
CANADA / JUDGMENT

C.J.H. v. Q.T.

2021 BCSC 976

COURT

Supreme Court of British Columbia

DECIDED

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2021 BCSC 976 C.J.H. v. Q.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.J.H. v. Q.T.,

2021 BCSC 976

Date: 20210429

Docket: E151674

Registry: Vancouver

Between:

C.J.H.

Claimant

And

Q.T.

Respondent

Before: The Honourable Mr. Justice Macintosh

(via videoconference)

Oral Reasons for Judgment

Counsel for the Claimant:

C.E. Drake

Counsel for the Respondent:

L.N. MacLean, Q.C.

F. MacLean

Place and Dates of Hearing:

Vancouver, B.C.

April 21-23, 2021

Place and Date of Judgment:

Vancouver, B.C.

April 29, 2021

- [1] THE COURT: These reasons address child support and s. 7 expense applications brought by the Respondent, Q.T.
- [2] Ms. T. seeks retroactive child support for the parties' biological child, C.E.Q.H., who is a girl aged 13, and for Ms. T.'s biological child, Jason, who will turn 20 on May 28 of this year. Jason is the stepson of the Claimant, C.J.H., who is the Respondent on these applications.
- [3] Ms. T.'s s. 7 claims are retroactive on behalf of both children, but also include a prospective claim for s. 7 expenses on behalf of C.E.Q.H.
- [4] Ms. T.'s other contested application is for interest on arrears for the unpaid child support she claims.
- [5] Q.T. and C.J.H. lived together from August 2005 to September 2008. Their daughter, C.E.Q.H. was born in 2007. Ms. T. grew up and was educated in China. She moved here sometime in the early 2000s. Jason came here from China in 2006 when he was five. C.J.H. has acknowledged that he was in a stepparent relationship with Jason for a two-year period.
- [6] C.J.H. is a partner in a Vancouver law firm. Pursuant to an order of this Court in October of last year, Ms. T. and the two children now live in Los Angeles.
- [7] The retroactive child support claims for both C.E.Q.H. and Jason total \$111,522.
- [8] The retroactive s. 7 claim for C.E.Q.H. alone totals \$117,260, and the retroactive s. 7 claim for Jason alone totals \$32,300. When those s. 7 claims are adjusted downward to recognize that Ms. T. has annual income attributed to her of \$20,000, Ms. T. accepts that the adjustment on that basis reduces the net retroactive s. 7 claim for C.E.Q.H. to \$111,424 and the net retroactive s. 7 claim for Jason to \$31,137.
- [9] The total of the combined retroactive child support claims (\$111,522), plus the two net s. 7 claims (\$111,424 and \$31,137), plus the claim (quantified at \$10,000) for interest on the retroactive child support claims, is \$264,083.

- [10] Several judges in this Court and the Provincial Court have devoted their efforts to this protracted dispute. Two of the earlier decisions providing background are those of Judge Howard in the Provincial Court in 2014 (File 09-23123, Vancouver Registry); and Justice Veenstra in this Court, in October of 2020 in this proceeding. It will not assist if I repeat in these reasons the same background that is helpfully found in those two earlier decisions, and I will set out in these reasons, where appropriate, only the facts relevant directly to the issues in the present applications. It is, however, useful to summarize Justice Veenstra's orders bringing us to the present applications. He ordered:
- a) the Claimant's final decision-making power as a guardian of C.E.Q.H. is terminated effective immediately and the Respondent shall now have sole day-to-day, and final, decision-making powers and responsibilities as guardian of C.E.Q.H.;
 - b) the Respondent will provide the primary residence for C.E.Q.H.;
 - c) in the event the Claimant and Respondent cannot agree on issues and decisions relating to C.E.Q.H., the Respondent will have the final decision-making authority;
 - d) the Respondent, Jason, and C.E.Q.H. shall forthwith be entitled to relocate to Los Angeles;
 - e) [this order determined certain child support payments for both children]; and
 - f) the issues of retroactive child support and retroactive special and extraordinary s. 7 expenses, and prospective special and extraordinary s. 7 expenses shall be adjourned generally.
- [11] Paragraph (f) above refers to what is now before the Court in the present applications.

