
CANADA / JUDGMENT

D.E.K. v G.K.

2003 BCSC 1879

COURT

Supreme Court of British Columbia

DECIDED

12 December 2003

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IN THE SUPREME COURT OF BRITISH COLUMBIA

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Citation:

D.E.K. v G.K.,

2003 BCSC 1879

Date: 20031212

Docket: ED034357

Registry: Nanaimo

Between:

D.E.K.

Plaintiff

And

G.K.

Defendant

Before: The Honourable Mr. Justice Shabbits

Reasons for Judgment

Counsel for the plaintiff:

K.M.J. Rongve

Counsel for the defendant:

T. Luchies

Date and Place of Hearing in Chambers

November 3, 2003

Nanaimo, B.C.

- [1] The plaintiff and the defendant were married on December 15, 1985. They separated on May 1, 2000. They were divorced from each other by an order pronounced in this proceeding on November 3, 2003. These reasons for judgment address issues of corollary relief.
- [2] Mr. D.E.K. was born on [], 1961. He is 42 years of age.
- [3] Ms. G.K. was born on [], 1960. She is 43 years of age.
- [4] The plaintiff and the defendant began to live together in Toronto in 1984. Ms. G.K. was employed as a payroll clerk. She had earlier received a General Business Certificate in accounting. Mr. D.E.K. was employed by a firm of engineers. His ambition was to become a professional engineer.
- [5] In the fall of 1985, Mr. D.E.K. began an Engineering program at A.[] University in Nova Scotia. Ms. G.K., who was pregnant, remained in Toronto.
- [6] The plaintiff and the defendant married on December 19th, 1985. Their first child, C.A.K., was born on [], 1986.
- [7] Ms. G.K. then took maternity leave. She and C.A.K. lived with her parents until April of 1985. She then returned to work and began living with her sister.
- [8] Mr. D.E.K. finished the school year at A.[] University. He then transferred to the University of W.[] into a general science program. He did not have the grades to transfer to an engineering program.
- [9] In 1987, Ms. G.K. changed employment. She continued as a payroll clerk in Toronto, but with a different employer.
- [10] Mr. D.E.K. transferred to S.[] College in Toronto. He graduated in 1990 with a Civil Engineer Technologist Diploma.
- [11] The K.'s second child, A.A.K., was born on [], 1989.
- [12] In 1990, Ms. G.K. started to work for the O.[] Board as a direct payments clerk. However, in July of that year, Mr. D.E.K. gained admission to L.[] University in its engineering program, and by September the plaintiff and the defendant and their family moved to T.[]. Ms. G.K. got work at an embroidery shop.
- [13] In the spring of 1992, Mr. D.E.K. graduated with an Engineering Degree. He completed a practicum, and then obtained employment as a professional engineer in T.[].

- [14] In 1997, the plaintiff and the defendant and their family moved to Y.[]. The move was occasioned by Mr. D.E.K.'s ability to obtain work there with greater income than was possible in T.[]. The plaintiff was then the primary income earner. Ms. G.K. first worked in Y.[] as an accounting clerk at a hotel, and later worked as a payroll administration clerk with the Y.[] District.
- [15] After the separation in 2000, Mr. D.E.K. moved to Nanaimo, and Ms. G.K. eventually moved to Victoria.
- [16] Mr. D.E.K. is now employed in Nanaimo as a professional engineer. His 2002 Guideline income was \$75,900.
- [17] Since November of 2000, Ms. G.K. has been employed by the Pension Corporation in Victoria as a Benefits Assistant. Her 2002 Guideline income was \$38,576.
- [18] Both C.A.K. and A.A.K. have been resident with Ms. G.K. since their parents separated. The parties agree that it is appropriate that they remain with Ms. G.K., with Mr. D.E.K. having the right to reasonable and generous access to them.
- [19] The applications before me include that of Mr. D.E.K. for an order of joint custody of the children, with their primary residence and care and control being with Ms. G.K., and that of Ms. G.K. for an order that she have sole custody of the children.
- [20] I see no reason why both the plaintiff and the defendant should not share joint custody of their children, with their residence and primary care and control being with Ms. G.K.. I so order.
- [21] The parties agree that they should be joint guardians of their two children. I so order. If the parties do not agree as to the terms of guardianship, each of them has leave to apply before me, summarily, for that determination. The submissions before me were that the parties could probably work out terms of guardianship incorporating the provisions of a "Master Joyce Order".
- [22] The plaintiff shall pay child maintenance to the defendant in accordance with the Federal Child Support Guidelines. The monthly child support maintenance required for a Guideline income of \$75,900 is \$983 per month. I order that the plaintiff shall pay child maintenance for the two children in a sum of \$983 per month, commencing the first day of December, 2003.
- [23] I fix the defendant's Guideline Income at \$38,576.00.
- [24] The defendant seeks judicial reapportionment of property on the basis of fairness under s. 65 of the Family Relations Act.

