
CANADA / JUDGMENT

Borek v. Flaherty

2011 BCSC 540

COURT

Supreme Court of British Columbia

DECIDED

27 April 2011

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

2011 BCSC 540 Borek v. Flaherty

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Borek v. Flaherty,

2011 BCSC 540

Date: 20110427

Docket: 45055

Registry: Kamloops

Between:

Dean Kenneth Borek

Claimant

And

Lorrie Ann Flaherty

Respondent

Before: The Honourable Mr. Justice Blair

in Chambers

Reasons for Judgment

Counsel for the Claimant:

M.N. Fus

Counsel for the Respondent:

L.N. MacLean

M. Witzman

Place and Date of Hearing:

Kamloops, B.C.

April 19, 2011

Place and Date of Judgment:

Kamloops, B.C.

April 27, 2011

- [1] The claimant, Dean Kenneth Borek, and the respondent, Lorrie Ann Flaherty, were engaged in a lengthy marriage-like relationship of approximately 13 years from June 1997 to January 2011. The parties have two children, Dalaina Ellie Flaherty-Borek, ("Dalaina") born May 2, 1991 and about to turn 20 years of age, and Kendell Marie Flaherty-Borek, ("Kendell") born February 9, 2001 and now aged 10 years.
- [2] The parties are the biological parents of Kendell and Ms. Flaherty is the biological mother of Dalaina who was adopted by Mr. Borek in September 2009. The parties and their two children all reside in Dawson Creek. Mr. Borek, aged 53, is employed in the construction business through various corporate entities and resides in the home formerly occupied by the family as a whole. Ms. Flaherty works part-time as a painter and resides in a rental property which she owns. Dalaina resides with her mother, attends college and works part-time. Kendell divides her time between the home of her mother and father, spending alternating weeks with each parent.
- [3] By notice of application filed March 28, 2011, Ms. Flaherty sought relief with respect to matters which have developed between the parties as they seek resolution of the questions arising from the disintegration of their relationship. A trial date has been provisionally scheduled for July 4, 2011; although there is concern that such an early trial date might not provide the parties with sufficient time to properly prepare for a trial which involves some complex issues.
- [4] One of the complicating factors in this action comes from the inclusion of the respondents by counterclaim, Rosella Delores Borek, in her own right and as the personal representative of the estate of Kenneth Borek. Ms. Borek is the mother of the claimant Dean Borek and the widow of Kenneth Borek who died in a motor vehicle incident. Ms. Borek possesses in her own right and as the personal representative of the estate of Kenneth Borek information with respect to Dean Borek's financial situation. Ms. Borek was not served with notice of the hearing of the March 28, 2011 application and neither she nor her counsel M. Scott Kerwin attended the hearing, although in a letter brought to the court's attention, Mr. Kerwin noted that some of the relief sought by Ms. Flaherty in her application involved matters and

property in which his client, Ms. Borek, had an interest. In the result, only some of the relief set out in Ms. Flaherty's application was addressed, with the remainder set over to a later date, possibly April 28, 2011, following the continuation of a judicial case conference ("JCC") scheduled for that day.

[5] The following involves the relief sought by Ms. Flaherty in her application with the numbering adhering to that set out in her application.

1. Interim Custody and Guardianship of Kendell

[6] Ms. Flaherty seeks an order providing the parties with joint custody and joint guardianship, in what is commonly described as the Master Joyce Model, and that Kendell's primary residence be with her.

[7] I conclude that it is appropriate in the circumstances for Mr. Borek and Ms. Flaherty to have interim joint custody and interim joint guardianship in the Master Joyce Model as this arrangement reflects the relationship the parents have with respect to Kendell. However, I am not prepared to order that Kendell's primary residence be with Ms. Flaherty, preferring to leave Kendell's living arrangements as the parties earlier agreed; that is alternating weeks with each parent.

[8] I appreciate that Ms. Flaherty has in the course of this application expressed some concerns about Mr. Borek's parenting, but conclude that given the early trial date that it would be best to have the status quo continue and that the trial judge determine the arrangements after having heard from the parents. In refusing to grant primary residence to either parent, I appreciate that the Master Joyce Model of joint guardianship requires modification in paragraphs (c) to (g) inclusive.

2. Interim Child Support

[9] Mr. Borek by agreement pays Ms. Flaherty monthly interim child support for Kendell in the amount of \$1,200 and, in addition, pays Dalaina for counselling fees which she incurs and a contribution towards her monthly gasoline costs. Ms. Flaherty seeks an order that Mr. Borek pay her interim child support for the two children pursuant to his Federal Child Support Guidelines (the "Guidelines") income. There is considerable difficulty in ascertaining Mr. Borek's Guideline income given that at this early stage of the case, disclosure remains incomplete and Mr. Borek does not have all of the information sought by Ms. Flaherty. The complexity of Mr. Borek's income and his present financial situation involving various income sources, including corporate entities in which he is involved and a family trust is reflected in Ms. Flaherty's request, noted later in these reasons, for the production of a Guideline Income Report by a chartered accountant.

