
CANADA / JUDGMENT

Beruschi v. Muller

2021 BCSC 78

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Supreme Court of British Columbia

DECIDED

19 January 2021

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2021 BCSC 78 Beruschi v. Muller

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Beruschi v. Muller,

2021 BCSC 78

Date: 20210119

Docket: E082273

Registry: Vancouver

Between:

Anthony John Beruschi

Petitioner

And

Jennifer Muller

Respondent

Before: The Honourable W.A. Baker

(Via Teleconference)

Reasons for Judgment

Appearing on his own behalf:

A. Beruschi

Counsel for Respondent:

S. Booth

Place and Date Hearing:

Vancouver, B.C.

November 3, 2020

Place and Date of Judgment:

Vancouver, B.C.

January 19, 2021

- [1] On this application the petition respondent, Ms. Muller, seeks an order that the petitioner, Mr. Beruschi, pay his proportionate share of section 7 of the Federal Child Support Guidelines expenses ("Guidelines") incurred for the parties' child, Thea.
- [2] There was a trial in this matter in 2009. While orders after trial addressed shared parenting of Thea and Mr. Beruschi's child support obligations, no order was made regarding s. 7 expenses. Up until early 2020, Mr. Beruschi voluntarily paid expenses which could be considered s. 7 expenses.
- [3] In 2019 Ms. Muller brought an application to require payment of retroactive child support. In February 2020, Sharma, J. issued her reasons for judgment, ordering Mr. Beruschi to pay a set amount of retroactive child support, and to pay prospective child support of \$3,000 per month. Sharma, J. engaged in a thorough analysis of Mr. Beruschi's income over the relevant years, and determined that the appropriate guideline income for Mr. Beruschi in 2020 was \$440,000. Again, no order was made with respect to s. 7 expenses.
- [4] On October 13, 2020, Sharma, J. ordered that Thea would reside primarily with Ms. Muller, and further adjusted child support to \$3,621/month to reflect the fact that Thea was now residing 100% with Ms. Muller. All of the orders of Sharma, J. were made based on her assessment of Mr. Beruschi's 2020 guideline income being \$440,384, and Ms. Mullers's 2020 guideline income being \$77,000.
- [5] Mr. Beruschi raised a concern with proceeding with this application given that he says he has suffered a financial set back and his net income is now a negative number, and not the income attributed to him by Sharma, J. Mr. Beruschi hopes to bring an application seeking a change in the determination of guideline income, but that application is not before me and has not been filed.
- [6] Ms. Muller agreed that the orders sought before me could be made on an interim, rather than final, basis. I agreed that the application would proceed on that basis.
- [7] At the hearing, counsel for Ms. Muller narrowed and clarified the specific orders sought as follows:

- a) On an interim basis Mr. Beruschi shall pay to Ms. Muller his proportionate share, being 85.1%, of the following s. 7 expenses:
 - i. health related expenses that exceed insurance reimbursement by at least \$100 annually,
 - ii. costs of all agreed upon or court ordered counselling services provided to Thea,
 - iii. costs of horse back riding and dance, including competition fees, up to a combined annual maximum of \$17,000/year, and
 - iv. any other expenses agreed to in writing by the parties.
 - b) Ms. Muller will provide Mr. Beruschi with a copy of receipts or other reasonable proof of incurring an expense, and Mr. Beruschi will have 15 days to reimburse Ms. Muller for the same.
 - c) Subject to Mr. Beruschi providing proof to Ms. Muller that he paid approximately \$7,880 in counselling fees for Thea in 2020, Mr. Beruschi will make a retroactive payment to Ms. Muller of \$2,363 for s. 7 expenses she has incurred in 2020.
- [8] Mr. Beruschi is not opposed to the characterization of s. 7 expenses proposed by Ms. Muller, with the exception of horse back riding. Mr. Beruschi disputes the determinations of income made by Sharma, J. as these affect the proportionate shares of the expenses to be paid by the parties but, as I have noted, there is no application before me vary the determinations of guideline income. Therefore, for the purposes of this application for interim s. 7 orders, I rely on the determinations of guideline income made by Sharma, J.