- [25] The defendant also seeks spousal support. Her application relates to s. 15.2(6)(a) of the Divorce Act. She submits that the spousal support order is required to recognize the economic advantage to the plaintiff and the economic disadvantage to her arising from the marriage.
- [26] Section 56 of the Family Relations Act provides that each spouse is entitled to an undivided one-half interest in family assets as a tenant in common when one of events set out in s. 56(1) first occurs. The first such event occurred on November 3, 2003, that being when the order for dissolution of the marriage was pronounced.
- [27] The parties had accumulated few family assets before their separation. Each of them has, since their separation, accumulated assets of significance which are, by definition under s. 58 of the Act, family assets.
- [28] When the plaintiff and the defendant separated, they had a number of debts.
- [29] Since the separation, the plaintiff acquired RRSPs worth \$19,000 and disposed of RRSPs worth \$20,000. He used the proceeds to acquire a residence for himself and his new partner. The defendant seeks a share of those proceeds either under s. 56, or by way of a compensation order under s. 66.
- [30] Since the separation, the defendant acquired and retains RRSPs. She placed a value on them of about \$5,500 in August of 2003. She has also acquired pension benefits for her three years of post separation service with the Pension Corporation. The evidence before me does not establish the present value of that pension interest. Those RRSPs and that pension are, by definition, family assets. After the separation, the defendant acquired and retains a life insurance policy worth \$5,487. It may be a family asset. The evidence as to that is not clear. In either event, that asset is of relevance to the application of the fairness provisions of the Act.
- [31] Each of the parties acquired those assets after their separation. Each of the parties wishes to retain what each has acquired after the separation as their own free of any claim of the other. The plaintiff's post separation RRSP savings of \$19,000 are, in my opinion, more probably than not worth about the same as the sum of the defendant's post separation RRSPs and the value of her pension for her three years of service with the Pension Corporation. In the result, I am of the opinion that it would be unfair not to permit each of the plaintiff and the defendant to retain as their own those RRSP proceeds and RRSPs and pension interest. Pursuant to s. 66(1)(c) of the Family Relations Act, I order that the plaintiff and the defendant shall retain those assets as their own. The insurance policy was acquired after the separation. For that reason alone, I order that the defendant retain it as her own whether or not it is a family asset. I dismiss the defendant's application to retain her RRSPs and pension interest, and to have the value of the RRSPs that the defendant acquired after separation allocated to her. In my opinion, that would be unfair.

