

CANADA / JUDGMENT

Evans v. Evans

2017 BCSC 1380

COURT

Supreme Court of British Columbia

DECIDED

4 August 2017

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2017 BCSC 1380 Evans v. Evans IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Evans v. Evans, 2017 BCSC 1380 Date: 20170804 Docket: E047208 Registry: New Westminster Between: Jennifer Juliet Webster Evans, also known as Jennifer Juliet Webster Claimant And Daryl Sheldon Evans Respondent Before: The Honourable Mr. Justice Crawford Reasons for Judgment Counsel for the Claimant: G.A. Laughlin Appearing on his own behalf, the Respondent: D.S. Evans Place and Date of Trial/Hearing: New Westminster, B.C. February 20, 2017 Place and Date of Judgment: New Westminster, B.C. August 4, 2017

Introduction

- [1] Ms. Evans seeks to vary the order of Mr. Justice Kent dated September 4, 2015, regarding child support where his Lordship accepted a consent order proposed by counsel and made an interim child support order the father pay \$350 per month child support, until further order of the court. His Lordship made it plain during argument the evidence lacked a factual foundation for him to make an order.
- [2] As well, Ms. Evans seeks sharing of the special extraordinary expenses of the children proportionally to the parents incomes, that the respondent be fined \$5000 for failing to comply with orders of the court regarding document disclosure, and costs.

Background

- [3] The parties cohabited in 1997, married in 1999, and separated December 2013.
- [4] There are two children of the marriage, a son, who is aged 18, and a daughter aged 11. The parents are now aged 49.
- [5] The parties separated in 2014 and shared the parenting of the children until March 2016.
- [6] Ms. Evans, in her second affidavit, dated January 19, 2017, notes the lack of financial disclosure by Mr. Evans in his financial statement of January 5, 2015, which refers to four bank accounts of his own, and three shared with Ms. Evans.

- [7] Mr. Justice Kent ordered full disclosure of "all materials" within 21 days of September 4, 2015, and that the matter be set for trial forthwith.
- [8] On June 10, 2016, Master Muir ordered Mr. Evans make full disclosure of all assets including his account numbers and statements for bank accounts and pensions, plus a list of documents, including the Bell Canada settlement. Banking records from December 2010 at CIBC, RBC, TD Bank and Bank of Montreal were to be provided.
- [9] As well Master Muir made an access order with Ms. Evans being primary residence and the father having the children after school on Thursday, until 6 p.m. on Saturday.
- [10] Although the matter was set for trial in August 2016 the date passed by as no Trial Certificate was filed and Mrs. Evans counsel sought banking documents from several financial institutions. On August 23, 2016, Mr. Justice Verhoeven directed RBC, CIBC, BMO and TD Bank to produce all records they had of Mr. Evan's relating to his bank accounts, investment accounts, pension accounts and other financial records. Mr. Evans
- [11] Mr. Evans was in upper management at Bell Canada and consistently made \$115,000-\$118,000 per annum from 2011 through 2014, but asserted in his January 5, 2015 Form 8 financial disclosure to the court that his income was zero.
- [12] He repeated this before Mr. Justice Kent in September 2015, when the order was made of \$350 per month.
- [13] Mr. Evans worked for Bell Canada until October 2, 2014, when he was given a notice of termination and was paid his monthly base salary of \$8250 through to the end of February 2015. A subsequent settlement was achieved on September 25, 2015, with a net payout at that time to Mr. Evans of \$13,047.19.
- [14] Thus his income from Bell in 2015 was \$18,486.16, plus the \$13,047.19, or a sum of \$31,534.35.
- [15] As well, he was on E.I. in 2015. However, his 2015 tax return reported an income of \$171,833, comprising: Employment Income \$22,936.67 E.I. Benefits \$23,056 RRSP Income \$57,875 Other Income (Bell shares) \$67,965.50 Total Income \$171,833.17
- [16] Mr. Evans says that he was not employed through 2015 and 2016, essentially because he is in sales, he is "too old and overqualified" and he has not been able to obtain a job the last two years.
- [17] He advised the court that shortly before the February 2017 hearing that he obtained a short term consulting contract that will provide income for him to the end of March 2017.
- [18] He further advised the court that his income for 2016 was solely Employment Insurance in the amount of \$20,847.

- [19] With respect to his job search in paragraph 20, Mr. Evans says that he has applied for over 1000 jobs. However, he has not made any documentation available regarding his attempts to obtain employment.
- [20] With respect to Justice Kent's order of September 4, 2015, he said the judge took into account that he was then paying for the children's activities, the claimant's car loan, the children's medical, cell phones, mortgage (\$2500), house expenses, insurance and tax. A review of the hearing made it clear a consent order was made with no findings of fact. Mr. Evans' Affidavits
- [21] Although Mr. Evans has, from time to time, employed a solicitor, it is not apparent from the affidavits that he has filed in response, which are sworn January 23, 2017 (number 8) and January 31, 2017 (number 9).
- [22] On my reading of them, they are rambling, although he does criticize the income of Ms. Evans. He says that she is an accomplished actress (it does appear that she obtains annual royalties of \$12,000) and as well as she has some background in insurance investigations and the ability to do medical transcripts.
- [23] I have summarised as best I can his explanation of his finances. Mrs. Evans
- [24] Her counsel concedes that her gross income is the order of \$30,00-\$32,000, but netting approximately some \$10,000 of income after appropriate allowances made for the expenses claimed, and suggested that approximately half the gross income or some \$15,000-\$16,000 be considered income for the child support purposes.
- [25] I further note Mr. Evans states that Ms. Evans has a Bachelor of Arts in Psychology but does not want to work in that field. Arguments at the Hearing February 20, 2017
- [26] Ms. Evans referred to the various bank accounts that have been produced in late 2016, and after itemizing the various accounts, submitted that for 2015 Mr. Evans total bank deposits are \$150,152.50, and for 2016 \$128,197.21.
- [27] Counsel suggested those figures be used to determine Mr. Evans' income for the respective years.
- [28] Part of the difficulty in trying to assess Mr. Evans' income is paragraph 31 of his affidavit filed 3 January 2017 where he talks about taxable income, gross income, and "real income" without consideration of the legislative definitions.
- [29] The child support guidelines with respect to incomes between \$10,820 and \$150,000 utilise a spouses annual income by looking at the sources of income set out under the heading "Total Income" in the T1 General form, issued by the Canada Revenue Agency, or more commonly called the payor's Line 150 Income.
- [30] Mr. Evans said his income for 2015 was \$31,279 and for 2016 was \$34,087.