A. Background

- [9] Since 2012 Thea has been involved in a competitive dance program. The cost of the dance program has been significant, close to \$15,900 annually. Mr. Beruschi has paid for Thea's dance fees throughout. In 2020, competitive dance was radically altered due to covid restrictions. As of April 2020, competitions no longer took place, and the lessons have been reduced to online classes. The costs of dance were dramatically reduced in 2020, down to approximately \$100/month.
- [10] In July 2019 Ms. Muller enrolled Thea in horseback riding, as Thea had expressed an interest in the sport. Ms. Muller did not consult with Mr. Beruschi before enrolling her, and Ms. Muller paid all of the costs herself. Thea continued with horseback riding in 2020, and that sport has not been restricted due to covid. She has continued training and participated in competitions. Ms. Muller suggests an annual budget for horse back riding of \$16,884. Mr. B paid \$472 towards Thea's horseback riding in September 2020 because Ms. Muller was in arrears with the riding school; however, he did not agree to fund any further expenses.

- [11] Mr. Beruschi is 63 years old and is a retired securities lawyer. He is now primarily a businessman and investor. His current partner is a medical doctor (radiologist) with whom he shares an eight year old daughter, Clare. There appears to be no dispute that Thea and Clare are very close to each other. Until December 2019, Thea spent approximately half her time with Mr. Beruschi and his family.
- [12] In addition to the costs of dance and other expenses paid for by Mr. Beruschi, Mr. Beruschi deposes that he has paid for Thea's counselling since January 2020, without contribution from Ms. Muller. Mr. Beruschi deposed in his affidavit that he has paid about \$7,750 in counselling costs to date for Thea. On the hearing Mr. Beruschi stated that he has paid \$7,880 in counselling fees.
- [13] Mr. Beruschi argues that in the past he paid for things like dance as a contribution to child support. Mr. Beruschi argues that before the orders of Sharma, J., his child support payments were considerably lower, and he considered his payment for extracurricular expenses to be a form of child support. Now that his child support payments are significantly increased, Mr. Beruschi argues that Ms. Muller should properly pay for the expenses out of her child support payments, and not as extraordinary expenses pursuant to s. 7.
- [14] The ability of Mr. Beruschi to pay for expenses such horseback riding and dance must be considered in light of the decision of Sharma, J. Sharma, J. found that Mr. Beruschi paid \$1,500/month in child support from September 2012 to February 2019. Starting March 2019 until November 2019, Mr. Beruschi paid \$4,000/month, with the exception of three months in the summer of 2019 when he paid \$5,000/month. Throughout 2019 Mr. Beruschi paid for expenses, such as dance. Therefore, while he argues that he paid far less in child support in the past, and payments for extracurricular activities were a form of additional child support, this argument does not hold water for 2019.
- [15] Mr. Beruschi expressed some concerns about whether competitive dance was the best thing for Thea. However, his main concern on this application relates to horseback riding. He is opposed to Thea participating in horseback riding because he says it is too dangerous for her. He argues that she is still a beginner rider, and should not be engaged in competitive jumping events.
- [16] Mr. Beruschi has done research into the safety of horseback riding and is of the view that it is very risky and dangerous. He is afraid of his daughter suffering a traumatic brain injury in a fall. Mr. Beruschi's partner also feels very strongly that it is too dangerous of a sport for the children, and has forbidden their daughter Clare from joining her sister in riding. Mr. Beruschi deposed that he has not consented to Thea riding horses in equestrian competitions, and he has made Ms. Muller aware of his views. Nevertheless, Ms. Muller continues to support Thea's participation in competitive equestrian jumping.

- [17] The decision of Ms. Muller to allow and encourage Thea to continue with horseback riding and competitive jumping has placed Mr. Beruschi in a difficult position. As he states:

By starting Thea riding horses when Jennifer knew I did not agree to the risks to Thea's health and safety Jennifer put me in a position where my desire to keep Thea healthy and minimize risks by not supporting equestrian training upsets Thea and gives her a reason to be angry with me, and to worry about my finding out.

- [18] In response, Ms. Muller states that Thea has talent and the ability for riding at a high level. She deposed that, in her first competition, Thea placed first out of 30 riders, and in her second competition she had one score higher than her trainer's. She states that Thea has talent and ability and should be permitted to pursue her equestrian sports.

