
CANADA / JUDGMENT

Drouillard v. Drouillard

2012 BCSC 1469

COURT

Supreme Court of British Columbia

DECIDED

3 October 2012

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2012 BCSC 1469 Drouillard v. Drouillard

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Drouillard v. Drouillard,

2012 BCSC 1469

Date: 20121003

Docket: 47069

Registry: Kamloops

Between:

Melanie Jane Drouillard

Claimant

And

Christopher William Drouillard

Respondent

Before: Master R.W. McDiarmid

Reasons for Judgment

Counsel for the Claimant:

M.S. Harrison

Counsel for the Respondent:

D. Komori

Place and Date of Hearing:

Kamloops, B.C.

September 17, 2012

Place and Date of Judgment:

Kamloops, B.C.

October 3, 2012

- [1] In this application, the claimant seeks interim spousal support; an order for exclusive occupancy of the former family home located at 4938 Gloinnzun Crescent, 108 Mile Ranch, British Columbia; an order for sale of the cabin located at 4864 Gloinnzun Place, to be sold with the claimant having sole conduct of sale, or, alternatively, the parties having joint conduct of sale; until the sale of the cabin the respondent is to make payments on a joint line of credit, that the respondent continue to make mortgage payments on the mortgage registered against title to the former family home; that the respondent maintain or reinstate the claimant as designated beneficiary on his life insurance, and that the respondent authorizes the insurer to permit the claimant to determine that insurance continues to name her as the designated beneficiary; that the respondent maintain or reinstate, if required, the claimant as the designated beneficiary of his life insurance policy with Equitable Life; that the respondent maintain the claimant on his medical and dental coverage available through employment; and that the respondent direct that the claimant be reimbursed directly for any medical and dental claims made by her, together with further and other relief and costs.
- [2] The respondent consents to paying interim spousal support based on the Spousal Support Advisory Guidelines [SSAG] provided that the claimant is responsible for the mortgage payments on the former family home, and for other expenses of the former family home. The respondent consents to the claimant having exclusive occupancy of the former family home. The respondent consents to continuing to be responsible for payments on the joint line of credit. He consents to keeping the claimant as a designated beneficiary of life insurance available through his employment, he consents to maintaining the claimant on his medical and dental coverage, including extended medical and dental coverage available through his employment, and consents to the claimant being reimbursed directly for any claims made under his medical and dental coverage available through his employment.
- [3] The respondent opposes the application to sell the cabin, the application that he continues to make mortgage payments on the mortgage registered against the former family home in addition to spousal support, and opposes reinstating the claimant as designated beneficiary on his life insurance policy with Equitable Life.

- [4] By way of background, the parties were together for 18 years, from June of 1994 until March 2012, when they separated.
- [5] When the parties married, the claimant was a widow. That is only relevant because the claimant receives a widow's pension of \$452.71 per month, which is her only secure income at present.
- [6] The evidence is that the claimant, during the marriage, worked at a number of unskilled jobs. She was not employed for a time period between 2008 and January of 2012, apart from doing some home renovations and painting in 2007 on an informal basis. Between July 2008 and August 2010, the claimant looked after and cared for her mother who lived with the parties during that period.
- [7] Shortly before the parties separated, the claimant obtained employment in Fort McMurray. She deposes that she:

... was not able to maintain the pace of this job, in part because of the nature of the job and in part because of the Respondent's behaviour while I was working. I also got carpal tunnel syndrome on the job and had to wear a brace on my left hand. I attended the local hospital because of the pain. In March, 2012, the Respondent, as indicated in this Affidavit, drew monies out of our joint line of credit without my agreement. I had to leave Fort McMurray and the job there in order to get home as soon as possible because I was very concerned about what the Respondent was doing with our finances and assets.

- [8] This latter comment is in relation to the essentially uncontradicted evidence that the respondent acquired what is referred to as the cabin, and in order to do so drew down a joint line of credit which is secured against title to the former family home. In addition, the respondent withdrew \$12,000.00 from the parties' joint bank account without the claimant's consent.
- [9] The respondent is employed as a school teacher. In 2011 his line 150 income was \$74,970.00. From that employment income, he has a union, professional or like dues of \$1,738.00 deducted annually, resulting in a net employment income of \$73,231.00.
- [10] While the respondent did obtain some workers' compensation benefits, I am satisfied that those were to off-set expenses incurred by him, and will not be used on this interim application to attribute additional income to him.
- [11] The respondent asks that in determining spousal support, I attribute income to the claimant.
- [12] The evidence shows that the claimant is trying to supplement her income and has taken in two students for approximately two and one half months, ending the first week of November 2012. The evidence of the claimant in this regard is somewhat unsatisfactory. I accept that she is being paid \$750.00 per month per student for their room and board, pro-rated for those months which are not full calendar months. Her estimate of the expenses attributable

to those two students exceeds the amount of money she is receiving and that does not make sense.

