

CANADA / JUDGMENT

Goldman v. Goldman

2024 BCCA 388

COURT

British Columbia Court of Appeal

DECIDED

4 October 2024

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2024 BCCA 388 Goldman v. Goldman

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Goldman v. Goldman,

2024 BCCA 388

Date: 20241004

Docket: CA49319

Between:

Michael Bruce Goldman

Appellant

(Respondent)

And

Christina Anne Goldman

Respondent

(Claimant)

Before:

The Honourable Madam Justice Fenlon

The Honourable Justice Dickson

The Honourable Justice Fleming

On appeal from: An order of the Supreme Court of British Columbia, dated

August 4, 2023 (C.G. v. M.G., 2023 BCSC 1355, Chilliwack Docket E16957).

Oral Reasons for Judgment

The Appellant, appearing in person

(via videoconference):

M.B. Goldman

Counsel for the Respondent:

J.E. Shragge

Place and Date of Hearing:

Vancouver, British Columbia

October 4, 2024

Place and Date of Judgment:

Vancouver, British Columbia

October 4, 2024

Summary:

The appellant appealed an order for retroactive and prospective child support granted August 4, 2023 based on an application brought by the respondent in April 2023 that was heard in July 2023. In his factum, the appellant argued the chambers judge had made a number of errors. Self-represented at the hearing of the appeal, he did not pursue those grounds but asked for a reduction in his support obligation starting April 2023 based on an alleged reduction in his income and a loss of suitable available employment.

Held: Appeal dismissed. At the appeal hearing, the appellant was not asserting a discernible error in fact, law or mixed fact and law. To the extent the appellant was arguing that his support obligation should be varied based on a change in his circumstances since the chambers hearing, the issue should be addressed by way of an application in the court below.

[1] FLEMING J.A.: This appeal is from the order of the chambers judge regarding retroactive and prospective child support granted August 4, 2023.

[2] The background to the dispute is set out in her reasons indexed at 2023 BCSC 1355. The appellant, Michael Goldman, and the respondent, Christina Goldman, married in 2000 and separated in 2006. The parties are the parents of Joel, born in 2001. Since his birth, Joel has experienced severe health difficulties as a result of a genetic condition. He has also been diagnosed with autism and suffers from anxiety. Joel requires constant care. Ms. Goldman has been always been his primary caregiver. Since August 2020, Joel has received a Person with Disability benefit of approximately \$1410 per month.

- [3] Some time after the separation, Ms. Goldman began a family law proceeding. Following a trial, in December 2010, Justice Fisher, as she then was, granted a final order that required in relevant part:
- Mr. Goldman to pay \$723 per month in child support based on a Federal Child Support Guidelines, SOR/97-175 [Guidelines] income of \$78,000 and \$2000 per month in spousal support effective January 1, 2011.
 - The parties to exchange financial information on June 1 of every year with any adjustments based on a material change in either party's incomes to be made as of July 1 each year.
- [4] Mr. Goldman's Guidelines income was based on an imputed annual income of \$78,000. At the time, Mr. Goldman said he expected to earn approximately \$60,000. Justice Fisher observed that Mr. Goldman's income had dropped considerably after an interim order was made earlier in 2010, and in addition to working as truck driver, he had two small businesses about which he had provided limited document disclosure. The final order specified that Mr. Goldman's financial disclosure obligation included: income tax returns; notices of assessment; and financial statements for his businesses.
- [5] Mr. Goldman paid child and spousal support in accordance with the final order, but until 2014, he provided Ms. Goldman with sporadic and incomplete financial disclosure that included copies of tax returns but not notices of assessment and reassessment. After 2014 he provided no financial disclosure at all.
- [6] In October 2022, Mr. Goldman was ordered to provide his tax returns and notices of assessment from 2011 onward. His total income in each year after 2011 ranged from a low of \$102,787 in 2015 to a high of \$277,611 (notice of assessment) or \$278,834 (notice of reassessment) in 2020. Mr. Goldman also produced his 2022 tax documents that showed a total income of \$359,258.
- [7] In April 2023, Ms. Goldman brought an application for retroactive child and spousal support for 2011 onward, as well as ongoing child and spousal support. She also sought other orders related to securing Mr. Goldman's child support obligation and a penalty for non-disclosure.
- [8] Referring to Ms. Goldman's application as a summary trial application, Mr. Goldman took the position it was not suitable for determination by summary trial and a full trial was required on some issues including appropriate ongoing child support. Substantively, he asserted undue hardship pursuant to s. 10(1) of the Guidelines with respect to both retroactive and prospective support.
- [9] The hearing of the application proceeded in chambers over three days in July 2023.
- [10] The chambers judge ordered Mr. Goldman to pay retroactive child support from 2011 through to part of 2020 based on his total income in each year.

