
CANADA / JUDGMENT

C.M.C. v. J.F.M.

2017 BCSC 1397

COURT

Supreme Court of British Columbia

DECIDED

9 August 2017

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2017 BCSC 1397 C.M.C. v. J.F.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

C.M.C. v. J.F.M.,

2017 BCSC 1397

Date: 20170809

Docket: 14-3974

Registry: Victoria

Between:

C.M.C.

Claimant

And:

J.F.M.

Respondent

Before: The Honourable Mr. Justice Johnston

Reasons for Judgment

Counsel for the Claimant:

A. R. Atwood-Brewka

Counsel for the Respondent:

J.A.C. Stewart

Place and Date of Trial/Hearing:

Victoria, B.C.

July 27, 2017

Place and Date of Judgment:

Victoria, B.C.

August 9, 2017

- [1] Mr. M. applies to terminate his child support obligation regarding T.M., born April 25, 1998, as of her 19th birthday. He unilaterally reduced his child support payments on that day.
- [2] Ms. C. resists, and applies to have child support and expenses under s. 7 of the Federal Child Support Guidelines, SOR/97-175 ("Guidelines") fixed for both T.M. and C.M., who was born June 1, 2002.
- [3] On May 8, 2015, I made an Order which set child support, with the parents to disclose income tax information and adjust support accordingly as of June 1 each year.
- [4] Apparently, the Family Maintenance Enforcement Program ("FMEP") is unable or unwilling to adjust to reflect annual changes such as were ordered, and that is why Ms. C. says she needs to have child support restated.
- [5] Apparently, FMEP is unable or unwilling to recognize that a child is no longer presumed a child of a marriage on reaching the age of majority, and will continue to enforce child support for an adult child on the strength of a payee parent's assertion alone that the child is unable to withdraw from parental charge, and that is why Mr. M. felt he had to seek the relief in his Notice of Application.
- [6] In spite of the positions taken by the director of FMEP, I conclude that as of April 26, 2017, Ms. C. has the burden of establishing that T.M. is unable to withdraw from the charge of her parents and remains a child of the marriage.
- [7] The factors set out in *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, B.C.S.C. (Master) most often guide the approach to deciding whether an adult child is a child of a marriage. These factors are:
 - (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
 - (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - (3) the career plans of the child, i.e., whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;

- (4) the ability of the child to contribute to his own support through part-time employment;
 - (5) the age of the child;
 - (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
 - (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
 - (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.
- [8] These factors have been approved and applied as a non-exhaustive list in many subsequent decisions, including by the Court of Appeal in *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406 (B.C.C.A.); *Neufeld v. Neufeld*, 2005 BCCA 7; and *De Beck v. De Beck*, 2012 BCCA 465.
- [9] These cases also make it clear that a party need not adduce evidence on every one of the factors in every case. A corollary of that is that no one factor is sufficiently determinative that it should overcome the others.
- [10] Ms. C. says that T.M. is enrolled in a course of studies that she attends five days a week, four hours per day, so that it is full-time post-secondary education.
- [11] In the fall of 2016, after graduating from high school, T.M. enrolled in Camosun College. Her first semester was not an academic success. In early 2017, she changed course, to begin studies at a private institution called Sprott Shaw College. There she is enrolled in an Executive Office Administrator Program that is due to complete on October 13, 2017. The cost of this program is \$9,588.53. T.M. is doing well in that program, achieving A's and A+'s.
- [12] Ms. C. swears that she hopes T.M. will obtain full-time employment on completion of her current course, and then that T.M. would like to take one further course at the same institution, this one in medical office terminology, at a cost of \$5,500.
- [13] Regrettably, T.M. and Mr. M. have begun to exchange affidavits, with T.M. explaining that her poor relationship with Mr. M. is largely the result of her antipathy toward Mr. M.'s new spouse, and giving reasons for that antipathy. Mr. M. responds by swearing that much of what his daughter has sworn to is false.
- [14] T.M.'s affidavit does state that in October 2016 she met with Mr. M. and discussed her schooling, the classes she would be taking, and how much it would cost. Her affidavit does not make clear whether this discussion related to her schooling at Camosun or the current course she is taking. She swears this was after she had hacked into her mother's email and read an email from Mr. M. saying he would not help pay for her schooling.