- [13] However, there is no evidence to indicate that she will have this additional income from this source after November 4, 2012, so I do not propose to attribute income to her with respect to these student boarders she is taking in, recognizing that there has probably been some small economic advantage to her from this.
- [14] I am mindful that although the claimant has some physical issues, carpal tunnel syndrome being perhaps the most serious, it does appear that she will be able to obtain some employment. The respondent has submitted that I should attribute \$21,320.00 income to the claimant over and above the Canada Pension Plan ("CPP") survivor pension she receives. The claimant deposed to income of \$13,104.00 in her financial statement. However, she was laid off from the job from which she anticipated generating this income. She is at present unemployed apart from looking after the student boarders.
- [15] The parties attended before me in a judicial case conference ("JCC") on May 14, 2012. At that time, the parties consented to certain orders, including in particular an order whereby the respondent consented to maintaining the claimant on his medical plan, consented to an order that any medical and dental expenses paid by the claimant are to be reimbursed directly to her, and consented to signing any authorizations required for medical and dental.
- [16] The parties also consented to an order that the beneficiary designations on life insurance will remain until the indebtedness on the former family home has been paid.
- [17] Accordingly, the orders sought in the application at paragraphs 6, 8 and 9 are already in place, so to that extent those orders are not needed.
- [18] From the evidence before me I cannot tell whether at the time the consent orders were entered into at the JCC, the claimant was a designated beneficiary on the respondent's Equitable Life insurance policy. From submissions made to me by respondent's counsel, it would appear that at the time of the consent order, the respondent's son was the designated beneficiary. I am advised that he is now the designated beneficiary.
- [19] If the claimant was the designated beneficiary when the interim consent order at the JCC was entered into on May 14, 2012, she should be reinstated as such. If she was not, then I will not make any further orders with respect to that portion of the relief sought.
- [20] The main issue before me has to do with whether or not the cabin ought to be sold.
- [21] Counsel on behalf of the claimant forcefully pointed out that the whole series of events surrounding the acquisition and plans for further development of the cabin were carried out by the respondent without the consent of the claimant and in a manner which has significantly increased the debt load of the parties, impairing the claimant's financial security. I accept that this is so.

[22] However, I also accept what has been submitted on behalf of the respondent; namely, that to order that the cabin be sold would not be in the economic interests of either party.

[23] The respondent has incurred substantial obligations. His counsel has submitted that if I were to order that the cabin be sold now, that would be an economic disaster.

[24] The Supreme Court Family Rules (the "Family Rules"), Rule 15-8(1) reads as follows:

Court may order sale

(1) If in a family law case it appears necessary or expedient that property be sold, the court may order the sale ...

[25] The evidence before me, provided by the respondent, is to the effect that a sale is not necessary and that he will be able to service the debt load which presently exists, together with the increased debt load he anticipates in order to erect a prefabricated post and beam home which he has already contracted to acquire.

[26] The respondent deposes in paragraph 16 of his first affidavit made September 7, 2012 and filed September 10, 2012, that a locally owned company requires a model home, that he has paid \$46,240.02 to that company, that the company has agreed to place a second mortgage on the cabin property, and does not seek the balance of an equivalent amount until August 9, 2017, to ensure that the project is completed so they will have a show home and the respondent will have a finished home. The respondent deposes in that paragraph that the \$46,240.02 paid to Trinity Post and Panel Inc., together the purchase price of the land, is where the \$124,000.00 CIBC line of credit attached to the former family home has been spent.

[27] In paragraph 17, the respondent confirms that CIBC has approved a construction mortgage which will pay off the personal line of credit, as well as the respondent's own MasterCard and second line of credit.

[28] The respondent deposes that:

... Once completed, depending on an updated appraisal, some of the CIBC line of credit for \$124,000 can be transferred to the Cabin Property.

[29] I find that to be unrealistic and unlikely. Financial institutions are not generally in the habit of reducing their security, although I suppose such an eventuality is possible.

[30] The test for ordering a judicial sale under the Supreme Court Rules, Rule 43(1), the predecessor to the Family Rules, Rule 15-8, set out in *Reilley v. Reilley*, 99 D.L.R. (4th) 47, where Goldie J.A., for the court, concludes at para. 31:

[31] In the result Rule 43(1) must now be taken as conferring a discretion on a judge to order the interim sale of real property which is a family asset where such a sale is necessary or expedient. There is, therefore, no error in law in the order appealed from in the case at bar.

