

CANADA / JUDGMENT

Amante v. Sanchez

2023 BCSC 2011

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 2011 Amante v. Sanchez

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Amante v. Sanchez,

2023 BCSC 2011

Date: 20231117

Docket: E211699

Registry: Vancouver

Between:

Laura Elena Cruz Amante

Claimant

And

Guillermo Manuel Sanchez Y Sanchez

Respondent

Before: The Honourable Mr. Justice Coval

Reasons for Judgment

Counsel for the Claimant:

A. Dzitac

Counsel for the Respondent:

S. Chiu

Place and Dates of Hearing:

Vancouver, B.C.

September 27-28, 2023

Place and Date of Judgment:

Vancouver, B.C.

November 17, 2023

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Introduction

- [1] The parties having resolved most of their disputes during the hearing of this summary trial, what remains for determination is assessment of: (a) Ms. Amante's 2021-2023 income for spousal support purposes; (b) the amount and duration of spousal support payable by Mr. Sanchez; and, (c) the apportionment of s. 7 expenses for the balance of 2023.
- [2] For the reasons that follow, I find that Ms. Amante's actual income should be used for spousal support purposes, without additional income imputed to her.
- [3] Her spousal support should be at the high end, with no end-date imposed at this point. The specific amounts awarded are:

2021: \$ 1,986/month

2022: \$3,174/month

2023: \$3,361/month

- [4] For the balance of 2023, the ratio for s. 7 expenses is 32% to Ms. Amante and 68% to Mr. Sanchez. In 2024, the ratio should reflect the parties' respective financial positions in that year, as determined by agreement or court order.
- [5] Mr. Sanchez has a right of review of these terms as of January 2025.

Background Facts

- [6] Ms. Amante is 36 years old and Mr. Sanchez is 38. Both were born in Mexico and are now dual Canadian/Mexican citizens. They married on July 9, 2011, in Morelia, Michoacan, Mexico. Their son was born in 2017.
- [7] Mr. Sanchez came to Canada on a work permit in 2008. He is a senior software engineer, employed since 2020 by a company in the mining business in Richmond, BC.
- [8] Ms. Amante moved to Canada in November 2011, to be with Mr. Sanchez. In Mexico, she taught English in an elementary school. Her work history in Canada is complicated due to unfortunate health issues which are discussed below.
- [9] In July 2020, the parties separated. Despite this, they lived together for the balance of 2020 in their family home and carried on financially as before.
- [10] On January 15, 2021, Ms. Amante went to Morelia for a vacation with their son. Her return flight was postponed by the COVID-19 pandemic. In the end, she decided it was best for her and their son to remain in Mexico. Mr. Sanchez ultimately agreed with this arrangement.
- [11] The parties have cooperated in their parenting. The evidence is that both parents have supported and assisted their son with his communicative functioning challenges and he has made significant progress. Ms. Amante has devoted herself to his health and well-being. Mr. Sanchez has financially supported his care, therapy and medication. He has travelled to Mexico for long visits to see his son and speaks with him by video-conference daily.

Procedural History

- [12] Ms. Amante filed her Notice of Family Claim on July 16, 2021, seeking spousal and child support. Mr. Sanchez filed his Response and Counterclaim on October 5, 2021. Neither party pursued property division claims as they did not accumulate valuable assets during the marriage.
- [13] By consent order in a judicial case conference on December 3, 2021, Ms. Amante continued with day-to-day parenting in Mexico, while Mr. Sanchez was to have daily calls and generous parenting time during school breaks.
- [14] The parties have exchanged financial disclosure but not conducted discoveries or scheduled a trial.

- [15] During this summary trial, they agreed to a broad consent order that included agreement on: past and future child support; special and extraordinary expenses and past payment of those expenses; Mr. Sanchez's 2021-2023 income for spousal support purposes; and, ongoing financial disclosure.
- [16] They also entered into a separate consent order for their divorce, having satisfied all statutory requirements.

