
CANADA / JUDGMENT

H.E.K. v. D.C.K.

2013 BCSC 13

COURT

Supreme Court of British Columbia

DECIDED

8 January 2013

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

2013 BCSC 13 H.E.K. v. D.C.K.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

H.E.K. v. D.C.K.,

2013 BCSC 13

Date: 20130108

Docket: 10-2456

Registry: Victoria

Between:

H.E.K.

Claimant

And

D.C.K.

Respondent

Before: The Honourable Madam Justice Ross

Reasons for Judgment

Counsel for the Claimant:

Naomi P. McKay

Counsel for the Respondent:

Roger Batchelor

Place and Date of Hearing:

Victoria, B.C.

November 30, 2012

Place and Date of Judgment:

Victoria, B.C.

January 8, 2013

Introduction

- [1] The claimant, H.K., brings this summary trial application pursuant to Rule 11-3 of the Supreme Court Family Rules (the "Family Rules"). The parties have resolved by consent a number of issues and at the hearing of the summary trial I granted an order for divorce. The issues that remain to be determined are:
- (a) division of family assets including a claim for reapportionment;
 - (b) spousal support;
 - (c) declaration of arrears of child maintenance; and
 - (d) the quantum of s. 7 expenses.

Background

- [2] The parties were married on August 25, 1984. They separated on February 15, 2010. On September 15, 2010, at a Judicial Case Conference, Master Bouck made a s. 57 declaration.
- [3] The parties have two children. Their son K. was born in March 1985. He is employed and self-sufficient. Their daughter M. was born in August 1992. M. is currently a full-time student at Camosun College.
- [4] The claimant, H.K., is employed as an investment specialist by Vancity and Credential Asset Management. She deposed in her financial statement that her current salary is \$52,470 per year. She deposed that for the first time in her career she will not receive a bonus this year. In her reply affidavit she deposed that she expects 2013 will be no different. In submissions, her counsel expanded this to an expectation that she will not receive bonuses in the future.
- [5] H.K.'s income in previous years was substantially higher. Her line 150 income for 2009 was \$61,308 of which \$4,327 was RRSP income. Her counsel stated that it was H.K.'s practice to take her yearly bonus, invest it in an RRSP and then immediately withdraw it. Her line 150 income for 2010 was \$64,165 of which \$7,655 was RRSP income. Her line 150 income for 2011 was \$61,916, of which \$3,561 was RRSP income.

- [6] The respondent, D.K., suggests that H.K.'s income has been understated and in fact will be \$69,462 for this year.
- [7] D.K., is employed as an auditor with the Canada Revenue Agency. His income is \$58,746.
- [8] The parties faced catastrophic circumstances following their separation. The matrimonial home was sold pursuant to a foreclosure leaving a deficiency. D.K. made an assignment into bankruptcy on June 21, 2010. He paid a total of \$8,190.72 to the trustee and was discharged from bankruptcy on May 11, 2012. H.K. entered into a Consumer Proposal dated March 15, 2012 which provides for the total payment of \$30,250 with payments of \$500 per month for 60 months.
- [9] H.K. deposes that the family's finances were destroyed by D.K.'s drug addiction. D.K. acknowledges that he used drugs for a short period during the marriage. He acknowledges that his drug use was detrimental to the marriage relationship, but asserts that the couple's financial problems predated his drug use. It was his contention that throughout the relationship neither party behaved in a responsible fashion concerning their finances. The troubles were exacerbated when H.K. lost her employment with TD Bank in 2003 and was unemployed for a period of time. As an example of the couple's poor decision making, he notes that they spent \$40,000 of H.K.'s severance package on three vacations in 2004, despite the fact they were already mired in debt.
- [10] Family assets:
- (a) the most significant remaining family asset is D.K.'s pension which, by consent, is to be divided equally leaving each party with a share presently valued at \$230,760.21.
 - (b) D.K. is entitled to severance pay for past service with his employer, which at present has an estimated value of \$33,461. This is acknowledged to be a family asset.
 - (c) H.K. has an RRSP in the amount of \$38,000 which was received from TD Canada Trust in 2004 and a group plan with Vancity which has a present value of \$18,000.
 - (d) H.K. deposes that she had \$15,000 in RRSPs, which she had obtained by rolling over her annual bonuses, and that she cashed those in to pay debts incurred by D.K. due to his drug use. By the rough equivalence of amount, I infer that she is referring to the RRSP income declared in her 2009, 2010 and 2011 returns, although this was not made clear in the evidence or submissions. No documents have been put into evidence showing the disposition of these funds. D.K. takes the position that the 2010 and 2011 RRSP amounts represent family assets for which H.K. must account in the division of assets. H.K. disputes this, arguing that the sources of these were bonuses earned after the triggering event. No documents are in evidence to corroborate that assertion.