Retroactive Child Support

- [12] Returning now to the retroactive child support claim for both children, Ms. T.'s claim of \$111,522 is for the years 2014-2020. The position of C.J.H. is that \$64,754 is the correct amount. I note here that Ms. T.'s claim is not for non-payment of child support amounts specified in earlier orders. It is instead for increased child support because C.J.H. earns more money than he did in 2014, and at least one of the earlier orders, that of Dhillon J. made in the Provincial Court on April 7, 2010, at para. 17, called for annual child support reviews based on current earnings.
- [13] Counsel for C.J.H. submits there are three reasons in combination for the difference between her client's position on retroactive child support, approximately \$65,000, and Ms. T.'s claim of approximately \$112,000.
- [14] First, and this is the largest factor, C.J.H. submits that the present child support of \$807 per month for Jason should remain where it is and not be increased to reflect the Claimant's increased earnings over the years because Jason is a stepchild.

- [15] Second is a difference between the parties for the calculations associated with periods when there was shared parenting.
- [16] Third, the parties debate what should be added back to the bottom-line earnings of C.J.H. each year. His accountant for each year has deducted from income for tax purposes various expenses which are attributed to operating the private law corporation C.J.H. uses for his law practice.
- [17] I will first address the argument of keeping Jason's child support at \$807 per month based on the point that Jason is a stepchild of C.J.H.

[18] The reasons of Howard J., given on January 7, 2014, included the following at para. 56:

In the end, I have concluded that [C.J.H.]'s application to terminate or reduce his child support payments for Jason must be denied. In coming to this conclusion, I have taken into account the fact that [C.J.H.] was a stepfather to Jason for a short period of time, just 2 years, and that he has been paying child support for Jason for 5 years now. I have also factored in Jason's age (just 12 years old) and the current estrangement between [C.J.H.] and Jason, a circumstance for which Jason is most certainly not to blame. . . .

[19] In the counselling overview and views of the child report of Alyson Jones, dated March 2, 2020, with respect to C.E.Q.H., Ms. Jones wrote:

. . . [C.J.H.] did not appear to want to continue his relationship with Jason once the relationship with Ms. [T.] dissolved. [C.J.H.] is not Jason's biological father, although he did appear to play a father role to Jason in his young years. This lack of ongoing relationship between Jason and [C.J.H.] has caused much hurt in both Jason and [C.E.Q.H.]. Jason indicated [that C.J.H.] was like a father to him and he wanted to continue to have a relationship with [C.J.H.], but that [C.J.H.] rejected him. [C.E.Q.H.] is protective of her brother and this has also hurt her. She sees her father as failing both her and her brother. . . .

[20] In July 2014, Jason left three vile, almost vicious, voicemails for C.J.H. However, I keep in mind that Jason was barely 13 at the time and that July 2014 is almost seven years ago.

[21] The law addressing stepparent support obligations for a child appears to focus primarily on the needs of the child as opposed to the state of the child-stepparent relationship. Authority supporting the obligation of a stepparent to continue paying child support when the relationship with the stepchild has broken down is found in *Shaw v. Arndt*, 2016 BCCA 78; and *Roy v. Roy*, 2017 BCSC 74. *Shaw* at para. 29 tells us that the quality of the stepparent-child relationship is a relatively minor factor in the analysis to be considered, if at all, only in the most egregious of breakdowns:

[29] The Court in *A.C. v. M.Z.* also referred to a paper written by Mr. Justice David Corbett entitled *Child Support for Estranged Adult Children* in 2010, who reached the following conclusions:

- (a) Contrary to certain recent literature, there has not been "growing judicial recognition" that the quality of the relationship should have a bearing on child support.
- (b) Courts have been willing to impose a few specific responsibilities on adult support recipients, and may properly do so, but not conditions that include maintaining a social relationship with a parent.
- (c) The statutory basis for taking the quality of the child-parent relationship into account is dubious.
- (d) There is appellant authority permitting the court to place some weight on the parent-child relationship, but that authority is more ambiguous than trial and motions court decisions suggest.
- (e) On the current state of the law, there seems to be a discretion to take this factor into account, though few courts do, and fewer have found it a significant factor in a support decision.
- (f) The better view is that if conduct is ever relevant, it should only be in truly egregious cases of misconduct by a child against a parent.

[At para. 172; emphasis added.]

In my view, this summary provides a useful description of the current law concerning the estrangement of adult children from their parents.

[Emphasis in original.]

