

CANADA / JUDGMENT

Evans v. Evans

2013 BCSC 1084

COURT

Supreme Court of British Columbia

DECIDED

13 June 2013

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2013 BCSC 1084 Evans v. Evans IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Evans v. Evans, 2013 BCSC 1084 Date: 20130613 Docket: 37180 Registry: Kamloops Between: Roxanne Gail Evans Claimant And James Edward Evans Respondent Before: The Honourable Mr. Justice Savage Oral Reasons for Judgment Counsel for the Claimant: M. Harrison Counsel for the Respondent: N. McDougall Place and Date of Hearing: Kelowna, B.C. June 13, 2013 Place and Date of Judgment: Kelowna, B.C. June 13, 2013

Introduction

- [1] There are two applications before me. The respondent husband filed an application December 11, 2012 for (1) reasonable and generous specified access to the child of the marriage born August 12, 2001, and (2) the cessation of spousal support. The claimant wife opposes the application and filed an application February 7, 2013 (1) for a retroactive assessment of child support, and (2) a continuation of spousal support. The matter of access has been resolved. Spousal Support
- [2] The parties were married November 6, 1999. They separated April 7, 2005. Justice Ehrcke's order provided that "Spousal support payable by the Defendant [Respondent] to the Plaintiff [Claimant] shall be reviewed upon application by either party any time after the Plaintiff's [Claimant's] graduation (expected April 2010) or in the event of a material change in circumstance".
- [3] At the time of the June 12, 2006 order, the claimant was enrolled in business degree studies at Thompson River University in Kamloops, B.C. In 2007 the claimant ceased her program at Thompson River University. She moved to Beaverlodge, Alberta. She now resides in Sherwood Park, Alberta, near Edmonton.
- [4] The review aspect of this order contingent on the claimant's graduation has been frustrated because the claimant dropped out of her courses within a year of the court order. Whatever the reasons were, in my view the circumstances here are sufficient to trigger a review under that order.

- [5] As a result of various matters, the claimant now says that she expects to complete her current course of studies, described as a "non-credit diploma" by 2014, four years later than anticipated at the time of the June 12, 2006 order. The claimant says that her course of studies and moves were either brought about, or contributed to, by the respondent failing to pay support in a timely way. That is disputed, however, I have no doubt that failing to pay support in a timely way contributed to the difficulties the claimant encountered completing studies. I appreciate that the claimant has had other difficulties, although she also bears some responsibility.
- [6] The claimant asks that spousal support continue until March 2014. That will allow her to complete a course of studies in nutritional science. It is apparent that the claimant has started and stopped different academic and work interests over the years of the marriage and post-separation. There is, of course, no guarantee that the current program will be completed or result in the benefits the claimant aspires for.
- [7] Had the respondent made timely payment of his spousal support, in my view, the authorities cited to me support the proposition that the duration of spousal support would be more limited than I propose to make it. Indeed, it may have appropriately ceased some months ago. I am satisfied, however, that the respondent's unsatisfactory record of support payments has contributed to the dilatory progress that the claimant has made towards self-sufficiency.
- [8] In the circumstances, I order that spousal support continue through December 2013, based on guideline income for the claimant of \$20,000 and guideline income for the respondent of \$106,000. The calculation will be based on the mid-range. After December 2013, the respondent's obligation to provide spousal support shall cease. Retroactive Child Support
- [9] The order of June 12, 2006 makes it plain that the respondent was to adjust his child support obligation each year based on the exchange of income tax information. It is not entirely clear to me that the fault lies wholly on the respondent, but as his income grew, the nature of the order makes it clear that his child support obligation would increase and be adjusted.
- [10] The claimant, however, did not seek to enforce the child support order over all these years. I am, of course, cognizant of the authorities that establish that the right to child support is a right of the child, and that the failure to provide the appropriate payment harms the child. On the other hand, the payment of a lump sum can also operate as a windfall to the claimant.
- [11] Based on the evidence before me the child support arrears are substantial. I appreciate, also, that the one time "in lieu of service" amount is an extraordinary payment. Further, it is important that those arrears, if ordered to be paid, actually benefit the child. In my opinion, that might best be accomplished by providing a number of orders.

- [12] In the circumstances, I find that the respondent should pay \$12,000 for arrears of child support. The respondent shall pay the \$12,000 in three equal installments of \$4000 by December 31 of each year, commencing December 31, 2013, by depositing such sum into a Registered Educational Savings Plan in the name of the child of the marriage. The account shall be in the name of and for the benefit of the child, but the beneficiaries of the RESP account shall be claimant and himself jointly.
- [13] The respondent shall provide the claimant with proof that he has made such deposits by January 15 of each year. The respondent shall be responsible for ensuring that any available grants are applied for to maximize the contributions to the plan for the benefit of the child.
- [14] Child support ongoing for 2013 and until the adjustment date in June 2014 shall be based on the respondent having an income of \$106,000.
- [15] Success has been divided. One important matter was resolved by agreement prior to the court hearing today. In the circumstances, each party is to bear their own costs. "The Honourable Mr. Justice Savage"

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