met disclosure requirements;
 - (ii) not satisfied several of the requests for information arising from his examination for discovery;
 - (iii) provided inaccurate information to Dr. W. upon whose expert opinion he was at one time seeking to tender in this proceeding; and

(iv) also admitted to destroying evidence on his work laptop, which he knew was the subject of a court application.

POSITION OF THE PARTIES

- [22] A.B. seeks a final order for sole custody and guardianship of Y., and that C.D.'s access continue to be supervised by a professional supervisor. She also seeks an order that C.D. pay her child support and his proportional share of Y.'s day-care expenses.
- [23] C.D. does not oppose an order that A.B. be awarded sole custody and guardianship. However, he contends that this Court make such an order on an interim basis only, because eventually an order for joint guardianship and custody would be appropriate. C.D. does not oppose the orders for supervised access but seeks an order that the professional supervision be phased out and that his mother and/or her friend G.H. act as the supervisor. He also seeks a review date in approximately three months.
- [24] He acknowledges his obligations to pay child support but disputes that the income to be attributed to him should be \$60,000, as is contended by A.B.

LEGAL FRAMEWORK

- [25] The paramount consideration for this Court is the welfare and best interests of Y. In this particular case, Y.'s best interests must be found within the practical context of the reality of her parents' lives and circumstances: *Gordon v. Goertz*, [1996] 2 S.C.R. 27 at para. 46.
- [26] In British Columbia, s. 24 of the Family Relations Act, R.S.B.C. 1996, c. 128, provides guidance as to the factors to be taken into account in assessing the best interests of the child. These include:
- (a) the health and emotional well being of the child including any special needs for care and treatment;
 - (b) if appropriate, the views of the child;
 - (c) the love, affection and similar ties that exist between the child and other persons;
 - (d) education and training for the child;
 - (e) the capacity of each person to whom guardianship, custody or access rights and duties may be granted to exercise those rights and duties adequately.
- [27] Sections 24(3) and 24(4) authorize the court to consider the conduct of the parents but only in so far as it "substantially affects" one of the factors set out in subsection 24(1): *Van de Perre v. Edwards*, [2001] 2 S.C.R. 1014 at paras. 9 and 32.

[28] This is not an exhaustive list and the emphasis to be given to each of the factors varies with an individual child's needs and circumstances. The Supreme Court of Canada in *Van de Perre* articulated the fundamental principle governing the determination of custody and access at para. 13:

Custody and access decisions are inherently exercises in discretion. Case-by-case consideration of the unique circumstances of each child is the hallmark of the process. This discretion vested in the trial judge enables a balanced evaluation of the best interests of the child and permits courts to respond to the spectrum of factors which can both positively and negatively affect a child.

[29] Each child is entitled to individual justice and the court must undertake the best interest analysis free of any legal or factual presumptions: *Robinson v. Filyk*, 1996 BCCA 733 at para. 22.

[30] In *V.S.J. v. L.J.G.*, [2004] O.T.C. 460 at para.143 (S.C.J.), the court provided guidance as to the factors a trial judge should consider when restricting a parent's access, including:

1. The maximum contact principle;
2. The right of a child to know and have a relationship with each parent;
3. A limitation of a consideration of parental conduct to that conduct which impacts on the child;
4. The risk of harm: emotional, physical and sexual;
5. The nature of the relationship between the parents and its impact on the child;
6. The nature of the relationship and attachment between the access parent and the child; and,
7. The commitment of the access parent to the child.

[31] In summary, the determination of the child's best interests, as endorsed by the Supreme Court in *Gordon*, requires a full and sensitive inquiry. The inquiry must have regard to all the relevant circumstances relating to a particular child's needs and the ability of the parents to satisfy those needs. Because the inquiry is highly individualized, it must be recognized that other decided cases are of assistance only in the limited sense of illustrating the application and interplay of the governing principles: *H. v. K.*, 2008 BCSC 660 at para. 212.

