
CANADA / JUDGMENT

Coumont v. Coumont

2014 BCSC 2525

COURT

Supreme Court of British Columbia

DECIDED

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2014 BCSC 2525 Coumont v. Coumont

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Coumont v. Coumont,

2014 BCSC 2525

Date: 20140801

Docket: E020356

Registry: Vancouver

Between:

Ronald Roman Coumont

Claimant

And

Rochelle Beverly Coumont

Respondent

Before: The Honourable Madam Justice Duncan

Oral Reasons for Judgment

In Chambers

Notice: This judgment was edited for publication purposes

on January 21, 2015

Appearing on his own behalf:

R.R. Coumont

Counsel for the Respondent

appearing by teleconference:

R.M. Shore

Place and Date of Hearing:

Vancouver, B.C.

June 9, 2014

July 4 & 25, 2014

Place and Date of Judgment:

Vancouver, B.C.

August 1, 2014

[1] THE COURT: This is an application by Ronald Coumont, hereafter "the applicant", for an order that his daughter, S.H.C., is no longer a child of the marriage. S.'s date of birth is April 9, 1992. She will turn 23 next spring.

[2] Section 2(1) of the Divorce Act defines a child of the marriage as:

... a child of two spouses or former spouses who, at the material time,

...

(b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life.

[3] The age of majority in British Columbia is 19. The onus of demonstrating that a child over 19 remains a child of the marriage is upon the party seeking support for the child, in this case the respondent.

[4] I heard submissions from the parties over the course of several hours on three court days, and I have been provided with voluminous affidavit material, as well as the relevant authorities to consider on this application.

[5] The applicant and his former spouse, Rochelle Bruce, to whom I shall refer as "the respondent", separated in July 2002 when S. was 10 years old. S. initially lived with her father, but on November 20, 2004, chose to live with her mother. I accept this change of primary residence came as a shock and disappointment to the applicant. The applicant and his new spouse had made efforts to settle S. in at school, encouraged her to do homework, and provided a structured life for her. I glean from the materials that S.'s mother was more permissive, and this likely had some bearing on S.'s decision to cease living with her father.

- [6] S. has had virtually no contact with her father since she left his home in 2004. I suspect this is largely due to the respondent's attitude towards her former spouse, which mirrors his attitude towards her. It is an attitude of disrespect and derision, peppered with acrimony and bitterness, and I will say little more than that about it, except to observe this attitude has regrettably begun to bleed over into the limited communications between the applicant and S.
- [7] I accept that the applicant has had little or no information from the respondent about S.'s progress in school or her general health and well-being. Neither the respondent nor S. has made consistent or realistic efforts to keep the applicant in the loop about developments in her life.
- [8] The applicant has paid child support for S. as required by the various orders issued by various judges of this court over the years. He applies for an order that S. is no longer a child of the marriage because, to bluntly summarize his position, she is not in school full-time and does not appear to be taking courses that would indicate she is following a realistic career path. He maintains she was never a good or diligent student, and her current plan to pursue a degree in psychology with a view to becoming an art therapist, which I will deal with presently, is unrealistic. The applicant also submits since S. recently spent two years taking esthetics courses at a private college, she should be focused on getting into the workforce, rather than signing up for academic courses at Langara College.
- [9] The respondent and S. explain that S. has had emotional difficulties stemming from her parents' separation and her alienation from her father which, in my words, not theirs, have prevented her from realistically entering adulthood. S. has been assessed by several psychologists, one of whom identified her estrangement from her father as a significant factor affecting her development. That psychologist recommended counselling to include the applicant, but that has not occurred. Other reports indicate that while S. has had difficulties with academic achievements in the past, she is a bright, creative young woman with clear goals in mind. She has been diagnosed with Attention Deficit Hyperactivity Disorder ("ADHD") and a Reading Comprehension Disorder. She was prescribed medication to deal with the ADHD and continues to take it.
- [10] As for S.'s post-secondary education thus far, the respondent explains she received some type of scholarship or discount for an esthetics program and encouraged S. to attend to gain some marketable skills. S. was not initially enthusiastic about the training, but appears to have stuck with it. S.'s other efforts at post-secondary courses have not met with academic success.
- [11] S. currently works part-time for a photographer. Her job involves preparing the photographer's subjects for photo shoots using the skills she learned at the esthetics college. This work is not particularly remunerative and S. works only part-time at this point. She does not appear to have any other source of income, apart from the support cheques from her father, and I heard nothing to indicate she was attempting to find other work.

