

CANADA / JUDGMENT

Babuick v. Babuick

2020 BCSC 1699

COURT

Supreme Court of British Columbia

DECIDED

10 November 2020

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

2020 BCSC 1699 Babuick v. Babuick IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Babuick v. Babuick, 2020 BCSC 1699 Date: 20201110 Docket: E24773 Registry: Fort St. John Between: Ronald Floyd Hartley Babuick Claimant And Lynn Marie Babuick Respondent Before: The Honourable Chief Justice Hinkson Reasons for Judgment Counsel for the Claimant: A.H. Devitt Counsel for the Respondent: N.R. Bauder Place and Date of Hearing: Fort St. John, B.C. October 26, 2020 Place and Date of Judgment: Fort St. John, B.C. November 10, 2020

- [1] The parties began cohabitation in February 2001, and married on November 10, 2001.
- [2] There are two children from the marriage, one daughter born April 30, 2002, and a second daughter born March 19, 2004.
- [3] The parties separated on September 1, 2019. The girls have lived with the respondent since the separation of their parents.
- [4] The respondent seeks an interim order for child support, commencing September 1, 2019 in accordance with the Federal Child Support Guidelines, SOR/97-175 [Guidelines].

Background

- [5] As of the date of the parties' separation, the claimant was employed in the forest industry. He has made no child support payments since the parties separated.
- [6] To date there have been no agreements or court orders for child support. The respondent commenced proceedings in the Provincial Court of British Columbia in Fort St. John for child support, but those proceedings were adjourned generally without any orders being made. This is the first application to this Court for an interim order for child support.
- [7] The respondent reported income for 2017 in the amount of \$72,969.80; \$43,592 for 2018; and \$94,524.53 for 2019. She declared bankruptcy on December 9, 2019. Her evidence is that her present income from Fortis BC, for the purposes of the Guidelines, is \$83,951.24 per year.

- [8] In the claimant's financial statement filed September 17, 2020, he confirmed his 2015 income as \$85,126.47; \$123,101.63 for 2016; \$64,900.00 for 2017; \$90,775.58 for 2018; and \$85,048.33 for 2019. He was laid off by his employer in April of this year, and paid \$43,479 for his work until then. He received Canada Emergency Response Benefit ("CERB") payments of \$10,500 thereafter, until he secured his present employment on September 8, 2020. The claimant's income from his present employment has been \$10,521 up to and including October 23, 2020, which would potentially extrapolate to an income of \$18,742 from that source until the end of the present year, for a total income from all sources of \$72,721 to the end of this year.
- [9] After the parties separated, the claimant remained in the family home. It was the subject of two mortgages, which required monthly payments of some \$2,300. These payments were made entirely by the claimant until the home was sold earlier last month. The claimant received reimbursement for one-half of those payments from the respondent's Trustee in Bankruptcy after the home was sold, together with \$41,000 for his equity in the home.
- [10] After their separation, the claimant also paid \$230 per month for an all terrain vehicle, and assumed payments of \$1400 per month for a truck that the respondent contends she was prepared to return to the dealership from which it was purchased. After the claimant assumed the financing costs for this truck, he used it as a trade-in for another vehicle.

Discussion

- [11] In *D.B.S. v. S.R.G.*, 2006 SCC 37, the Supreme Court of Canada identified the factors that are to be applied on an application for retroactive child support:
- (a) reasonable excuse for why support was not sought earlier;
 - (b) conduct of the payor parent;
 - (c) circumstances of the children; and
 - (d) hardship occasioned by a retroactive award.
- [12] The claimant concedes that the respondent meets the first of these factors.
- [13] The claimant contends, and I accept, that his conduct in seeking new employment satisfies the second factor insofar as those efforts, but his failure to make any payments for child support at all, is an aspect of this factor that must be considered.
- [14] The children in this case are respectively 18 and 16 years of age, the former attending post-secondary education and the latter a high school student. They were, and are, entitled to look to their father for support.
- [15] The main thrust of the claimant's response to the application before me is that it will be a hardship for him to make payments for child support on a retroactive basis, as he paid for family debt obligations, when the respondent was unable to do so.

