

CANADA / JUDGMENT

Carlson v. Flanagan

2020 BCSC 1030

COURT

Supreme Court of British Columbia

DECIDED

10 July 2020

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2020 BCSC 1030 Carlson v. Flanagan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Carlson v. Flanagan, 2020 BCSC 1030 Date: 20200710 Docket: E192821 Registry: Vancouver Between: Suzanne Lea Carlson Claimant And Robert John Flanagan Respondent Before: The Honourable Madam Justice D. MacDonald Reasons for Judgment Counsel for Claimant: D.J. Miller Counsel for Respondent: R.W. Howarth Written Submissions Received: Vancouver, B.C. June 25, 2020 Place and Date of Judgment: Vancouver, B.C. July 10, 2020 Overview

- [1] The claimant, Ms. Carlson, filed an application seeking orders for interim child support, spousal support, and the sharing of the children's special and extraordinary expenses (s. 7 expenses) in proportion to their guideline incomes. The application was through written submissions in lieu of an oral or telephone hearing.
- [2] The parties had a 17-year relationship and there are two children of the marriage.
- [3] Mr. Flanagan agrees to pay some interim child and spousal support but does not agree to the amount estimated by Ms. Carlson. He submits he has been buying the children things and giving them money. He argues the parties should split future special and extraordinary expenses on a 50/50 basis.
- [4] The written submissions procedure is designed to deal efficiently with a single issue between the parties. By definition, seeking spousal support, child support, and special and extraordinary expenses constitutes three issues. Ms. Carlson acknowledges this but argues that she is in immediate need of support to meet her and the children's financial needs. She further argues that child and spousal support are premised on the parties' respective guideline incomes and they are ordinarily determined together.
- [5] I agree. I am willing to order spousal and child support based on the parties' imputed incomes. The s. 7 expenses should be split in proportion to the parties' imputed incomes.
Background Facts and Positions of the Parties
- [6] Both parties have made allegations against the other. These allegations are not relevant to the issues before me. There is also a dispute about the date of separation. What is clear is that Mr. Flanagan left the family home on September 29, 2019.

- [7] Mr. Flanagan has paid no formal child or spousal support since separation. The children live with Ms. Carlson in the family home. They see their father approximately twice a week, but there have been no overnight visits.
- [8] Until March 2020, Mr. Flanagan deposited a portion of his bi-weekly salary into the parties' joint account for the payment of the mortgage, property tax, insurance, utilities, and cable. Mr. Flanagan ceased depositing any funds into the joint account in mid-March 2020. Ms. Carlson is now solely responsible for the payment of all of the expenses related to the family home, although the mortgage payments were reduced due to COVID-19. Ms. Carlson deposed she pays for all of the children's expenses, including their cellphone costs. She concedes Mr. Flanagan pays for restaurant meals, treats, and random purchases when he sees the children.
- [9] Ms. Carlson has some disabilities and can only work part-time. She is currently off work due to COVID-19. Ms. Carlson is receiving CERB benefits in the amount of \$500 per week. She will also receive approximately \$924 as one month of Employment Insurance benefits. This EI payment is the last payment payable under her former EI application.
- [10] In January 2020, Ms. Carlson began renting the basement suite in the family home. The current rent is \$1,200 per month. She therefore receives \$14,400 per year in rental income. Ms. Carlson owns a cabin in Sorrento, BC. She rents the cabin in the summer. In 2020 Ms. Carlson has one confirmed rental for a two-week period. Although it is rented for \$3,000 per week, she claims the rental of the cabin generates a net loss. Lastly, she receives \$6,673 per year in dividends, \$2,620 in interest and investment income, and \$1,321 in capital gains.
- [11] Mr. Flanagan argues Ms. Carlson has underreported her income, including the tips she earns. She is currently not working so her tips do not form part of her present income.
- [12] Ms. Carlson's gross total (Line 150) income has consisted of the following:
- 2017 - \$26,206.79;
 - 2018 - \$29,265; and
 - 2019 - \$40,037.53.
- [13] Based on the extension of CERB, Ms. Carlson agreed in reply to have her income imputed at \$37,938.
- [14] Ms. Carlson has provided Mr. Flanagan's Line 150 income. His income has consisted of the following:
- 2016 - \$201,113;
 - 2017 - \$216,041; and
 - 2018 - \$224,206.

