

CANADA / JUDGMENT

Bebb v. Bebb

2007 BCSC 1520

COURT

Supreme Court of British Columbia

DECIDED

12 October 2007

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2007 BCSC 1520err1 Bebb v. Bebb

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bebb v. Bebb,

2007 BCSC 1520

Date: 20071012

Docket: E022650

Registry: Vancouver

Between:

Sarah Jane Bebb

Plaintiff

And:

Richard Arthur Bebb

Defendant

Before: The Honourable Mr. Justice Groves

Reasons for Judgment

In Chambers

Counsel for the Plaintiff:

P. Daltrop

Self-Represented:

R.A. Bebb

Date and Place of Hearing:

June 29, 2007

Vancouver, B.C.

Introduction:

- [1] By way of motion dated the 7th of April 2007 the defendant Richard Arthur Bebb applies for the following relief:
1. Termination of monthly spousal support obligation payable by him to the plaintiff pursuant to the order of the Honourable Mr. Justice Oppal (as he then was), dated the 30th of June 2003, such termination effective the 31st of August 2005;
 2. Repayment of spousal support payments made from the first of September 2005 to date;
 3. Reduction in the quantum of child support of \$2500 per month ordered payable by the Honourable Mr. Justice Oppal to the sum of \$1000 per month effective the 1st of September 2005;
 4. Repayment child support payments in excess of \$1000 per month made from the first of September 2005; and
 5. Re-adjustment of Section 7 Expenses ordered payable by the defendant to the plaintiff by the order of the Honourable Mr. Justice Oppal.
- [2] As in any case where a variation of a previous Court order is sought, the order sought to be varied is the starting point of consideration. Justice Oppal provided written Reasons on the 30th of June 2003 following an eight-day trial in March and June 2003. Justice Oppal ordered that the defendant Richard Bebb pay to the plaintiff child support in the amount of \$2500 per month. He ordered that the defendant pay the plaintiff extraordinary expenses for the children in the amount of \$2259 per year. He ordered that the defendant pay spousal support to the plaintiff of \$5000 per month.
- [3] He further ordered an order of joint custody and joint guardianship of the children and that the children shall have shared equal time with both parents.
- [4] The Reasons of Justice Oppal are helpful in terms of this review. Justice Oppal found that the defendant to have income of \$225,000 per year in 2003. The plaintiff at the time had no income, having left the regular paid work force during the course of the marriage, by agreement, to be the primary caregiver for the children.

- [5] Justice Oppal in his Reasons, although he did not set a limit on spousal support, provided helpful comments for any subsequent review application. Justice Oppal ordered that spousal support be paid retroactive to the 1st of September 2002. Further, he opined that there was "no logical reason as to why the plaintiff, who is intelligent, well educated, and professionally trained, cannot become self-sufficient by the time Charlotte commences Grade 1", which was September of 2005.
- [6] Since the order of Justice Oppal, the plaintiff has been able to get back into the regular pay workforce, however, this re-entry into the workforce was not at the same speed as Justice Oppal anticipated. Her income, other than spousal support, in 2005, the suggested year of self-sufficiency was only \$10,074.63. By 2007, specifically, by February of 2007, she had reached a regular income level of \$89,000 per year.
- [7] I am satisfied that it is now reasonable for there to be an order that spousal support end. I am however not convinced that a retroactive termination of the order approximately to the extent sought by the defendant is warranted in these circumstances. In 2005 Ms. Bell was clearly still struggling financially. Through her efforts in 2006 and into 2007, she has been able to improve her situation, and established herself in her career.
- [8] It is in my view reasonable in all of the circumstances to terminate spousal support effective the 1st of May 2007. As a result, the last payment of spousal support will be the 1st of April 2007.
- [9] I will further order that the plaintiff has six months from the date of these Reasons to pay back to the defendant any overpayment that he has made as a result of this order.
- [10] One final comment, it would be hard to try to retroactively terminate spousal support once the payment of such has been declared as a deduction for tax purposes, as the defendant has done for both 2005 and 2006, and once the plaintiff has declared it as income. That is not a factor however in these Reasons.
- [11] In regards to child support, the circumstances have changed in regards to a child support order since the order of Justice Oppal. Notably, the plaintiff is now working. The parties shared the children on a roughly equal basis, and it is therefore logical to consider what payment should now be made by either party as a result of a true joint custody arrangement and the fact that both parties are working.
- [12] I am satisfied based on the financial disclosure that I have seen that the plaintiff's income is \$89,000 annually. I am not satisfied on the basis of the evidence before me that I can accurately determine what the defendant's income is.
- [13] As noted in the Affidavit No. 1 of the plaintiff sworn the 20th of June 2006, the defendant's medical income for 2004-2005 was \$356,801.87. The defendant claims in his most recent financial statement of August 7, 2007 to have an income of \$200,582 annually. The defendant is a highly trained medical specialist. The defendant claims to have annual expenses in excess of \$351,000, although \$60,000 of that is spousal support. In other words, he is

claiming expenses of approximately \$290,000. This does not seem possible for someone with income of \$200,000.