DISCUSSION

Custody and Guardianship

[32] Y. has the right to enjoy a loving relationship with both of her parents. In an ideal world she would have the benefit of an arrangement in which her involvement with each parent was the same. The world that her father has created for her is far from ideal. The role of this Court is to find an arrangement that best meets her needs in difficult circumstances: *L.E.G. v. A.G.*, 2002 BCSC 970 at para. 83.

- [33] In assessing Y.'s best interests pursuant to s. 24 of the Family Relations Act, I accept that both parents love Y. Her ties are stronger to her mother because of her greater contact with her over the past year. Y. is too young to provide her views and she is also too young for education and training to be a major factor in the analysis. Thus, the factors that must be given primary emphasis in this case are Y.'s health and emotional well-being, and the capacity of each of her parents to exercise custody or access rights.
- [34] The focus must be on providing a safe, secure, loving, and emotionally and physically healthy environment for Y.: *F.K. v. M.K.*, 2010 BCSC 563 at para. 151. A.B. is a loving and committed parent and has been Y.'s primary caregiver since birth. I am satisfied that A.B. is able to provide such a nurturing environment and that she has provided and will continue to provide a loving and stable home for Y.
- [35] I am also satisfied that A.B. will continue to promote Y.'s relationship with her father and his family. Despite the difficult circumstances, she has demonstrated a commitment to fostering Y.'s bond with her father. This is borne out by her past efforts to accommodate C.D.'s access. When Y. had an emergency visit to the hospital, A.B. also took immediate steps to contact C.D.
- [36] Y.'s health and well-being demand that she maintain a stable relationship with her mother and that she be free of any conflict that exists between her parents. It is in her best interests to have parental decisions made by a parent who can place her interests ahead of the parent's own interests. I am satisfied that A.B. is capable of doing so. I am not persuaded that Y.'s father, while struggling with his addictions and problems with impulse control, is capable of consistently maintaining Y.'s interests as a priority.
- [37] I recognise that since the separation, C.D. has shown a commitment to exercising access. However, I am not satisfied that it is appropriate to make an order for joint custody. The parties are not capable of co-parenting in parental decision-making and communicating consistently in a reasonable and appropriate way. The authorities mandate that while the ability of the parents to communicate is not determinative of whether joint custody should be awarded, it is an important factor to be considered by the Court: *Jordan v. Jordan*, 2001 BCSC 1058 at paras. 20-21. In light of the restraining order and the consequent absence of an adequate degree of communication between the parties, at this stage an order for joint custody is simply not realistic nor in Y.'s best interest.
- [38] On the totality of the evidence, I conclude that Y.'s best interests are served with an order that parental decision-making be made by A.B. alone. I cannot conclude that it would be in Y.'s best interests for her father to be given any custodial and guardianship responsibilities. In the result, I order that A.B. be awarded sole custody and guardianship of Y.

Access Schedule

- [39] It is in Y.'s best interest to have appropriate access to both of her parents. Her access to her father since April has been entirely under professional supervision.
- [40] Access must be crafted to preserve and promote that which is healthy in the relationship between the custodial parent and the access parent: J.L.G. v. D.W.M., 2002 BCSC 1727 at para.199.
- [41] A.B. proposes the following access schedule: Week 1, Tuesday and Thursday, pick-up at 5:00 p.m., drop-off at 6:30 p.m.; Week 2, Tuesday, pick-up at 5:00 p.m., drop-off at 6:30 p.m.; Saturday, pick-up at 12:45 p.m., drop-off at 4:15 p.m.
- [42] C.D. agrees to the access schedule proposed by A.B., but seeks additional access. He proposes that every other weekend he have a five hour access visit on both Saturday and Sunday. I am of the view that at this stage, and given Y.'s young age, the regular visits twice a week with one three hour visit every second weekend is appropriate. With the objective of promoting contact and bonding with her father, as is consistent with Y.'s best interests, I order that, in addition to the access schedule proposed by A.B., C.D. have access to Y. on the third Sunday of each month, commencing in February 2011, from 12:45 p.m. to 4:15 p.m.