- [11] Daughter M. has been a full-time student at Camosun College since September 2012. M. has a part-time job which pays \$400 per month which she uses to pay for her cell phone, clothing and entertainment. H.K. supplements her spending money with \$100 per month. The cost of M.'s tuition and books is \$4,000 per year. She has not been able to obtain student loans. The parties have settled the issue of ongoing child support for M. The remaining issue is the appropriate division of M.'s s. 7 expenses.
- [12] H.K. claims arrears for child support for M. for the period March 2010 to September 2010, claimed in the amount of \$3,787. D.K. agrees that he did not pay child support immediately following the separation. He calculates that shortfall as \$3,246. However, he submitted that he continued to pay child support after M. turned 19 and before she enrolled at college. It was his submission that he paid \$4,328 during this period that was over what he should have been required to pay. H.K.'s response was that he had agreed to pay support during this period as M. was attempting to attend post-secondary school through a special program.

Position of the Parties

[13] H.K. seeks:

- (a) an order for re-apportionment of assets, apportioning to her 100% of her RRSP and group plan;
- (b) spousal support in the amount of \$356 per month from March 2012 to February 2017, being the amount net of tax required to pay 50% of the payments required under the payment proposal;
- (c) D.K. to pay \$167 per month for s. 7 expenses for M., being 50% of the \$4,000 cost of tuition and books; and
- (d) a declaration of child support arrears in the amount of \$3,787.

[14] D.K. seeks:

- (a) to have what he submits is roughly an equal division of assets, accomplished by apportioning the severance to him and the RRSP and group plan to HK;
- (b) no spousal support;
- (c) an order that D.K. contribute \$70 per month for s. 7 expenses; and
- (d) a declaration that there are no arrears of child support.

Discussion

[15] Rule 11-3(15) of the Family Rules provides that:

- (15) On the hearing of a summary trial application, the court may
 - (a) grant judgment in favour of any party, either on an issue or generally, unless

- (i) the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or
- (ii) the court is of the opinion that it would be unjust to decide the issues on the application,

[16] Thus, the first question to be addressed is whether this matter is suitable for summary disposition. In that regard, Verhoeven J. summarized the considerations to be addressed in *Lott v. Fulford*, 2012 BCSC 1189, as follows:

The considerations applicable to deciding whether a matter is appropriate for disposition by way of a summary trial are well known. In that regard, in *MCoal Corporation v. R.J. Tocher Holdings Ltd.*, 2012 BCSC 653, I stated as follows, at paras. 37-39:

- [37] Under Rule 9-7(15) of the Rules, on a hearing of a summary trial application, the court may grant judgment, unless the court is unable, on the whole of the evidence before the court on the application, to find the facts necessary to decide the issues of fact or law, or the court is of the opinion that it would be unjust to decide the issues on the application.
- [38] In deciding whether it will be unjust to give judgment, the chambers judge is entitled to consider, inter alia, the amount involved, the complexity of the matter, its urgency, any prejudice likely to arise by reason of delay, the cost of taking the case forward to a conventional trial in relation to the amount involved, the course of the proceedings and any other matters which arise for consideration: *Inspiration Management Ltd. v. McDermid St. Lawrence Ltd.* (1989), 36 B.C.L.R. (2d) 202 (C.A.) [*Inspiration Management*], at 214.
- [39] The Rule must be applied only where it is possible to do justice between the parties in accordance with the requirements of the Rule itself and in accordance with the general principles which govern judges in their daily task of ensuring that justice is done: *Inspiration Management*, at 212, quoting *Placer Development Ltd. v. Skyline Explorations Ltd.* (1985), 67 B.C.L.R. 366 (C.A.), at 385-386.

and see *Waters v. Michie*, 2011 BCSC 1083.

