

CANADA / JUDGMENT

F.S. v. C.S.

2024 BCSC 1133

COURT

Supreme Court of British Columbia

DECIDED

27 June 2024

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

2024 BCSC 1133 F.S. v. C.S. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: F.S. v. C.S., 2024 BCSC 1133 Date: 20240627 Docket: E203099 Registry: Vancouver Between: F.S. Claimant And C.S. Respondent And E.H.L. Corporate Respondent (By way of counterclaim) Before: The Honourable Madam Justice Murray Reasons for Judgment re Interim Spousal Support Counsel for the Claimant: Y. Li-Reilly S. Silber Counsel for the Respondent: L. Rudovica No Other Appearances Place and Date of Hearing: Vancouver, B.C. May 28-30, 2024 Place and Date of Decision: Vancouver, B.C. May 30, 2024 Place and Date of Judgment: Vancouver, B.C. June 27, 2024

INTRODUCTION

- [1] C.S. seeks interim spousal support in the amount of \$4,000 per month until a decision is rendered in the family trial set to begin September 3, 2024, or alternatively for a lesser amount for a shorter period of time. On May 30, 2024, I dismissed C.S.'s application with reasons to follow. These are those reasons.
- [2] This is an acrimonious family action. There have been many applications to date and there will be many more in the future. Everything is in issue from parentage and parenting of the children to division of property. The trial of the action has been bifurcated with the issue regarding the validity of the Marriage Agreement ("MA") to proceed first. That is what is scheduled to start September 3, for three weeks.
- [3] This was a relatively short union- eight years. The parties have two young children. They separated almost exactly four years ago when the eldest child was three and the youngest was less than one. C.S. has had very limited contact with the children since separation. She has been granted supervised parenting only a number of hours a week. She has not contributed to the children financially since separation.
- [4] As touched on above, the parties have a MA which they entered into during their union. C.S. is contesting its validity on several bases including that she entered into it under duress. There is no need to go into the specifics of the MA on this application other than with respect to spousal support.

- [5] The MA provides that F.S. is to pay to C.S. spousal support in the amount of \$4,000 per month, for 47 months (half of the length of their relationship). That obligation has been fulfilled. The final support payment was made in May 2024.
- [6] In seeking further support, C.S. stresses that she is unable to work at present as she is in a residential substance abuse treatment program for three months and has no source of funds. As stated at the outset, C.S. began this application seeking interim spousal support until a final decision regarding same has been rendered at trial, however, by the end of the application she sought support for only the time that she is an inpatient at the treatment program.
- [7] This is not C.S.'s first application for interim spousal support. In May 2022, she brought an application for spousal support of \$4,000 per month to continue past the time period specified in the MA until final order of the Court or agreement of the parties. On September 16, 2022, Associate Judge Robertson ordered F.S. to pay spousal support in accordance with the MA.
- [8] The parties agree that since this Court has already ruled on C.S.'s application for interim spousal support, this is an application to vary the interim support order and that this court can only vary the order of Robertson, A.J. if there has been a material change of circumstances since the last order was made.
- [9] The parties further agree that since the interim support order is silent as to what legislation it was made under, it is an order under the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) ("DA"). There is no statutory provision in the DA which permits the Court to vary an interim order for support. The Court may vary a previous order pursuant to its inherent jurisdiction but relief is generally only to be exercised in exceptional circumstances: see *Ottesen v. Ottesen*, 2022 BCSC 405 at paras. 13-16. Where the Court's inherent jurisdiction is invoked to vary an interim order in the DA, the Court must find that there is a material change in circumstance.
- ISSUE
- [10] The issue is whether C.S. is entitled to interim spousal support while she is in a residential treatment program for substance abuse.
- [11] As above, the threshold question is whether there has been a material change in circumstance. If the answer is no, C.S.'s application must be dismissed. If the answer is yes, then the Court must go on to consider whether C.S. is entitled to ongoing interim support.

ANALYSIS

- [12] A "material change in circumstance" was defined by Tucker, J. in *Young v. Young*, 2019 BCSC 1953 as follows:
- [42] A material change is one which, if known at the time, would have resulted in different terms. The test for material change does not depend on what could or should have been foreseen by the parties, but rather on what was within the parties' actual contemplation in

the circumstances existing at the time of the original order: *Dedes v. Dedes*, 2015 BCCA 194 at paras. 19-25; *McCarter v. McCarter*, 2016 BCSC 2499 ["McCarter"] at para. 14. A change can also be material where it was within the actual contemplation of the parties at the time, but the court is satisfied that the parties made a conscious decision to leave it out "because it was sufficiently complex, or the extent of its impact was unknowable": *Megson v. Megson*, 2014 BCSC 2467 at para. 43; see also *McCarter* at para. 18.

- [13] C.S. argues that the material changes are that the spousal support has ended and she is unable to work as she is in a residential treatment program.
- [14] F.S. counters that there are no material changes since the making of the interim order. The MA and its presumptive validity existed at the time of the interim support order as it does now. The fixed period of support has always existed. C.S. was unemployed then and she is unemployed now.
- [15] I agree with F.S. that the fact that the spousal support has run out is not a material change in circumstance. C.S. was always aware of the end date. Nor is the fact that C.S. is unable to work because she is in a residential treatment program a material change. She has not been employed since the parties separated and she has been talking about entering such a program for years.
- [16] I do not find that there is a material change in circumstance. However, if I am wrong I do not find that C.S. is entitled to further interim support.
- [17] In the four years since separation while receiving spousal support, C.S. has taken no steps to become gainfully employed or self-sufficient, nor until May 2024 (when the support ended) did she take concrete steps to get into a treatment program. She has not disclosed details regarding the history or extent of her substance abuse issue, nor has she provided medical evidence that it rendered her unable to work. In fact, she gave evidence at her examination for discovery in September 2023 that she was able to work. And she testified that she was doing two commission paintings at that time and was turning away other commissions.
- [18] C.S. has had no child rearing responsibilities since the separation. Neither has she paid any child support. I pause to note that on May 28, 2024, C.S. consented to an order being made that she will commence paying child support to F.S. two months after being released from treatment based on an annual income of \$25,000.
- [19] C.S. has received \$192,000 in support over four years. The issue of C.S.'s entitlement to spousal support- both to the amount she has already received and to further support- is highly contentious. The trial to determine the validity of the MA is scheduled for September 2024. If the MA is upheld, C.S. will not be entitled to any further spousal support. If the MA is held to be invalid, the matters of whether she is entitled to further support and/or whether she has been overpaid and needs to repay support she has already received will be determined. These issues will involve contested findings of fact.

- [20] As stated in *L.G.B. v. M.A.C.M.*, 2005 BCSC 1786 at para. 14, "[where there is a] need to resolve contested issues of fact, especially when connected with a threshold issue such as entitlement, it becomes less advisable to order interim support."
- [21] In addition, there is an issue as to whether F.S. will be able to recover funds following trial if it is determined that C.S. was not entitled to support she has received: see *L.G.B.* at para. 15.

CONCLUSION

- [22] I find that there has been no material change in circumstances since the order of Associate Judge Robertson. If I am wrong, I find further that C.S. has failed to establish a *prima facie* case for entitlement.
- [23] Accordingly, C.S.'s application for interim spousal support is dismissed. "The Honourable Madam Justice Murray"

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/24/11/2024BCSC1133.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/f-s-v-c-s-2024>

Prepared on 27 October 2026 · Esheria