
CANADA / JUDGMENT

Bullen v. Bullen

2012 BCSC 1724

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Supreme Court of British Columbia

DECIDED

22 November 2012

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2012 BCSC 1724 Bullen v. Bullen

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bullen v. Bullen,

2012 BCSC 1724

Date: 20121122

Docket: 08 0796

Registry: Victoria

Between:

Jacqueline Bullen

Claimant

And

Corey Bullen

Respondent

Before: The Honourable Madam Justice Humphries

Reasons for Judgment

The applicant, Jacqueline Bullen:

On her own behalf

The respondent, Corey Bullen:

On his own behalf

Place and Date of Hearing:

Victoria, B.C.

November 2, 2012

Place and Date of Judgment:

Victoria, B.C.

November 22, 2012

- [1] These parties appeared before me on August 29, 2012 with cross applications on expenses, access and child support. I dealt with all matters orally, with the exception of Mr. Bullen's application to reduce child support and cancel arrears, and Ms. Bullen (now Graham)'s application to maintain child support at the present level. I adjourned those applications because Mr. Bullen said he had medical information to support his employment decisions. I gave directions for the filing of additional material. The hearing resumed on November 2, 2012.
- [2] At the resumption of the hearing, Mr. Bullen relied on a new affidavit, but also began a long explanation of the circumstances of his life since the breakup of the marriage. Since most of this information/evidence was not in the affidavit, I had Mr. Bullen affirm to tell the truth as he gave his submissions, in order to avoid a further adjournment in case any of the information was relevant. Ms. Graham also did so, although in her case, that step was not necessary. In the end, the additional information provided by Mr. Bullen, although giving some additional factual background and some insight into his view of the world, is not directly relevant to the discrete issues before the court, and the applications can be dealt with on the basis of the affidavits. I have, however, referred to the oral evidence for some background that would have been, I presume, before Madam Justice Dorgan on the original trial.
- [3] As the marriage broke up in late 2007/early 2008, Mr. Bullen was employed with the provincial government doing computer work. He was not trained for this work, but had obtained the job through contracts originally arranged by Ms. Graham's sister. The job eventually became a permanent position.
- [4] In August 2009, Madam Justice Dorgan found his guideline income to be \$50,969 and set child support at \$774/month.
- [5] Mr. Bullen's income tax return for 2010 showed a salary of \$51,411.
- [6] By 2010, Ms. Graham's new partner was working in the same office as Mr. Bullen. Mr. Bullen felt he was having difficulty exercising access to his children and, together with the working situation, became stressed and depressed, according to his affidavit.

- [7] The medical evidence produced by Mr. Bullen at the resumption of the hearing consisted of a letter from a doctor dated February 23, 2010 saying he should take a month's medical leave. No diagnosis is offered. The second letter is dated a year later, February 22, 2011, and also contains no diagnosis or information, stating only:

This is also to confirm that as a result of his current medical issues, it is actually felt that it would be advisable for him not to continue working in Victoria any further; and for this reason, I am suggesting that he go on medical EI.

- [8] Mr. Bullen left his job at the provincial government at the end of February 2011 and moved to Nanaimo to be near his girlfriend. He looked for a job while on employment insurance, which paid \$936 every two weeks. He unilaterally reduced his child support payments to \$400. He was unable to find a job that he deemed suitable and began a training program for social work. He received \$661 by-weekly as a training allowance while in school and continued the support payments of \$400.
- [9] There is some dispute between the parties about the extent of the time Mr. Bullen spent looking after his girlfriend's children and helping her with her work.
- [10] Mr. Bullen's income tax return for 2011, which includes three months' income from his provincial government job, shows income of \$38,395.
- [11] Mr. Bullen completed his schooling in September of 2012 and has begun work in the field of social work. He is now working as a Youth Support Worker on a part time basis for \$18/hour and has various other part time opportunities.
- [12] Mr. Bullen deposes that as a full time social worker he will make about \$32,000, but he hopes to increase his income by starting his own business. Mr. Bullen is convinced that he can make a decent living as a social worker, if given time to build up a business. He says social work is his passion and his increased self esteem and confidence can only benefit the children.
- [13] Mr. Bullen says he is willing to pay \$500 per month child support while he works on his career. He says he has high access costs associated with travelling to Victoria and with providing for the children while he has them. He says a review in two years would be reasonable.
- [14] Arrears have accumulated since March of 2011 and are now around \$6,000. FMEP has become involved in the collection procedure.
- [15] The court's concern with Mr. Bullen's actions was whether he had a valid reason to leave his job with the provincial government to go back to school and retrain for a career that would pay much less. That is, is he intentionally underemployed?

