

CANADA / JUDGMENT

A.J.B.B. v. B.B.M.

2024 BCSC 478

COURT

Supreme Court of British Columbia

DECIDED

22 March 2024

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2024 BCSC 478 A.J.B.B. v. B.B.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.J.B.B. v. B.B.M.,

2024 BCSC 478

Date: 20240322

Docket: E59240

Registry: New Westminster

Between:

A.J.B.B.

Claimant

And

B.B.M.

Respondent

Before: The Honourable Justice Schultes

Supplementary Reasons for Judgment

Counsel for the Claimant:

R.P. Dueckman

The Respondent, Appearing on his own behalf:

B.B.M.

Claimant's Written Submissions:

November 14, 2023

Respondent's Written Submissions:

December 11, 2023

Place and Date of Supplementary Reasons for Judgment:

New Westminster, B.C.

March 22, 2024

Introduction

- [1] On October 30, 2023, I gave oral reasons for judgment on a summary trial in this family matter. Those reasons have since been transcribed and published, with the neutral citation of 2023 BCSC 2431.
- [2] These reasons deal with the imputation of income to the respondent for child and spousal support purposes, based on additional evidence that I requested from the parties following that summary trial.

Background

- [3] Before the parties separated the respondent operated a business that conducted railway maintenance and construction.
- [4] The company encountered financial difficulties and the respondent also developed various personal issues, including with substance use. He eventually left Canada and went to Ukraine, where he has been engaged since then in business ventures and jobs that relate to that country's war effort. His earnings in those capacities have been very modest.
- [5] In her summary trial application, the claimant sought to impute an income to the respondent that was based on his yearly withdrawals from the company before it encountered difficulties, which were in the range of \$250,000. The respondent took the position that his support obligations should be based on his current earnings.
- [6] I found that an income should be imputed to the respondent. I was not satisfied that he was capable of immediately operating another business that would generate the amounts that had been available to him through the company, because of the circumstances under which that business had collapsed and the resulting debts and unpaid taxes that were described in the evidence. However, I concluded that he was reasonably capable of earning the incomes that were available in the jobs that he had held before he began that business - as a shipping foreman and as a railway company employee - and therefore was intentionally underemployed in his efforts in Ukraine.

- [7] The problem was that because the claimant was relying on his earnings from the company and he was relying on his present income, there was no evidence of the kinds of openings and incomes that are available for those previous, jobs or for comparable jobs requiring the same skills.
- [8] I therefore directed the parties to each provide a supplementary affidavit describing the nature of the respondent's previous employment before he started his own company, including other types of jobs to which skills he acquired in them would be transferable, and the current pay for and availability of such positions in the Lower Mainland area. They have both provided affidavits in response.[1]

Additional Evidence

- [9] The claimant deposes that eight years ago the respondent was a foreman with a terminal company in Vancouver and that he earned \$160,000 per year in that position. She attaches a printout from the Glassdoor website (which provides information about incomes that are available at various businesses, to assist in job searches) showing that the current income as a foreman for that company is \$244,000.
- [10] The respondent deposes that he worked for that terminal company in 2015 and 2016 and, with welcome candour, that he actually earned a higher income than the claimant recalls - \$267,000 per year. However, he explains that when he resigned his position to start the rail business, he also resigned from the union that represents employees who hold that position. He attaches email responses to his inquiries from officials of the terminal company and the union. They advise that he cannot simply be reinstated in either his former position or his union membership, and that he will simply have to apply when a job posting arises. There were no such postings at the time that he inquired.

Discussion

- [11] Unfortunately, the parties have not engaged fully with my request for further evidence, from which I hoped to be able to make findings about the respondent's employability in his former positions, or in additional positions to which his skills could be transferred.
- [12] The additional evidence refers only to his former employment and income as a terminal foreman, and indicates that there are no current opportunities for the respondent to resume that position. To do so, he will have to wait for any vacancies that may arise. (Although the responses he received are silent on what his prospects might be, I infer that his previous experience would give him some advantage in that process.)