Supervised Access

- [43] I turn next to address the issue of imposing terms of supervision on C.D.'s access. While the evidence does not support a finding that her father would intentionally put Y. at risk, I am concerned that his behaviours, inability to control his impulses, and addictions present a risk to Y.'s safety and well-being.
- [44] Through a supervision order, while continuing to promote her relationship with her father, Y.'s safety and well-being will be ensured while he engages in counselling or treatment to address the issues I have described earlier. In the exceptional circumstances of this case, I am ordering that access continue on a supervised basis.
- [45] While he concedes that his access should be supervised, C.D. says there is no necessity for the involvement of a professional supervisor. He submits that the professional supervision be phased out over a three month period. He proposes his mother and her long-time friend G.H. as supervisors; both of whom testified at trial.
- [46] A.B. opposes both of the proposed supervisors. She expresses concern as to their loyalty to C.D. and their perceived inability to discharge their supervisory functions in an independent manner. She questions whether:
- i. C.D.'s mother would actually attend the visits;
 - ii. either his mother or G.H. would report any breaches of the access conditions to her because of the potential consequences to C.D.; and

iii. either of them would immediately remove Y. from a potentially unsafe situation.

[47] I am mindful of the guiding principle affirmed by McLachlin J. in *Gordon* that because the custodial parent has been charged with making daily decisions in the child's interests, his or her views are entitled to great respect and the most serious consideration. The Supreme Court in *Gordon* emphasized that the court must take into account and accord great respect to the views of a custodial parent: *McArthur v. Brown*, 2008 BCSC 1061 at para. 114.

[48] I turn next to consider the suitability of each of the two supervisors proposed by C.D. J.M.

[49] C.D.'s mother, J.M., testified at trial. She has been a teacher for 25 years. She has been the supervisor on trips abroad and many overnight fieldtrips and student excursions.

[50] She acknowledges her son's addiction to alcohol and pornography, and understands that he is currently seeking treatment. While it appears that she has not been in close communication with her son in the past, she is clearly supportive of him.

[51] I accept that she desires to have a close relationship with Y. She was at the hospital the day Y. was born, and after her birth, she visited Y. every one or two weeks. Since the separation, her access to Y. has been restricted to those occasions when she has made arrangements to see Y. during C.D.'s supervised access visits.

[52] I have carefully considered this issue. While in no way detracting from her good intentions, in this Court's view it is not appropriate that she act as supervisor in the difficult circumstances of this case. There may be cases where it would be appropriate that a grandmother act as supervisor but this is not one of those cases.

[53] A.B. must and does recognise that it is in Y.'s best interests to have a relationship with her father's family. However, A.B.'s views as to the appropriate arrangements for those visits must be accorded significant deference.

[54] Given A.B.'s wishes, at this juncture I cannot accede to C.D.'s request that his mother and sister be granted unrestricted access to Y. However, each of them is at liberty to attend C.D.'s supervised access visits as long as the appropriate arrangements are made with the supervisor. This arrangement permits them some reasonable and regular contact with Y.

[55] Once Y. is older, it would be preferable that visits with her grandmother be facilitated with the agreement of A.B.

G.H.

[56] C.D. is proposing G.H., who has been a close friend of J.M. since 1976, as an alternate professional supervisor. A.B. does not agree that G.H. would be appropriate as a supervisor, given G.H.'s lengthy and close association with the B. family.