- [16] After considering the scant evidence in the affidavits, it appears that it was indeed difficult for Mr. Bullen to remain in the job with the particular job he had with the provincial government and that he has legitimately embarked on a new career which he hopes to develop. On the other hand, Mr. Bullen appeared to give no consideration to the difficulties he might create for his children by halving his income.
- [17] I have not gone further into this analysis as Ms. Graham, while questioning all the assumptions on which Mr. Bullen bases his future intentions, is willing to accept that he has changed his life and his career and that child support should be set according to his income tax returns.
- [18] However, she opposes his application to have child support decreased retroactively to the beginning of 2011 from \$780 to \$400 (that is, the amount Mr. Bullen continued to pay while on EI and going to school), thus resulting in the cancellation of arrears.
- [19] Ms. Graham says she and her new husband have two young children in addition to the two children she has with Mr. Bullen (aged 11 and 14), and struggle to make ends meet. They pay all the routine expenses for sports and activities and do not ask for contributions from Mr. Bullen. Her husband works extra jobs to help the family out, as she currently receives only EI because she is still on maternity leave.
- [20] She says Mr. Bullen was using his time providing day care for his girlfriend's children, and helping her with her painting jobs. He was taking trips to Mexico and Las Vegas and allowing himself sports weekends in Seattle. She feels Mr. Bullen was looking for a reason to move to Nanaimo and gave no consideration to his financial duties to his children. She asks why he did not try to get a transfer within the government, ask for assistance from his union, or go on a government leave program which would have at least continued his benefits.
- [21] Mr. Bullen says he could not face a miserable future working in a job he had no interest in and was not trained for, simply for the purposes of earning money for child support. He is passionate about social work and knows he can make this career work. He says he did only one small sanding job for his girlfriend who paid for a trip to Mexico. He had saved to take the children to Disneyland but was not provided with passports so took a short trip to Seattle instead. He says he has been completely forthright with his financial disclosure, does not avoid his responsibilities to his children, but simply has no more money.
- [22] As both parties were unrepresented, neither provided any assistance on the law that applies to cancellation of arrears.
- [23] Child support was set by Madam Justice Dorgan under the Divorce Act on August 31, 2009 at \$774 per month. Payments were made until March of 2011. As of April 2011 Mr. Bullen began to pay \$400. His application to adjust child support retroactively to that date was filed July 20, 2012. Ms. Bullen's counter application to retain the amount of child support set out in the order of Dorgan J. followed on July 19, 2012.

- [24] The Divorce Act requires a material and long lasting change in circumstances to justify cancelling arrears. Section 96(2) of the Family Relations Act says the court may cancel child support arrears only if it is satisfied that it would be grossly unfair not to do so. That principle has also been considered under the Divorce Act. (see: S.A.R. v. L.G.R., 2011 BCSC 712 @ para. 45). In Earle v. Earle, [1999] B.C.J. No. 383 (S.C.) Martinson J. set out various principles to be applied to an application to cancel arrears. Relevant to this application are:
1. the onus is on the application seeking to reduce or cancel arrears to show a change in circumstances;
 2. arrears will only be cancelled if the applicant is unable to pay now and unable to pay in the future;
 3. The applicant must provide full financial disclosure under oath that the change in financial circumstances is significant and long lasting, the change was not the result of choice, and efforts were made to earn money, but were unsuccessful.
- [25] Ms. Graham appeared to me to be a sincere and hard working person who is trying her best in difficult circumstances. She does not seem to be mean spirited, nor does she appear to be distorting reality, as Mr. Bullen would have it.
- [26] However, I am satisfied that Mr. Bullen has shown a material and long lasting change in circumstances. On the information before me, he had valid reasons for leaving his job in Victoria to return to the Nanaimo/Ladysmith area, where he had grown up and where the parties had lived for much of their marriage. Circumstances not of his choosing led to the decision to change careers and cities. Although it appears that he welcomed the move, he did not do so in order to avoid his obligations to his children. He has now embarked on a new career which, at present, does not pay the amount he earned when child support was set under the old order.
- [27] On the other hand, I am not satisfied that he will never be able to pay anything towards the arrears. To require him to repay \$6,000 on his present salary, however, is unrealistic and would be grossly unfair.
- [28] On an income of \$38,395 for 2011, Mr. Bullen should have been paying child support of \$583 per month, rather than \$400. The arrears for 2011 would therefore be \$1,647 (nine months times \$183), even on that level of income, although I realize Mr. Bullen takes the position that he made a higher level of salary for only three months of 2011 until he quit his job.
- [29] There has been no income tax return for 2012. Mr. Bullen says his income while in school would be about \$17,000, and since he graduated, he has been making an amount that would total about \$32,000 if he were to be working full time. Mr. Bullen submitted that the amount of support at that level would be \$495, although the amount in the tables is \$501. In any event, he proposes that he pay \$500 per month, that is about \$100 less than he has paid for the past eight months of 2012.