- [12] When I asked Mr. Shore, counsel for the respondent, for an explanation as to why S. was not working full-time, Mr. Shore provided affidavit material which set out that S. is taking a biology course at Langara College this summer, which takes up a certain number of hours per week. As I understand it, the job with the photographer is somewhat flexible and she can work around her school commitments. S. also deposes that she plans to work full-time in August for the photographer, and will work part-time in the fall when enrolled full-time at Langara College, possibly in the child care field.
- [13] I turn now to S.'s plans for her future. S. wishes to become an art therapist. I understand she has been the recipient of such therapy and found it both helpful and inspiring. S. and the respondent both maintain this career path is not a new one, and that S. has expressed a desire to go into this field since about her late teens.
- [14] The requirements to become an art therapist are both rigorous and expensive. S. would have to take a full course load at Langara College and maintain approximately a B average, and then transfer to Simon Fraser University in the summer of 2015, when she has attained 63 credits at Langara. She plans to take two courses at SFU in the summer of 2015 and 2016, so she does not have to take a full course load in the fall and spring semesters. This plan makes sense, as it would allow her to work part-time to supplement her income.
- [15] If all goes according to plan, S. would have her degree from SFU in 2017, and then apply to the Adler School to do a 15-month degree in clinical counselling. The Adler School is a private college based in the United States, with branch offices across North America. While the applicant was quite dismissive of the institution and the training it provides, I am satisfied it is a legitimate post-secondary institution which provides training in the field that S. wishes to pursue. Whether her wishes are realistic is a separate consideration. Either way, S. has done her research in terms of how to get where she wants to go with a career in art therapy.
- [16] This planned course of study, from full-time classes at Langara, through a degree at Simon Fraser University, to post-graduate studies at the Adler School, is lengthy and expensive. I understand that the tuition at the Adler School alone is in the area of \$50,000. As a result of the expense, it is understandable that S. wants to continue receiving financial support from her father for at least part of this training to offset the money she will have to earn or borrow to attain her goal. It is also understandable from the applicant's perspective that he feels he is merely a source of income for his estranged daughter's unrealistic career goals.
- [17] The legal principles governing whether an individual over the age of 19 is still a child of the marriage come from *Farden v. Farden*, 1993 CanLII 2570, 48 R.F.L. (4th) 406. The factors outlined therein by Master Joyce, as he then was, are still relied on by trial and appellate courts alike. Those 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.

[18] In *De Beck v. De Beck*, 2012 BCCA 465, D. Smith J.A. noted it is not a requirement that all of the Farden factors be established in order for an adult child to meet the status of a child of the marriage. The evidence in each case must be weighed against all the factors.

[19] I will turn now to a review of each factor and the evidence I have been provided with through the affidavits of the parties.

(1) Whether the child is in fact enrolled in a course of studies

[20] S. is currently enrolled in one course at Langara College. She has registered for a full-time course load as of September. Apart from her time at the private esthetics college, this appears to be her first foray into full-time study and it will involve academic courses, not those aimed at developing practical skills.

(2) Whether or not the child has applied for or is eligible for student loans or other financial assistance

[21] The respondent has a limited ability to financially assist her daughter, but has committed to help her financially with securing a tutor, should that become necessary. She also provides S. a place to live. S. will have to rely on student loans or bursaries in addition to whatever money she can save from her summer job or earn while going to school.