- [57] G.H. is a retired high school principal with a master's degree in education. Her professional qualifications are exemplary. She conveyed to the Court that she is willing to undertake some supervision of C.D.'s access to Y.
- [58] She was sincere and straightforward during her testimony and remained composed in the face of a thorough cross-examination. She comprehends the gravity of C.D.'s addictions to alcohol and pornography. She struck me as a reasonable, focussed and careful person. Overall, I found her to be a very impressive witness.
- [59] I am satisfied that Y.'s wellbeing and security would be her paramount concern, that she has sufficient impartiality to properly discharge her role as supervisor, and that she would report any breaches of the access conditions. Her supervision is conditional on her undertaking to the Court, in writing, that she will report any breaches of any access conditions to A.B. The access will also include the following conditions:
- i. If transporting Y., she must have an unexpired car seat in her vehicle;
 - ii. she must also provide A.B. with the particulars of where the access is to take place;
 - iii. C.D. must not drink any alcohol within 12 hours of the commencement of or during the access visits; and
 - iv. C.D. is not to have any use of a computer or cell-phone during the access visits.
- [60] I am directing counsel for A.B. to draft the conditions for supervision, and the appropriate terms for a written undertaking. If the parties cannot agree, they have liberty to schedule a hearing before me to settle the terms. This should be arranged through Supreme Court Scheduling.
- [61] Hopefully by pursuing counselling and treatment, in the future C.D. will find a way to control his addictions and will be in a position to provide a psychiatric/psychological assessment regarding his progress in treatment and ability to meet the needs of his daughter as an access parent. He must recognise that unsupervised access depends on him modifying his behaviour. This would clearly be in Y.'s best interests.
- [62] Given the timing of C.D.'s very recent undertaking of treatment, at this juncture I am not persuaded that it is appropriate to make the orders regarding the parenting arrangements for Y. on an interim basis or to order a fixed review date or to order a transition to unsupervised access. C.D.'s stated goal for recovery is to assume a greater role in Y.'s life. If C.D. successfully pursues rehabilitation, the appropriate application can be made for variation of the access order to permit unsupervised access.

ORDERS

- [63] In summary, with respect to the parenting arrangements for Y., I make the following orders:
- 1) There will be an order of sole custody and guardianship to A.B., on the following terms:

- (i) she will advise C.D. of any emergency health issues pertaining to Y., as soon as reasonably practicable;
 - (ii) she will inform him by way of a journal whenever there is a change of Y.'s health-care provider, and any specialist appointments; and
 - (iii) C.D. shall have full access to any medical information for which he shall pay if there is a fee associated with same;
- 2) C.D.'s access shall be supervised by a professional supervisor or G.H. on the condition that G.H. provide an appropriate form of undertaking, or by any other supervisor agreed to in writing by both parties or as ordered by the court;
 - 3) Until further order or written agreement, the access will be as follows: Week 1, Tuesday and Thursday, pickup at 5:00 p.m. and drop off at 6:30 p.m.; Week 2, Tuesday, Pickup at 5:00 p.m. and drop off at 6:30 p.m., Saturday pickup at 12:45 p.m. and drop off at 4:15 p.m.; and every third Sunday, C.D. will have access from 12:45 p.m. to 4:15 p.m. or such other times as agreed to between the parties; and
 - 4) A.B. can interrupt this schedule for up to two weeks every six months to facilitate holiday and other travel but A.B. shall not take Y. for any trips longer than 48 hours without a court order or agreement of the parties, such agreement not to be unreasonably withheld. A.B. shall provide to C.D. a detailed itinerary with all contact information.
- [64] The following orders will go by consent:
- 1) A.B. shall be allowed to remove Y. from British Columbia for up to 48 hours without requiring permission from C.D., who shall provide a blank written authorization for such purposes. By way of the journal, A.B. shall provide C.D. with 72 hours notice of her intention to do so;
 - 2) C.D. will not remove Y. from the City of Vancouver without express written agreement or a court order;
 - 3) C.D. shall not apply for any U.S. identity documents, including but not limited to passports and citizenship, unless he has agreement in writing by A.B. or a court order;
 - 4) C.D. shall not post videos or photos of Y. on the internet, and shall remove all previously posted by him; and
 - 5) Y.'s name will be changed to Y.J.K.L., and C.D. shall sign all documents required for the same.

CHILD SUPPORT

- [65] In order to determine the quantum of child support payable, the court must determine an income level that fairly reflects the income available to a parent. Ordinarily, a spouse's annual income is determined from the total income shown on his or her income tax returns.

