

CANADA / JUDGMENT

Doyle v. Doyle

2006 BCSC 1727

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 1727err1 Doyle v. Doyle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Doyle v. Doyle,

2006 BCSC 1727

Date: 20061122

Docket: E30184

Registry: Vernon

Between:

TRACY ANN DOYLE

PLAINTIFF

And

ANDREW JOSEPH DOYLE,

also known as DREW JOSEPH DOYLE

DEFENDANT

Before: The Honourable Mr. Justice Williams

Ruling Re: Applications brought by

plaintiff and defendant

Plaintiff, appearing on her own behalf:

T.A. Doyle

Counsel for the defendant:

P.A. Dyck

Date and Place of Hearing:

August 30, 2006

Vernon, B.C.

INTRODUCTION

- [1] In this matrimonial proceeding, both the plaintiff, Tracy Ann Doyle, and the defendant, Andrew Joseph Doyle, seek orders of the Court relating to child support issues and costs. The matter is before this Court as a consequence of an order of the Court of Appeal, setting aside an earlier ruling.
- [2] In her notice of motion, the plaintiff seeks the following orders:
1. That the issue of child support in relations to the children, namely, STEPHANIE ROBIN DOYLE, born November 19, 1988, and JORDYN MICHELLE DOYLE, born July 20, 1991 be reviewed and in particular that:
 - (a) That child support payments be re-calculated based on the defendant's income that he has declared as \$76,162.00 for 2005.
 - (b) The plaintiff be credited for child support payments for Jordyn Doyle from July 2005 to present, based on the defendant's income of \$76,162.00, for 2005.
 2. The Court make an Order that the defendant pay in full for any future fees for the child, Jordyn Michelle Doyle until the age 19, to attend extracurricular activities including but not limited to; music lessons, music equipment, sports, other recreational activities such as dog agility, extra-ordinary school fees, after receiving confirmation of costs from the plaintiff with notice. These activities shall be seen to benefit the health and social well-being of Jordyn so she can have the same opportunities as her sister, Stephanie Doyle, who benefits from living with the defendant who earns a significantly higher income than the plaintiff.
 3. The Court made an Order that the defendant be financially responsible for the entire costs minus the first \$1000, of post-secondary education for Jordyn Doyle, so she may have the same opportunity as her sibling, Stephanie Doyle, who benefits from the defendant's income which is in excess of \$76,000 per year. The estimated minimum amount of tuition is \$2000 per semester, and the defendant may choose to make payments into a RESP account on a monthly or lump sum basis over the next 3 years while Jordyn attends high school. An average degree program is 4 years long and has a total of 8 semesters, for a total of \$16,000 at minimum.

4. The Court make an Order that the defendant purchase a vehicle for the child Jordyn Doyle, when she reaches the age of 17 years, so she may have the same opportunity as her sister, Stephanie Doyle.
 5. Paragraph 5 of the Order made on December 16, 2002, by Madam Justice Neilson, which varied the Order made on June 18 and July 17, 2002, Paragraph 18, by Mr. Justice Cole, be varied by omitting specific days per week for access to accommodate the plaintiff's work schedule rotation, so it is more flexible to meet the changing needs of both children; Stephanie Robin Doyle, and Jordyn Michelle Doyle, for work, school, and recreational activities, without becoming concerned whose access day it is and whether that parent will provide transportation. Weekend rotations with the children between the parties shall remain the same.
 6. The Court make an Order that costs against the defendant be awarded to the plaintiff for time to prepare court documents for this proceeding, at a rate of \$30 per hour, based on approximately 10 hours of preparation time for paperwork, and approximately 1 hour of court time, for an estimated total of \$300, and make payment made by way of Registered Educational Savings Plan at Interior Savings Credit Union, in the name of Jordyn Doyle.
 7. The defendant pay costs to the plaintiff for fees outstanding from Legal Services Society in the amount of \$3,601.53 for Legal Aid services for the plaintiff for the legal fees incurred in the year 2002 in case LSS#2302777, when the plaintiff was unemployed.
- [3] The defendant, in his notice of motion, seeks the following:
1. That the issue of child support in relation to the children, namely, STEPHANIE ROBIN DOYLE, born November 19, 1988 and JORDYN MICHELLE DOYLE, born July 20, 1991 be reviewed and in particular, that:
 - (a) The defendant be credited for child support payments made by him to the plaintiff from May, 2005 through to August, 2005.
 - (b) The Court determine the Guideline incomes of the parties and order child support payable by one party to the other accordingly, and in accordance with the Federal Child Support Guidelines.
 - (c) The plaintiff pay to the defendant special and extraordinary expenses in accordance with Section 7 of the Federal Child Support Guidelines for anticipated post secondary education costs incurred by the defendant for the child, STEPHANIE ROBIN DOYLE, born November 19, 1988.
 2. An Order for costs against the plaintiff.
 3. Such further and other relief as this Honourable Court may order.

