

CANADA / JUDGMENT

Connolly v. Connolly

2014 BCSC 1860

COURT

Supreme Court of British Columbia

DECIDED

2 October 2014

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2014 BCSC 1860 Connolly v. Connolly IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Connolly v. Connolly, 2014 BCSC 1860 Date: 20141002 Docket: E32895 Registry: New Westminster Between: Patrick Samuel Connolly Claimant And Erin Lorraine Connolly Respondent Before: The Honourable Mr. Justice D. M. Masuhara Reasons for Judgment Acting on his own behalf: Patrick S. Connolly Counsel for Respondent/Applicant: A. M. Lessing Place and Date of Hearing: New Westminster, B.C. September 12 2014 Place and Date of Judgment: New Westminster, B.C. October 2, 2014

Introduction

- [1] The parties have brought forth cross applications.
- [2] Ms. Connolly (now Coleman) applies for the cancellation of arrears of child and spousal support and the cancellation of her ongoing spousal support obligation.
- [3] Mr. Connolly applies for spousal support in the amount of \$1,044/month beginning January 1, 2014 and continuing indefinitely. He also seeks a declaration that the parties' daughter Brennah is no longer a child of the marriage for support purposes. Ms. Connolly consents to the declaration being made.
- [4] In terms of arrears of support, the amount due on October 1, 2014 is \$16,595 according to the records of the Family Maintenance Enforcement Program.

Background

- [5] The parties commenced cohabiting in January 1991, married in 1992, and separated January 1, 2009. Mr. Connolly moved out of the family home in the summer of 2009 into a rental accommodation. Ms. Connolly remained in the family home and purchased Mr. Connolly's one-half interest in it. She has continued to reside there. Mr. Connolly lives in a single bedroom condominium which he owns. A contested application regarding financial and child matters were set down for September 29, 2010. The parties were represented by counsel. On that hearing day, a final consent order was agreed to by the parties resolving all outstanding issues (except for the divorce and name change for Ms. Connolly) including the

division of family assets which were divided essentially equally; custody and guardianship; and child and spousal support (the "Consent Order").

- [6] The Consent Order required Mr. Connolly to pay child support to Ms. Connolly of \$533 per month as the two children of the marriage, a son and daughter, resided with her; and Ms. Connolly was required to pay spousal support to Mr. Connolly of \$569 per month. The annual income of Mr. Connolly and Ms. Connolly set out in the order were \$34,283.88 and \$57,984.00, respectively.
- [7] An order for Divorce was granted on November 16, 2010.
- [8] During the marriage, Mr. Connolly was a carpenter working for the school district in Delta. He was diagnosed with multiple sclerosis in 2004. His symptoms first appeared in 2001. Since 2008, he has been unable to work and has received long-term disability benefits under his employment benefits program as well as a Canada Pension Plan disability pension. He is also covered under Ms. Connolly's extended medical benefits plan. The materials indicate that Mr. Connolly's depression and anger resulting from his affliction was a major stressor in the family and major contributor to the breakdown in the marriage. The medical evidence indicates that Mr. Connolly's condition has been gradually getting worse and that he is unable to perform any type of job.
- [9] Ms. Connolly is a teacher. Prior to teaching she worked as a cashier for a large retail grocer. During the marriage she attended university and obtained her teaching degree in 2005, and has been employed as a teacher since then.
- [10] The Consent Order has been varied three times.
- [11] The first occurred pursuant to a consent order dated June 28, 2011. The variation was a change in child support and spousal support. The parties' son was no longer a child of the marriage and their daughter began to live in a shared parenting regime. As a result Ms. Connolly was required to pay Mr. Connolly \$241 per month and the spousal support was suspended based on the Spousal Support Advisory Guidelines ("SSAG") calculation at the mid-range level. The annual income for Mr. Connolly and Ms. Connolly as set out in the order was \$34,387 and \$60,226, respectively.
- [12] The second variation occurred pursuant to an order of Mr. Justice Ball. Ms. Connolly was ordered to pay child support for her daughter of \$305 per month beginning May 1, 2011 and continuing to January 1, 2012; \$337 per month from January 1, 2012 and continuing to January 1, 2013. She was also ordered to pay spousal support of \$510 per month beginning May 1, 2011 and continuing to January 1, 2012; \$503 per month from January 1, 2012 to January 1, 2013; and \$647 beginning January 1, 2013 and continuing on the first day of each month hereafter, with such amount reviewable pursuant to the terms of the Consent Order. The annual income of Mr. Connolly as set out in the order was \$34,287 for 2011 and 2012 and \$32,700 for 2013. The annual income for Ms. Connolly as set out in the order was \$66,060 for 2011; \$69,429 for 2012; and \$72,337 for 2013.

