

CANADA / JUDGMENT

C.K.S. v. P.S.S.

2025 BCSC 380

COURT

Supreme Court of British Columbia

DECIDED

27 January 2025

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2025 BCSC 380 C.K.S. v. P.S.S.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.K.S. v. P.S.S.,

2025 BCSC 380

Date: 20250127

Docket: E053550

Registry: New Westminster

Between:

C.K.S.

Claimant

And:

P.S.S. and T.G.L. Inc.

Respondent

Before: The Honourable Justice Schultes

Oral Reasons for Judgment

In Chambers

Counsel for Claimant:

Z. Suche

Counsel for Respondent:

D. Terpylo

Place and Date of Hearing:

New Westminster, B.C.

November 26, 2024

Place and Date of Judgment:

New Westminster, B.C.

January 27, 2025

Introduction

- [1] In this summary trial application, the respondent seeks a divorce so that he can proceed with a planned remarriage. The claimant opposes his application on the basis that reasonable arrangements have not yet been made for the support of the parties' child, as required by section 11(1)(b) of the Divorce Act.

Background

- [2] The parties were married in 2008 and separated in 2017. Their daughter is now 15 years old.
- [3] There are allegations by the claimant of family violence having been inflicted by the respondent during the relationship. A protection order, which does not have an expiry date, was imposed in 2017. It prohibited the respondent from contacting the claimant or their daughter, or attending at certain locations where they were likely to be.
- [4] Although the prohibition with respect to their daughter was later made subject to certain exceptions for parenting time, the daughter has been in the sole care of the claimant since separation. The respondent initially exercised some supervised parenting time, which the daughter resisted.
- [5] A section 211 report that was prepared in 2018 recommended that the respondent's parenting time with her be phased in, as part of a process that involved the daughter, and that the parties each undergoing counselling. The respondent apparently did not progress very far in the counselling that was required of him, and his last request for time with the daughter was made in 2020.
- [6] The parties consented to an interim support order in October 2020. Pursuant to it, the respondent pays child support pursuant to the Federal Child Support Guidelines in the table amount corresponding to his 2019 income, which he deposes has declined by about \$9,000 since then. He has continued to pay the amount of support required under that order.

- [7] He is the directing mind of a trucking company, from which he draws a salary that he controls, and operates several other corporate entities. The companies he is involved with are other respondents in this action.
- [8] The claimant alleges that he has deliberately underreported his income since separation and at trial she will seek a determination of his income for support purposes.
- [9] For the purposes of this application, the important provisions of the interim order were that on a without prejudice basis the parties were to share responsibility for their daughter's competitive gymnastics, in proportion to their 2019 incomes: 51% to be paid by the claimant, and 49% by the respondent. The respondent's contribution in any one month was capped at \$250. In addition, the order provided that:

Where one party incurs the entire cost in relation to the child's competitive gymnastics, they shall provide proof of payment (a copy of the bill or receipt) to the other party within 30 days of the date the expense was incurred.

This triggered an obligation on the non-paying party to provide reimbursement within a further 30 days.

- [10] The other relevant provision is from the parties' consent order at a judicial case conference in 2018. It entitled the respondent to receive "health, education, or other information" about the child from third parties.
- [11] The respondent has been in a new relationship since 2018. He and his partner would like to remarry, and have already gone as far as to hold a formal engagement ceremony. He deposes that there is strong opposition in his culture to couples living together or having children without being married. As a result, he is unable to move forward with his life until a divorce is granted. Particular concerns he highlights are the stress that he, his partner, and their families are enduring until the issue of marriage can be resolved, and the effect of any further passage of time on his ability to have children with his partner.
- [12] A trial is set for July of this year. There have been five previous trial dates. The parties dispute the attribution of responsibility for the loss of these dates, but it is not necessary to resolve that dispute at this stage, since it is common ground that an unacceptable amount of time has elapsed since the separation and that the issues for trial need to be finally resolved. Unfortunately, the respondent declined at the last minute to participate in a mediation to resolve the outstanding issues that had been scheduled in November of 2023.
- [13] The support issue that underlies the claimant's opposition to a divorce being granted at this point is with respect to the child's competitive gymnastics expenses. The claimant has registered with the Family Maintenance Enforcement Agency and as of the date that the application material was filed, the respondent had arrears of over \$8,600 in his required contribution to those expenses.

- [14] He maintains that this does not reflect any willful default or resistance to paying on his part. Instead, he explains that the claimant has refused to provide the required information about the nature of these expenses, so that he is able to determine whether they actually relate to competitive gymnastics, as opposed to gymnastics generally, or are not related to gymnastics at all. To this point, the details of the claimant's payments on her receipts have been redacted from the documents that he is provided with through the FMA.
- [15] A further concern that he raises with respect to the FMA's records of his arrears is that they have failed to apply the \$250 cap on his monthly contribution to this expense, with the result that the amount of arrears has been inappropriately inflated by approximately \$1,800.
- [16] Another problem with this process is that the interim order provides that the information with respect to the competitive gymnastics expenses is to be provided to him, not to the FMA. This lack of information prevents him from exercising his right under the JCC order to obtain information about the child from the gymnastics organization in question. Although he concedes that the redactions on the credit card statements are currently carried out by the FMA, he points out that the claimant previously applied them herself.
- [17] I should add that in addition to these redacted payment receipts, the respondent receives copies of the forms that the claimant fills out and submits to the FMA. These list the date of the expense, a brief description of it, the total amount, and the respondent's 49% share of it. Such descriptions as "tuition and fees," "meet fees," and "camp and competition fees" are used in the forms.
- [18] For her part, the claimant says that the FMA is aware of the protection order and that they redact information that would inform the respondent of the location where the child has her gymnastics, so that he does not have the opportunity to breach the order. She continues to be concerned that he will breach it if he obtains that information, although he stresses in his response affidavit that he has no intention of doing so.
- [19] The FMA also reviews and verifies these receipts.
- [20] She explains that the respondent is also mistaken in asserting that the FMA does not adhere to the monthly limit on his contributions to this expense. The totals that he refers to in his affidavit are actually for two months each, the individual components of which do not exceed \$250 in a given month. She has annotated that portion of his affidavit to show the amounts actually attributable in any calendar month.
- [21] More broadly, she explains that these arrears are only a small portion of the daughter's overall special and extraordinary expenses, all of which she has covered herself. These have included: the balance of the daughter's gymnastics expenses, (\$26,000); her counselling as recommend by the section 211 report, (\$3,003); orthodontics in excess of the claimant's insurance coverage, (\$3,080); and other medical and dental expenses that have exceeded that coverage (more than \$6,400). This is all in addition to the fact that the respondent did not pay child support for the initial 39 months following the separation, an amount that she

