
CANADA / JUDGMENT

Connors v. Walsh

2015 BCSC 2068

COURT

Supreme Court of British Columbia

DECIDED

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2015 BCSC 2068 Connors v. Walsh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Connors v. Walsh,

2015 BCSC 2068

Date: 20150901

Docket: 14-0851

Registry: Victoria

Between:

Sara Marie Connors

Claimant

And:

Patrick Edward Walsh

Respondent

Before: The Honourable Mr. Justice B.D. MacKenzie

Oral Reasons for Judgment

(In Chambers)

Counsel for the Claimant:

C. Murray

Counsel for the Respondent:

J. Stewart

Place and Date of Hearing:

Victoria, B.C.

September 1, 2015

Place and Date of Judgment:

Victoria, B.C.

September 1, 2015

[1] THE COURT: This is an application by Ms. Connors for spousal support, both ongoing and retroactive back to November 1, 2014.

[2] Mr. Walsh resists the application on the basis that the parties reached a full and final settlement of all issues pertaining to their 12-year marriage, and that all provisions of the minutes of settlement entered into after two days of mediation in July 2014 have been complied with and satisfied, except until recently certain pension calculations.

[3] In this regard, the preamble to the July 2014 agreement states the following:

These minutes constitute a full and final of all issues arising out of the relationship of Sara and Patrick (the "Parties") with the sole exception of obtaining an Order for Divorce.

[4] I have read that as it appears in the minutes and clearly there is some correction or words that are missing. Nevertheless, it is clear the intention of the parties was for a full and final settlement of all issues.

[5] The respondent also emphasizes the provisions of paragraph 22 of the minutes of settlement. Paragraph 22 states:

Both parties forever waive any spousal support claims, past, present, and future.

[6] Ms. Connors accepts the provisions of the agreement and the fact that both she and Mr. Walsh were represented before, during, and after the settlement was reached, by experienced counsel.

[7] Ms. Connors, however, deposes that she entered into this comprehensive settlement on the understanding that Mr. Walsh was planning to retire from the Navy sometime around October or November 2014, and that if he did so, his available income for spousal support would therefore be reduced. With this in mind, along with, I dare say, all of the other factors that must go into reaching a matrimonial settlement, including the uncertain outcome of any court proceeding, the agreement was reached and signed by the parties.

[8] Mr. Walsh, however, to this point in time has not yet retired. He says he has not done so because it was only recently that the final calculations pertaining to the pension issue were received. It is not necessary, in my view, to go into any real detail with respect to those

calculations and, moreover, it matters not, in my view, who may or may not have been responsible for calculation errors or incomplete information or other issues that have precluded the pension issue from being finalized till, as I say, according to Mr. Stewart, just recently; Mr. Stewart acting on behalf of Mr. Walsh.

- [9] In this regard, I accept Mr. Walsh's evidence in his affidavit that he has not retired because he wishes to confirm what his financial circumstances will be in order to plan for his future needs and expenses.
- [10] In support of her application today, Ms. Connors deposes that she relied on Mr. Walsh retiring in November 2014 and "that this information formed a basis of the terms of the agreement" that she and Mr. Walsh reached with respect to spousal support. Ms. Connors submits that, as Mr. Walsh has still not retired, she is now entitled to apply for spousal support on the basis of either an initial order pursuant to the provisions of s. 15(2) of the Divorce Act, or pursuant to the provisions of s. 164 of the Family Law Act, that section permitting the court to set aside agreements respecting spousal support once certain conditions are met.
- [11] I turn first to the agreement and the provisions of s. 164(3) and (5) of the FLA. When I consider all of the circumstances and the all-encompassing provisions of the agreement, while I accept that Mr. Walsh's plan to retire was a factor that went into Ms. Connors' ultimate decision to settle on the basis that the parties eventually did, I am not satisfied Mr. Walsh was in any way acting in bad faith or misleading Ms. Connors when he stated he was planning to retire in October or November 2014.
- [12] I am not persuaded, given that there is no reference to this issue in the settlement itself, that this was of such singular and fundamental importance that I should overlook the clear and unequivocal waiver of any claim for spousal support in the past, present, or future on the part of Ms. Connors.
- [13] I am also not satisfied that Ms. Connors' assertion that, if she knew Mr. Walsh would still be working at the present time, she would not have waived her claim for past or future spousal support. I am not satisfied that is sufficient to establish that it would be appropriate to set aside or vary the settlement agreement.
- [14] In my view, the intention of the parties when they entered into the agreement was clear. It was to be a complete, full and final settlement.
- [15] In addition, the correspondence between counsel from roughly July of 2014 to April 2015 supports Mr. Walsh's contention that there was a legitimate issue with respect to finalizing the provisions of paragraph 18 of the agreement in reference to Mr. Walsh's future pension benefit. That paragraph states:

The parties will reduce Sara's share of Patrick's Forces' Pension proceeds by the actuarial value of Patrick's interest in Sara's Provincial Government Pension. Patrick waives his right to Sara's interest in her pension. The date of division for pensions is based on cohabitation of August 2, 2002 to September 2, 2013.