[17] It is clear that at the time of separation this family was facing a catastrophic debt load leaving them in the aftermath with few assets to divide. Each of the parties has advanced a very different account of the genesis of this problem. It is impossible to reconcile the accounts and neither party has adduced documentary evidence that would assist in establishing their contentions. Thus, there is a credibility issue which is not possible to reconcile on the evidence. That factor strongly favours a conclusion that the matter is not suitable for summary disposition.

[18] However, the parties seek to have it resolved on a summary basis. Neither applied to have the matter referred to the trial list. The cost of taking the matter forward would be substantial, particularly in relation to the amount in dispute. I have concluded that, if the onus of proof is considered, it will be possible to find the facts necessary to resolve these issues and that in all the circumstances it will be just to do so.

- [19] I have concluded that the 2010 and 2011 RRSPs are not family assets for which H.K. must account.
- [20] I find that H.K. has not established that D.K. was the sole cause of the financial catastrophe the family endured. However, it is clear that she has borne a greater share of the consequences in that she will be required to pay roughly \$22,000 more pursuant to her Consumer Proposal than D.K. was required to pay under his bankruptcy. I have concluded that the appropriate way to deal with this disparity is through reapportionment of family assets, not through an order for spousal support.
- [21] Accordingly, I reapportion 100% of the group plan currently valued at \$18,000 to H.K. H.K.'s RRSP will be divided \$23,000 to her and \$15,000 to D.K. through a spousal rollover. D.K.'s severance pay will be divided equally at the time when it is received by D.K.
- [22] The reapportionment of assets leaves each party bearing an equal share of the family debt following separation. That being the case, I am not satisfied that there is entitlement on the part of either spouse for an order for spousal support.
- [23] I have concluded that H.K.'s income for this year will be \$54,470 and that D.K.'s suggestion that it will be much more was not substantiated. I do accept that she will not receive a bonus this year; however, she has not established that this change in the usual pattern will be permanent or likely to continue for future years. Accordingly, the parties are to exchange income tax returns each year in June for so long as M. remains a child of the marriage.
- [24] D.K.'s submission with respect to the quantum of s. 7 expenses was premised in part upon an assumption that H.K.'s income was really \$69,462 and the tax implications of H.K. claiming tuition and book expenses. He further submitted that M. should be contributing \$1,500 toward her tuition and book expenses. I have found that H.K.'s income will not be the amount D.K. claimed. H.K. deposed that no decision had been made with respect to the tuition and book expense credits. I note that for this year at least, D.K. earns a higher salary than H.K. I conclude that an equal sharing of the s. 7 expense will adequately take into account the concerns raised by D.K.
- [25] There will be an order that D.K. pay \$167 per month, being 50% of the \$4,000 s. 7 expenses. In future years the amount will be modified to reflect a sharing in proportion to the parties' income.
- [26] Finally, I declare arrears with respect to child support in the amount of \$3,787. It is not disputed that D.K. did not pay child support during the period following separation until the Judicial Case Conference although it was clearly his responsibility to do so. He has submitted that these arrears should be set-off against amounts that he did pay after M. turned 19 before she enrolled as a full-time student.
- [27] The order made by consent at the Judicial Case Conference required payment of child support in the amount of \$541 per month for so long as M. remains a child of the marriage. No application was ever made to vary the order. It appears that the parties agreed to reduce

the amount payable for the period following her 19th birthday until she enrolled as a full-time student. However it appears to me that during this period M. remained a child of the marriage. H.K. deposed that she was endeavouring to attend post-secondary school through a special program. It appears that she remained under her mother's charge and there is no suggestion that she was self-sufficient. Accordingly, in my view, it is not appropriate to set-off the amounts paid during this period against the arrears representing child support that should have been paid following separation.

"Ross J."

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/13/00/2013BCSC0013.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/h-e-k-v-d-c-k-2013>

Prepared on 26 October 2026 · Esheria