- [13] On May 7, 2013, Mr. Justice Armstrong issued an order that Mr. Connolly was to pay child support of \$298 per month. Ms. Connolly was ordered to pay spousal support of \$839 per month commencing March 1, 2013. Mr. Connolly's Guideline annual income was set out in the order as \$32,913; and Ms. Connolly's Guideline annual income was set out as \$72,337.
- Discussion
- [14] In terms of the arrears application, the amount as at the hearing date was \$16,595. Cancellation was not strongly pursued by Ms. Connolly.
- [15] Ms. Connolly's last payment of spousal support to Mr. Connolly was in June 2014. It was explained that she had not paid because she was unable to as she did not receive income as a result of the province-wide teachers' strike. The records show that Ms. Connolly had, prior to this, made regular support payments to Mr. Connolly. I am advised that enforcement is not being pursued by the FMEP because of the labour dispute.
- [16] Her counsel stated that the variation of spousal support was the key focus for Ms. Connolly and acknowledged that the test for cancellation is a high one. The submission that was advanced by Ms. Connolly in regard to arrears was that it was simply a determination for the Court. I am not persuaded that the circumstances justify a cancellation of arrears. The application is denied.
- [17] I turn now to spousal support.
- [18] Ms. Connolly's application to cancel spousal support is based upon the wording in the Consent Order. The specific term states:
7. Spousal support is reviewable in three (3) years at the Claimant's option or on any material change of circumstance which shall include:
 - a. Changes of income of either party;
 - b. Changes in residence of either of the Children;
 - c. Changes in status of either of the Children as to whether they remain Children of the marriage.
- [19] A further term stipulated that:
8. The parties shall immediately disclose to the other any changes in his or her income, and in any event provide to the other their filed Tax Returns and Assessment Notices by July 1st of each year, commencing in 2011.
- [20] A key aspect to Ms. Connolly's application is the characterization that it is a review and accordingly triggers a de novo hearing as opposed to a hearing into whether there has been a material change in circumstance. Further, it is submitted that spousal support for Mr. Connolly could only have been based on need. It is asserted that it was only Ms. Connolly who could have established an entitlement to spousal support on compensatory grounds. Based on this, Ms. Connolly says that Mr. Connolly does not have a need for support as his

income is sufficient to meet his requirements. It is further argued that given Mr. Connolly's multiple sclerosis, his needs are getting smaller.

- [21] Mr. Connolly submitted that, based on his reading of the Consent Order, only he can trigger a review. I took his argument that an application by Ms. Connolly to vary her support obligations could only be through a material change in circumstance. He also contested the argument that he had no claim for compensatory support and was limited to a "needs" justification.
- [22] Mr. Lessing advised that he was not counsel for Ms. Connolly at the time of the Consent Order and thus had limited knowledge as to interpreting the subject term. In response to my question regarding the silence of the Consent Order as to the duration of spousal support, Mr. Lessing advised that the SSAG at the time the Consent Order was granted indicated that the duration of support was in the range of 8.5 to 17 years.
- [23] Though there have been previous hearings before other judges of this Court regarding spousal support, I was not advised of any findings regarding the interpretation of the subject term, including the basis for support (compensatory or non-compensatory or both). I cannot discern the intent of the parties from the order itself. Based on my view of the materials I am reluctant to accept that the basis for support excluded compensatory grounds and was limited to a needs based justification. Before me the parties raised arguments related to whether Ms. Connolly's education was funded by Mr. Connolly or not. Mr. Connolly stated that he had presumed that he would be supported. If the basis for support issue were to be pursued, more would be needed. I do not accept Mr. Connolly is limited to just need.
- [24] Further, a plain reading of the subject term supports Mr. Connolly's view that he alone holds the right to a review. Accordingly, a de novo hearing sought by Ms. Connolly is not permitted.
- [25] As a result, the basis for a variation in spousal support would have to be justified on the existence of a material change in circumstance. I note that in the Consent Order a material change is to include a "change in the income of either party". Presumably, this is why the increases in Ms. Connolly's income have resulted in orders increasing her support obligations. This intention was supported by Mr. Connolly's statement that the filed materials which led to the Consent Order included the salary grid for teachers to show the various step increases (based on years of experience) that Ms. Connolly would be entitled to receive. At the time she was at step 5 (5 years) which indicated a salary of \$59,048. At step 10 (10 years) she would be entitled to \$74,353 under the then contract. It appears that this was to show that salary increases were anticipated and that support was to be adjusted in accordance with the SSAG based on such increases. I received no submissions contrary to this. In terms of change in circumstances that warrants a change in spousal support, it appears a change in the parties' respective incomes permits this.

- [26] On January 1, 2014, Mr. Connolly says that Ms. Connolly's income increased to \$77,408.40. Mr. Connolly says that the new mid-range amount for spousal support according to the SSAG is \$1,044 per month and he seeks an increase in his support.
- [27] The 2013 income tax filing of Ms. Connolly was produced and filed during the hearing on September 12, 2014. Her line 150 income is stated to be \$76,472.
- [28] Based on my understanding of the Consent Order, an adjustment to Mr. Connolly's spousal support is allowed and is to be calculated applying the SSAG at the mid-range figure based on annual income for Ms. Connolly at \$76,472 effective July 1, 2014 (Mr. Connolly having applied for a variation of support in June 2014); and an annual income for Mr. Connolly of \$35,747.

Conclusion

- [29] The parties' daughter is declared to be no longer a child of the marriage for support purposes.
- [30] Ms. Connolly's application for cancellation of arrears is denied.
- [31] Ms. Connolly's application for cancellation of spousal support is denied.
- [32] Mr. Connolly's application for a variation in spousal support is granted on the on basis as set out above. The Honourable Mr. Justice Masuhara

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/14/18/2014BCSC1860.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/connolly-v-connolly-2014>

Prepared on 30 October 2026 · Esheria