- [31] He says that the RRSP monies he withdrew in 2015 (\$57,875) were used to payback borrowed monies put into his RRSP in 2014, which allowed him to receive a refund from CRA in 2015 (which may have been some \$20,000).
- [32] He says he withdrew the \$57,875 from an RRSP in 2015 to pay back the monies borrowed in 2014 and the "Bell shares paid out \$67,965" were deposited into TD Canada Trust and he did not realize they counted as income. He says the Bell shares became contribution to pensions for the benefit of him and Ms. Evans, and are locked in RRSP's for Ms. Evans and himself.
- [33] He argues therefore his "tangible income" in 2015 is \$31,279, whereas Ms. Evans made "tangible income" of \$32,947 for 2015.
- [34] He says he was also contributing to the children's expenses, the mortgage, taxes, the claimant's car loan, and part of her car insurance, and that he borrowed \$145,000.
- [35] The difficulty with this last aspect is that there does not appear to be disclosure of his contributions to these expenses, nor of three lines of credit he says he has with various banks, as well as monies borrowed from an unnamed friend.
- [36] For 2016 he says his income was derived from E.I. (\$11,528) and RRSP withdrawals of \$22,559, a total of \$34,087, though he reduces that to "real income" of \$24,087, while he says Ms. Evans expects to earn over \$35,000. Disclosure
- [37] Again, it is unfortunate that Mr. Evans is representing himself but he does say in his affidavits that he has delivered documents to Mr. Laughlin's office and his own lawyer.
- [38] However, when I asked him if he had provided a covering letter listing the documents or something that may indicate what documents he had provided, he was unable to do so. Nor did he obtain any evidence of delivery, or that his lawyer might have so documented document disclosure.
- [39] That leaves me with the fact that on two occasions (Master Muir in mid-2016, and Justice Verhoeven in September 2016) the Court was obliged to make orders for disclosure which can only indicate, in the absence of proof to the contrary, that Mr. Evans had not made disclosure.
- [40] At this stage of the hearing in February 2017 I ask Mr. Laughlin how he expected me to pinpoint an income for Mr. Evans on the basis of monies deposited in Mr. Evans bank accounts for 2015 and 2016. Counsel was not able to deal with my question and accordingly I made the following orders:
1. Mr. Evans is to disclose his lines of credit documentation and name of lender of the \$45,000 within 10 days.
 2. Mr. Laughlin is to provide his written argument to me by the March 10, 2017.
 3. Mr. Evans is to make his written reply by March 22, 2017.

4. Ms. Evans is to provide a disclosure of her bank and credit card documents by March 17, 2017. Mrs. Evans - Written Argument
- [41] I did not receive a written argument attributing income to Mr. Evans from the money flowing through the bank accounts. What I did receive were pages of banking summaries for 2015 and 2016, 21 were listed and 14 were active. Three were said to be joint accounts but not so stated. I am unable to attribute income to a listing of bank accounts that does not show when, where (the source), and how the monies were banked (and then moved around) and how some of the monies are then said to be Mr. Evans income. Mr. Evans - Written Argument.
- [42] This proved to be a five page repetitive and muddled discourse which repeated the arguments noted above. It does appear to say he borrowed \$68,000 in 2015 to "right down" his taxable income for 2014 and received \$20,000 refund from the CRA. Then he cashed an RRSP and the Bell shares which accounts for his \$171,000 income in 2015. He says he had a \$30,000 inheritance that was used to pay family bills.
- [43] He says he owes \$105,000 on three lines of credit and owes a friend \$40,000.
- [44] I was unable to untangle his discussion of borrowings and movement of monies through the accounts.

Conclusion

- [45] This matter is set for trial 30 October 2017. Assuming there has now been disclosure by Mr. Evans, it is plain that Mrs. Evan's counsel has to go through each of the bank statements and create a chronological sequence of deposits and withdrawals and then examine Mr. Evans on oath on the banking records (some of which are said to be joint accounts) to establish the source of the monies deposited and how the monies were utilised, and what has been put away as pension assets, presumably for both parties benefit. The discovery may then show what Mr. Evan's income for support purposes is since separation.
- [46] But at present, I like Justice Kent, do not have a basis for varying the consent order in a case where one party is ostensibly unemployed and the other is said to be underemployed.
- [47] Given the protestations of Mr. Evans I will not make an order regarding his lack of disclosure of documents. I do accept it seemed to take the last order of Verhoeven J. and a separate application to the financial institutions to get full disclosure, but the trial judge will be better placed to see if the lack of disclosure results in a penalty or results in costs awards.
- [48] Nor will I make any order as to costs. "Crawford J."

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