- [31] Dealing with the exercising of discretion, Goldie J.A. writes as follows:
- [32] With respect to the exercise of her discretion Madam Justice Allan was guided by the judgment of Madam Justice Huddart in *Bodo v. Bodo* in deciding whether it was necessary or expedient to make the order sought. There being no necessity, expediency became the sole basis for the order.
- [33] It is self-evident that great care must be taken over the interim sale of the matrimonial home which is, by virtue of s. 43 of the Act, a family asset. A triggering event signals a marriage breakdown. The common law rights of a wife to continue residing in the matrimonial home are largely superseded. If the spouses are joint tenants or tenants in common one spouse's right to partition under the Partition of Property Act is subordinate to the apportionment provisions of s. 51. In some cases the welfare of children residing in the matrimonial home will be the principal consideration.
- [34] In *Bodo v. Bodo* it was said any doubts about the justice of an order for sale on an interim application should be resolved in favour of the status quo.
- [35] With respect, this formulation may not provide the certainty it suggests. The status quo for one spouse may be the perpetuation of an injustice for another. In light of the infinite variety of circumstances arising out of human relationships it is fruitless to attempt to catalogue in advance the factors to be taken into account on an application for an interim sale. At the risk of over simplification my own view is that what the rule requires, where necessity is not in issue, is that the proposed sale be advantageous to both parties. Advantageous is a primary dictionary meaning of expedient. As to its application to all parties see *In re Craven's Estate*, [1937] 1 Ch. 431 (Ch.D.). In that case the statute in question authorized the sale of property by trustees in the absence of any express power but where it was expedient in the opinion of the court to do so. The court declined to order a sale which was advantageous to one beneficiary but not to others.
- [36] In the case at bar Madam Justice Allan concluded it was in the best interests of both parties if an order for sale was made. ...
- [32] The actions of the respondent in unilaterally purchasing the cabin property and in incurring indebtedness, for which the claimant is jointly responsible, in order to fulfill the respondent's vision for the cabin property, is high-handed and unfair. He should not have done either of those things without consent.
- [33] However, in my view it is neither necessary nor expedient to order the sale of the cabin property at this time.
- [34] The evidence of the respondent's ability to service the debts negates necessity.
- [35] If the project can be completed as envisioned by the respondent that should increase the equity position and enhance the valuation of all of the family assets. In addition, the cabin property may well provide a place for the respondent to reside.

- [36] As pointed out by Goldie J.A., a formulation that any doubts about the justice of an order for sale on an interim application should be resolved in favour of the status quo is not the entire answer. The status quo for one spouse (the respondent in this case) may be the perpetuation of an injustice for the claimant.
- [37] It does not appear to me that the sale would be advantageous to both parties. On the contrary, it seems to me that a proposed sale at this juncture would, as characterized by respondent's counsel, be a disaster.
- [38] The application by the claimant for the order sought in paragraph 3 of the notice of application is dismissed.
- [39] Lastly, dealing with interim spousal support, I reviewed the evidence here. The respondent has agreed to pay interim spousal support. Both counsel provided to me DIVORCEmate print-outs correctly setting the respondent's income at a net of \$73,231.00. If I attribute only the pension income to the claimant, the SSAG suggest a range of spousal support between \$1,509 low, \$1,760 mid, and \$2,012 high. If I attribute \$13,104.00 of income to the claimant, as deposed to by the claimant prior to being laid off, the range is \$1,162 low, \$1,356 mid and \$1,550 high.
- [40] The claimant is capable of working, and for the purposes of this interim application I attribute employment income to her of \$1,000.00 per month. The SSAG range, including this attributed income, is \$1,280 low, \$1,494 mid, and \$1,707 high.
- [41] Because the mortgage payment has been increased as a consequence of the actions of the respondent, I am going to order spousal support above the mid range. I order that the respondent pay to the claimant the sum of \$1,550.00 per month commencing October 15, 2012, and \$1,550.00 per month on the 15th day of each and every month thereafter until this order has been varied by a change of circumstance. The \$1,550.00 in addition to the CPP survivor's benefit received by the claimant will enable her to enjoy a standard of living approximately the same as that of the respondent until this matter has gone to trial.
- [42] The claimant is ordered to make the payments set out in paragraph 24 of her second affidavit made September 12, 2012 and filed September 13, 2012. These include the mortgage, hydro, cable, Internet, telephone and water. The respondent is to continue to pay the payments he is presently making up to October 15, 2012.
- [43] In summary, with respect to the orders sought:
- a) The respondent is to pay interim spousal support to the claimant in the amount of \$1,550.00 commencing October 15, 2012;
 - b) Commencing October 15, 2012, the claimant is to make the payments (apart from the insurance which has been paid) as set out in paragraph 24 of her second affidavit;

- c) The claimant is to have exclusive occupancy of the former family home located at 4938 Gloinnzun Crescent, 108 Mile Ranch, British Columbia;
 - d) The application to sell the cabin located at 4864 Gloinnzun Place, 108 Mile Ranch, British Columbia, is dismissed;
 - e) The respondent is to continue to make the payments on the \$124,000.00 joint line of credit in addition to paying spousal support;
 - f) The application to have the respondent continue to make mortgage payments is dismissed;
 - g) The relief sought in paragraphs 6, 8 and 9 of the notice of application have been dealt with in the manner sought by the claimant pursuant to the consent order agreed to by the parties at the JCC held May 14, 2012; and
 - h) The application to have the respondent "maintain or reinstate, if required" the claimant as a designated beneficiary of his life insurance policy with Equitable Life is governed by one of the provisions of the consent order entered into at the JCC; if at the time of that JCC the claimant was the designated beneficiary then she is to be reinstated. If at the time of the JCC the respondent's son was the designated beneficiary, then that designation remains.
- [44] The respondent has generally been successful, at least insofar as the contentious matters in this application are concerned. However, an order for costs at this point may well interfere with the potential for the parties to resolve all issues between them. Accordingly, the issue of costs on this application is set over to be dealt with at trial.

MASTER McDIARMID

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