

CANADA / JUDGMENT

Engelbert v. Holuboch

2020 BCSC 890

COURT

Supreme Court of British Columbia

DECIDED

16 June 2020

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2020 BCSC 890 Engelbert v. Holuboch

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Engelbert v. Holuboch,

2020 BCSC 890

Date: 20200616

Docket: E200092

Registry: Vancouver

Between:

Margaret Kirsten Vibeke Engelbert also known as Kirsten Holuboch

Claimant

And

Dorian Edward Holuboch

Respondent

Before: The Honourable Justice A. Ross

Reasons for Judgment

Counsel for the Claimant:

K. Richardson

Counsel for the Respondent:

J. Lewis

Written submissions Received

Vancouver, B.C.

June 9, 2020

Place and Date of Judgment:

Vancouver, B.C.

June 16, 2020

- [1] This application comes before the court by way of written submissions in lieu of an oral or telephone hearing. The claimant seeks orders for interim child and spousal support.
- [2] The respondent agrees to pay some interim child support but disputes the amount claimed. He disputes the claimant's entitlement to interim spousal support.
- [3] I am not willing to make a decision on the claimant's application for interim spousal support. First, I note that this written procedure is designed to deal efficiently with a single issue between parties. By definition, seeking both spousal and child support constitutes two issues. More importantly, the respondent's uncertain financial position, discussed below, makes the claimant's entitlement to interim spousal support a live issue. A finding in favour of one party, at this point in time, could be unfair to the other party. For that reason, I decline to make any order with respect to interim spousal support, and I adjourn that application generally. The claimant is at liberty to bring that application back on for hearing at any time. However, I suggest that she wait until the respondent's financial situation is more stable.
- [4] Turning back to the first issue, the claimant seeks interim child support for two children, H. (born September 15, 2014) and R. (born October 15, 2017).
- [5] H. is the child of the claimant and her former spouse. The claimant has full parenting responsibilities for H. There is an existing order that H.'s father pay \$278 per month in child support.
- [6] R. is a child of the marriage of the parties.
- [7] The claimant, who is qualified as a registered nurse, has been on long-term disability since before the beginning of the relationship with the respondent. She receives \$3,400 per month in disability payments.

- [8] Because of the conduct of the respondent, the claimant departed from the family residence with the two boys on January 15, 2020. She also filed the notice of family claim on that date. The claimant notes that she has incurred numerous expenses because of the respondent's poor money management and her departure from the family home. The claimant obtained certain orders regarding contact and preservation of funds on applications made without notice to the respondent.
- [9] The claimant says that her counsel entered into negotiations with the respondent and, in early March 2020, the respondent agreed to consent to an order whereby he would pay monthly child support of \$2050 per month. She says that figure was calculated based on his estimate income from 2019. For reasons set out below, the respondent's financial landscape changed in mid-March.
- [10] In response to the claimant's application, the respondent states that his situation is as follows:
- a) Until May 15, 2020, he was employed at a mine in Yukon. He was earning \$140,000 per year.
 - b) As a result of the COVID-19 pandemic, he is now unemployed. He has not worked since March 31, 2020. He has applied for, but has not yet received, employment insurance benefits.
 - c) Hence, any discussions that he had in early March 2020 regarding child support are no longer germane to the situation.
 - d) He is applying for jobs on Vancouver Island and expects to obtain employment soon. He submits that the court should impute an income of \$80,000 per year to him.
 - e) Since 2018, he has been an undischarged bankrupt. He hopes that he will be rehabilitated by the fall of 2020. He pays \$1,370 per month to the bankruptcy trustee.
 - f) He has another biological son and pays \$1,050 per month for child support.
- [11] The respondent's position is that his obligation to pay interim support for H. is secondary to that of the child's parents. On that basis, he submits that the appropriate payment towards H.'s support would be \$150 per month. He further submits that a time limit should be placed on this obligation. Because the entirety of the relationship with the claimant was less than three years, he submits that the interim payments should not be longer than three years.
- [12] He submits that, based on an imputed income of \$80,000 per year, the Federal Child Support Guidelines, SOR/97-175 [Guidelines] provide \$765 per month as the appropriate table amount for the support payable in respect of R.
- [13] Hence, in combination, the respondent's position is that he should be required to pay \$915 per month on an interim basis.

- [14] The respondent notes that, since January 15, 2020, he has paid the claimant a total of \$6,980. He seeks credit for that amount against any amount of interim child support ordered by the court. The claimant says that not all of those payments were earmarked for child support. I cannot decide that issue on the current application.
- [15] The claimant, in her response submissions, seeks an assessment of the respondent's income on the basis of a three-year average. She also notes that, in addition to not providing his 2019 tax return, the respondent has not disclosed any income that he may have earned from a company he owns. Given that the respondent is an undischarged bankrupt, I doubt that he has significant income from that endeavour. However, I do not make any finding on that front, and I encourage full income and asset disclosure.
- [16] In her reply submissions, the claimant also submits that she is not actually receiving any child support from H.'s father. She concedes that she does not have evidence to that effect. Her position on that issue further emphasizes the need for the parties to address these issues more fully at a subsequent hearing.
- [17] In the circumstances, given the world-changing effect of the pandemic, I am not willing to accede to the claimant's submission regarding a three-year average for the respondent's income. Although there is case authority to support that proposition, the factual underpinning of those cases usually depends on the payor being employed but having variable income. As noted, in this case, the respondent's financial situation has been significantly affected, at least in part, by a world-wide pandemic. Hence, imputing income that he does not receive, and is not capable of earning, will not benefit anyone.
- [18] It is apparent to me that the respondent's financial position is very much in flux. As noted, he requests that an income of \$80,000 per year be imputed to him. The basis for that imputation, on the affidavit material, is unclear. As noted, as of the date of his affidavit, he was unemployed but applying for work. The only fair method of ensuring that a proper amount is being contributed to support the two children is by the respondent having an ongoing obligation to disclose his income, until that income becomes steady.
- [19] In my opinion, both parties will benefit from attending a judicial case conference in the near future to determine whether the respondent's financial situation has become more certain and whether any issues can be resolved. Thereafter, I expect that there will be full applications relating to interim child and spousal support.

Orders Made

- [20] As a result, in an effort to ensure that the children have proper financial support, I make the following (very) interim orders:
- a) I adjourn the claimant's application for spousal support with liberty to reapply.

- b) I decline to make a finding or imputation with respect to the respondent's income for Guidelines purposes, and I order that any such finding or imputation must be made following a further application.
- c) I order that the respondent pay \$1,400 per month in interim child support pursuant to s 15.1(2) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) in relation to H. and R. I do not put any time limit on that obligation at this time.
- d) The respondent is to be given credit for \$6,980 that he has paid to the claimant in 2020, subject to further evidence being adduced at a subsequent hearing regarding the nature of the payments by the respondent.
- e) The monthly payments should be made on the first day of each month to HART Legal, in trust, and delivered to 460-888 Dunsmuir St. Vancouver, BC, V6C 3K4, or in such other method as the parties may agree.
- f) I order that the respondent produce, on a monthly basis, copies of his pay stubs, employment insurance benefits, and other income. That production can be made by scanning the documents with a smart-phone and emailing the scans to his counsel or counsel for the claimant, whichever is more convenient.

[21] Both parties are at liberty to apply for variation of this order once the financial circumstances of the respondent become more clear.

Costs

[22] Costs will be in the cause.

"A. Ross J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/20/08/2020BCSC0890.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/engelbert-v-holuboch-2020>

Prepared on 28 October 2026 · Esheria