BACKGROUND FACTS

- [4] These parties were married on August 31, 1985. They separated on October 17, 2001, and were subsequently divorced on July 18, 2002.
- [5] There are two children of the marriage, Stephanie Robin Doyle ("Stephanie"), born November 19, 1988, and Jordyn Michelle Doyle ("Jordyn"), born July 20, 1991.
- [6] Relations between these parties have been, and continue to be, acrimonious.
- [7] Pursuant to the order of Mr. Justice Cole, made June 25, 2002, the plaintiff and the defendant shared custody of the children. Notwithstanding that arrangement, the defendant agreed to pay child support to the plaintiff in the amount of \$846 per month, based upon a Guideline income of \$63,000.
- [8] In May 2005, the elder child, Stephanie, decided to reside primarily with her father, the defendant. She apparently has a reasonably independent social lifestyle, has her own vehicle, a part-time job and commenced studies at Okanagan College in September.
- [9] Jordyn is in the 50-50 care of the parties, as set out in the order of Mr. Justice Cole. On the basis of the material filed, it appears that the acrimony of the circumstances has permeated her relationship to some extent. As best I discern, she, of her own volition, has recently decided that she will spend more of time with her mother than with her father, although it is not clear that this change is permanent. She is 15 years of age and is enrolled as a Grade 10 high school student.
- [10] Since the breakdown of the marriage, the plaintiff has attended a post-secondary education and has qualified herself in the field of social work. Initially, her income from that was sporadic, but the present indication is that she is employable and has embarked upon her career.
- [11] The defendant is employed as a machinist. His income for the taxation year 2005 was \$76,162. He has remarried and has taken on family obligations. As noted, Stephanie resides with him and his spouse.
- [12] In accordance with agreed terms between the parties, the defendant paid spousal support to the plaintiff for a period of one year. Spousal support terminated at that point.
- [13] Each of the parties brought applications in October 2005; those were heard by Brooke J.
- [14] The defendant contended that there were material changes in the circumstances and sought to vary to order of July 18, 2002. Specifically, he pointed to the fact that Stephanie now lived with him full time, as opposed to the original arrangement whereby she had resided half the time with one parent and half the time with the other and so he argued that his obligation to pay child support for her should be relieved as of May 1, 2005, the date of her move. He also took the position that Jordyn spent more than half of her time with him and so there should be a revisiting of his support obligation for her. Finally, he submitted that the plaintiff had secured a new job and that her income had substantially increased.

- [15] Brooke J. accepted that the relocation of Stephanie constituted a material change of circumstances, effective July 1, 2005, and went on to deal with the applications regarding support obligations. He found that the plaintiff's employment situation was not sufficiently established to warrant recognition as a settled state of affairs, particularly considering the fact that she had been through significant difficulty and sacrifice to upgrade her skills and to enhance her ability to earn an income.
- [16] In dealing with the difficult situation of a shared custody/split custody scenario, he ordered that the defendant to pay a full measure of child support to the plaintiff, as per the Child Support Guidelines (the "Guidelines"), for Jordyn. He relieved the defendant from the obligation to pay child support for Stephanie, but declined to order that the plaintiff pay any support for her.
- [17] The defendant appealed from the decision of Brooke J. He disputed the finding made as to when Stephanie had begun to live primarily with him, he challenged the chambers judge's finding of the plaintiff's annual income, and he challenged the order which had been made with respect to his application to vary child support, particularly, the ruling that the defendant would be responsible for a full component of child support for Jordyn, notwithstanding the shared custody arrangement.
- [18] In oral reasons delivered March 8, 2006, speaking for the court, Huddart J.A. dismissed the appeal with respect to the date of Stephanie's move and the chamber judge's determination of the plaintiff's income for the purpose of the Guidelines. However, the court concluded that the chambers judge had erred in the matter of the child support obligation of the defendant.
- [19] The court recognized that the situation should be governed by either section 8 of the Guidelines, providing for a split custody arrangement or section 9, which provides for a shared custody arrangement, or possibly some combination. The court declined to substitute the order it thought proper, in that there was on the record no evidence with respect to certain relevant factors, particularly those set out at section 9(b) and (c):
- (b) the increased cost of shared custody arrangements; and
 - (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.
- [20] In the circumstances, the order of Brooke J. was set aside and the matter was remitted for a further hearing; the parties were at liberty to provide the relevant evidence and the Guidelines could thereby be considered and applied.
- [21] Thus it is that the matter is before this Court.
- [22] It is my understanding that the defendant has paid child support to the plaintiff in accordance with the order of Brooke J. through June 2006.