Analysis

- [17] I accept the parties' position that the issues that remain for determination are suitable for a summary trial.
- [18] I agree that this is in the interests of justice because of the expense of litigation relative to their financial circumstances and the amounts at issue, and their mutual desire to bring litigation to an end.
- [19] Given the relative absence of complexity or disputed facts, the evidence provided is adequate to find the facts necessary to resolve the issues.

What is Ms. Amante's Income for Spousal Support Purposes?

- [20] Ms. Amante submits that spousal support and apportionment of s. 7 expenses for 2021-2023 should be based on her undisputed actual income in these years of:

2021: \$ 18,577

2022: \$ 233

2023: \$ 163

- [21] Mr. Sanchez submits that Ms. Amante has been under-employed since 2021, and an annual income should be imputed to her of between \$34,840 (based on Canadian minimum wage) and \$50,000 (which she earned in 2019).
- [22] Under s. 19(1)(a) of the Federal Child Support Guidelines, income may be imputed when a spouse is intentionally under-employed, or unemployed, unless required by the needs of the child of the marriage. The standard is one of reasonableness, taking into account earning capacity, age, education, health, work history and availability, and re-training prospects (*Hsieh v. Lui*, 2017 BCCA 51, para. 48).
- [23] For the reasons that follow, I find that Ms. Amante's actual income should be used for spousal support purposes and no income imputed to her. The evidence does not demonstrate her to be choosing to be under-employed or unemployed. Rather, the combination of her health difficulties and responsibility for the care and support for their child makes even part-time work impossible at this stage.

Ms. Amante's Work History

- [24] The facts regarding Ms. Amante's education and work history are undisputed. She has a Bachelor of Business Administration degree from a university in Mexico. Before moving to Canada, she worked for three years as a full-time elementary school English teacher.
- [25] Unable to find a teaching job in Canada, she worked in a call-centre for around a year starting in late 2012. In 2014-2015, she went back to school and obtained two diplomas from the Vancouver Film School in visual art and animation. In the end, however, she did not wish to pursue that line of work. In 2016, she worked for a telecommunications service provider.
- [26] During her pregnancy, she suffered significant mood swings that worsened after their son was born in 2017. In October 2017, she returned to the telecommunications provider. In July 2018, she took a new job as a support analyst for a credit union.
- [27] In May 2020, Ms. Amante went on disability through her extended health coverage at the credit union. She experienced significant stomach pains and depression. At the same time, their son was having difficulties with development and behaviour issues.
- [28] In July 2020, the parties separated. Ms. Amante was hospitalised for a few days that month from a bad reaction to anti-depressant medication. In October 2020, the disability insurer approved her for long-term disability benefits of \$2,481/month.
- [29] As mentioned above, since January 2021 she and their son have lived in Mexico.
- [30] On February 22, 2021, the disability insurer provided Ms. Amante with an approved plan for gradual return to work at the credit union, which she could do remotely from Mexico. Ms. Amante's uncontradicted evidence, which I accept, is that she attempted the return but her health issues and childcare duties made it impossible. Her affidavit attaches a note from her family doctor, March 5, 2021, stating she was unable to attend work for at least the next month for medical reasons.
- [31] On June 30, 2021, the insurer terminated her benefits because she was residing outside Canada. Since then, she has been unemployed except for occasional work as a substitute English teacher in Mexico. For this, she is paid the equivalent of approximately CAN \$20/day.
- [32] Her evidence is that, when she is ready to return to work, she may need to re-train, go back to school, or start a new job at an entry level position.