- [22] On the facts of this case, s. 5 of the Federal Child Support Guidelines, SOR/97-175 [Guidelines], read with s. 147 of the Family Law Act, S.B.C. 2011, c. 25, lend further support for the conclusion that C.J.H. has ongoing child support obligations to Jason from 2014 until now, just as he has had those obligations for C.E.Q.H.
- [23] Section 5 of the Guidelines deals with the apportionment of child support between a child's parent and stepparent. Section 147(4) of the Family Law Act provides that stepparents have a duty to support their stepchildren when two conditions are met: first, that the stepparent contributed to the child's support for at least one year; and second, that the application for child support is made within one year of the stepparent's last contribution to the child's support. Both conditions are satisfied in the case before me.
- [24] Under s. 147(5), a stepparent's duty to provide support is secondary to the duty of the child's parents, and extends only as appropriate, considering the standard of living and the length of time the child resided with the stepparent. Section 147(5) is a codification of the principle from *H.(U.V.) v. H.(M.W.)*, 2008 BCCA 177, that an applicant is not entitled to give a biological parent a pass in favour of pursuing a stepparent for support. See also, *B.P.E. v. A.E.*, 2016 BCCA 335.

- [25] However, in *Shen v. Tong*, 2013 BCCA 519 at para. 58, the Court found that a stepparent may bear the primary support obligation if the objectives of the Guidelines cannot be otherwise met, such as when the biological parent is unable to pay or the support obligation cannot be enforced against the biological parent.
- [26] The parties disagreed as to whether Ms. T. looked hard enough for Jason's biological father, who presumably is still in China. I was shown a translation of a civil ruling in 2003, by the People's Court of a city in China denying Ms. T.'s application for divorce, and child support for Jason, because even then, Ms. T. could not find Jason's father even when it was in her clear interests to do so. She has made fresh efforts much more recently to find him, but still without success. C.J.H. says she could have done more in her search. That is perhaps right, but I am satisfied in assessing Jason's interests and needs that there has never been any prospect of getting any money out of China from this man to provide for Jason, and Ms. T. has no man in her life in Vancouver or in Los Angeles. C.J.H. is Jason's only source for financial support.
- [27] From those circumstances, I conclude that, for Jason, Ms. T. is to receive an increase in child support, notwithstanding that Jason is the stepchild of C.J.H.
- [28] Concerning the second point of divergence, Ms. T. has, more accurately than has C.J.H., adjusted the child support amounts owing to reflect the times when there was shared parenting, and I accept her adjustments.
- [29] Turning finally to the third issue in the matter of child support, here again, in my view, Ms. T.'s adjustments for appropriate "add backs" for determining the annual earnings of C.J.H. are reasonable. Perhaps the most obvious example is for 2015, where I agree with Ms. T. asking me to add back \$12,000 which was described as a "consulting" expense for C.J.H. The evidence did not support that payment as a bona fide expense, at least for child support purposes. The other adjustments Ms. T. asks for are smaller amounts each year under various expense headings. In my view, as I said above, they constitute reasonable compromises.
- [30] For the reasons above, I allow Ms. T.'s retroactive child support claim in the amount of \$111,522.
- [31] I also allow the claim for interest on that amount which Ms. T. rounded down to \$10,000. The argument by C.J.H. against that interest award was that he has not failed to pay any of the child support amounts specified in earlier court orders. However, I accept Ms. T.'s submission that C.J.H. had a duty, pursuant to an earlier order, to provide information annually with a view to adjusting his child support payments according to his annual earnings. That he never did. He stood by, confining his child support payments to the unadjusted amounts specified by earlier court orders. The non-compliance with the order to adjust child support commensurate with income meant, of course, that he had the use of the money over those years which should have gone to the children. Because of that, he should now pay the interest claimed.

Section 7 Expenses

[32] Here it becomes relevant to describe, at least briefly, the entertainment career 13-year-old C.E.Q.H. is launching in Los Angeles. I respectfully adopt and quote here the findings of Veenstra J. at paras. 20-31 in his reasons dated October 22, 2020:

[20] At some point in about 2017, C.E.Q.H. and J.X.S. began posting material on YouTube and Instagram. By early 2018 they had developed a hip-hop style and created a character, L.T., whose videos were notable for the shocking, crude, and vulgar language and actions being employed by a then ten-year-old girl. By March 2018 there were a number of videos of C.E.Q.H. on the internet in her L.T. persona, describing herself as "the youngest flexer of the century".

[21] Q.T.'s evidence described this online "fictional persona as a 9-year old Harvard drop-out and Los Angeles gangster kingpin". She described the approach as follows:

J.X.S. and C.E.Q.H. became aware that to build a brand would require making a video which was controversial and edgy. They noticed that Rappers and Flexors build immediate brand recognition by pushing controversial boundaries in their videos. They decided to push those boundaries with the plan to transition into more traditional entertainment roles. Their strategy worked beyond their dreams.