- [15] Ms. Carlson argues Mr. Flanagan's income is comprised of base salary, bonus, stock options, and restricted share units.
- [16] Mr. Flanagan introduced evidence that his financial situation has changed since 2018. His 2019 line 150 income was \$285,292. However, he deposed he did not receive bonuses or stock options in 2019, although his 2018 bonus was reflected on his 2019 T4. He deposed that he is unlikely to receive a bonus in 2020. He states he takes the stock option but his employer is not contributing to the option. He deposed his current income is \$144,900 and if he receives a bonus in 2020 he will notify Ms. Carlson through her counsel.
- [17] Ms. Carlson strongly disagrees with Mr. Flanagan's characterization of his current income. She argues, based on his 2019 compensation portfolio from his employer, there is no evidence that he will not be entitled to receive a bonus or long term incentives in 2020.

Analysis

- [18] Ms. Carlson has established a prima facie case for entitlement to spousal and child support: *L.G.B. v. M.A.C.M.*, 2005 BCSC 1786. Mr. Flanagan did not argue otherwise.
- [19] This is an interim application and I have not engaged in an in-depth analysis of the parties' financial records. Such an analysis is better left to trial: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299 (S.C.).
- [20] Based on the above information, I impute Ms. Carlson's income to be \$38,000.
- [21] Mr. Flanagan's income is harder to calculate. He deposed he did not receive a bonus in 2019 and is unlikely to receive a bonus in 2020. He will advise Ms. Carlson if he does receive a bonus. As stated above, Ms. Carlson disagrees. I have conflicting affidavit evidence which is difficult to resolve on the basis of written submissions.
- [22] Mr. Flanagan relies on *Engelbert v. Holuboch*, 2020 BCSC 890. I agree with the claimant that there were very different facts in that case. The respondent/payor had lost his job and did not have the ability to pay. Here, Mr. Flanagan may not receive his annual bonus. However, there is no indication that his employment is at risk due to COVID-19 or otherwise.
- [23] Based on the limited information I have, including Mr. Flanagan's 2019 income, the long term incentives which he will likely receive, and, apart from his own statement, no evidence before me that Mr. Flanagan will not receive a bonus in 2020, I impute Mr. Flanagan's income to be \$200,000.
- [24] Ms. Carlson is entitled to \$2,749 per month in child support and, based on DivorceMate calculations at the mid-range, \$3,071 per month in spousal support. These amounts should be adjusted when the parties' financial situations are more certain. If no agreement can be reached, the parties can address these issues at a subsequent hearing.

- [25] I make these orders retroactive to April 1, 2020, when Mr. Flanagan stopped contributing to the family expenses. Mr. Flanagan had effective notice Ms. Carlson was seeking such orders on October 22, 2019 when she filed the notice of family claim: *Devathasan v. Devathasan*, 2017 BCSC 1010; *D.B.S. v. S.R.G.*, 2006 SCC 37.
- [26] The parties should contribute to the children's s. 7 expenses in proportion to their respective incomes. Orders Made
- [27] In an effort to ensure that Ms. Carlson and the children have proper financial support, I make the following interim orders:
- a) I order Mr. Flanagan to pay to Ms. Carlson child support of \$2,749 per month pursuant to s. 15.1(2) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), based on his imputed income of \$200,000. This order is retroactive to April 1, 2020 and should be paid on the first of each month thereafter.
 - b) I order Mr. Flanagan to pay to Ms. Carlson spousal support of \$3,071 per month pursuant to s. 15.2(2) of the Divorce Act. The amount is calculated based on his imputed income of \$200,000 and Ms. Carlson's imputed income of \$38,000, applying the mid-level of the Spousal Support Advisory Guidelines. This order is retroactive to April 1, 2020 and should be paid on the first of each month thereafter.
 - c) The special and extraordinary expenses should be shared in proportion to the parties' imputed guideline incomes.
- [28] These orders will remain in place until agreement between the parties or further order of the court. Both parties are at liberty to apply for variation of this order once the financial circumstances of the parties are clearer. "D. MacDonald J."

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