- [15] Mr. M., while disputing many other things T.M. has sworn to, responds to this paragraph by expressing displeasure that T.M. has demonstrated little regard for personal property and privacy. He does not deal with her description of their meeting.
- [16] Both T.M. and Mr. M. agree that Mr. M. was not told about the new course of study until after T.M. was enrolled and was well into her course of study.
- [17] This is in spite of a term of the order of May 8, 2015 that provides:
- If either parent proposes the expenditure of another special or extraordinary expenses [sic], he or she shall inform the other by email with reasons the expense is needed, before incurring that expense, and the party receiving that information shall have 30 days to agree or disagree.
- [18] I am satisfied that Mr. M. was informed in February 2016 that T.M. intended to go to Camosun College in September 2016. I am also satisfied that he was not informed of the switch from Camosun College to Sprott Shaw College until after it had happened.
- [19] I accept that the cost of the Camosun program in the fall of 2016 was a net of \$1,149.93, after a scholarship awarded to T.M., and that was a proper s. 7 expense. Mr. M. is ordered to pay his proportionate share of \$827.95.
- [20] When T.M. enrolled at Sprott Shaw and committed to the fees it charged, she was still presumed to be a child of the marriage. The \$9,588.53 was incurred while she was still a minor. She became an adult part way through her school program.
- [21] It seems to me that the cost of the Sprott Shaw program should be decided on ordinary principles applicable to post-secondary education expenses, without the complication of whether she has been shown to be unable to withdraw from the charge of her parents.
- [22] Under s. 7(1)(e) of the Guidelines the court may order an amount to cover all or a portion of the expenses for post-secondary education after taking into account:
- the necessity of the expense in relation to the child's best interests;
 - the reasonableness of the expense in relation to the means of the parents and those of the child; and
 - the reasonableness of the expense in relation to the family's spending pattern prior to the separation of the parents.
- [23] I have been given little information about what the Sprott Shaw program is intended to accomplish. Its title is self-explanatory in that I infer it equips a graduate to seek a position as an Executive Office Administrator. I also infer that a diploma will improve T.M.'s prospects of finding employment in an office setting, something that is in her best interests.
- [24] I also find that the expense of the program is necessary in order to elevate T.M. out of the larger pool of high school graduates seeking employment.

- [25] The expense, although apparently high, is reasonable in relation to the means of both parents and T.M. Mr. M.'s Guidelines income is \$94,752.00 and Ms. C.'s is \$33,747.00. T.M. has shown herself capable of earning up to \$9,000 per year working part-time, at least if one extrapolates from her earnings this to April 13, 2017. Her 2016 T4s show total earnings of just over \$8,600.
- [26] Section 7(1) of the Guidelines provides that an order may provide an amount for "all or any portion" of the expenses listed.
- [27] Bearing in mind T.M.'s ability to contribute to the costs of her education, I order Mr. M. to pay his proportionate share of 74% of two-thirds of the Sprott Shaw program cost of \$9,588, which would amount to \$6,392.00, 74% of which is \$4,730, which I order Mr. M. to pay. One-third of the tuition cost I find reasonable to ascribe to T.M. and her part-time earnings.
- [28] I will not go further and deal with the somewhat speculative prospect of further Sprott Shaw costs: if they emerge, they will have to be dealt with either by agreement of the parties or an application on somewhat better evidence than is currently available as to the anticipated benefits weighed against the cost of further training.
- [29] I turn to whether Ms. C. has established that T.M. remains a child of the marriage and unable to withdraw from the charge of her parents.
- [30] Mr. M. has focused much of his argument on the last Farden factor, saying that T.M. has unilaterally severed her relationship with him. He also complains that Ms. C. has used her best efforts in ensuring that T.M. received the counselling ordered in para. 6 of the May 8, 2015 order.
- [31] T.M. has had counselling; it may not have been the counselling Mr. M. proposed or wished for, and it does not appear to have achieved the results Mr. M. hoped for, but I cannot say that Ms. C. has breached either the letter or the spirit of the May 8, 2015 order in that regard.
- [32] As to the termination of the relationship, while T.M.'s language in some of her communications with Mr. M. appears to indicate the finality of her position, and her affidavit states that she does not want a relationship with Mr. M. at this time, she also indicates that she is reluctant to engage with him for fear of having what she says used as ammunition in her parents' ongoing disputes, and she does not feel that Mr. M. has properly received what she considers past efforts on her part to fix their relationship.
- [33] I do not intend to attempt to assign responsibility for the current state of the father-daughter relationship: that is not possible on the evidence before me. All I can conclude is that the current situation has developed over years, with no small part being animosity felt by T.M. toward Mr. M.'s spouse, and his reluctance to give in to T.M.'s demands to engage with her without the spouse being involved or present.
- [34] In any event, this is only one of the Farden factors, and is not determinative. Of the rest of the factors, I have concluded that:

- (a) T.M. is enrolled in a full-time course of studies;
 - (b) she is not obliged to borrow by way of student loans in addition to contributing toward the cost of her education through part-time earnings;
 - (c) although her career plans have not been well developed in the evidence, the fact that she is taking an office administration program suggests her career goal is to obtain work in an office and above a basic entry level position, which I consider reasonable;
 - (d) she is contributing to the cost of her education through part-time work;
 - (e) she has just turned 19, which favours continued support; and
 - (f) she is doing well at Sprott Shaw College after having not done well at Camosun College, indicating that her current educational aspirations are reasonable;
- [35] I have little or nothing on which to judge the parents' pre-separation plans for their children's education.
- [36] I conclude that T.M. remains a child of the marriage at this time.
- [37] In Neufeld the Court of Appeal said that "in principle, support for an adult child who is entitled to child support because of his or her attendance at a post-secondary institution generally should be determined under s. 3(2)(b)" of the Guidelines: at para. 42. The court added that this "does not necessarily preclude a specific award for 'special and extraordinary expenses' under s. 7, where appropriate": at para. 45.
- [38] Section 3(2) of the Guidelines provides:
- (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is
 - (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.
- [39] T.M.'s condition and means indicate that she can contribute to her own support over and above her contributions to her educational expenses. She continues to need the support of her parents. Each of her parents has the financial ability to contribute to her support. She is living with Ms. C. and her sister, and Ms. C.'s husband and his children.
- [40] The Guidelines table amount for C.M. alone would be \$876. For both C.M. and T.M. it would be \$1407, a difference of \$531.

- [41] Recognizing that T.M. is able to contribute to her living expense through her part-time employment, I consider the appropriate amount of ongoing child support for T.M. should be \$300 per month, to be added to the \$876 for C.M. for a total child support amount of \$1,176 per month, retroactive to May 1, 2017.
- [42] Allowing for two months after completion of her current program for T.M. to find full-time employment for which she has been educated, that additional child support over the amount payable for C.M. will continue to and include December 2017.
- [43] If T.M. remains unable to withdraw from her parents' charge after completing the current program of studies, her parents may agree on that matter or Ms. C. is free to bring an application for ongoing child support for T.M.
- [44] Mr. M.'s application for termination of his obligation to pay child support for T.M. is dismissed.
- [45] Ms. C. has applied to fix "maintenance and ongoing adjustments so that support can be collected by FMEP". This is a somewhat inarticulate application. I gather she seeks to have child support stated in an order, after reflecting any changes in Guidelines income since the last order. Using the child support figures above, I set child support at a total figure of \$1,176 per month, as of May 1, 2017, with the portions attributable to each of C.M. and T.M. set out above.
- [46] Ms. C. also seeks an order "setting the section 7 expense amounts to be payable and the activities that they will be payable for including further clarification of the expenditures from the fundraising account for [C.M.] for baseball activities and a retroactive order for section 7 expenses to be paid by the Respondent to May, 2015."
- [47] The May 8, 2015 order provides in para. 12:
- Section 7 expenses shall be shared according to each party's income and will include the costs of the child C.M.'s baseball activities, including travel to tournaments and games, in excess of amounts raised through fundraising.
- [48] C.M. is fifteen years old. Her baseball activities are described briefly in my reasons of May 8, 2015, indexed at 2015 BCSC 757, including that at that time I viewed her baseball activities as a reasonable and necessary expense. I have heard no evidence that persuades me that this is no longer the situation.
- [49] The problem seems to be that Mr. M. is being given receipts that suggest to him that he may be asked to pay for people other than C.M. to take baseball trips, and there is inadequate accounting being provided. Another problem is that Mr. M. appears to wish to quarrel with some aspects of the expenses claimed on the basis that they ought to be considered as paid out of his basic child support, and are not true s. 7 expenses.

- [50] A third problem is that a fundraising account, that was apparently large enough to cover most if not all of C.M.'s baseball expenses in 2015 has somehow been divided in team records between Mr. M. and Ms. C., so that Mr. M. can control what is paid out for C.M.'s baseball expenses in some way.
- [51] I will not involve the court in the administration of the baseball fundraising account.
- [52] To the extent that the parents require some guidance with respect to the baseball expenses, I reaffirm that the reasonable expenses incurred in C.M.'s baseball endeavours, including travel to games and tournaments outside Victoria, are to be shared proportionately between her parents, that is, 74% by Mr. M., 26% by Ms. C., based on the incomes found earlier.
- [53] I conclude that these costs include, as s. 7 expenses, C.M.'s cost of travel, accommodation, and food while playing baseball outside of Victoria, and also include the cost of travel, accommodation and food for one adult accompanying C.M. on such a trip.
- [54] Mr. M. will pay his share of such costs on presentation of a clear accounting for the amount claimed, together with supporting receipts. Whether he pays it out of a fundraising account in his name or his own pocket is up to him.
- [55] Ms. C.'s application is allowed to the extent set out above.
- [56] Ms. C. has been substantially successful on both applications. She is entitled to one set of costs.

"R.T.C. Johnston, J."

The Honourable Mr. Justice Johnston

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