However, if the court concludes that this general rule would not be fair, the court may attribute income to the payor spouse in the amount the court considers appropriate: Federal Child Support Guidelines [Guidelines], ss. 16-19; *S.B.C. v. M.A.C.*, 2004 BCSC 1558 at para 28; *Bains v. Bains*, [1999] B.C.J. No. 544 (S.C.).

[66] A.B.'s income is uncontroversial. Based upon her financial statement sworn October 26, 2010, A.B.'s Guidelines income for 2010, during which she was on maternity leave, was \$42,562.60. In 2011, her monthly income is \$8,146.43 (gross earnings) minus \$187.59 in union dues, or \$7,958.84. She is paid 10 months' salary for a total of \$79,588.40. She also receives \$1,200 in Universal Child Care Benefits, which on my calculations is \$80,788.40 per annum.

[67] C.D. has an obligation to support Y. pursuant to s. 88 of the Family Relations Act. On October 27, 2010, based upon a guideline income of \$48,200, Mr. Justice Williamson ordered that:

... commencing November, 2010 until the completion of this matter the Respondent will pay \$448.00 per month child support for the infant child, ... plus \$275.00 per month toward child care until that Order is confirmed or then varied by the Trial Judge ...

[68] C.D. has paid monthly child support of approximately \$448 per month since the separation. However, the record does not show the precise amount of the payments he actually made as of the date of trial nor whether in fact he made any payments toward the child care expenses.

C.D.'s Income

[69] The question of C.D.'s income was in dispute and was a central issue at trial.

[70] This issue must be considered in the context of A.B.'s allegation regarding C.D.'s persistent failure to disclose financial documents in this proceeding. She also contends that many of C.D.'s financial documents were not disclosed in a timely fashion.

[71] On October 27, 2010, Mr. Justice Williamson ordered C.D. to provide, within seven days, his authorizations to PayPal for production of his PayPal account records. C.D. did not sign the authorization until November 24, 2010, five days before this trial was scheduled to commence. He maintains that his former counsel mailed the authorization to the offices of PayPal in California. I note, parenthetically, it also appears that, on November 25, his former counsel delivered a copy of the authorization to A.B.'s counsel. In any case, and not surprisingly, these records were not produced at trial. Nor did C.D. produce any records from his Ad-sense account or amazon.com account, despite a demand to do so.

[72] In 2010, C.D. withdrew funds in excess of \$6,000 gross from his RRSP, but he failed to report any RRSP income on his 2010 financial statement. Nor did he indicate that he had disposed of a significant portion of his RRSP. C.D. provided no satisfactory explanation for his failure to do so. Notably, he admitted in cross-examination he is working towards obtaining a C.G.A. designation.

- [73] Despite previous demands in writing, C.D. produced his bank statements for the first time sometime after his examination for discovery on October 13, 2010. Based on those bank statements, A.B. prepared a summary of deposits from May 2009 to October 2010, which she identified as not relating to his employment income. C.D. contends that these deposits represent gifts from various family members, primarily his mother. Notably, none of these gifts were listed in his financial statement. On November 9, 2010, A.B. requested he provide an accounting and all documents relating to those deposits. C.D. provided some explanation at trial for some of those deposits, but never provided the requested accounting. Nor did he provide the supporting documentation.
- [74] Although failing to disclose the income from his RRSP and the cash gifts from his family on his 2010 financial statement, C.D. claimed hardship (under s. 10 of the Guidelines) because of the cost of his supervised access visits. He did not pursue the hardship claim at trial.
- [75] I conclude that the evidence supports a finding that C.D. has failed to produce financial documents, and some of the documents he has disclosed were not disclosed in a timely manner. He was represented by counsel until shortly before trial. He was served with a Notice to Produce and a Demand for Discovery of documents in March 2010. He has provided no satisfactory explanation for his failure to comply: S.B.C. at para. 82. C.D.'s obligation for disclosure is a serious matter and is of paramount concern to this Court. Compliance is mandatory, not negotiable.
- [76] Section 92 of the Family Relations Act provides the court with the discretion to order an amount not exceeding \$5,000 be paid by a person for failure to comply with the rules for disclosure of information. In this case, considering the factors I have outlined above, I am ordering that C.D. pay A.B. \$3,000. This is intended to signify the Court's disapproval of his failure to abide by the rules for disclosure and to deter such conduct in the future.