Findings

- [33] Under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), spousal support is determined by reference to the factors in s. 15.2(4):
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and

- (c) any order, agreement or arrangement relating to support of either spouse.
- [34] A spouse is not obliged to become self-sufficient following a marriage breakdown; rather, they are obliged to make reasonable efforts to achieve self-sufficiency. If reasonable efforts are lacking, support may be reduced by imputing income to the unreasonably under-employed spouse: (Rogers v. Rogers, 1999 BCCA 238 at paras. 44-47).
- [35] Based on Ms. Amante's uncontradicted evidence, I find that, since 2021, she has been unable to do more than a small amount of part-time work due to her health difficulties and parenting responsibilities. The evidence does not support a finding that she has failed to make reasonable efforts.
- [36] Ms. Amante's son attends school, swimming lessons and regular speech, behaviour and neurological therapy sessions, as recommended by his medical team. I accept Ms. Amante's undisputed description of their demanding daily routine as described in her affidavit. In my view, this alone makes full-time work, or even substantial part-time work, impossible.
- [37] Regarding Ms. Amante's health struggles, Mr. Sanchez did not dispute the uncontradicted evidence of her medical difficulties and treatments, though he did submit that she had filed no expert evidence of any diagnosis.
- [38] I accept Ms. Amante's description of her situation as follows:
- a) In 2011, she was treated for serious stomach problems, including a hiatus hernia, gastritis and colitis. She continues to suffer from colitis and related stomach problems. She takes anti-depressant medication which causes her acid-reflux, headaches and nausea.
 - b) From 2019-2021, in-person or remotely, she attended almost 50 appointments with a registered clinical counsellor in Burnaby, presenting with anxiety, stress, anger, childhood trauma, migraines and other health issues.
 - c) From May 2020 to February 2021, she was on disability based on the advice from her family doctor and her insurer's independent medical examinations.
 - d) From June 2021 to March 2022 in Mexico, she received psychotherapy treatment from a psychologist, which she halted for financial reasons.
 - e) In September 2022, she received a letter from her Mexican neurosurgeon, advising that she suffers from autism spectrum disorder and treatment resistant depression, and that "she requires neuropsychiatric follow up and psychotherapy."
 - f) In December 2022, she received a neuropsychological assessment report recommending among other things, pharmacological treatment and continued psychotherapy treatment.
- [39] In sum, Ms. Amante's spousal support should be based on her actual income of: 2021-\$18,577; 2022-\$233; 2023-\$163.

What is the Amount and Duration of Spousal Support?

- [40] Entitlement to spousal support may be based on compensatory or non-compensatory grounds. Compensatory support is intended to provide redress for economic advantages or disadvantages between spouses arising during the marriage. Non-compensatory support is grounded in the "social obligation model" of marriage. Upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state. Disadvantage can include a significant decline in the standard of living from the marital standard (*Chutter v. Chutter*, 2008 BCCA 507, paras. 50, 54; *McKenzie v. McKenzie*, 2014 BCCA 381, para. 111).
- [41] Ms. Amante seeks support at the high end of the range from 2021 forward. She seeks compensatory support based on: (a) giving up her career in Mexico to join Mr. Sanchez in Canada and foster his career; (b) her care for their child; and (c) her outstanding student loans. She seeks non-compensatory support based on her lack of income and assets, health problems, and their son's special needs.
- [42] She submits there should be no termination date imposed at this time because of her ongoing health difficulties, the demands of raising their son, and her student loan debt.
- [43] Mr. Sanchez concedes Ms. Amante's entitlement to non-compensatory support through 2024. He submits that, for 2022-2024, it should fall between the low- and mid-range, and should terminate at the end of 2024. 2024 will be 4.5 years after separation, by which time, he says, she should have achieved financial self-sufficiency. He submits that she has the ability to return to work, and her cost of living is lower in Mexico than Canada. For example, her Form 8 Financial Statement in November 2021 discloses mortgage costs of only \$300, compared to his rent at the time of \$1,435.
- [44] Mr. Sanchez argues against compensatory support. He submits that their marriage did not restrict Ms. Amante's ability to support herself or advance her career because she obtained useful education and work experience in Canada. He relies on *Stobo v. Cohoon*, 2022 BCSC 817, para. 120, in which the low range was ordered because the recipient had ample opportunity to pursue her educational and career aspirations during the marriage.

Findings

- [45] Looking at the overall situation, in my view Ms. Amante deserves high-end spousal support with no specific end-date imposed at this point. Mr. Sanchez should have a right to review spousal support as of January 2025, including with an independent medical examination either by agreement or by order of the court if the court finds it appropriate.