- [10] There is a lack of information available about Mr. Borek's living expenses, some of which appear to be paid by the companies with which he is in some way involved. Another unknown factor lies in the existence of a bank account in the name of Kendell Flaherty-Borek which Mr. Borek uses, and through which some hundreds of thousands of dollars has passed in recent years. Mr. Borek's financial situation is clouded by audits and reassessments conducted by the Canada Revenue Agency in recent years.
- [11] Although Ms. Flaherty's counsel submits that Mr. Borek has purposely created the cloud over his financial affairs, I am not prepared to accept such an assertion in the absence of documentation from which Mr. Borek's finances might be fairly and properly analyzed and from which his appropriate Guideline income might be determined.
- [12] In the interim, and it must be remembered that this is an application for interim child support with a trial provisionally set to commence on July 4, 2011, I must reach a conclusion as to Mr. Borek's Guideline income in order to determine the proper quantum of interim child support for the two children, Dalaina and Kendell. I consider both to be children of the marriage and dependent on their parents, although Dalaina's financial situation is more likely to change in the near future with other sources of financial assistance, including income from part-time employment, perhaps bursaries and scholarships, and funds from a registered education savings plan, the full details of which are not known to me.
- [13] In reaching a conclusion on Mr. Borek's Guideline income, I caution that this conclusion is based on a paucity of information and is subject to review and revision retroactively if needed when more comprehensive information as to Mr. Borek's income becomes available.
- [14] Ms. Flaherty's counsel submits that Mr. Borek's Guideline income should be fixed at \$500,000 a year. I am not prepared to make such a finding. Mr. Borek's income in the years 2007 to 2009 averages \$391,000 annually and that, I conclude, is a more appropriate figure than the \$500,000 proposed by counsel. I fix Mr. Borek's Guideline income at \$391,000 and pursuant to the Guidelines he will pay interim child support of \$5,001 a month commencing May 1, 2011 for Dalaina and Kendell. I concur with the submission that Mr. Borek no longer need pay for Dalaina's counselling fees and gasoline which will be the responsibility of Ms. Flaherty.
- [15] I have not made the interim child support payable retroactively, concluding that this determination is best left to an occasion when Mr. Borek's income can be ascertained with more certainty than that which I presently have available.

3. Interim Spousal Support

- [16] After taking into account the interim child support and Ms. Flaherty's monthly income of approximately \$391,000, the Spousal Support Advisory Guidelines provides a range in the interim spousal support of a high of \$10,175, a middle amount of \$9,311 and a low of \$8,445. Given my concerns about the determination of Mr. Borek's income, I have concluded that interim spousal support should be fixed at \$8,445 payable monthly commencing on May 1, 2011.
- [17] I decline to order spousal support payable retroactively, again concluding that this determination is best left to when Mr. Borek's income can be ascertained with greater certainty than that which I have available.
4. Transfer of this Action to Dawson Creek Registry
- [18] Ms. Flaherty's application to have the file in this action transferred to Dawson Creek is a subject which requires the involvement of the respondents by counterclaim and was adjourned to a date to be set, perhaps following the JCC scheduled for April 28, 2011.
5. Production of Documents
- [19] Ms. Flaherty applied for the production of documents as described in sub-paragraphs (a) to (z) and (aa) to (ee) inclusive. Mr. Borek advised that the documents in sub-paragraph (c) were with his accountant or the Canada Revenue Agency and he would attempt to obtain copies as requested. His counsel also advised that the documents sought in sub-paragraphs (l), (n), and (t) were either in their possession and would be forwarded to Ms. Flaherty if they had not already been forwarded. Many of the other documents were in Ms. Borek's possession and that required the involvement of Mr. Kerwin.
- [20] I concluded that it was premature to make any disclosure order with respect to the other material referred to in the remaining sub-paragraphs without hearing from Mr. Kerwin on behalf of the respondents by counterclaim.
6. Advancement to Pay Legal Fees
- [21] Ms. Flaherty's applies for an order pursuant to Rule 12-1(3) of the Supreme Court Family Rules that Mr. Borek pay an advance of \$100,000 to her for payment of legal fees. Counsel agreed that the application would be heard at a date to be set.
7. & 8. Expert Appointed to Determine Mr. Borek's Guideline Income for Child and Spousal and Support
- [22] Counsel agreed that Ms. Flaherty's applications for the appointment of an expert to conduct a Guideline Income Report and that Mr. Borek pay the cost of the report would be discussed at the JCC on April 28, 2011.
9. & 10. Access to Property

[23] Counsel agreed that Ms. Flaherty's applications to have access to real properties held by Mr. Borek or his family for the purpose of caring for the parties' horses and to enable her to retrieve her personal property required the presence of Mr. Kerwin and the topic will be heard at a date to be set.

11. Injunctive Relief

[24] Counsel agreed to set over to a date to be set to hear Ms. Flaherty's request for injunctive relief to freeze with Mr. Borek's assets as it required Mr. Kerwin's involvement.

12. & 13. Costs

[25] Ms. Flaherty's application for costs and special costs was adjourned to be heard at a date to be set.

"R.M. Blair J."

BLAIR J.

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/11/05/2011BCSC0540.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/borek-v-flaherty-2011>

Prepared on 26 October 2026 · Esheria