[22] C.J.H. said that he was contacted by C.E.Q.H.'s school in February 2018 expressing concern about this behaviour. He met with C.E.Q.H.'s teacher, who told him that C.E.Q.H. was being encouraged by Q.T. and by J.X.S. to make and post these videos on social media.

[23] On March 8, 2018, Q.T. texted C.J.H. to advise that C.E.Q.H. had been invited by a Dooney Battle to come to Los Angeles, California, and meet with respect to potentially signing her as an artist. After some back and forth, C.J.H. consented to C.E.Q.H. making this trip during the upcoming spring break on various conditions, including that she would be back at school no later than April 3, 2018.

[24] The initial trip plan was cancelled. Q.T. attributed this to C.J.H. having asked "too much questions" about the arrangements for the trip. However, an "[L.T.] Management" email that had been set up began to receive a steady stream of inquiries and proposals from various social media entertainment and merchandising companies.

[25] Then on April 3, 2018, Q.T. texted C.J.H. advising that:

Dooney asked us to go to LA in 2 days. This time must go right away, because you don't know when the next chance to meet him, he is out of country a lot.

C.J.H. responded:

Okay, but [C.E.Q.H.] cannot miss a lot of time from school - and you have to stay with her.

He also expressed concern that in one of C.E.Q.H.'s videos she was pretending to smoke drugs, which C.J.H. felt was not appropriate. In further texts, C.J.H. cautioned Q.T. to be wary of anyone who says you are asking too many questions, suggesting that a legitimate business person would not have a problem with questions.

- [26] Q.T., C.E.Q.H., and J.X.S. flew to Los Angeles on April 5, 2018, and began meeting with a number of people involved in the entertainment industry. While there, they continued to receive email inquiries from people who were interested in discussing possible business arrangements. Q.T. was well-aware that C.J.H., having been given final decision-making authority pursuant to the order of Judge Ehrcke, was required to sign off on any contract with respect to C.E.Q.H. She and C.E.Q.H. spoke with C.J.H. about a number of the correspondences that came in. Q.T.'s evidence was that C.J.H. simply refused to deal with them, and in any event refused to authorize any agreements to be signed.
- [27] C.J.H., on the other hand, gave evidence that he saw many of them as tentative inquiries that did not actually call for a decision on his part. More importantly, beginning on April 13, 2018 (i.e., ten days after he had agreed to a brief trip to Los Angeles) he began to ask Q.T. in texts when she, C.E.Q.H., and J.X.S. were going to return to Vancouver. Initially on April 13, Q.T. said that they would be returning in two days, but then it was decided that they would not. C.J.H. continued to send texts inquiring as to when they would return, as he became more concerned about C.E.Q.H. missing significant amounts of school. Q.T. appears to have mostly ignored these texts.
- [28] As they proceeded through March and April, further photographs and videos were posted to the L.T. Instagram page, including pictures of C.E.Q.H. posing with various prominent rappers, in one showing her middle finger, in another driving and then kicking at the door of a large Rolls-Royce automobile.
- [29] In May, various magazine and online articles appeared, including a Vice magazine article titled "Who is [L.T.] and Are We OK with the Internet Hating Her?", and beginning on May 23, stories on ABC and in Maclean's magazine about how L.T. had decided to move to Los Angeles. L.T.'s Instagram following grew from about 300 to approximately 2.8 million followers. As 2018 progressed "Who is [L.T.]" became a global top ten question on Google.
- [30] Q.T. continued to advise C.J.H. of inquiries that were coming in from people interested in working or contracting with L.T., with little response from C.J.H. C.J.H. continued to text Q.T. asking when she would be bringing C.E.Q.H. back to Vancouver to continue with elementary school, with little response from Q.T. On May 9, C.J.H. advised that if C.E.Q.H. was not back in school by May 14 he would make an application to the court. Q.T. responded that C.E.Q.H. was now in home schooling, and she would cry if she had to leave Los Angeles.
- [31] It is clear both from their correspondence at the time and from the evidence they gave on this application that Q.T. and C.J.H. had radically different priorities for their daughter. For Q.T., allowing C.E.Q.H. to pursue fame and fortune in Los Angeles was the highest priority. Her view appeared to be that they could work out schooling issues around the requirements

of a social media and entertainment career. To the extent she considered any of the downside risks, Q.T. was presumably confident that they could be guarded against. C.J.H., on the other hand, placed the highest priority on C.E.Q.H. continuing with her schooling, was very concerned about C.E.Q.H. being taken advantage of or drawn into a dangerous lifestyle, and was hopeful that the adventure in Los Angeles would be a short-term distraction. Q.T. was confident in her ability to negotiate the entertainment world, while C.J.H. had very serious concerns about Q.T.'s judgment. Given the history of their disputes in the Provincial Court, I cannot say that his concerns were without foundation.