- [16] Section 10(1) of the Guidelines also recognizes hardship as a factor to be considered. It provides: 10(1) On either spouse's application, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.
- [17] Section 10(2) provides a non-exhaustive list of factors that may be considered in determining if a case for undue hardship has been made out:
- (2) Circumstances that may cause a spouse or child to suffer undue hardship include the following:
- (a) the spouse has responsibility for an unusually high level of debts reasonably incurred to support the spouses and their children prior to the separation or to earn a living;
 - (b) the spouse has unusually high expenses in relation to exercising access to a child;
 - (c) the spouse has a legal duty under a judgment, order or written separation agreement to support any person;
 - (d) the spouse has a legal duty to support a child, other than a child of the marriage, who is
 - (i) under the age of majority, or
 - (ii) the age of majority or over but is unable, by reason of illness, disability or other cause, to obtain the necessities of life; and
 - (e) the spouse has a legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.
- [18] In *Kelly v. Kelly*, 2011 BCCA 173, at paras. 33-34, our Court of Appeal stated: 33 A claim for undue hardship under s. 10 of the Guidelines encompasses a two-step analysis. First, the parent applying for relief must demonstrate the undue hardship that will be caused by paying Guidelines support. Section 10(2) sets out a non-exhaustive list of factors that may be considered at this stage, including "an unusually high level of debts" incurred prior to the separation or "to earn a living", and "unusually high expenses in ... exercising access". This first step has a high threshold. The hardship that must be established is described in the authorities as severe, extreme, improper, unreasonable, or unjustified: *Van Gool v. Van Gool* (1998), 59 B.C.L.R. (3d) 395, 44 R.F.L. (4th) 314 at paras. 48-51. 34 If, and only if, this first requirement is met, the second step engages a comparison of the standard of living in each parent's household under s. 10(3) of the Guidelines, to ensure the payor of child support will not have a higher standard of living than the recipient if a reduction in Guidelines support is made.
- [19] I do not consider the debts assumed by the claimant to be unusually high. While there is a dispute over just what property the parties retained, I am unable to resolve that dispute on their competing affidavits, and will not therefore assume that either has been advantaged thereby.

- [20] The claimant has not pursued an active relationship with his younger daughter and did not face unusually high expenses in relation to exercising his access to his older daughter.
- [21] The claimant has no legal duty under a judgment, order or written separation agreement to support any other person.
- [22] The claimant does have a legal duty to support both of his daughters, but has no legal duty to support any person who is unable to obtain the necessities of life due to an illness or disability.
- [23] It is thus unnecessary to compare the standards of living of the parties.
- [24] I find that the claimant should have paid child support to the respondent. While it is unfortunate that he lost the job he held at the time of the parties' separation, he has been able to find suitable and comparably remunerative employment fairly quickly.
- [25] He did enjoy the occupation of the matrimonial home for a period of time following the parties' separation, and has now been repaid for one-half of the mortgage payments that he made. In the result, I would notionally set off the one-half net payments that he made against occupational rent.
- [26] It is also clear that the claimant has funds from the payment out of his equity that can be used to pay retroactive support payments for his daughters, without creating an undue hardship for him.
- [27] I therefore find that the respondent is entitled to retroactive child support payments commencing on September 1, 2019.
- [28] Based on the claimant's earned income for 2019, and the Guidelines, I assess his retroactive obligation for child support for the last four months of that year at \$1,315 per month for a total of \$5,260.
- [29] For the purposes of the Guidelines, I find that the claimant should be imputed to enjoy an income for the present year of \$70,000, which will result in a child support obligation to the respondent of \$1,086 per month, which is \$10,860 for the first 10 months of this year.
- [30] The claimant is ordered to continue child support payments to the respondent in the amount of \$1,086 per month, until an agreement to the contrary by the parties, or further order of the Court. "The Honourable Chief Justice Hinkson"

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/20/16/2020BCSC1699.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/babuick-v-babuick-2020>

Prepared on 24 October 2026 · Esheria