

CANADA / JUDGMENT

Bainbridge v. Bainbridge

2000 BCSC 1173

COURT

Supreme Court of British Columbia

DECIDED

31 July 2000

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2000 BCSC 1173

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Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

LORRAINE ANNE BAINBRIDGE ALSO KNOWN AS
LORRAINE BAINBRIDGE
PETITIONER

AND:

TERRY CYRIL BAINBRIDGE ALSO KNOWN AS
TERRY BAINBRIDGE
RESPONDENT

REASONS FOR JUDGMENT OF THE HONOURABLE mr.JUSTICE vickers (IN CHAMBERS) Counsel for the Petitioner: Appearing on her own behalf Counsel for the Respondent: K.L. Basran Date and Place of Hearing: July 25, 2000 Vancouver, BC

- [1] On Monday, the 27th of January, 1997 Grist J. made an order in these proceedings. The order reflected an agreement made by the parties. Pursuant to its terms, the respondent was to pay the sum of \$1,700.00 per month child support for the benefit of the infant child, Vanessa.
- [2] In addition, the respondent was to deposit \$50.00 to an education account to which the petitioner would add a child tax credit of approximately \$31.61 per month. This account was to be referred to as the Education Account and the funds in the account were to be used for Vanessa's "ongoing educational benefit for items which include but are not limited to books, computer supplies, or special courses." The petitioner was required to notify the respondent in advance of any withdrawals from the Education Account and to indicate at that time the purpose for which those funds were to be used.

- [3] By agreement, the respondent was ordered to pay spousal maintenance in the sum of \$1,300.00 per month up to and including August 1, 2001 when spousal maintenance would cease. With respect to spousal maintenance, the order contained the following provision: AND THIS COURT FURTHER ORDERS, BY CONSENT, that the spousal maintenance shall only be varied on application by the Respondent due to a significant decrease in his income but in the event spousal maintenance is decreased, the Petitioner may seek an extension of the spousal maintenance beyond August 1st, 2001 as is necessary to provide her with the same gross maintenance total which would have been available had the Respondent paid maintenance to her at the rate of \$1,300.00 per month from February 1st, 1997 through and including August 1st, 2001.
- [4] The petitioner now seeks to vary the order of Grist J. She seeks an order for:
- (a) child maintenance pursuant to the Child Support Guidelines;
 - (b) a contribution for special expenses;
 - (c) a deletion of the education provision and provision for a new education account, namely, a registered education plan contributed to in proportion to the incomes of the parties; and
 - (d) reimbursement of uninsured expenses she has incurred for psychological counselling and Kumon Math fees relating to Vanessa.
- [5] The respondent has filed a notice of motion seeking an order that the spousal maintenance be reduced or terminated.
- [6] The respondent's income has not decreased since the consent order. There is no good reason to vary the agreement with respect to spousal maintenance incorporated in that order and, accordingly, the respondent's motion is dismissed.
- [7] Counsel for the respondent argues that there has been no material change in circumstances, the agreement made by the parties should be respected by the court, and the order of Grist J. relating to child maintenance should not be varied: *Wang v. Wang* (1998), 39 R.F.L. (4th) 426 (B.C.C.A.); *Garard v. Garard* (1998), 41 R.F.L. (4th) 1 (B.C.C.A.).
- [8] When the consent order was made, the respondent's income was approximately \$165,000.00 per year. The petitioner's income was approximately \$72,000.00 per year, of which \$12,000.00 was a W.C.B. widow's pension which was net of income tax. I find the respondent now earns \$198,000.00 per year and the petitioner's income is \$84,000.00 per year, again, inclusive of the \$12,000.00 she receives net of income tax. I find that as a result of her increase in income the petitioner is in a different tax bracket. The maintenance payments she receives for Vanessa are taxable in her hands and the net benefit of those payments has thus been reduced. In my view, there is a material change in circumstance and child maintenance should be based upon the Child Support Guidelines. I conclude the respondent should pay the Guideline amount based on his annual income of \$198,000.00, namely \$1,386.20 per month, commencing August 1, 2000.

