

CANADA / JUDGMENT

C.E.O.S. v. J.K.S.

2023 BCSC 626

COURT

Supreme Court of British Columbia

DECIDED

28 March 2023

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2023 BCSC 626 C.E.O.S. v. J.K.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.E.O.S. v. J.K.S.,

2023 BCSC 626

Date: 20230328

Docket: E66024

Registry: New Westminster

Between:

C.E.O.S.

Claimant

And

J.K.S.

Respondent

Before: Master Nielsen

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

K.J. Groves

Counsel for the Respondent:

M.J. O'Nions

Place and Date of Hearing:

New Westminster, B.C.

March 8 and 28, 2023

Place and Date of Judgment:

New Westminster, B.C.

March 28, 2023

- [1] THE COURT: This is an application by the claimant, Mr. S., seeking parenting orders, an order that a s. 211 report be commissioned, and for interim spousal support.
- [2] The application for parenting orders is adjourned generally as the claimant is currently the subject of a no-contact order due to an allegation of family violence. In the circumstances I do not want to restrict the options which the judge hearing the criminal proceeding may or may not impose.
- [3] By way of background, the claimant is 46 and the respondent is 48. They were married in June of 2000, and separated in October of 2022. Their relationship spans 22 years. The parties have two biological children, a daughter who is twelve, and an eight-year-old son. The children currently live in the family home with the respondent.
- [4] At the time of separation the claimant was unemployed. However, he has since found full-time employment making a 100,000 a year, with the potential for bonuses. The respondent is a successful senior director with a tech firm and has line 150 income for 2019 in the amount of \$290,464; for 2020, line 150 income in the amount of \$497,709; and line 150 income for 2021 in the amount of \$523,095. The three-year average of those amounts is \$437,000.89.
- [5] Both parties allege family violence within the relationship and there is evidence to support, in part, a portion of each party's allegations. There are also allegations of controlling behaviour by both parties, and again there is evidence to support some of the allegations. Both parties have in the past phoned for police assistance. The claimant alleges he is the victim of psychological abuse and manipulation.
- [6] There are letters, messages, and emails from the parties' 12-year-old daughter which are troubling when viewed within the context of the marital breakup. She is clearly suffering emotionally from her parents' situation, and I have not canvassed the evidence and allegations in detail as the issue of parenting has been adjourned. However, it is relevant in the context of whether to order a s. 211 report.
- [7] In *D.W.T.S. v. L.E.M.*, 2003 BCSC 1855, the court states:
- [16] With respect to the purpose of a s. 15 report --

Now a 211 report.

-- Mr. Justice Hood had this to say at para. 11:

"The purpose of a s. 15 report is to assist the Court in its task, and it is for the Court to decide whether such a report will be of assistance, based on the subject matter, the evidence and the assertions of the parties before the Court. And when the family matter concerns the evidence or views of children, or their emotional state, matters of much importance to the Court, the threshold requirement for the obtaining of an assessment and report of a neutral s. 15 expert, to assist the Court, should be minimal."

- [20] In my experience, s. 15 reports are almost always helpful to the court when a judge attempts to consider the best interests of a child or children. This is particularly true in chambers applications where the views of a neutral party can assist in sorting out the coloured and often inflammatory statements of the parties and their allies.
- [21] In addition they can, in fact, be very helpful tools in assisting the parents in coming to a resolution of their differences without the necessity of further litigation. It is the court's common experience that the longer and more protracted the litigation, the more embittered and entrenched the positions of the parents become. All of which is, of course, hardly in the best interests of the children.
- [8] In my view, s. 211 reports are extremely useful in investigating a matter and in the provision of helpful advice concerning the best interests of the children. The respondent opposes the commission of a s. 211 report at this time. In a prior order dated January 13, 2023, Master Keighley ordered that the children and parents attend counselling with Ms. Sonja Braig. Although those sessions have not occurred yet, they are expected to take place in late March or April. The respondent submits it is best to await Ms. Braig's recommendations for the family going forward before a s. 211 report is commissioned, and indeed she could provide the s. 211 report if required.
- [9] The claimant is of the view that the common denominator to all the conflict between the respondent and claimant is the respondent, and although not said with the same specificity, the respondent in my view takes the same position with respect to the claimant.
- [10] The evidence indicates the parties' daughter is having difficulties including heightened anxiety. She wrote a letter to the claimant dated January 15, 2023, which includes a discussion surrounding a condo owned by the respondent and an alleged written agreement between the parties to hold the property in trust for the children. I find this concerning as it indicates a level of co-opting the children into the parents' dispute.
- [11] In my view, a s. 211 report is warranted now and I so order. The cost will be divided evenly in the interim with the final division of the cost to be determined at trial. I agree with the submissions of counsel for the claimant that it is best to commission someone other than Ms. Braig as it would almost certainly lead to an allegation of bias given her current role as counsellor. The order for the s. 211 report will go in the form sought by the claimant at

paragraph 2(b) of the application, and of those potential named experts, it will be the first to advise they are able to accept the retainer.

