

CANADA / JUDGMENT

Gnanaseelan v. Gnanaseelan

2011 BCSC 1824

COURT

Supreme Court of British Columbia

DECIDED

21 November 2011

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2011 BCSC 1824 Gnanaseelan v. Gnanaseelan IN THE SUPREME COURT OF BRITISH COLUMBIA
Citation: Gnanaseelan v. Gnanaseelan, 2011 BCSC 1824 Date: 20111121 Docket: E030316 Registry:
Vancouver Between: Vasuki Gnanaseelan Claimant And: Thiyagarajah Gnanaseelan Respondent
Before: The Honourable Madam Justice Griffin Oral Reasons for Judgment In Chambers For the
Claimant No appearance Appearing on his own behalf T. Gnanaseelan Place and Date of Hearing:
Vancouver, B.C. November 2, 2011 Place and Date of Judgment: Vancouver, B.C. November 21,
2011

- [1] THE COURT: The respondent in this proceeding, Mr. Thiyagarajh Gnanaseelan, seeks an order varying the child support that was ordered by Mr. Justice Brooke on March 4, 2005.
- [2] The primary reason for Mr. Gnanaseelan's application is that he lost his job on January 2, 2011, and he has since been on Social Assistance. According to his evidence he is only receiving Social Assistance of \$610 per month, which annually adds up to \$7,320. Based on that income no child support would be payable.
- [3] Mr. Gnanaseelan has two children, an 18-year-old and a 14-year-old, who live with his ex-wife, the named claimant, Vasuki Gnanaseelan, in Ontario.
- [4] The difficulty with this type of application, which is brought under s. 17 of the Divorce Act, is that because the claimant now lives in Toronto, Ontario I must pay heed to s. 18 of the Divorce Act, which limits me to making a provisional order only, unless there is evidence that the claimant has accepted the jurisdiction of this court or has consented to the application of s. 17.1 in respect of this matter. There is no such evidence from the claimant and therefore s. 18(2) of the Divorce Act applies.
- [5] Mr. Gnanaseelan has filed a notice of application, filed September 22, 2011; an affidavit filed September 22, 2011, which affidavit was sworn on September 20, 2011; a financial statement sworn September 20, 2011, and filed September 22, 2011; an affidavit of ordinary service, sworn and filed on October 27, 2011; and another affidavit of ordinary service filed and sworn on November 18, 2011.

- [6] The evidence he has filed supports his submissions that he lost his job and he has been trying hard to find a new job. It also supports his submission as to his reduced income. At the time of the order of Mr. Justice Brooke, which he seeks to vary, his income was held to be \$23,204.
- [7] In the affidavits of service Mr. Gnanaseelan has put forward evidence that he served the claimant in Ontario by registered mail with the application and then by UPS courier service with the requisition setting this date for hearing on November 21, 2011. He has informed me orally that he spoke to the claimant by telephone, as well, and he indicated that she does not oppose the application. However, she has not put any evidence before me.
- [8] I am prepared to make the order that Mr. Gnanaseelan seeks, but this will be a provisional order that first must be directed to the Attorney General of this province, who shall then forward it to the Attorney General for Ontario in accordance with the process set out under s. 18 and then s. 19 of the Divorce Act.
- [9] I will direct to the Attorney General the notice of application and affidavits filed by Mr. Gnanaseelan as referred to in these reasons, as well as a copy of these reasons.
- [10] The provisional order I make will be as follows:
1. That the order of the Honourable Mr. Justice Brooke made March 4, 2005, with respect to child support payable by the respondent in this proceeding, Mr. Gnanaseelan, be varied based on the applicant's current income of \$7,320 per annum, such that he has no child support payable and this order is retroactive to February 1 of 2011.
 2. That upon Mr. Gnanaseelan finding employment that he provide immediate notice to the claimant, together with information as to the name of his employer and his income, and if available to him together with some documentary proof of his income, such as a payroll stub or letter of employment.
 3. That the arrears of child support that have accumulated since January 2011 be cancelled.
 4. Upon Mr. Gnanaseelan's change of income that he will seek to reach agreement with the claimant to reinstate child support based on his income and the Federal Child Support Guidelines. "S.A. Griffin, J." The Honourable Madam Justice Susan A. Griffin

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