- [32] At the time of the separation, the parties owned a 1990 Chevrolet Lumina. It is of a value of about \$3,000. The plaintiff kept this vehicle in consideration for assuming and paying the vehicle loan of about \$4,800. The defendant could herself have kept the vehicle had she wished to assume that loan. I order that the plaintiff keep this vehicle as his own, but that he pay and save the defendant harmless from any obligation to pay the vehicle loan.
- [33] I am of the opinion that it would not be unfair to divide all the other family assets and the liability for family debts equally between the parties.
- [34] The parties have already divided between them the personal property that they had.
- [35] The parties had a number of debts at separation. Those debts included \$20,000 owing to the defendant's parents, and about \$18,000 owing in credit card debts, bank debts, consumer debts, and a student loan. I am of the opinion that the evidence does not establish that the parties owed \$10,000, or any sum, to the plaintiff's parents, as alleged by the plaintiff. Since separation, the plaintiff has assumed responsibility for all the family debts other than the debt to the defendant's parents. I order that the defendant shall pay and keep the plaintiff indemnified from any obligation to pay the debt to her parents, and that the plaintiff shall pay all of the other debts that the parties had at separation, and I order that the plaintiff shall keep the defendant indemnified from any obligation to pay those other debts. In addition, the plaintiff shall forthwith pay the defendant \$1,000 by way of equalization.
- [36] The plaintiff kept as his own \$7,500 worth of RRSP's that the parties had at separation. The defendant has a pre-separation acquired life insurance policy that she values at about \$4,800. I order that each of the plaintiff and the defendant shall retain those assets as their own. I order that the plaintiff forthwith pay the defendant the further sum of \$1,350 by way of equalization.
- [37] The parties shall each retain their credits, rights and benefits under the Canada Pension Act arising from their relationship and marriage and each others employment and contributions to the Canada Pension. These reasons do not affect their rights under the Canada Pension Act legislation.
- [38] The defendant's claim for spousal support includes a submission that the marriage economically disadvantaged her, and economically advantaged the plaintiff. In my opinion, the defendant is economically self-sufficient, and there is no reason other than s. 15.2(6)(a) why she might be entitled to an order for spousal support. The defendant relies on *Moge v. Moge* (1992), 43 R.F.L. (3d) 345 (SCC). The defendant submits that as a result of the marriage and as a result of her need to care for the children of the marriage, she did not pursue her career on the same basis as would occurred but for the marriage. She submits that she has been disadvantaged in that she relocated from time to time and disrupted her career path to accommodate the plaintiff's training and employment. She submits that the plaintiff is advantaged with employment that provides him with income far greater than hers.

- [39] The plaintiff, in turn, responds that he had always urged the defendant to further her education, and that it was her choice not to do so. He submits that the defendant's employment today is exactly the same as it probably would have been but for the marriage, and that he would likely have become an engineer with or without the marriage
- [40] I do not consider it of relevance that the defendant asserted a claim for compensatory support only some time after the separation occurred. Unlike a needs based claim for spousal support, a claim for compensatory maintenance can be considered and assessed only at trial, whether the claim is by way of application for a s.65 Family Relations Act order, or by way of application for an order for spousal support under s.15.2(6)(a) of the Divorce Act.
- [41] I am of the opinion that the marriage was of some economic disadvantage to the defendant, and of some economic advantage to the plaintiff. The marriage accommodated Mr. D.E.K.'s career path and plans. He did receive several years of schooling during the marriage. The defendant's career did suffer. She is of less experience and seniority than would have been the case but for the marriage and her need to child care.
- [42] I am of the opinion that a limited time maintenance order is required to recognize and address the economic advantage to the plaintiff and the economic disadvantage to the defendant arising from the marriage.
- [43] I have considered the affidavit evidence relating to the present economic circumstances of each of the parties. Each has economic responsibilities and obligations which have changed since their separation. Although both are economically self-sufficient, neither is affluent.
- [44] I order that the plaintiff pay spousal support to the defendant in the sum of \$500 per month for the fixed period of 60 months, the payments to commence February 1, 2004.
- [45] In my opinion, each of the parties has enjoyed a measure of success in this proceeding. I order that each bear his or her own costs.

"S.J. Shabbits, J."

The Honourable Mr. Justice S.J. Shabbits

December 15, 2003 - Corrigendum to the Reasons for Judgment issued by Mr. Justice S.J. Shabbits advising that 2004 should be deleted from paragraph 22 and the date 2003 should be inserted.

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