
CANADA / JUDGMENT

Cole v. Cole

2016 BCSC 1284

COURT

Supreme Court of British Columbia

DECIDED

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2016 BCSC 1284 Cole v. Cole

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Cole v. Cole,

2016 BCSC 1284

Date: 20160711

Docket: E140108

Registry: Vancouver

Between:

Jo-Anne Christine Cole

Claimant

And

Brian Richard Cole

Respondent

Before: The Honourable Mr. Justice Voith

Supplementary Reasons to Cole v. Cole, 2016 BCSC 716

Supplementary Reasons for Judgment

The Claimant, appearing on her own behalf:

Jo-Anne Christine Cole

The Respondent, appearing on his own behalf:

Brian Richard Cole

Place and Date of Hearing to Clarify Order:

Vancouver, B.C.

June 27, 2016

Place and Date of Judgment:

Vancouver, B.C.

July 11, 2016

Introduction

- [1] On April 21, 2016, in reasons indexed at 2016 BCSC 716 (the "Reasons"), I addressed the various issues that arose from the family-law dispute that existed between the parties. My judgment has since been appealed.
- [2] Each of Mr. and Mrs. Cole, who were self-represented at trial and who continue to be self-represented, had written to the Registry subsequent to receiving the Reasons. They indicated that they now sought "clarification" in respect of various aspects of the Reasons. In total, their written communications sought clarification in relation to more than a dozen issues and many more sub-issues or calculations. Though they filed no formal application materials, I was prepared to hear from them.
- [3] The parties were married for approximately 20 years and have two children. One of those children is presently in university; the other will commence university this coming fall.
- [4] In the Reasons, I concluded that the parties were honest people (at para. 8), but observed that there was considerable friction between them, that they had not communicated for years (see paras. 15, 32, 39, 50), and that their present communications were strained and ineffective (see paras. 8, 15, 74).
- [5] I do not propose to address each issue or sub-issue that has been raised by either Mr. or Mrs. Cole. I have, however, addressed a few of these issues as illustrative of the matters that were raised before me.
- [6] I am satisfied that most matters reflect an effort to re-argue or revisit certain conclusions, or to introduce further evidence, or to further and unreasonably refine certain financial conclusions that I arrived at. In relation to some matters, the parties made various new allegations that were unsupported by any formal evidence.

- [7] The parties' difficulties in communicating continue to the present time. They have not yet agreed on the terms of a formal order that would reflect the various orders that I made. Consequently, for example, Ms. Cole has not yet made any of the financial payments that she is required to. As a result of this, Mr. Cole has not yet been able to deal with the debt he has and his financial circumstances, which are difficult, have worsened.
- [8] I have told the parties to arrange to formally settle the terms of the various orders I made. I have suggested that the parties seek the assistance of a third-party mediator or facilitator to assist them with their present difficulties and impasse. Both must realize that the present state of affairs is harmful to them. It is also clearly impacting on their relations with their children.
- [9] I turn to some of the issues raised before me. Both parties argued that I ought to have undertaken certain calculations differently, and that I failed to consider certain evidence that had been raised by them. This is a case where the issues that were raised were overwhelmingly financial in nature. It is also a case where the parties each sought to present their evidence differently, where that evidence was inconsistent, where some of the evidence was not supported by records or other objective evidence, and where much of the evidence was somewhat disorganized. Mr. Cole, for example, gave me likely hundreds of pages of banking and credit card information.
- [10] In the Reasons I said:
- [49] The division of the parties' family debt is necessarily imprecise. The parties used different dates for the date of separation. They used different sets of calculations. Those calculations also had different dates attached to them. Thus, the summaries generated by Ms. Cole had some debt totals that preceded the date of separation and others that post-dated the date of separation. The parties also made various concessions on various issues, but these issues did not align. Thus, for example, Ms. Cole appeared willing to pay a portion of the debt that Mr. Cole incurred for their son's private school tuition even after the parties had separated. Mr. Cole, however, if I understood correctly, did not seek any repayment for those amounts subsequent to the parties' separation. On the other hand, for example, Mr. Cole sought to have Ms. Cole pay a portion of the interest payments that accumulated on the debt he incurred. Ms. Cole did not directly address this issue. Still further, the numbers advanced by the parties for various issues or expenses often did not align with precision or even, in some cases, in any meaningful way.
- [50] In addition, the parties had not, as I have said, discussed their financial affairs for some time and had not communicated in the months leading to trial. This reality prevented any joint and coherent presentation of relevant financial information.
- [11] In relation to the issue of child support I said:

- [134] Because the evidence before me was not precise, the calculations required of me are also not precise. The following factors are relevant: a) the parties' incomes, and b) where the children resided. I have assumed that Claire spent an equal amount of time with her mother and her father for three months or until November 2014. As I have said, she left for school in September 2015. Based on these factors, the following calculations ensue:
- [12] Accordingly, the reality is that, in many instances, the exercise I undertook was necessarily in the nature of a best-efforts assessment, rather than a precise calculation. I do not, therefore, consider that there is any basis to revisit the various conclusions that I arrived at.
- [13] Each party also attempted to raise issues that were unrelated, in any direct way, to the Reasons. Thus, for example, Ms. Cole questioned whether Mr. Cole still owed the money that underlay the debt calculations I had performed and the division of debt order that I made. She speculated that Mr. Cole might have declared bankruptcy, knowing that Mr. Cole had testified at trial that if he declared bankruptcy, he would not be able to continue with his present employment.
- [14] Mr. Cole, conversely, recognized that I had ordered that Ms. Cole was to oversee the ongoing disbursement of the children's RESP monies for their schooling (see paras. 105, 106), but again argued, as he had at trial, that these monies might be better invested and that he should have some input into those decisions.
- [15] Again, there is nothing in these various submissions that is in the nature of a "clarification" or that warrants any change in the orders that I made.
- [16] Several of the issues that were raised were in the nature of re-argument. Mr. Cole's written memo to the Registry suggests that I did not "clearly address" the issue of Banked Sick Time or Holiday Pay. I believe the Reasons address these matters fully (see paras. 79-97). Similarly, Mr. Cole's written memorandum sought to recalculate Ms. Cole's outstanding child support obligations. For example, he recalculated what he believed Ms. Cole owed in 2014. That recalculation, however, appears to ignore my conclusion that the parties had joint custody of their daughter from August to October 2014.
- [17] Ms. Cole argued that I had not allowed her to fully respond to some of Mr. Cole's evidence at trial about when the parties separated and about their personal interactions prior to trial. I do not consider that this is accurate. If it were accurate, it is not a matter that I could address at this time.
- [18] Some issues raised matters that I consider it would be inappropriate, with this matter being appealed, for me to revisit. For example, I dealt with both children's ongoing university expenses as s. 7 expense (see paras. 136-150). Mr. Cole argued that I should have recognized that his son, Quinn, will not have reached the age of majority when he starts university this coming fall. Mr. Cole says that I should have ordered that his son receive child support until he reaches the age of majority. Mr. Cole accepts, however, that the approach I used in the Reasons, which pertained to both children, and which could be applied consistently into the

future for both children, does not, as it relates to Quinn, give rise to a different result than the methodology he now proposes.

- [19] Ultimately, I do not consider it necessary or appropriate to revisit or to "clarify" any aspect of the Reasons, and I decline to do so.
- [20] One aspect of what may be occurring between the parties is troublesome. Each party argues that aspects of the orders I made are not being complied with. Each party made such submissions without any evidence and, accordingly, I was unprepared to address these matters. Ms. Cole, for example, asserts that Mr. Cole has continued to involve his children in their dispute. Mr. Cole, on the other hand, argues that Ms. Cole has refused to provide documentation or information in relation to her pension and RRSPs, and that the orders I made about the division of these assets are being frustrated.
- [21] I am urging the parties, in the strongest terms possible, to comply with the orders that I have made. A failure to do so can give rise to serious consequences. If either party is of the view that the other is not complying with such orders, it is open to them to bring these matters back before me and I will, on the basis of the formal evidence that I hear, address those matters.
- [22] I do not consider that any cost orders arising out of the parties' recent attendance before me would be appropriate.

"Voith J."

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