

CANADA / JUDGMENT

Banford v. Banford

2006 BCSC 543

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 543 Banford v. Banford IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Banford v. Banford, 2006 BCSC 543 Date: 20060404 Docket: D31489 Registry: Kamloops Between: Barbara Agnes Elizabeth Banford a.k.a. Barbara Elizabeth Banford Plaintiff And Barry James Banford Defendant Before: The Honourable Mr. Justice Powers in Chambers Reasons for Judgment Counsel for the Plaintiff E. Harris Counsel for the Defendant M. Harrison Date and Place of Trial/Hearing: March 27, 2006 Kamloops, B.C.

- [1] Mr. Banford seeks an order that his obligations to pay spousal support cease. The Banfords were married for approximately twenty-three years, and have three children who are all now adults. An interim order for support had been made in the amount of \$1,300.00 per month commencing September 1, 2001.
- [2] The parties had separated December 31, 1999. They were divorced on June 18, 2002, and after a reference to the registrar in October of 2002, consented to an order January 13, 2003, which required Mr. Banford to pay spousal support in the amount of \$1,375.00 per month commencing October 1, 2002, payable in two-weekly instalments of \$687.50 on the 1st and 15th day of each month thereafter. The consent order was based largely on the findings and recommendations of Master Groves, as he then was, in his report filed October 31, 2002. Master Groves pointed out at that time that Ms. Allen (formerly Banford) was approximately 49 years of age, which would make her approximately 53 now. Mr. Banford was 50 and, therefore, he would be approximately 54 now. The children were enrolled in university or college at the time, and Mr. Banford made an informal contribution to their support of \$200.00 per month per child. It was clear that Mr. Banford was the primary source of income for the family during the marriage. He works for the Ministry of Forests as an operations manager. The family changed locations from time to time during the marriage as required by Mr. Banford's employment. Ms. Allen had some university education and pursued work during the marriage.
- [3] When the report and recommendations were made, Ms. Allen had hoped to return to school to complete her Bachelor of Arts degree, and then obtain a teaching certificate after a further one or two years of school.

- [4] Ms. Allen was attending school and in receipt of student loans and grants for a total of approximately \$14,146.00 in 2001 to 2003. Of this, \$8,536.00 was a grant. The master included the grant portion as income for the purposes of calculating spousal support. The master found, for the purposes of spousal support, her income should be viewed at approximately \$9,800.00. The master found her expenses to be approximately \$26,271.00.
- [5] Mr. Banford's income was estimated at approximately \$67,500.00. His expenses, including \$1,300.00 per month spousal support, were estimated at \$65,829.00 per annum.
- [6] Mr. Banford argues that Ms. Allen has completed her Bachelor's degree, but has not continued to pursue a teaching certificate. She has obtained permanent part-time employment and continues to take some upgrading relating to that employment. However, she has income now of just over \$26,000.00 per annum. Mr. Banford argues that this is a significant change of circumstance, and his obligation to pay spousal support should end.
- [7] Ms. Allen argues that she is entitled to ongoing support. The marriage was one of twenty-three years approximately, she assumed the primary responsibility for raising the children during the marriage, and Mr. Banford was the primary income earner. She argues that she continues to suffer the economic disadvantages of the disintegration of the marriage. She also argues that given the length of the marriage she is entitled to a roughly equivalent lifestyle to that of Mr. Banford.
- [8] Mr. Banford argues that Ms. Allen's present income allows her to meet her present expenses. He also argues that since the division of assets, her financial circumstances have improved in the sense that she has been able to increase her savings by approximately \$15,000.00. Ms. Allen points to the Spousal Support Advisory Guideline: A Draft Proposal (the "Advisory Guidelines"). She argues that the present amount of spousal support is at the lower end of the range for parties with a twenty-three year marriage, and the present incomes of Mr. Banford and herself. She also argues that she has been able to get by to-date by being extremely frugal, and that is reflected in her expenses in her property and financial statement.
- [9] Mr. Banford refers to a decision *Prokopchuk v. Egan*, 2005 BCSC 717. The *Prokopchuk* case is not of assistance in this matter. In the *Prokopchuk* case, the parties had been married for nine years and had consented to a settlement which included spousal support of \$800.00 per month with a review after three years. The decision was made approximately five years after the original order. Ms. *Prokopchuk* had not originally been working, but by the time of the review, had income of approximately \$28,000.00 per annum gross, and after the order received child support in the amount of \$1,273.00 per month. Mr. *Egan* had income of approximately \$60,000.00 per annum. The parties had agreed to a formula to divide the child tax benefits that were paid in relation to the parties' four children. One of the significant differences between the *Prokopchuk* case and this case is that it involved a marriage of nine years. The court was satisfied that Mr. *Prokopchuk* had overcome any disadvantages she might have suffered as a result of the marriage.

