

CANADA / JUDGMENT

Grenier v. Carrat

2022 BCSC 1531

COURT

Supreme Court of British Columbia

DECIDED

20 July 2022

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2022 BCSC 1531 Grenier v. Carrat IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Grenier v. Carrat, 2022 BCSC 1531 Date: 20220720 Docket: E131322 Registry: Kelowna Between: Sam Grenier Claimant And Cody Carrat Respondent Before: Master Keighley Oral Reasons for Judgment In Chambers Counsel for Sam Grenier: J.C. Chandler Counsel for Cody Carrat: W.T. Clarke Place and Date of Hearing: Kelowna, B.C. July 20, 2022 Place and Date of Judgment: Kelowna, B.C. July 20, 2022

- [1] THE COURT: This application arises in family law proceedings. The claimant and respondent began living together in a marriage-like relationship in December 2015 and they separated about four and a half years later in August of 2020. They have one child, a little boy, who will be six this September.
- [2] Before me today are essentially three applications: an application for child support brought by the claimant, an application for spousal support brought by her and an application for the sale of the family residence, which I understand is a modular home located on a pad in Kelowna. That home is presently occupied by the respondent, at least when he is working in town.
- [3] I am going to deal with the issue of the sale of the home first. In terms of rationale for the sale, the claimant's position as I understand it is essentially twofold. That she feels the sale of the home will expedite a settlement of this matter and would also provide her with an opportunity to obtain an order for payment from the proceeds to assist her in funding her legal fees.
- [4] The test for interim sales of property under the Supreme Court Family Rules is well known. The Court must consider firstly whether a sale is necessary and if the court finds that the sale is not necessary in a legal sense, the court goes on to consider a sale is expedient. That word has been defined by the authorities to be read as advantageous to both parties.
- [5] It does not appear to me that the sale of this property is necessary. The mortgage is not in default, the property is not wasting and there are no issues with respect to the property which suggest that it will deteriorate significantly in value if steps are not taken to market it immediately.

- [6] In terms of whether it is advantageous to both parties, the sale of the property might provide the claimant with access to funds to assist her in paying for this litigation. I say "might" because an application would still have to be made to obtain an allocation of the proceeds of sale for that purpose if not agreed upon and might because of the incentive that a pool of cash, not a particularly deep pool in this case, resting in one of the lawyer's trust accounts might have on settlement where it might not otherwise occur.
- [7] On the other hand, in terms of whether sale of the property is advantageous to the respondent, it provides him with a home when he is here, the equity in the property is not that substantial and also the respondent has indicated a wish to buy out the claimant's interest in the property and has in his affidavit material indicated the steps he has taken to assure himself that he has the means to do so.
- [8] I am not convinced on the basis of the material before me that a sale of this property is necessary and neither, for the reasons I have indicated, am I satisfied that a sale is advantageous to both parties. Accordingly the application for an interim sale of the property is dismissed.
- [9] As far as child support goes, that issue is fairly easily resolved by the position the respondent now takes in response to this application. On an interim and without prejudice basis using an annual income figure for him of \$112,000, the amount payable as support for the parties' single child will be \$1,047 per month. I am going to order the respondent to commence payments in that amount commencing July 1st of 2022 and continuing on the 1st day of each and every month thereafter until varied by order of the court or written agreement between the parties.
- [10] I leave open the issue of whether retroactive support should be payable. I gather no trial date has yet been set.
- [11] I just reiterate the child support order is interim and without prejudice.
- [12] With respect to spousal support, I have not been provided with a calculation pursuant to the DivorceMate program or similar program which would indicate an appropriate amount of spousal support to be paid. In light of the view I take with respect to the application, that detail is unnecessary. I am not satisfied on the basis of the material before me that the claimant has made out entitlement to support on either the compensatory or non-compensatory grounds that she indicates in her argument form the basis of her claim.
- [13] I am not going to dismiss her claim, I am simply going to adjourn it. I think the court should have before it more material to establish the basis of entitlement than is available on this application.

- [14] The application for sale of the residence is dismissed. Child support is ordered in the amount indicated commencing as of July 1st, 2022, and continuing on the 1st of each and every month thereafter until further order of the court or written agreement between the parties. The order is interim and without prejudice. The application for spousal support is adjourned generally.
- [15] Leaving only the issue of costs, I think.
- [16] MR. CLARKE: If I may just before you get to the issue of costs, Your Honour, with regards to the child support order can that be labelled as "by consent."
- [17] THE COURT: What is your position with respect to that, Mr. Chandler?
- [18] MR. CHANDLER: That's fine.
- [19] THE COURT: Okay. Thank you.
- [20] MR. CLARKE: And with regards to the issue of costs, with that order being the only order granted and it was by consent, then I would suggest that my client be granted costs of a fixed amount of a thousand dollars not payable forthwith but not payable in the cause but fixed as a thousand dollars, and I am sure that will come out in the wash.
- [21] MR. CHANDLER: I think that given the conduct of the respondent in failing to disclose his income notwithstanding his positive duty, there should be no costs payable by either party as a result of this application. Each party should bear their own costs.
- [22] THE COURT: Costs of the application will be in the cause. "Master Keighley"

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