- [30] Taking into account the incomes for 2011 and 2012, and Mr. Bullen's present financial circumstances, as well as the potential for him to pay an amount towards the arrears in the future, I will reduce the arrears to \$2,400 and suspend the payment of them for one year at which time the issue may be revisited, that is Mr. Bullen can apply to extend the suspension, or the court may make any other order it considers appropriate. If there is no further order of the court at that time, arrears will be paid at the rate of \$100/month.
- [31] I would order small ongoing payments on the arrears now if I thought there was any chance Mr. Bullen could pay them. However, he contributes to his children's expenses on the alternative weekends he sees them and absorbs the access costs associated with seeing them in Victoria.
- [32] In the meantime, child support will be set at \$501/month, commencing September 1, 2012. I have set that commencement date because this application should have been completed at the end of August, had Mr. Bullen provided complete information.
- [33] The financial disclosure requirements and the adjustment of the amount of child support as set out in paras. 6 and 7 of the order of Dorgan J. continue to govern.
- [34] I told the parties I would provide assistance in drafting the order to facilitate its entry. I have added the relevant paragraphs and amendments to the order as drafted by Ms. Graham, which incorporates the orders made orally on August 29, 2012:

ON THE APPLICATIONS of the Claimant, Jacqueline Graham (formerly Bullen), and the Respondent, Corey Bullen, coming on for hearing at Victoria, B.C. on August 29, 2012, and November 2, 2012, and on hearing the Claimant, Jacqueline Graham, and the Respondent, Corey Bullen:

ON THE COURT being advised that the name and birth dates of each child of the marriage is as follows:

Name

Date of Birth

Madison Yvonne Bullen ("Madison")

09-Jul-1998

Carson William Bullen ("Carson")

19-Jun-2001

(the "children")

THIS COURT ORDERS that:

1. The Respondent, Corey Bullen, pay to the Claimant, Jacqueline Graham, the sum of \$343.46 for disbursements (previously ordered by Madam Justice Dorgan) on or before 28-Sep-2012.

2. The Respondent, Corey Bullen, pay to the Claimant, Jacqueline Graham, the sum of \$927.50 for his share of daycare costs as previously ordered, on or before 28-Sep-2012.
3. Arrears of child support payable by the Respondent to the Claimant for the year 2010 are set at \$276.
4. Arrears of child support payable by the Respondent to the Claimant for the year 2011 are set at \$120.
5. The Respondent, Corey Bullen, file and serve the Claimant, Jacqueline Graham, his material in support of his application for a material change in circumstances with respect to child support/income, on or before 19-Sep-2012.
6. The Claimant, Jacqueline Graham, file and serve the Respondent, Corey Bullen, with her response to the material referred to in paragraph 7, on or before 28-Sep-2012.
7. Madam Justice Humphries is seized of the issue of child support for the continuation of the hearing on November 2, 2012 only.
10. By consent, the Respondent will continue to exercise access to the children as ordered by Madam Justice Dorgan on 31-Aug-2009, with the exception that the Thursday access is discontinued.
11. On his access weekends, the Respondent will return the children to the Claimant's home at 7:00 p.m. on Sunday.
12. The claimant's application to reduce alternate weekend access visits to every third weekend is dismissed. Madison's attendance at Sunday basketball practices during access visits will be accommodated by the Respondent after discussion with Madison.
13. The Respondent, Corey Bullen, will pay to the Claimant, Jacqueline Graham, disbursements in the amount of \$120 for the Court appearance of August 29, 2012, on or before 28-Sep-2012.
14. Arrears of child support owing from the Respondent to the Claimant are reduced to the amount of \$2,400, and collection of those arrears is suspended for one year from the date of this order, following which the Respondent may apply to extend the suspension or the court may make any other order it considers appropriate. If no further application is made, arrears will be paid at the amount of \$100 per month.
15. Based upon a Guideline income of \$32,000 per annum, child support is set at \$501 per month, to commence September 1, 2012.

The Claimant is to draft the order resulting from this application and provide it to the Respondent for signature. The respondent will have one week to sign the draft order, failing which the order will be filed with the Court and Madam Justice Humphries will sign it on his behalf.

[35] It is my understanding that the amounts set out in paras. 1 to 4 and 13 have already been paid.

[36] I am not seized of further applications because I am not resident in Victoria.

"M.A. Humphries J."

The Honourable Madam Justice M.A. Humphries

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Prepared on 29 October 2026 · Esheria