- [14] Also of considerable note is what the defendant has recently done in regards to his property. Although it is not disclosed in his financial statement, as is required under the disposal of property section, it is clear that the defendant has recently sold his home on West 16th Avenue in Vancouver and moved into a home at 1799 Cedar Crescent in Vancouver. The former residence on West 16th apparently sold in the \$1,800,000 range. The defendant received from the sale in excess of \$1,000,000.
- [15] A new home was purchased in the amount of approximately \$3,200,000. Interestingly, the new home is not in the name of the defendant Dr. Bebb but in fact in the name of his new partner, with whom he resides. It seems clear that virtually all of the equity from Dr. Bebb's previous residence, or at least the sum of \$914,000, was paid towards the purchase of the new residence. The new residence required mortgage financing of \$2,300,000. This suggests the entire downpayment came from the resources of Dr. Bebb. The defendant is a guarantor on the mortgage. His previous mortgage was approximately \$708,000. As noted, Dr. Bebb is not the owner of the new premises.
- [16] Dr. Bebb's explanation for this is that the funds he advanced are in fact a second registered mortgage on the home. On his financial disclosure, not only does he not receive payment on the second mortgage from the owner of the property but further, he apparently pays \$6,000 a month on the first mortgage on the property.
- [17] In summary, the defendant sold a property on which there was a \$708,000 mortgage and received in excess of \$1,000,000 from the sale. Approximately \$914,000 of the sale proceeds was directed to the purchase of a property in his partner's name which he says is registered as a second mortgage investment. He receives no payments on this second mortgage; is a guarantor on its \$2,300,000 indebtedness; and pays \$6,000 a month on that indebtedness.
- [18] Dr. Bebb has dramatically increased his financial obligation, disposed of all his equity in the home and receives no financial compensation or interest in a subsequent home as a consequence of that disposal. He also claims that his income had dropped dramatically. He further claims expenses 45% in excess of his income.
- [19] None of this makes financial or logical sense. The explanation offered for a reduction in income is not adequate for the court to draw the conclusion which Dr. Bebb wishes it to draw, that his income is being reduced. He is acting very much like a person who has substantial income who is taking on more indebtedness.
- [20] I accept the plaintiff's evidence that as of February 2007, her income is \$89,000 annually. A person who earns \$89,000 would pay child support for two children of \$1303.

- [21] The defendant's income is hard to gauge and I do not accept his evidence as to what his income is. I will however accept as submitted by counsel for the plaintiff that his income should be set at approximately \$300,000 per year, his medical income for the years 2002-2005, and an amount similar to what he says he spends a year. Based on that income of \$300,000, Dr. Bebb would have an obligation to pay child support for two children in the amount of \$3891. The difference between the two is \$2588.
- [22] I order the defendant to pay to the plaintiff as child support \$2588 per month effective the 1st of November, 2007.
- [23] As for Section 7 Expenses, the defendant is currently obligated to pay a small amount of money towards these expenses. Dr. Bebb claims that he in fact pays the vast majority of the children's Section 7 Expenses and I accept his evidence in that regard. However, of considerable note, Ms. Bell's extended family pays the private school tuition for the plaintiff and the defendant's two children and she is not seeking contribution towards that from Dr. Bebb. This is far in excess of what Dr. Bebb pays for other extraordinary expenses. Fairness and practicality suggests that the court no longer impose any obligation, as the parties themselves appear to have developed a routine of payment outside the existing order.
- [24] I ordered effective the 1st of November 2007, that there will be no Section 7 Expenses payable by either party to the other for these children.
- [25] The plaintiff will have her costs of this matter at Scale B.

"The Honourable Mr. Justice Groves"

March 17, 2008 - Revised Judgment

Corrigendum to the Reasons for Judgment issued advising that in my Reasons for Judgment handed down October 12, 2007, the following has been brought to my attention:

- (a) In ¶ 15, 16, 18, 19, 21, and 23, the name "Dr. Begg" should read "Dr. Bebb".
- (b) at ¶ 20, it reads:

I accept the plaintiff's evidence that as of February 2007, her income is \$89,000 annually. A person who earns \$89,000 would pay child support for two children of \$1113.

It should read:

I accept the plaintiff's evidence that as of February 2007, her income was \$89,000 annually. A person who earns \$89,000 would pay child support for two children of \$1303.

- (c) at ¶ 21, the third sentence reads:

Based on that income of \$300,000, Dr. Bebb would have an obligation to pay child support for two children in the amount of \$3202. The difference between the two is \$2089.

It should read:

Based on that income of \$300,000, Dr. Bebb would have an obligation to pay child support for two children in the amount of \$3891. The difference between the two is \$2588.

(d) at ¶ 22, it reads:

I order the defendant to pay to the plaintiff as child support \$2089 per month effective the 1st of November 2007.

It should read:

I order the defendant to pay to the plaintiff as child support \$2588 per month effective the 1st of November 2007.

(e) at ¶ 23, the third sentence reads:

However, of considerable note, Ms. Bell's extended family pays the private school tuition for the plaintiff and the defendant's two children and she is seeking contribution towards that from Dr. Bebb.

It should read:

However, of considerable note, Ms. Bell's extended family pays the private school tuition for the plaintiff and the defendant's two children and she is not seeking contribution towards that from Dr. Bebb.

Additionally, as a result of a further hearing on the issue of costs held on the 14th of March 2008, I have reconsidered the issue of costs. As a result:

(a) At ¶ 25, the sentence reads:

There has been mixed success in this application and I would direct that each party bear their own costs.

It should read:

The plaintiff will have her costs of this matter at Scale B.

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Prepared on 27 October 2026 · Esheria