- [9] As the current provision for an education account appears unworkable, those provisions of the order of Grist J. are to be deleted. I make no order with respect to a registered education plan. If either party wishes to embark upon such a course of action, they are free to do so at any time.
- [10] The petitioner says she has special or extraordinary expenses for Vanessa and she seeks an order that the respondent pay his proportionate share of these expenses, which include: Monthly Yearly Dr. Nancy Michel, Child Psychologist 58.33 699.96 St. Michael's tuition, mandatory contribution and fees 180.00 2,160.00 Kumon Math 70.00 840.00 Progress Tutoring (math) 152.00 1,824.00 Extraordinary extracurricular activities expenses: Fine Arts:Piano lessons Dance Lessons 75.00 30.00 900.00 360.00 Sports:Board/tennis lessons, passes, memberships 65.66 788.00 Sporting equipment/maintenanceTOTAL: 99.14 \$730.13 1,189.73 \$8,761.69
- [11] The expenses relating to sporting activities include gymnastics, swimming, membership in two tennis clubs, season's pass at Whistler and the expenses related to the sport of skiing.
- [12] When the parties entered into a consent order relating to the maintenance of Vanessa, the respondent was aware that Vanessa would be enrolled in a private Catholic school. He was aware that such an expense would be incurred by the petitioner.
- [13] In *McLaughlin v. McLaughlin* (1998), 44 R.F.L. (4th) 148 (B.C.C.A.) Prowse J.A., for the court, said at p. 171: In the result, I conclude that, in deciding whether an expense, or the totality of expenses claimed on behalf of children under s. 7(1)(f) are extraordinary, the court should take into consideration the combined income of the parties, as well as the nature and amount of the individual expense, the nature and number of the activities, any special needs or talents of the children, and the overall cost of the activities. This list is not intended to be exhaustive, as considerations may arise in other cases which may also be relevant. I note that in the only other decision of this Court dealing with s. 7(1)(f), *Cochrane v. Zarins* (1998), 36 R.F.L. (4th) 434 (B.C.C.A.), the Court concluded that a particular child's talents are a relevant factor in determining whether an expense for an extracurricular activity is extraordinary. As earlier stated, once an expense or expenses are found to be extraordinary it is necessary for the court to proceed to determine whether the expenses are necessary in relation to the children's best interests and reasonable, having regard to the means of the spouses and those of the child, and to the family's spending pattern prior to separation. There appears to be a consensus in the authorities dealing with s. 7(1)(f) that those questions do not need to be addressed until the expense or expenses in question have been found to be extraordinary. That would also be true of "extraordinary" educational expenses under s. 7(1)(d). With respect to the other expenses included under s. 7(1), which fit under the rubric of "special" expenses as that word is used in the heading of the section, the expenses need not be extraordinary, but they must meet the tests of necessity and reasonableness.

- [14] I take into account all of the factors referred to by Prowse J.A. I find the following expenses to be extraordinary: Monthly Yearly Dr. Nancy Michel, Child Psychologist 58.33 699.96 St. Michael's Tuition, mandatory contribution and fees 180.00 2,160.00 Kumon Math 70.00 840.00 Progress Tutoring 152.00 1,824.00 Piano LessonsTOTAL: 75.00 \$535.33 900.00 \$6,423.96
- [15] With respect to the expenses relating to sports and dance lessons, I am unable to conclude they are "extraordinary." They are expenses which one would anticipate would be usual or standard for parents having the combined income available to these parties: *Greenwood v. Greenwood* (1999), 2 R.F.L. (5th) 190 (B.C.S.C.).
- [16] It appears that the fee for the child psychologist can be submitted to both the petitioner's insurer and the respondent's insurer. Accordingly, the order I make with respect to that extraordinary expense is that after the receipts have been submitted to both insurers, the balance outstanding shall be shared in proportion to their incomes. The respondent was prepared to share the St. Michael's tuition fee but was unwilling to contribute to the parish or non-participation fee. I conclude attendance at St. Michael's requires the payment of the parish or non-participation fee and, accordingly, the respondent must share in those expenses.
- [17] The expenses for Kumon Math, Progress Tutoring and the piano lessons are to be submitted quarterly to the respondent who will then pay his proportionate share.
- [18] On the material before me, I am unable to conclude there was an agreement by the parties that the respondent would share in the Kumon Math expenses. Accordingly, there will be no order for the reimbursement of those expenses. I conclude the respondent owes the sum of \$531.00 to the petitioner with respect to payments she has made to Dr. Nancy Michel, Child Psychologist. There will be an order that she be reimbursed those expenses. The petitioner is to co-operate with the respondent should he seek to recover those expenses from his insurer.
- [19] In summary, the motion by the respondent is dismissed. The petitioner's motion is allowed in part. The order of Grist J. is varied as follows:
1. There will be child support payments calculated on the respondent's income of \$198,000.00, namely \$1,386.20 per month commencing August 1, 2000.
 2. The respondent will pay his proportionate share of extraordinary expenses for the child psychologist, St. Michael's tuition, mandatory contribution and fees, Kumon Math, Progress Tutoring and piano lessons.
 3. The provisions relating to the education account are to be deleted.
 4. The respondent is to reimburse the petitioner the sum of \$531.00 relating to payments she has made to the child psychologist.

[20] There will be an order that the petitioner recover her costs. "D.H. Vickers, J." The Honourable Mr. Justice D.H. Vickers

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