

CANADA / JUDGMENT

Atwal v. Huber

2025 BCSC 421

COURT

Supreme Court of British Columbia

DECIDED

12 February 2025

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2025 BCSC 421 Atwal v. Huber IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Atwal v. Huber, 2025 BCSC 421 Date: 20250212 Docket: E153521 Registry: Vancouver Between: Kedy Kaur Atwal also known as Kedy Atwal Claimant And Christopher John Huber also known as Chris Huber Respondent Before: The Honourable Justice Thomas Oral Reasons for Judgment In Chambers Counsel for the Claimant: M. Ellis Counsel for the Respondent: G. Edwards Place and Date of Trial/Hearing: Vancouver, B.C. February 12, 2025 Place and Date of Judgment: Vancouver, B.C. February 12, 2025

- [1] THE COURT: The parties have asked me to give supplemental reasons with respect to how the incomes that I gave in my judgment should be used to calculate the amount of spousal support. Specifically, they are questioning whether they should use the high, medium, or low range. In the hearing, there were no materials, nor were counsel able to advise, whether the spousal support which had been paid pursuant to the consent order up to the hearing date represented an amount in the high, mid or low range from the prescribed spousal support tables.
- [2] In my reasons, I determined that the claimant had a very strong claim for spousal support and that it was clear that the support owed had not been satisfied to date by the amount of support paid pursuant to the consent order regardless of where support had been paid under the prescribed tables. I chose to continue having spousal support paid using the same point on the range used in the consent order that had been paid from the date of the order to this hearing.
- [3] At the hearing, I felt it was appropriate to adjust the income used to calculate the spousal support. I determined that the respondent was working at less than his capacity and attributed income to him to address that situation.
- [4] I specifically did not address the duration of spousal support as I felt uncomfortable doing so given that I did not know where on the range spousal support payments had been made; so I did not know how much spousal support had been paid to date in comparison to the table amounts.

- [5] That should address the issue raised by the parties; as I say, I turned my mind to the range and chose to follow what was in the consent order, as I did not know where in the range the respondent had been paying spousal support.
- [6] CNSL M. ELLIS: I'm afraid I really don't understand, and I don't understand what the final order is. Are you saying that the final order is to continue the amount that was before? Neither my friend and I know what the order for spousal support is, and I - and I'm not sure that I understand from what you have just said how -
- [7] THE COURT: The order for spousal support -
- [8] CNSL M. ELLIS: -- to determine it.
- [9] THE COURT: -- In the consent order you had incomes for the respondent and the claimant, and calculations were performed and an amount of support was generated somewhere between the low and high range from the tables. Counsel were unable to advise at the hearing where on the range support was being paid. I determined that wherever on the range the support was being paid, the entitlement was so strong that support continued to be owed at this time. When I made my order I awarded ongoing support at the same point on the scale; that is somewhere between the low and high point from the tables. For example, if the consent order was based upon the medium range from the tables, that is the point at the new tables, using the income that I have specified, where spousal support would be calculated.
- [10] CNSL G. EDWARDS: Justice,- the original order did not state the range, and so the question that I think we both have is how do we calculate the amount of that he is to pay now?
- [11] THE COURT: I believe I was told that the amount of support payments set out in the consent order had been calculated in accord with the spousal support tables in use at that time.
- [12] CNSL M. ELLIS: Okay. So the order is that counsel should go back, determine the range from the original consent order, determine the point on the range that spousal support was set and apply that point to the current incomes to determine what the order is - do I have that -
- [13] THE COURT: That is correct.
- [14] CNSL M. ELLIS: Well, as you know, probably - your order is under appeal. A) I'm concerned that neither of us, who are both long-time family lawyers, knew what the order was, and B) now we'll go back and do the Divorcemate calculation and try and figure it out, and then I'm not sure how we draft the order - I mean I guess we can just submit a draft order and put the number in the draft order, but the number is not going to appear in the reasons, and I'm not sure it would be - and I'm not sure how - even this is appropriate to say, but I'm gonna say it anyway. I'm not sure that the Court of Appeal is going to be able to figure out what your order was.

- [15] THE COURT: I have laid out what my thinking was at the time I made my order on this issue in my supplemental reasons. The order that flows from that is as you have said: The parties are to go to the original consent order; determine where in the range of spousal support that the calculations for payment were agreed upon, that will be somewhere between the low and high end; and they will use that percentage to calculate the current payments of spousal support. If you feel I have made an error, the Court of Appeal is available to correct it. I do not feel it is appropriate to hear submissions on what I should or should not have done at this time.
- [16] CNSL M. ELLIS: I now understand, we are supposed to go back and do this calculation and hopefully agree on the numbers, and then I guess we draft an order. We put the number that we both think is it and submit the order for your signature; is that how you -
- [17] CNSL G. EDWARDS: Based on the attributed income?
- [18] THE COURT: Based on the attributed income.
- [19] CNSEL G. EDWARDS: So one practical problem that we have is the registry is unlikely to accept whatever order we agree on with a number in there that doesn't appear in your reasons, so I guess we would have to - would it be appropriate for us to direct it to you?
- [20] THE COURT: Yes, the order can be directed to me, and I am going to order a copy of the reasons I just gave so that they will then be published and will form part of, or at least supplemental to the reasons I gave.
- [21] CNSL M. ELLIS: Would you like to see the 2017 - I can do up a 2017 Divorcemate calculation, and we'll do up the 2024 Divorcemate calculation and submit them to you with the draft order? Can we do that?
- [22] THE COURT: Yes. Please do so. Those are the numbers that I requested at the hearing. They are necessary to determine the amount of spousal support paid relative to the amount prescribed.
- [23] CNSL M. ELLIS: Because sometimes the registry's very difficult about submitting Divorcemate calculations attached to notices of application and various things. But, okay. Then we will do that and get that into this week while it's still in the top of everyone's mind, if that's okay.
- [24] THE COURT: That would be great. And so I will direct that you submit the Divorcemate calculations for 2017 and 2020 as appendixes to the draft order.
- [25] CNSL M. ELLIS: 2017 and 2024; right? Is that --
- [26] THE COURT: 2024; correct. And I am assuming as appendixes makes the most sense, but is that fine? You did not ask for that.

- [27] CNSL M. ELLIS: Yeah, I think that's practically the way to do it. I'm not sure what my friend has to say on that point.
- [28] THE COURT: Okay.
- [29] CNSL G. EDWARDS: And so we'll do.
- [30] THE COURT: Okay.
- [31] CNSL M. ELLIS: Thank you.
- [32] THE COURT: Right. Thank you both.
- [33] THE CLERK: Order in chambers. Chambers adjourned. "Thomas J."

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