- [16] Moreover, Mr. Walsh points out that the parties entered into an amending agreement on November 21, 2014, sometime after Mr. Walsh's hoped-for retirement in October or November. This apparently was dealing primarily with an old automobile. However, the agreement unequivocally states that, except for changes to Clause 3 in the original agreement dealing with the automobile, "it is the parties' firm intention that all other clauses of the minutes of settlement remain binding and in full effect."
- [17] In this regard, I am unable to conclude the provisions of either s. 164(3) or (5) of the Family Law Act have been met that would allow me, in these circumstances, to order spousal support for Ms. Connors in contrast to the provisions of the agreement, especially when Mr. Walsh was still employed when both the first and second agreements were entered into, and the fact that Mr. Walsh remains employed.
- [18] On this point, I can understand that if Mr. Walsh was unemployed at the time the agreement was entered into and swore he was unable to work, and as such had modest income, and then found employment after Ms. Connors entered into a final agreement waiving spousal support, in those circumstances there could very well be a clear basis to find the agreement was unfair or that there was a change in the means, needs, or other circumstances of the spouse.
- [19] In these particular circumstances, however, I am unable to conclude the agreement was significantly unfair or that it failed to meet the objectives of spousal support set out in s. 161 of the Family Law Act.
- [20] Even though this conclusion, in my view, is dispositive of the application, I will state for the record that I am not satisfied Ms. Connors has established that there should be an order for spousal support pursuant to the provisions of the Divorce Act.
- [21] The primary basis for Ms. Connors' application today for support is need based and based on the present disparity in her income vis-à-vis Mr. Walsh's income, he making something like \$98,500 and Ms. Connors making something in the neighbourhood of \$52,000, plus her medical issues, which she deposes makes her employment future somewhat precarious.
- [22] Ms. Connors' medical circumstances were, however, basically the same when the parties entered into the final agreement. Indeed, it is acknowledged that Ms. Connors unfortunately suffered from these physical difficulties during the marriage.

- [23] Moreover, I am not satisfied that, even though there is some disparity in their incomes, and being mindful of our Court of Appeal decision in McKenzie dealing with hundreds of thousands of dollars in income and various properties, when one considers all of the property division provisions that the parties agreed to in the settlement, even if there was no agreement that there would be no future claim for spousal support, I am not satisfied that Ms. Connors has established entitlement to support, given the rest of the property division.
- [24] On this point, I note specifically the provisions of s. 15(4)(c) of the Divorce Act, which deals with the provisions of any agreement, and also the fact that I have insufficient evidence as to the functions performed by each spouse during cohabitation, another relevant factor under subsection (b) of that section.
- [25] In my view, finally, the provisions of the comprehensive agreement that the parties reached again is consistent with, I am satisfied, the overall objectives and values outlined in s. 15(2) of the Divorce Act, much as I have found the objectives of spousal support have been met pursuant to the provisions in the Family Law Act.
- [26] So for all of those reasons, Ms. Connors' application is dismissed.
- [27] Is there anything else, Mr. Stewart, Ms. Murray?
- [28] MR. STEWART: Just the issue of costs with respect to this application.
- [29] THE COURT: Your submission is . . . ?
- [30] MR. STEWART: Well, in my submission, Mr. Walsh has been substantially successful. The agreement is being held up. I would suggest that my client should be entitled to costs of today's appearance, which includes both morning and afternoon.
- [31] THE COURT: Ms. Murray?
- [32] MS. MURRAY: Thank you, My Lord, I would argue strongly against costs in this matter. Ms. Connors is already in a financially difficult position. She relied upon a sworn statement of Mr. Walsh in this matter. She's already waived spousal support and her economic future is not promising. She can't bear costs, I would submit.
- [33] THE COURT: There is no question Mr. Walsh has been substantially successful. Generally speaking, the party that is successful wins. I cannot say the application was frivolous or inappropriate. I am going to exercise my discretion, Mr. Stewart, and not award costs. All right. Thanks very much.
- [34] MR. STEWART: Thank you.

"B.D. MacKenzie, J."

The Honourable Mr. Justice B.D. MacKenzie

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