

CANADA / JUDGMENT

Couture v. Couture

2010 BCSC 894

COURT

Supreme Court of British Columbia

DECIDED

25 June 2010

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2010 BCSC 894 Couture v. Couture IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Couture v. Couture, 2010 BCSC 894 Date: 20100625 Docket: E28495 Registry: New Westminster Between: Cory Roy Couture Plaintiff And Theresa Jeanine Couture Defendant Before: The Honourable Mr. Justice Crawford Reasons for Judgment Counsel for the Plaintiff: K.E. McNeilly Counsel for the Defendant: J.E. Kovacs Place and Date of Hearing: New Westminster, B.C. May 11, 2010 Place and Date of Judgment: New Westminster, B.C. June 25, 2010

- [1] This is a family law proceeding being dealt with by way of summary hearing. The defendant father is 40 and the plaintiff mother 41. They began living together in 1987, married in August 1991, and separated in October 2005.
- [2] There are three children of the marriage, Elsbeth age 16, Bryce age 14, and Domenik age 8. All three children primarily reside with their mother.
- [3] Both parties have formed new relationships since the separation in 2005. The defendant mother has lived with Mr. Cowan since September 2006 and Mr. Cowan has one child of a previous relationship. The plaintiff father has lived with Ms. Dort and her three children since September 2008, and they have added a baby to their household.
- [4] The parties agreed on a number of orders on May 11, 2010 namely:
1. A divorce effective in 31 days;
 2. Joint custody, guardianship on the Joyce model, primary residence with the defendant, and reasonable and generous access to the plaintiff;
 3. Child support of \$1,455 per month based on Mr. Couture's income of \$74,849. Mr. Couture shall provide 12 post-dated cheques dated the 15th of each month for payment of child maintenance;
 4. The plaintiff to provide medical and dental insurance for the defendant and children;
 5. Each party to provide the other with their tax return upon filing and notice of assessment when received;

6. Life insurance: this is a joint policy where the defendant pays the premium. Ms. Couture is to designate Mr. Couture as beneficiary and she is to designate the children as her beneficiary;
7. Family assets: each party is retaining the assets they presently keep, save for the house sale proceeds, which I will deal with below;
8. The parties' Canada Pension Plans are to be divided on the time period November 1987 to October 2005, pursuant to the CPP legislation;
9. An alcohol restriction order was sought. I did not see sufficient evidence to justify such an order on either side.

[5] The remaining issues then are:

1. Expenses pertaining to s.7 of the Federal Child Support Guidelines [the "Guidelines"] i.e. extraordinary or special expenses for the children;
2. Asset division, namely the proceeds of the family house, and should they be equally shared or reapportioned;
3. Spousal support.

1. Section 7 Expenses

[6] Ms. Couture tabled a claim in excess of \$13,000 dating back to 2005, seeking from Mr. Couture historical bills including daycare, music lessons, sports costs, and orthodontic dental work. The evidence was that the bills were not collated until November 2009 when presented in an affidavit.

[7] Counsel could not confirm if these claims had been made previously made in spite of the fact that there had been two judicial case conferences in 2008 and a settlement conference in 2009. Ms. Couture argued she frequently drew Mr. Couture's attention to the bills she was incurring for the children but he made little or no response. She does concede that he has paid his monthly child support amount as set by the Guidelines throughout. Ordinarily many of these expenses fall within the provisions of the Guidelines for special or extraordinary expenses.

[8] Mr. Couture says that the retroactive claim is unfair for he was only recently presented with these bills and the defendant cannot hoard the bills and then expect him to pay them, particularly on the approximate 70/30 apportionment caused by the differences in income.

[9] The defendant's affidavit and argument, other than assembling the bills, did not help. Of particular concern is the orthodontic bill for some \$6,000. Although it is plain that Mr. Couture did not have orthodontic coverage, it does appear matters moved along for some time in 2009 on the basis that Elsbeth's orthodontic work was justified by two separate orthodontic opinions. But it is difficult to understand why Ms. Couture or her orthodontist went ahead without having satisfied themselves there was in fact orthodontic insurance

coverage with Mr. Couture, when there was none. As it is, Mr. Cowan has been able to obtain \$2,000 on his insurance. In the circumstances, I fix Mr. Couture with five sevenths of the \$4,000 (\$2,857) still owing on dental work.

[10] There are a number of bills for music, soccer and daycare. Much of the daycare is what can be described as stale-dated, although it did apparently provide the ability for Ms. Couture to work for a couple of years at a custom paper company. I do not consider it fair to present bills pre-dating 2008. For the balance of the calculation for 2008 and 2009 the costs for the activities are a little over \$5,000. Mr. Couture's share I fix at \$2,750.

[11] It is important that the parents discuss the extra expenses before they occur and they be agreed to in light of the incomes available to the two households. It will soon be time for Elsbeth to start her tertiary education and again it will require pre-planning to give the opportunity to make the best of her education. Communication on all sides is essential.

2. Asset Division

[12] From the sale of the house remains some \$160,000, of which \$20,000 has already been impressed by a potential claim of the defendant's parents who say they lent monies for the purchase of the house. \$40,000 has been paid out of the \$160,000 to each party.

[13] The defendant says the whole of the balance should be reapportioned pursuant to s. 65(1)(e) of the Family Relations Act, R.S.B.C. 1996, c. 128, principally on the basis that she has been an "at home mother", and therefore has lost her abilities in the market place. For example, her special education qualifications are no longer acceptable. The plaintiff responds by saying the defendant successfully ran a home daycare, has worked for various political campaigns and worked at a paper company making in excess of \$20,000. As well, in comparative terms she is relatively young and therefore should be considered self-sufficient.

[14] Another factor which causes uncertainty in this field is the fact that Ms. Couture and Mr. Cowan appear to have a solid and supportive partnership of more than four years at this time: see Barrow J. in *Kelly v. Kelly*, 2007 BCSC 227. Mr. Cowan has put the children on his medical and dental insurance. He was the purchaser of the family home.

[15] In these circumstances, I order that of the \$60,000 balance in the solicitor's account, \$39,000 be paid to Ms. Couture and \$21,000 to Mr. Couture. The remaining \$20,000, if not successfully claimed by the defendant's parents within one year (unless the claim is still before the courts) is to be paid out \$10,000 to each party.

[16] The net result from \$160,000 will be either \$79,000 or \$89,000 payable to Ms. Couture and \$61,000 or \$71,000 payable to Mr. Couture. Mr. Couture's share of the funds shall be reduced by his obligation relating to the award for past section 7 expenses, and paid to Ms. Couture.

3. Spousal Support

- [17] The spousal support submissions put forward by counsel range from zero to some \$500 for a minimum period of nine years. They reflect in part differences in forms of calculation and the effect of paying section 7 expenses as well as the child maintenance.
- [18] It is plain Mr. Couture's ongoing obligation is going to be to his children with substantial monthly payments and (hopefully) an agreed regime for section 7 expenses. It is Ms. Couture's obligation to put these forward when they arise and get agreement on them, before being incurred. Mr. Couture still has substantial childhood expenses to look forward to, particularly given the difficulties facing the youngest child.
- [19] In all the circumstances and given the reapportionment of the house funds which reflect the defendant's lost earning ability, I will make no award for spousal support.
- [20] In sum, there is an award for:
1. Section 7 expenses of \$5,607.
 2. A reapportionment of the family assets;
 3. No award for spousal support.
- [21] I make no order as to costs. "The Honourable Mr. Justice Crawford"

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