(3) The career plans of the child

- [22] As outlined above, S. wants to pursue art therapy as a career. While the applicant has supplied me with material indicating this may not be a particularly lucrative or in-demand occupation, it is S.'s career goal and I am satisfied, on the basis of the responsive affidavit materials, that it was not formulated on the sudden in response to her father's application to terminate support.
- (4) The ability of the child to contribute to her own support through part-time employment
- [23] To put it bluntly, S. has been underemployed since she finished her technical training at esthetics college and apparently before then as well. She feels she can work part-time while taking a full course load. She certainly now has the skills base to do so, but given her previous academic difficulties and the fact that she may have to engage a tutor to help her keep up, it is difficult to see how she could work more than a few hours a week.
- (5) The age of the child
- [24] S. is 22 years old.
- (6) The child's past academic performance
- [25] As I noted above, S.'s past academic performance has been less than stellar, however, her poor grades in the past at Langara coincided with the time when she was enrolled on a full-time basis in esthetics college. S. feels those grades do not represent what she is capable of if given the opportunity to study full-time.
- (7) What plans the parents made for the education of their children
- [26] When one strips away the unhealthy attitude S.'s parents have towards each other, it is clear that they are both intelligent, articulate individuals who planned or at least hoped that their daughter would go onto post-secondary studies. I heard evidence that they had set up a Registered Education Savings Plan, but I am unclear on its current status.
- (8) Whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought
- [27] The applicant has had little contact from S. since she left his home. She appears to have been making some efforts lately to connect with him, but I am satisfied she has been rebuffed. I mean no criticism of the applicant in coming to this conclusion. He has been shut out of her life for some time and is justifiably skeptical regarding recent efforts at reconciliation. That said, I am not satisfied, on the basis of the materials I have reviewed, that S. unilaterally terminated the relationship. Given the relations between the applicant and respondent, I am satisfied they gave her an unhealthy template for respectful communication and she wants to break free of it. The applicant should be encouraged to follow suit and try to meet his daughter halfway. Whether that can be accomplished remains to be seen.

- [28] The parties provided me with several helpful authorities which demonstrate the application of the Farden factors in different scenarios. One that is quite factually similar is *Nitchie v. Nitchie*, 2014 BCSC 468, a decision of Mr. Justice G.P. Weatherill. In *Nitchie*, the child of the marriage also suffered from learning disabilities and had plans to further his education. Weatherill J. found that terminating child support would force the child to work while he continued to complete his education and would doom him to failure, as he was not yet able to withdraw from his parents' charge or obtain the necessities of life. One critical difference between the circumstances in *Nitchie* and those before me, however, is that the child of the marriage in *Nitchie* was 19 ½ years old, whereas S. is 22 ½. In both scenarios, the pursuit of post-secondary education appears to have been delayed by the existence of learning disabilities.
- [29] In *Y.H.B. v. J.P.B.*, 2014 BCSC 618, Mr. Justice Savage heard an application concerning whether the 20-year-old son of the parties was still a child of the marriage. The son had academic aspirations, but the evidence established they were not consistent. Savage J. observed there appeared to be "a considerable amount of prevarication" on the son's part concerning his academic career and that "Progress on his university career, while at this point not quite desultory, has not proceeded with dispatch". Despite the young man's less-than-exceptional academic performance and change of plans, Savage J. found he was still a child of the marriage for the purposes of the Divorce Act, however, he provided the matter was reviewable at the instance of the respondent after two further academic years.
- [30] After reviewing the authorities and the materials before me, I am satisfied that the respondent has demonstrated S. is still a child of the marriage. I should caution, however, that this was a close call. I recognize that S. has had some educational deficits and emotional issues to overcome, but she is 22 ½ years old, an age when many of her peers have already completed an undergraduate degree, while she is just starting on one. I also recognize that S.'s career plans may not come to fruition due to her academic difficulties. If she is unable to keep up with a full course load and maintain a high enough average to gain entry to SFU, she will have to reconsider her plans. If she succeeds in attaining sufficient credits at a sufficient grade point average to transfer to SFU to continue her studies, however, she should be commended by both parents.
- [31] The applicant is at liberty to have this ruling reviewed after S.'s marks for the fall 2014 semester at Langara College are available. They may support his contention that S.'s plans are unrealistic and they may not. I direct that those marks be sent to the applicant within 48 hours of their receipt by S. through whatever means are most convenient and expeditious to the parties. I also direct that S.'s final mark for her summer session biology course be sent to the applicant within 48 hours of its receipt.
- [32] I defer making an order as to costs until after this order is reviewed. If no review application is made before the end of March 2015, however, the parties may arrange an appearance before me to speak to costs.

"Duncan J."

The Honourable Madam Justice Duncan

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