C.D.'s Income for 2010

- [77] As I previously stated, A.B. alleges that C.D. has greater income than he has disclosed in these proceedings. His failure to produce documents and provide responsive answer to outstanding requests has rendered the task of determining his income for child support problematic.
- [78] I turn next to consider what income should be attributed to C.D. for 2010.
- [79] A.B. seeks an order to have income imputed to C.D. of \$60,000. Based on the Guidelines, he would be required to pay child support of \$561 per month. A.B. submits that from June 1, 2010, C.D. should pay the difference between the child support he has paid and \$561 per month, and that he should pay his proportionate share of Y.'s monthly day-care expenses from September 2010, which are \$820 per month.

[80] Section 19(1) of the Guidelines allows the Court to impute such amount of income to a parent as it considers appropriate in the circumstances. The court in *Hanson v. Hanson*, [1999] B.C.J. No. 2532 at para. 8 (S.C.), summarized the governing principles as follows:

The Concept of Imputing Income

- [8] Parents have a joint and ongoing legal obligation to support their children. In order to meet this legal obligation, a parent must earn what the parent is capable of earning. Section 26.1(2) of the Divorce Act says that the Guidelines "shall be based on the principle that spouses have a joint financial obligation to maintain the children of the marriage in accordance with their relative abilities to contribute to the performance of that obligation."
- [81] Is it reasonable to attribute income of \$60,000 to C.D. for 2010? As the court affirmed in *Vincenti v. Vincenti*, 2010 BCSC 1283 at para. 35:
- [35] The onus is on the party seeking to impute income to show on a balance of probabilities that income should be imputed on a rational and evidentiary basis and there must be evidence to support the amount to be imputed: *Windle v. Windle*, 2010 BCSC 18 at para. 88.
- [82] In the absence of complete financial information the court must consider other evidence, including circumstantial evidence, for the purpose of imputing income: *Poursadeghian v. Hashemi-Dahaj*, 2010 BCCA 453 at para. 23.
- [83] It is uncontroversial that C.D.'s employment income for 2010 was \$44,546, and that he earned gross income from his bookkeeping business in the amount of \$4,088. The record does not indicate whether he produced any supporting documentation in this regard. The evidence also shows that in 2010 C.D. received income of \$6,495 from cashing in his RRSP.
- [84] I turn next to consider the summary of deposits in his bank account for the period from January to October 2010, totalling \$10,714.06. It is common ground that these deposits did not pertain to his employment income. This summary was prepared by A.B. and was mentioned earlier in these reasons. C.D. took no issue with the accuracy of the summary.
- [85] C.D. provided an explanation for some of the deposit entries, although he produced no supporting documentation. C.D. maintained at trial that the income he earns from his various internet businesses is negligible and that the unidentified deposits primarily represent gifts from his family. I am not satisfied that his evidence on this point was reliable.
- [86] On my calculations, the bank deposits for which C.D. had no specific explanation totalled \$4,396.47. C.D.'s mother corroborated his evidence that she gifted him monies in 2010. She estimated that in 2010 she had gifted him funds in the range of \$4,000 to \$6,000. Although I accept that C.D. received some gifts from his relatives, in the absence of supporting documentation, the evidence does not support a finding that the totality of the unidentified bank deposits represent gifts from his family.

[87] In my view, it is a reasonable inference from the totality of the evidence that, in 2010, C.D. had income of \$3,000 that he has not disclosed.