B. Analysis

- [19] Thea's health related expenses that exceed insurance reimbursement by at least \$100 annually, and the cost of all agreed upon or court ordered counselling services provided to Thea, are clearly special and extraordinary expenses pursuant to subsection 7(1)(c) of the Guidelines. Neither party seriously opposed the sharing of these expenses. It is not clear from the evidence exactly how much is spent on such expenses in a year, but it does not appear to be more than \$10,000.
- [20] The costs of dance and equestrian activities must be considered pursuant to subsection 7(1)(f) of the Guidelines, namely "extraordinary expenses for extracurricular activities".
- [21] For the purposes of subsection 7(1)(f), s. 7(1.1) of the Guidelines defines extraordinary expenses. First, such expenses are those that the parent cannot reasonably cover, taking into account child support and other income. If a parent cannot reasonably cover the expenses, the court must then consider the amount of the expenses in relation to the requesting spouse's income and child support payments, the nature and number of the activities, any special needs or talents of the child, the overall cost of the programs and activities, and any other factors the court considers relevant.
- [22] In *Boucher v. Boucher*, 2018 BCSC 2191 at para. 46-53 the court reviewed the law which establishes the following propositions: section 7(1) of the Guidelines sets out an exhaustive list of expenses that may be characterized as special or extraordinary, common extra curricular expenses are not extraordinary expenses, and it can be unreasonable for a parent to incur significant expenses without the agreement of the other parent.
- [23] Ms. Muller deposes that her income is \$77,000, and this was confirmed in the judgment of Sharma, J. Pursuant to the orders of Sharma, J., Ms. Muller received \$37,242 in child support in 2020. Therefore, for the purposes of the s. 7 assessment, Ms. Muller's income is \$114,242. Ms. Muller seeks contribution to dance and equestrian expenses to a maximum of \$17,000/year. This is approximately 40% of the child support payments currently ordered in favour of Ms. Muller. I do not agree that these expenses can be reasonably expected to be covered

by Ms. Muller within her current income, including the child support payments she receives.

- [24] Mr. Beruschi has paid for Thea's dance since 2012. It is clearly an expense which both parents have agreed to in the past, and it is within the means of Mr. Beruschi to afford, as he has done so for eight years, even in 2019 when his child support payments were higher than they were in 2020. Indeed, Mr. Beruschi does not mount a serious objection to paying for Thea's dance costs.
- [25] Thea has been involved in competitive dance for many years, and both parents agree that is a valuable activity for Thea. It has been disrupted due to covid, but when covid has resolved there is no reason to think that it cannot continue. I find that dance is an appropriate extraordinary expense to be shared between the parents.
- [26] As I have already stated, the real issue is the request of Ms. Muller that Mr. Beruschi fund the new equestrian expenses and, in particular, the competition expenses. Ms. Muller argues that she is not asking for a contribution which is materially larger than what Mr. Beruschi has paid in the past for dance. She says that Thea is a talented rider, and she should be supported by her father in pursuing riding at a competitive level.
- [27] Ms. Muller points to Boucher, where the court found that equestrian expenses of a similar amount were properly extraordinary expenses and should be contributed to by the payor parent. In Boucher, however, the court also found that the child had been involved in riding for four years, and the payor parent bought the child a horse and had committed to paying the costs associated with the horse. After approximately one year, the payor parent stopped making any payments. The court found that the child had developed an attachment to the horse and it was in the child's best interests to keep the horse. The court also relied on the fact that it was the payor parent who had instigated the ongoing expense of the horse.
- [28] Mr. Beruschi relies on Catallo v. Catallo, 2015 BCSC 1276, where the court found equestrian costs to be unreasonable in light of the financial situation of the parties. In Catallo the father had a guideline income of close to \$100,000, and the mother had an income of approximately \$50,000. In Catallo, the court was provided with affidavit evidence from the child's coach attesting to her excellence and her potential to compete at the Olympic level. The court recognized that the child's best interests would be served if she were given an opportunity to pursue her passion; however, the court tempered that statement with a qualifier, namely that the cost must be reasonably affordable. On balance, the court disallowed the equestrian expenses as s. 7 expenses.
- [29] In both Younger v. Younger, 2017 BCSC 363 and Heatherington (Tapping) v. Tapping, 2007 BCSC 209, the court commented negatively on parents who seek retroactive payment for expenses which were not approved of in advance. In Younger the parent incurred substantial expenses including for instruments, music lessons, school exchange trips, ski equipment and orthodontics. In Tapping the parent incurred substantial costs in relation to private school. In both cases the payor parents were not required to pay the retroactive

expenses (either in whole or in part).