ISSUES TO BE DETERMINED

- [23] The principal issue to be addressed is the proper structural basis for the parties' child support obligations for Jordyn.
- [24] It will also be necessary to address the parties' obligations for the post-secondary education expenses for Stephanie.
- [25] There was initially an issue with respect to access arrangements; during the course of the hearing, the parties agreed that they will be able to resolve that without any order of the Court and accordingly that will not be addressed.
- [26] The Court must also deal with the plaintiff's application that the defendant be ordered to pay on a prospective basis the post-secondary expenses of Jordyn and that he be ordered to purchase a vehicle for her when she reaches the age of 17.
- [27] Additionally, it will be necessary to rule upon the plaintiff's application that the defendant pay costs to her for fees outstanding from the Legal Services Society, which fees are evidently sought to be recovered for proceedings in the year 2002, at a time when the plaintiff was unemployed and the Society made representation available to her.
- [28] Finally, the plaintiff seeks an order that the defendant be required to pay her for her preparation and court time at a rate of \$30 per hour.

DISCUSSION

- [29] In the course of submissions, counsel for Mr. Doyle advanced the position that there is a fair and reasonable way of dealing with the situation, one that does not require the difficult conceptual contortions of reconciling the facts with the provisions of ss. 8 and 9 of the Guidelines. Essentially, he proposes that the matter be treated as a split custody scenario. By that method, the husband would be treated as though he had sole custody of one of the children and the wife as though she had sole custody of the other.
- [30] I digress for a moment to deal with the matter of the appropriate income amounts to be used for the purpose of determination of quantum of support. Initially there appeared to be some considerable difference of opinion on this issue. In fact, that is not the case. The parties are agreed that Mr. Doyle's income for this calculation is \$76,162.00 and Ms. Doyle's is \$28,305.00. Those are the amounts that will form the basis of the calculations.
- [31] Using these income amounts and continuing the proposal of Mr. Doyle, he would be obliged to pay Ms. Doyle the sum of \$610 per month in respect of the child who is with her. Ms. Doyle would be required to pay the sum of \$252 per month to Mr. Doyle for the child who is with him. Once offset, the net effect is that Mr. Doyle would pay \$363 per month to Ms. Doyle.