- [33] I was shown documents tending to prove that in these formative years of her entertainment career, C.E.Q.H. lost out on millions of dollars in revenue from an internationally-known record label, and a rapper who is also of great renown. The submission of Ms. T. was that it was C.J.H. withholding his consent that caused C.E.Q.H. to lose these lucrative opportunities and forced her career to slow down or stop. Justice Veenstra's Order leaves final decision making for C.E.Q.H. with Ms. T. alone, and it appears that his decision on that point was influenced, at least in part, by the fact that C.J.H. had been withholding his consent to these commercial endeavours in the entertainment career of C.E.Q.H.
- [34] Section 7(1)(f) of the Guidelines requires expenses payable for extraordinary activities to be necessary and reasonable. The parties appear to be in agreement that a legal requirement for a finding of necessity is that the child's participation in the activity goes beyond that of the "average child". For that test, Ms. T. cited *D.L.C. v. F.M.C.*, 2010 BCSC 1312 at para. 67. C.J.H. relied for the same point on *Dorey v. Havens*, 2019 BCCA 47 at para. 44.
- [35] In support of Ms. T.'s claim for s. 7 expenses, I was shown considerable evidence addressing whether C.J.H. has agreed to all or most of them. In 2020, when C.J.H. was cross-examined on his affidavits, he appears from the transcript of the cross-examination to have been supportive in earlier years of most of the vast array of extracurricular activities his daughter undertook. However, the arguments before me on s. 7 expenses became more focused on the question of whether the expenditures now claimed fall within the test from *D.L.C.* and from *Dorey*, cited above.
- [36] For the headings of s. 7 expenses claimed for C.E.Q.H., the Claimant accepts that acting, dancing, guitar, and singing lessons should be allowed in recognition of his daughter's apparently exceptional talent and prospects. The debate under those headings is for how many earlier years those activities should be supported by contributions from C.J.H., considering that C.E.Q.H. is now only 13, and only became a recognized performer in about 2018.
- [37] As noted early in these reasons, the net retroactive s. 7 claim for C.E.Q.H. is \$111,424. The parties placed before me a helpful chart. The chart contained all the s. 7 claims for C.E.Q.H. over the whole claim period under all of the headings claimed. The copy of the chart as submitted by C.J.H. showed the amounts he argues should be deleted, either because the headings are unrelated to the career of C.E.Q.H., and thus do not meet the test expressed in

both D.L.C. and Dorey, cited above, or because they are for times before 2018, when C.E.Q.H. arrived firmly on the entertainment scene.

- [38] I agree with counsel for C.J.H. in disallowing claims related to summer camp, swimming, skating, horse riding, Chinese school, driver expenses, drawing, and Spanish classes. I agree with her that claims should be allowed under the columns entitled "piano and singing", "ballet/dancing", "acting expenses", "online school", "guitar", as well as "medical expenses" and "Alyson Jones & Associates fees". Medical and dental expenses for C.E.Q.H. were specified as proper s. 7 expenses in the order of Dhillon J. in 2010. Alyson Jones is a counsellor for C.E.Q.H.
- [39] Under the headings I have allowed above, the contributions from C.J.H. will be for the years 2016 and after. C.E.Q.H. turned nine in 2016. Presumably the talents she is becoming known for called for training in the artistic disciplines for at least two years before 2018. I am leaving it to counsel to reach agreement on the total amount for these s. 7 expenses, given my findings of the appropriate headings and the start year of 2016.
- [40] The parties are now in agreement concerning s. 7 expenses for C.E.Q.H. going forward, and I will not address them further.
- [41] Concerning the net retroactive s. 7 claim for Jason totalling \$31,137, the bulk of that claim is for piano lessons totalling 95% of \$23,263. That accords with the Dhillon Order, and C.J.H. does not argue against it. I disallow the "after school" claim for Jason. I also disallow the claims for dental and orthodontic work of \$8,161.75, and the medical claim of \$875.70. I reach that conclusion based on the Dhillon Order, dated April 7, 2010, at para. 12 (d), which specified that Jason's s. 7 expenses would be confined to the cost of piano lessons and other expenses the parties agreed to in writing. Also, the Howard decision, on January 7, 2014, at para. 57, does not contemplate an application to vary Jason's s. 7 expense allowance.
- [42] Costs can be addressed in accordance with the protocol I discussed with the parties on April 29, 2021.

"Macintosh J."

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