- [46] Regarding compensatory considerations, Ms. Amante left her family, friends, and full-time job in Mexico to be with Mr. Sanchez in Canada. It is uncontested that she was homesick, found life here difficult, and could not find a job teaching children. Mr. Sanchez supported her training in film and animation studies but unfortunately this did not lead anywhere. Her pregnancy created serious health issues and she continues to devote much of her time and energy to their son's care and well-being.
- [47] Her Canadian student loan has just over \$9,000 outstanding, to be repaid at approximately \$300/month over the next three years. The evidence is that Mr. Sanchez also incurred student loan debt during the marriage but the couple paid it off during their time together.
- [48] On the non-compensatory side, this was a nine-year marriage with one child. Ms. Amante has virtually no income or material assets. I accept her evidence that her current financial situation precludes following the treatment plans recommended by her doctors or obtaining her recommended prescriptions. It is uncontested that she has savings of around \$9,000, but debt of approximately \$21,000 owed on her credit card and to the Canada Revenue Agency.
- [49] Mr. Sanchez relies on the evidence in Ms. Amante's November 2021 Form 8 Financial Statement, showing mortgage payments of only \$300/month. There is no evidence of the context of that expense or any update since 2021. Her Form 8 Financial Statement shows total annual expenses in 2021 of over \$41,000, including repayments of debts incurred during the marriage.
- [50] Ms. Amante's evidence is that her medical care and prescription drugs are more expensive in Mexico because they are not tax-funded as in Canada and she receives none of the child-care benefits she would in Canada. Overall, I find the evidence does not establish that Ms. Amante's life in Mexico is materially less expensive than it would be in Canada.
- [51] Another important consideration militating in favour of support at the high end is that the Guidelines' calculations assume Ms. Amante is receiving around \$10,000/year in child benefits and GST and PST credits, which she is not due to residing in Mexico.
- [52] Ms. Amante's income for support purposes was determined above: 2021: \$18,577; 2022: \$233; 2023: \$163. Mr. Sanchez's income was agreed between the parties: 2021: \$107,315; 2022: \$122,169; 2023: \$127,400.
- [53] Under the Guidelines, monthly payments at the high end of the range for these incomes are:
- 2021: \$ 1,986/month
- 2022: \$3,174/month
- 2023: \$ 3,361/month
- [54] In my view, these are appropriate support payments for Ms. Amante in all the circumstances.

Apportionment of s. 7 Expenses

- [55] In the consent order, the parties dealt with apportionment of past special or extraordinary expenses. They also agreed that, going forward, these expenses would be shared according to the ratio of their respective incomes for support purposes, as determined above.
- [56] Thus, for 2023, Ms. Amante's income is based on her actual income of \$163 plus spousal support of \$3,361 per month, for a total of \$40,495. Mr. Sanchez's income for 2023 is \$127,400 less the spousal support, for a total of \$87,068. The ratio is therefore 32% to Ms. Amante and 68% to Mr. Sanchez.
- [57] For 2024, the ratio will reflect the parties' respective financial positions in that year, as determined by agreement or court order.

Conclusion

- [58] The following orders are made under the Divorce Act.
- [59] Spousal support payable by Mr. Sanchez to Ms. Amante is:
- 2021: \$ 1,986/month
- 2022: \$3,174/month
- 2023: \$3,361/month
- [60] No termination date is imposed on Ms. Amante's receipt of spousal support. As of January 2025, Mr. Sanchez is entitled to a review of whether support should continue and if so in what amounts, including with an independent medical examination either by agreement or by order of the court if the court finds it appropriate.
- [61] For the balance of 2023, Mr. Sanchez is to pay 68% of special and extraordinary expenses. For 2024, the ratio is to be adjusted to reflect the parties' respective financial positions in that year, as determined by agreement or court order.
- [62] The parties are entitled to amend their income tax returns to include the spousal support paid pursuant to this order.

"Coval J."

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