

CANADA / JUDGMENT

Forest v. Forest

2014 BCSC 1861

COURT

Supreme Court of British Columbia

DECIDED

2 October 2014

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2014 BCSC 1861 Forest v. Forest IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Forest v. Forest, 2014 BCSC 1861 Date: 20141002 Docket: E50255 Registry: Vernon Between: Janette Hope Forest Claimant And Robert Yvon Forest Respondent Before: The Honourable Madam Justice Gray Reasons Supplemental to and Correcting Oral Reasons for Judgment originally given on July 23, 2014 In Chambers Counsel for the Claimant: P.A. Dyck Counsel for the Respondent: M.G. Miller Place and Date of Supplemental to and Correcting Oral Reasons for Judgment: Vernon, B.C. October 2, 2014

- [1] I gave oral reasons for judgment on July 23, 2014 ("Oral Reasons"), in which I ordered first, that the respondent ex-husband pay the claimant ex-wife spousal support in the amount of \$3,500 per month effective August 1, 2014; second, that the issue of spousal support was reviewable on or after July 1, 2019; third, that the ex-husband's application to vary Clause 15 of the Separation Agreement was dismissed; and fourth, that the ex-wife was entitled to her costs.
- [2] The ex-husband filed a notice of appeal on August 13, 2014.
- [3] Subsequently, a draft of the Oral Reasons was provided to me for editing.
- [4] On reviewing the draft Oral Reasons, I discovered that I had made a calculation error. I referred in paragraph 42 to evidence that the ex-husband admitted to a private investigator that he normally worked from 10:00 a.m. to around 2:30 p.m. as being an admission of working five and one-half hours a day, when that is only a four and one-half hour period.
- [5] The order arising from the Oral Reasons has not yet been entered in the court records. Counsel agreed on a form of order and provided the order to the registry for entry. I asked the registry not to enter the order without my approval, so that I could consider whether it was necessary to vary it.
- [6] Where an order has not yet been entered in the court records, which is the case here, the court retains a discretion to vary the order, and even to change the result to the opposite of the original order. This was discussed by Finch C.J.B.C. (as he then was) in *Harrison v. Harrison*, 2007 BCCA 120, at paras. 28 and 29, as follows:

- [28] The scope of a trial judge's discretion to vary an order after pronouncement depends on whether a formal order has been entered. So long as the order remains unentered, the judge retains "an unfettered discretion" to re-open the matter. That discretion should be used sparingly: *Sykes v. Sykes* (1995), 6 B.C.L.R. (3d) 296 (C.A.). Although this discretion is sometimes treated as part of the discretion granted by Rule 41(24), the "Slip Rule", it is in fact a common law discretion recognized by this Court in *Clayton v. British American Securities Ltd.*, [1934] 3 W.W.R. 257, [1935] 1 D.L.R. 432.
- [29] Once an order has been entered, however, the court which made the order is *functus officio* with respect to the issues therein: *Piyaratana Unnanse et al v. Wahareke Sonuttara Unnanse et al*, [1950] 2 W.W.R. 796 (P.C.). Once the judge is *functus*, the power to re-visit an order is much narrower. Generally speaking, that power is confined to making corrections or amendments in two situations: first, under Rule 41(24) of the Supreme Court Rules where there has been a 'slip' in drawing up the order or where a matter should have been but was not adjudicated upon; and second, where there has been an error in expressing the manifest intention of the court: *Buschau v. Rogers Communications Inc.*, 2004 BCCA 142; see also *Chandler v. Alberta Association of Architects*, [1989] 2 S.C.R. 848.
- [7] Had I correctly referred in the Oral Reasons to the period as being four and one-half hours per day, the following paragraphs would have changed so that they were as set out below (with changes underlined):
- a) paragraph 45 would have been as follows: From 10 a.m. to 2:30 p.m. is four and one-half hours. Four days a week at four and one-half hours is 18 hours a week. Eighteen hours a week for 52 weeks would be \$187,200 at \$200 an hour. Presumably there would be days a person would not work, such as major holidays, so those calculations lead to a figure closer to about \$183,000 per year, calculated at 48 weeks of work.
 - b) paragraph 53 would have been as follows: I have struggled to try to come up with a fair number to use for considering the ex-husband's income for the purpose of determining spousal support. One number that I have looked at is the annual income on the basis of the hours as reported to the private investigator. As I have said, that is a figure of about \$183,000. Another figure I have looked at is the figure reported in the income statement to June 30th, which was listed as \$58,000 gross and \$51,000 net, so that would be somewhere between \$102,000 and \$116,000, depending on what expenses would be taken into account. As I said previously, the income tax documentation, even on its face, in my view, underreports the income available for spousal support because of claimed expenses, and I would tend to gross it up, if I accepted that, to more like \$85,000 to \$95,000 per year.
 - c) paragraph 54 would have been as follows: I also considered what would be the earnings of the ex-husband if he reduced his work from four and one-half hours, four days a week, to four and one-half hours two days a week, and only three hours on two days a week. I calculated 15 hours a week, and multiplying that by 50 weeks at \$200 an hour, I got \$150,000 in gross income.

- d) paragraph 55 would have been as follows: I also considered taking 60 percent of 18 hours a week, if the ex-husband reduced his hours by 40 percent as suggested by his family doctor. That is 10.8 hours per week, which would be \$108,000 per year gross income. If that was done over four days, it would be about 2.7 hours a day. If it was done over three days, it would be 3.6 hours a day.
- [8] In paragraph 58 of the Oral Reasons, I concluded that I should consider the ex-husband's annual income, for the purposes of determining spousal support, to be in the range of \$122,000. That was upon considering five amounts: first, the annual income on the basis reported to the private investigator, mistakenly stated in paragraph 52 of the Oral Reasons as "over \$200,000"; second, the amount based on the income statement, which would be somewhere between \$102,000 and \$116,000; third, the income tax documentation, which I would have grossed up to \$85,000 to \$95,000 per year; fourth, the amount considering that the ex-husband might work reduced hours, mistakenly described in paragraph 53 as being "\$170,000"; and fifth, the hours if the ex-husband worked 60% of the hours calculated on the basis of his report to the private investigator, mistakenly described in paragraph 54 as "\$132,000".
- [9] I have attempted to determine what I would have concluded based on the corrected numbers. In other words, I have considered the following five figures: first, the annual income on the basis reported to the private investigator, in the corrected amount of \$183,000; second, the amount based on the income statement, which would be somewhere between \$102,000 and \$116,000; third, the income tax documentation, which I would have grossed up to \$85,000 to \$95,000 per year; fourth, the amount considering that the ex-husband might work reduced hours, in the corrected amount of \$150,000; and fifth, the hours if the ex-husband worked 60% of the hours calculated on the basis of his report to the private investigator, in the corrected amount of \$108,000.
- [10] Considering those five figures, and giving appropriate weight to each figure, in my view, the conclusion that, for the purposes of determining spousal support, the ex-husband's income should be considered to be in the range of \$122,000 remains correct. I give little weight to the figures based on the tax returns and the income statement. I give the most weight to the figures resulting from the ex-husband's admissions to the private investigator, and I consider the possibility of reduced hours even though the ex-husband failed to provide admissible expert evidence demonstrating a need for reduced working hours.
- [11] As a result, I am not varying the order arising from the Oral Reasons.
- [12] I will therefore instruct the registry to enter the order in the form provided by counsel. "Gray J."

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Prepared on 29 October 2026 · Esheria