- [11] From August 2020 to the end of 2021, she awarded monthly child support of \$1,106.70 based on finding Joel's monthly budget was \$2,985. From that she subtracted his PWD benefits and apportioned the difference, \$1581, 70% to Mr. Goldman and 30% to Ms. Goldman.
- [12] Addressing child support for January 2022 onward, the chambers judge came to the same result, although she also imputed to Mr. Goldman a Guidelines income of \$165,063.60 based on averaging his incomes for 2017 through 2021.
- [13] Mr. Goldman had argued his income should be fixed at \$27,840 based on the amount of the Employment Insurance benefits he was receiving at the time and his evidence he had been unable to work since April 2023 due to anxiety and depression.
- [14] The chambers judge did not accept that Mr. Goldman could not work and found he was intentionally unemployed, in addition to diverting income and failing to provide full and frank financial disclosure. It was these findings that led her to imputing the Guidelines income of \$165,063.60.
- [15] Due to a lack of time, the chambers judge adjourned generally Ms. Goldman's application for retroactive and prospective spousal support.
- [16] At today's hearing Mr. Goldman indicated a hearing regarding spousal support is scheduled for next week.
- [17] In his factum, Mr. Goldman asserted the chambers judge had made a number of errors including:
- 1) the reasons do not permit proper appellate review of the final order;
 - 2) the trial judge made an error in law by imputing income to the appellant on an ongoing basis; and
 - 3) the proceedings were not procedurally fair and the trial judge made an error in law, in the analysis that resulted in the calculation of retroactive child support for three periods: January 2022 - March 2023; September 2020 - December 2021; and January 2011 - September 2013.
- [18] Mr. Goldman is now self-represented.
- [19] At today's hearing he abandoned almost every aspect of his appeal. Mr. Goldman submitted that all that he wanted was a retroactive reduction in his child (and spousal) support obligation from April 2023 until now. The basis for his position is his assertion that his only income following six months of Employment Insurance benefits, has been Canadian Pension Plan (CPP) income, which he receives because he is over 60. Mr. Goldman also referred to a medical report he had just obtained dealing with his ability or inability to work and a lack of suitable work that he described as supervisory or not a labour job. He indicated, in other words, he is capable of doing some types of work but there is nothing available.

- [20] Asked to identify what error the chambers judge made related to his ongoing child support obligation, Mr. Goldman reiterated there has been no suitable work available to him based on a number of mill closures that started in May 2023 and his income should be fixed at the amount he receives in CPP.
- [21] Mr. Goldman did not advance any arguments about how the 70/30 division, or the chamber's judge's finding regarding Joel's budget, involved any error or any other error related to prospective child support.
- [22] An appeal is always from the order as opposed to reasons of the presider. As counsel for Ms. Goldman points out, the income that the chambers judge imputed to Mr. Goldman for 2022 onward, \$165,063.60, was not the basis for the 70/30 division that grounds Mr. Goldman's monthly child support obligation of \$1106.70. Had this Guidelines income been used, his share would have increased to close to 90%.
- [23] The Supreme Court of Canada has stated that significant deference applies to family law decisions generally because of their fact driven and discretionary nature: *Hickey v. Hickey*, [1999] 2 SCR 518 at para. 12. Supports orders specifically attract greater deference: *Hinz v. Davey*, 2022 BCCA 232 at para. 33. The Court has emphasized that "appeal courts may only intervene where there is a material error, a serious misapprehension of the evidence, or an error in law": *Barendregt v. Grebliunas*, 2022 SCC 22 at para. 103, citing *Hickey* at para. 12 and *Van de Perre v. Edwards*, 2001 SCC 60 at para. 11.
- [24] To the extent that Mr. Goldman asserts that support should be varied based on a change in his circumstances since the chambers hearing -- this is an issue that should be addressed by way of an application in the court below.
- [25] In the absence of any asserted discernable error in fact, law, or mixed fact and law, I would dismiss the appeal.
- [26] As is usual, Ms. Goldman is entitled to costs of the appeal.
- [27] FENLON J.A.: I agree.
- [28] DICKSON J.A.: I agree.
- [29] FENLON J.A.: The appeal is dismissed with costs to the respondent.

"The Honourable Justice Fleming"

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