- [32] In my view, this proposal is sensible and fair and conceptually straightforward. I do not understand Ms. Doyle to dispute that, although she has concerns that arise from other areas, particularly the matter of expenses for the activities and extra expenses of the children. Those will be addressed shortly.
- [33] The cases dealing with the complications that attend the situation of split custody/shared custody arrangements, and most authoritatively *Contino v. Contino-Leonelli*, [2005] 3 S.C.R. 217, recognize the fact that there are duplications of costs and expenses that are not readily addressed by the straightforward application of the Guidelines, along with other factors. It becomes necessary to consider the increased costs of shared custody arrangements, together with the conditions, means, needs and other circumstances of both the parents and the children. The exercise is by no means an easy or uncomplicated one. These concerns are present in the case at bar. The challenge is made substantially more difficult because the evidence that would be necessary to enable this Court to make the analysis required is not before this Court.
- [34] The proposal appears to implicitly recognize the difficulty in fully addressing the challenges that the cases describe, and, to my mind, does so in a way that is fair and equitable. It will form the basis of the outcome here.
- [35] There are extraordinary expenses to be dealt with, most particularly the post-secondary educational expenses of the elder child, Stephanie. Mr. Doyle takes the position that the responsibility for these costs should be borne by the parties in direct proportion to their Guidelines income. By that method, Mr. Doyle would be liable for 72.9% of the relevant expenses, while Ms. Doyle would be responsible for 27.1%. That accords with the presumptive allocation of the statutory scheme. The basic expenses for Stephanie's academic year are indicated as \$4,900.00, comprising tuition, books and parking. Ms. Doyle has received the Child Tax Credit for Stephanie and has provided that to her for the purposes of the educational expenses. Mr. Doyle submits that that sum should be credited to Ms. Doyle's obligation, so that she will owe \$327.90 for the entire academic year, that is, is further to the amount that has already been paid.
- [36] Mr. Doyle did not make specific submissions with respect to other extraordinary expenses for Stephanie nor with respect to Jordyn.
- [37] Ms. Doyle takes issue with this proposal. In her submission, the essential imbalance between her financial lot and that of Mr. Doyle is such that it constitutes unfairness for her to have to contribute to the extraordinary expenses of the girls. She sees the situation as being exacerbated by the fact that she is more responsible for Jordyn than she is for Stephanie's day to day circumstances (because the latter resides with Mr. Doyle and enjoys the benefit of a lifestyle that Ms. Doyle considers much more than she can afford for herself, which she sees as thereby imposing a disparate and lesser lifestyle on Jordyn). As I understand, it is her view that the appropriate order for this Court to make is that Mr. Doyle will be fully responsible for all of the extraordinary expenses of both the children. She has

also urged that the Court make orders for certain prospective expenses, but I will deal with that issue later in these Reasons.

- [38] While there is a discretion to be exercised in respect of the allocation of the parents' responsibility for such expenses, other than in strict proportion to the respective incomes, it must be exercised in a way that is fair and reasonable, and in light of the circumstances at large. In this case, I am not persuaded that it would be appropriate to deviate from the proportionate model. As I have discussed earlier, the child support order that is being made is structured to recognize Ms. Doyle's lesser means. The allocation of the extraordinary expenses proposed by Mr. Doyle for the post-secondary costs incurred by Stephanie constitutes a modest burden for Ms. Doyle. As well, there is the fact that Mr. Doyle has the financial responsibility of a new family. I realize that his circumstances seem quite strikingly comfortable to Ms. Doyle, but the fact is, the evidence before me demonstrates that he has an income of \$76,162.00. He is not a person of infinite or extravagant wealth by any means.
- [39] In my view, this is not a situation where it would be fair or appropriate to depart from the proportional allocation of responsibility for the extraordinary expenses of the two children.
- [40] In her application, Ms. Doyle seeks an order that would require Mr. Doyle to be fully responsible for all future fees for Jordyn's extracurricular activities, up to the point that the child reaches the age of 19 years. She also asks this Court to order that Mr. Doyle be financially responsible for the entire cost of the post-secondary education of Jordyn (minus the first \$1,000) for a total of four years, and suggests that Mr. Doyle make payments toward that expense by paying into an account over the next three years while Jordyn finishes high school. Additionally, she seeks an order of the Court that would require Mr. Doyle to purchase a vehicle for Jordyn when she reaches the age of seventeen.
- [41] It is evident that Ms. Doyle believes that there are discrepancies between the circumstances of the two girls, and she is determined that everything that can be done should be done to alleviate that situation. While that view undoubtedly flows from a genuine concern for her children, these are not orders that this Court should make. With respect to the legitimate extraordinary expenses of Jordyn's extracurricular and other activities, they should be dealt with in accordance with the usual pattern in such matters, and, in this case, should be borne proportionally by the parents in accordance with their Guidelines incomes. That is consistent with the discussion above. Insofar as the Court is asked to make a blanket order, I decline. These matters should be dealt with by the parties on the basis of circumstances as they develop. Hopefully they can be addressed through discussion and agreement; if that cannot be accomplished, then of course applications may be brought if that is found to be necessary. As for the proposed requirement that Mr. Doyle should pay funds into an account now to satisfy an obligation that may or will materialise well into the future, I know of no basis that would justify the making of such an order. Presumably he will meet his obligations in a responsible way as they arise. For the Court to become engaged in making orders that would in effect manage his budget is not in any way justified. Finally, with

respect to the application for an order that would require him to buy an automobile for this child in three years, it is not reasonable and no such order will be made.