- [13] This evidence is only of partial assistance in determining what he could reasonably be earning in the Lower Mainland of this province. There is no evidence of his income when he was working for the railway, or the availability of that former position, and no evidence of the other kinds of jobs he could likely qualify for with his background, or their usual earnings.
- [14] Making the best of the evidence that is available, I think that quantifying the type of income that should be imputed to the respondent will have to be mainly an exercise in applying common sense to the limited amount that is known about his current opportunities.
- [15] First of all, as I noted in the original reasons for judgment, his short-term employment in Ukraine as of the last hearing date extrapolated to an annual income of \$51,000. Based on how poorly that position and his previous positions in Ukraine have been paid, I draw the inference that incomes in that country generally, and specifically now that it is a war zone, are significantly depressed in comparison to jobs involving equivalent skills in the Lower Mainland. I consider that those earnings represent a discount of approximately 50% from what he could reasonably earn here, indicating a current capability of earning approximately \$102,000 per year.
- [16] Another relevant consideration is that while no vacancies for the specific position of terminal foreman are currently available, the respondent's previous employment in that position shows that his skills and experience are potentially capable of earning approximately \$244,000 per year in it, according to the information obtained by the claimant. It seems reasonable for him to be able to apply those skills in other positions that are currently available, and to earn at least 50% of that potential income, or \$122,000 per year.
- [17] Incorporating both sources of evidence into this analysis, I will impute an income to him for support purposes at the midpoint of those two figures - \$112,000 per year. He will pay child support for two children at the table amount for that income, effective the date that this summary trial application was filed. If the application of the "with child support" formula of the Spousal Support Advisory Guidelines reveals that any spousal support is payable[2], he will also pay such support at the mid-range, based on that income and an income of \$40,000 for the claimant.
- [18] I will rely on the claimant's counsel to perform these calculations. If the respondent does not agree with them, there can be a reference to the registrar, who will certify the results.
- [19] Going forward, the parties will exchange copies of their income tax returns each year as soon as they are filed, and their notices of assessment each year as soon as they are received. If the respondent's Canadian tax return does not capture all of the income earned by the respondent in a foreign jurisdiction, he will advise the claimant of his additional earnings, including providing copies of the documents that show those earnings, by the deadline for filing his Canadian return each year.

- [20] The claimant also seeks to have the respondent post security for his support payments, in the form of his share of the proceeds of sale of the former family home. Such an order is permitted by s. 12 of the Federal Child Support Guidelines for child support, and s.15.2(1) of the Divorce Act for spousal support. Section 170 of the Family Law Act also permits orders for certain specific types of security, the relevant one for our purposes under ss.(c) - a lump sum amount to be paid in trust.
- [21] Security may be ordered if there is evidence of a payor deliberately disobeying orders or that he is likely to do so in the future: *K.A.L. v K.J.L.*, 2017 BCSC 651 at para. 174.
- [22] While the respondent stopped paying support after he went to Ukraine, and his "take it or leave it message" to the claimant suggests that the cessation was intentional, he had paid de facto support until then, and addressed a portion of his arrears with a significant lump sum payment to the Family Maintenance Enforcement Program last year, despite still being in Ukraine. In addition, his position in this hearing has been that he is willing to pay support, albeit on the basis of his claimed income.
- [23] Even if those factors on balance favoured the ordering of security, which I am not convinced of, the more fundamental problem is that the only current evidence is that the funds that would be deposited for that purpose are no longer in liquid form. The respondent deposed that before he left Canada he used them to buy a piece of medical equipment to operate a new business, but the ongoing availability of that equipment was not described. While his lack of financial disclosure in this case does him no credit, the reality is that the property issues in this action have not yet been dealt with, and I am reluctant to order the posting of an amount without some reasonable degree of confidence that it is actually available, or can be raised. That aspect of the claimant's action must therefore be dismissed.
- [24] The claimant has had substantial success on the summary trial application as a whole. Although she did not succeed in having the amount of the respondent's former draws from the family business imputed to him as his ongoing income, or in requiring him to post security, I have found that he is intentionally underemployed and imputed an income to him that is well above the one he claims, which were the main issues in dispute. Therefore, she will receive her costs in any event of the cause, at the usual scale of difficulty.

"Schultes J."

- [1] Although the respondent filed his affidavit in the court registry in December, I did not receive it until February, when he inquired with Supreme Court Scheduling about the status of these supplementary reasons. Documents filed in the registry are simply placed in the registry file, and are not cross-referenced to any applications that may be outstanding with respect to that file. I would not expect a self-represented litigant to know this, and in retrospect I should have specifically requested the respondent to send a copy of his affidavit to me through Supreme Court Scheduling. He is certainly not at fault for the resulting delay.

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- [2] The priority given to child support under the SSAGs means that no or nominal spousal support is payable when there is not a significant disparity between the parties' incomes.
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Prepared on 24 October 2026 · Esheria