[88] In summary, I calculate his income for 2010 to be as follows:

(i) employment:

\$44,546

(ii) bookkeeping:

\$4,088

(iii) RRSP:

\$6,495

(iv) \$3,000 undisclosed

\$3,000

Total:

\$58,129

[89] In the result, for 2010, I set his income for purposes of calculating his child support obligation under the Guidelines at \$58,129.

Retroactive Child Support

[90] Child support may be awarded in relation to a period predating the order: D.B.S. v. S.R.G., 2006 SCC 37. In exercising its discretion in making a retroactive child support order, the court should consider the circumstances surrounding any delay in seeking support, the payor parent's conduct, the child's circumstances, and any potential hardship to the payor parent: D.B.S.

[91] Retroactive child support is generally calculated from the date the payor parent received "effective notice" of the claim: D.B.S. C.D. received "effective notice" in March 2010 that A.B. was seeking child support when he was served with the statement of claim. C.D. did pay child support after separation. Also, by letter to his counsel dated June 24, 2010, C.D. had notice that A.B. would be seeking that he pay his share of the child care expenses. There is no basis in the evidence that Y. has suffered any deprivation as a result of her father's failure to pay child support commensurate with his income. Balancing all of the factors, including the potential hardship to C.D. from a retroactive award, I award the increased child support from June 2010.

- [92] In summary, for purposes of fixing child support for 2010, C.D.'s income is set at \$58,129. C.D. has an obligation to provide child support commensurate with his income in 2010. Based upon the Guidelines, he is therefore required to pay A.B. \$542 per month retroactive to June 2010, and payable through to the end of 2010. The amounts he has paid are to be deducted from the amount owing.
- [93] C.D. is also required to pay his proportionate share of the s. 7 expenses, being the child care expenses of \$820 per month for September through December 2010, based upon A.B.'s income for 2010 and his income of \$58,129.

C.D.'s Income for 2011

- [94] The evidence does not support a finding that C.D. will have RRSP income in 2011. In the result, until further order of this Court, for purposes of fixing child support for 2011, I find his income to be \$51,634. I have calculated C.D.'s income for 2011 by deducting the RRSP income of \$6,495 from the total income attributed to him for 2010.
- [95] In the result, under the Guidelines, C.D. is required to pay A.B. \$480 per month retroactive from January 1, 2011. The parties will share the s. 7 daycare expenses in proportion to their respective incomes.
- [96] If the parties are unable to agree on the sums due as a result of my order they may speak to the issue.

Exchange of Information

- [97] The parties shall exchange complete copies of their income tax returns by May 30 of each year commencing May 2011 for so long as child support remains payable. They shall provide copies of their notices of assessment and reassessments, if any, within 7 days of receipt of these documents from the Canadian Revenue Agency.
- [98] On May 30 of each year, C.D. must provide to A.B. documentary proof of his income from his bookkeeping business for the preceding year.
- [99] The parties are at liberty to seek further financial disclosure with respect to any future applications under the Guidelines.

Restraining Order

- [100] With respect to the terms of the restraining order, on the totality of the evidence I am not persuaded that it should be varied as requested by C.D. The parties are at liberty to vary the terms by written agreement. For clarity, the communications between the parties regarding any emergency issues in relation to Y. and their communications in the journal will not constitute a breach of the restraining order.
- [101] C.D. shall return to A.B. her building common area key.

CONCLUSION

[102] In conclusion, I emphasize that compliance with orders of this Court is essential. Court orders must be obeyed in order to protect the integrity of the court and the rule of law in our organised society: *Glase v Glase*, 2009 BCCA 321. The seriousness of a refusal to obey a court order is underscored by the fact that the non-complying party may face future applications for contempt, the consequences of which could lead to fines or imprisonment.

COSTS

[103] If the parties are unable to agree on costs by March 30, 2011, they should reserve a date through Supreme Court Scheduling to address the issue.

"Dardi J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/11/06/2011BCSC0603cor1.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/a-b-v-c-d-2011-bcsc-603>

Prepared on 29 October 2026 · Esheria