- [10] Mr. Banford has remarried and is supporting his new spouse. She is an American citizen and has not yet obtained permission to work in Canada. He continues to make informal contributions towards the support of his three children. Two of the children reside with Ms. Allen and her evidence is that, although they contribute what they can, the additional expenses exceed what they are able to contribute.
- [11] Mr. Banford estimates his annual expenses, including all tax deductions and spousal support of \$1,375.00, at a total amount of \$76,980.60 per annum. Ms. Allen's annual expenses are estimated at just under \$29,000.00 for herself and the two children residing with her. She is extremely frugal. However, that does not mean that she does not continue to be entitled to spousal support.
- [12] Ms. Allen relies on the decision *W. V. W.*, 2005 BCSC 1010. In that decision, the court considers the application of the Advisory Guidelines as well as the general law with regard to spousal support in British Columbia. The court cites the Supreme Court of Canada decision *Moge v. Moge*, [1992] 3 S.C.R. 813, with the proposition that in a long marriage the result will likely be a rough equivalency in standards of living when the court considers spousal support. (¶11).
- [13] The court in *W. v. W.* refers to the Advisory Guidelines as advisory only, but as useful tool and a cross-check for assessing spousal support. In *W. v. W.*, the husband's income was \$125,000.00 per year and the wife's just under \$57,000.00 per year. The parties' three children continued to reside with the wife. The parties were in their late 40s and both had professional careers. They had been married for twenty-two years and resided together for two additional years. The husband was the primary income earner during the marriage. The court fixed spousal support in the amount of \$1,500.00 per month, to review on a change of circumstance. DIVORCE ACT
- [14] This is an application for a variation of the original order pursuant to s. 17 of the Divorce Act, R.S., 1985, c. 3 (2nd supp.)(the "Act"). The Act provides at s. 17(4.1) and 17(7): Factors for spousal support order: (4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration. Objectives of variation order varying spousal support order:
- (7) A variation order varying a spousal support order should
- (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
- (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;

- (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.
- [15] There has been a change of circumstance in the sense that Ms. Allen's income has gone from the estimated \$9,800.00 per annum to approximately \$28,000.00 per annum. Mr. Banford's income has gone up slightly from about \$67,500.00 to approximately \$72,500.00. Neither party is living extravagantly, although Mr. Banford's expenses are greater than Ms. Allen's. Neither of them has acquired a great number of assets. They have their RRSPs that were divided at separation. Ms. Allen has managed to increase the amount of her RRSPs by some aggressive investing. Ms. Allen has also saved some monies by being extremely careful.
- [16] I have considered the Act, in particular s. 17, and have considered the Advisory Guidelines as a cross-check. However, I have also considered the amount of the original order and I am satisfied that the change of circumstance does warrant a variation in the order, but not nearly to the extent that Mr. Banford seeks. Spousal support will be varied to the sum of \$1,200.00 per month. "R.E. Powers, J." The Honourable Mr. Justice R.E. Powers

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