will seek to recover at trial. (The respondent explains that these retroactive claims, which the claimant has never sought to recover in an interim application, are more appropriately dealt with at trial, and that in any event they are likely to be set off against the \$100,000 that he says she removed from their joint bank accounts at the time of separation.)

- [22] Finally, the claimant argues that the existing interim order was the best compromise that could be obtained at that time, but was never intended to address long term support requirements for the child. As an indication of the respondent's attitude towards the agreement, she notes that he initially refused to make payments in accordance with it because the email to which he was to send the money still contained her married surname.

Discussion

- [23] The exercise of discretion under section 11(1)(b) of the Divorce Act imposes an independent duty on the judge from whom a divorce is sought to satisfy themselves that the necessary reasonable arrangements have been made: *F.(R.D.) v. F.(S.L.)* (1987), 12 B.C.L.R. (2d) 1 (S.C.) at paras. 18 and 26.
- [24] While an interim order may in some circumstances enable the judge to be satisfied of the existence of such reasonable arrangements, such orders are usually "a rough and ready order often based on a minimum of evidence, because of the lack of knowledge of the applicant of the non-custodial spouse's financial circumstances, in addition to the urgency of the order": *Roberts v. Roberts*, 2007 BCSC 236 at paras. 33 and 34. (The order in that case was both interim and without notice.)
- [25] A without prejudice order on its face indicates that it is based on representations as to income, without full analysis. Even when adequate disclosure has been made, a court must still scrutinize the evidence in order to apply the reasonable arrangements test, and where there are triable issues, such as the amount of income to be imputed to the payor, the test may not be met: *Kaila v. Kaila*, 2024 BCSC 2399 at paras. 77 and 79.
- [26] The option of making an order for reasonable support arrangements concurrently with granting the divorce, which was found to be sufficient in the decision of *D.K.K. v. A.J.K.*, 2006 BCSC 1532 at para. 4 is of course not available here.
- [27] Declining to grant a divorce because section 11(1)(b) has not been satisfied must be distinguished from withholding it as a means of encouraging settlement, which is not permissible, *Johnson v. Johnson*, (1991), 32 R.F.L. (3d) 349 (B.C.C.A.) at para. 6.
- [28] Dealing first with the narrow issue of the competitive gymnastics' expenses, I do not think that anything turns on the fact that the expenses were not submitted directly to the respondent. The entire legislative purpose of the FMA is to stand in the shoes of a recipient spouse to collect the amounts owing, and the respondent has received the same information about the nature of the expenses that the claimant submitted through the agency, and would otherwise have submitted to him.

- [29] The claimant is also correct that the totals on which the respondent relies are for more than one month, so the FMA has not attributed arrears to him that exceed his maximum monthly obligation.
- [30] I do not see how knowing the name of the gymnastics organization to which the payments were made would add any further clarity about whether the activities in question were competitive or not, and in light of the continuing protection order, it was certainly reasonable for the FMA, and the claimant before it, to redact that information.
- [31] I do agree that the absence of this information interferes with the respondent's ability to seek information from the gymnastics organization as a third party, but that is quite a separate issue from his obligation to pay the expense and should not be conflated with it in the analysis.
- [32] After almost five years without seeing his daughter, and having failed utterly to comply with the regime set up to repair their relationship, I find it odd that the respondent would fixate on that particular source of information with respect to her, and I draw the inference that he has likely raised it for purely tactical reasons in this application.
- [33] If there is in fact a good faith dispute that some of the expenses fit the definition in the interim order, that is all the more reason not to be satisfied that reasonable support arrangements are yet in place. If the respondent succeeds on that issue, some of the \$8,600 of arrears would then have to be absorbed by the claimant, with a correspondingly detrimental effect on her ability to provide for their daughter's needs.
- [34] But the question is much broader than that. Arrears of other s. 7 expenses totalling in the tens of thousands of dollars and 39 months of unpaid child support are in dispute, with the potential that they will be offset against an alleged self-help remedy by the claimant of withdrawing a large amount of joint family funds. And underlying the entire support issue is the question of whether the salary that the respondent allocates to himself fairly represents all of the resources that are available to him to pay that support.
- [35] In short, the existing interim order is a classic example of a rough and ready arrangement that was achievable under the circumstances, but which addressed only a segment of the overall support issues between the parties. Depending on the outcome of the trial, the amounts owed by the respondent could be radically different, and as a result I cannot safely conclude that the current very basic ones are reasonable.
- [36] Accordingly, the application for divorce is stayed, and the summary trial application is dismissed with costs to the claimant in the cause.

"Schultes J."

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