- [12] Concerning the issue of spousal support, the claimant currently is earning 100,000 per year, plus the potential for bonuses. His line 150 income for 2019 was \$91,844; \$69,580 for 2020; and \$71,706 for 2021. He was renting a room in a hotel as indicated in one of the affidavits. I am not sure whether he still is.
- [13] Immediately prior to the parties' separation the claimant was unemployed. The claimant alleges he was the primary caregiver immediately prior to separation and has always been active and involved in the children's care. The respondent takes issue with this assertion.
- [14] The respondent is highly successful, earning \$523,095 in 2021. Her average yearly earnings for the past three years is \$437,089. The respondent is currently the primary caregiver of the parties' two children. She is maintaining the mortgage on the family's home. In addition, she maintains the mortgage of an investment property, a condo, which is rented. The rental income is retained by the respondent. The respondent is also looking after the parties' two dogs and providing for all the extracurricular activities of the children.
- [15] The essence of the respondent's submission is that she bears the full brunt of the costs of the parties' separation. The respondent also submits that the claimant has not been economically disadvantaged by the breakup of the relationship, that she has always been the primary caregiver, and the claimant is fully capable of becoming self-sufficient. The respondent further submits that the claimant has not met the threshold of entitlement, and therefore entitlement, if any, should await trial. The trial is scheduled for 10 days, commencing June 24, 2024, some 14 months away.
- [16] The law on interim spousal support was summarized by Master Keighley in *Robles v. Kuhn*, 2009 BCSC 1163, wherein he states at para. 12:
- [12] On interim support applications, the application of these provisions must be qualified by certain established considerations:
1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
 2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
 3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);

4. The courts should not unduly emphasise any one of the statutory considerations above others;
 5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
 6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
 7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
 8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B. supra*.
- [17] Currently and recently the claimant earns 100,000 per year, plus potential bonuses, and the respondent has three-year average earnings of \$437,089. The parties were a couple for 22 years before separation. The respondent is occupying the family home together with the parties' two children, and renting out an investment property. The respondent has possession of the family's two vehicles, a Tesla Model Y and BMW 540i, both of which are apparently hers. The claimant, on the other hand, is only recently employed, and at last count, without a car and renting a room in a hotel.
- [18] The claimant is clearly not living to the same standard enjoyed prior to the parties' separation. In my view, the claimant has met the threshold test for interim spousal support and he is at an economic disadvantage as a result of the breakdown of the relationship. The SSAG Guidelines indicate ranges of spousal support. The claimant will have the low-end figure, which puts the Guideline income of the respondent at the three-year average of \$437,089 and the claimants at \$100,000.
- [19] MR K. GROVES: Just for my own edification, Your Honour, I note for the DivorceMate calculation, that says \$6,265 in spousal support, and then there is the child support amount, as well. I just want to be clear. Is it your order that it be -- I would assume it would be net of the child support program.
- [20] THE COURT: It would be net of the child support.
- [21] MR K. GROVES: Okay.
- [22] MR K. GROVES: So, in other words, what we are doing is 6,265 less 1,522, so, perhaps that number --
- [23] THE COURT: So that would be an amount of \$4,743 a month.

[24] MR M. O'NIONS: And do we consider the claimant's bonuses, because most of the \$437,000 would be the claimant --

[25] THE COURT: Well, I am going to make -- on that point --

[26] MR M. O'NIONS: -- the respondent's bonus.

[27] THE COURT: -- Mr. O'Nions, the order is interim and without prejudice. If the claimant earns a massive bonus, you can come back and revisit the matter.

[28] MR M. O'NIONS: Okay.

[SUBMISSIONS ON COSTS 3:35:49 TO 3:38:00 P.M.]

[29] THE COURT: The claimant will have his costs of the application in the cause.

"Master Nielsen"

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