- [42] The applications set out in paragraphs two, three and four are dismissed.
- [43] Ms. Doyle also brings two applications for orders dealing with costs. The first is that she be awarded the sum of \$300 (ten hours at \$30.00 per hour) to compensate her for the time she took to prepare the materials for this application. This is simply an application for an award of costs, and I will deal with it at the conclusion of these Reasons.
- [44] Secondly, she seeks an order that would require Mr. Doyle to pay her the sum of \$3,601.53, which I understand is an amount that the Legal Services Society of British Columbia claims that she owes that organization and which the Society is actively attempting to collect from her. Evidently she was provided with counsel by the Society at the time that the parties were actively litigating the divorce and a number of collateral issues. Ms. Doyle was unemployed at the time and a lawyer was made available to her for that purpose, although it would appear that the Society had or believes it had an arrangement to make some recovery from her from the proceeds of the property settlement. That claim apparently remains outstanding.
- [45] The issues between the parties were addressed in a case conference that took place on June 25 and July 17, 2002. The resulting order, which was entered on July 18, 2002, is five pages in length and deals with the resolution of a host of issues, including the divorce, property matters, custody, guardianship, access, child support, spousal support, and even the custody of a family pet. Paragraph 31 of the order states that "each of the parties shall each bear their own costs".
- [46] In my view, that answers Ms. Doyle's present claim to be have Mr. Doyle pay for the legal account she is facing. On a plain reading of the order, there is no other conclusion but that each of them would be responsible for their own legal costs. There is no basis to make the order that she seeks.
- [47] Finally, I turn to the matter of the costs of this application. While success has for the most part been in Mr. Doyle's favour, I am going to decline to make an order for costs in his favour. Rather, the parties will each bear their own costs. Accordingly, Ms. Doyle's application in this regard is dismissed.

SUMMARY

1. The Guidelines income of the plaintiff Tracy Anne Doyle is determined to be \$28,305.00.
2. The Guidelines income of the defendant Andrew Joseph Doyle, also known as Drew Joseph Doyle, is determined to be 76,162.00.

3. Effective August 1, 2005, the defendant shall pay to the plaintiff the sum of \$610.00 per month for the support of the child Jordyn Michelle Doyle and the plaintiff shall pay to the defendant the sum of \$252.00 per month of the support of the child Stephanie Robin Doyle. In the net result, the defendant shall pay to the plaintiff the sum of \$358.00 per month in respect of child support.
4. The post-secondary educational costs of the child Stephanie Robin Doyle for the academic year 2006-2007, estimated to be \$4,900.00, shall be shared proportionately between the plaintiff and the defendant. The plaintiff is to receive credit of \$1,000.00 for the Child Tax Credit that has been paid for these expenses. The proportion of responsibility is 27.1% for the plaintiff and 72.9% for the defendant. The plaintiff's outstanding share for the academic year 2006-2007 is \$327.90. The parties shall adjust their obligations at the commencement of the January term.
5. Extraordinary expenses of the children, other than the post-secondary educational expenses of Stephanie, shall be shared by the parties in the ratio of 27.1% for the plaintiff and 72.9% for the defendant.
6. The plaintiff's application for an order that the defendant pay in full for the cost of extracurricular activities for Jordyn is dismissed.
7. The plaintiff's application for an order that the defendant be required to pay the full cost of the post-secondary education of Jordyn and to deposit funds to secure such an obligation is dismissed.
8. The plaintiff's application that the defendant purchase a vehicle for Jordyn when she reaches the age of 17 years is dismissed.
9. The plaintiff's application that the defendant pay her the sum of \$3,601.53 for legal fees sought by the Legal Services Society is dismissed.
10. The parties shall each bear their own costs of this action.

"J. Williams, J."

The Honourable Mr. Justice J. Williams

February 2, 2007 - Revised Judgment

Corrigendum to the Reasons for Judgment issued advising that in paragraph 3, page 15, the last sentence should read:

In the net result, the defendant shall pay to the plaintiff the sum of \$358.00 per month in respect of child support.

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