- [30] In the case before me, Ms. Muller did not seek approval from Mr. Beruschi before enrolling Thea in riding, and did not seek his approval before allowing her to participate in competitive jumping. Mr. Beruschi was aware that Thea was riding, but he did not approve the costs of riding, and did not agree it was a safe sport for her.
- [31] On the guideline income determined by Sharma, J., it is within the means of Mr. Beruschi to pay for the equestrian expenses when combined with dance expenses to a maximum of \$17,000. However, that is not the end of the analysis. I must also consider the other activities Thea is participating in, whether she has any special talent in riding, and other factors I consider relevant. I find that it is relevant that Mr. Beruschi opposes riding and, in particular, competitive jumping because he is of the view that it poses a serious risk to his daughter.
- [32] I agree with Mr. Beruschi that Thea is still a novice rider. While she appears to enjoy it and has done well, I have no evidence of coaches or trainers that she is exceptional. She is not competing at the pre-Olympic level like the child in Catallo. She has not devoted herself to the sport with the encouragement of both parents for many years. I am not satisfied that this is a case where the child has a special talent which would justify the characterization of riding as an extraordinary expense.
- [33] Further, riding is a sport which is not supported by both parents. While Ms. Muller does not feel that riding is particularly risky, I cannot find that Mr. Beruschi's concerns are unreasonable. I am not finding that riding is unsafe, but merely finding that Mr. Beruschi's concerns are not frivolous. Reasonable people can have different views on the safety of riding. Mr. Beruschi's views are based in his research, and on the advice of his partner who is a medical professional, and are valid views for a parent to have. Ms. Muller's views are also reasonable. However, the best interests of the child are not served when one parent allows the child to participate in a sport which will cause conflict with the other parent.
- [34] The reasonably held views of both parents must be taken into account in determining which activities children will participate in. In encouraging Thea to participate in riding against the wishes of Mr. Beruschi, Ms. Muller has allowed conflict to arise in the relationship between Thea and her father. This has also created a situation for Mr. Beruschi where one of his daughters is participating in a sport forbidden to her younger sister for safety reasons, and this also creates conflict in the parenting of Thea. In these circumstances, it is my view that it is not reasonable for Mr. Beruschi to be required to contribute to the ongoing costs of Thea's equestrian pursuits as an extraordinary expense.

- [35] With respect to retroactive payments for section 7 expenses incurred in 2020, Ms. Muller prepared a reconciliation of expenses paid by each parent. According to this reconciliation, Ms. Muller paid \$490 in physiotherapy costs and \$4,309 in equestrian costs, and Mr. Beruschi paid \$3,197.72 in dance costs and \$472 in equestrian costs. Mr. Beruschi says that he also paid \$7,880 in counselling fees, which Ms. Muller asks to have verified with receipts.
- [36] I do not agree that Mr. Beruschi should be responsible for payment of equestrian fees in 2020, with the exception of the \$472 which he voluntarily paid on Ms. Muller's behalf in the fall of 2020. While I am not prepared to order equestrian fees as extraordinary expenses, I find that the payment of \$472 was voluntary and not unlike a number of gratuitous payments Mr. Beruschi has made to Ms. Muller over the years to assist her. There will be no adjustment in favour of Mr. Beruschi in relation to the payment of \$472 he made in the fall of 2020.
- [37] In the result, I make the following orders:
- a) On an interim basis Mr. Beruschi shall pay 85.1%, and Ms. Muller shall pay 14.9%, of the following s. 7 expenses:
 - i. health related expenses that exceed insurance reimbursement by at least \$100 annually,
 - ii. costs of all agreed upon or court ordered counselling services provided to Thea,
 - iii. costs of dance, including competition fees, up to an annual maximum of \$16,000/year, and
 - iv. any other expenses agreed to in writing by the parties.
 - b) The party incurring the expense will provide the other party with a copy of receipts or other reasonable proof of incurring an expense, and the reimbursing party will have 15 days to make such reimbursement.
 - c) Mr. Beruschi will provide proof to Ms. Muller of counselling fees for Thea he paid in 2020.
 - d) The parties will proportionately share s. 7 expenses incurred in 2020 on the same basis as set out above.
- [38] If Mr. Beruschi does bring on an application to vary his guideline income, it is open to him to also apply to vary these interims orders and the hearing judge will determine if it is appropriate to do so.
- [39] If the parties wish to make submissions on costs, they may do so in writing within 30 days of this judgment. If I receive no submissions on costs, I order that each side bear their own costs.

"Baker J."

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Prepared on 29 October 2026 · Esheria