

CANADA / JUDGMENT

H.S.S. v. D.K.G.

2024 BCSC 117

COURT

Supreme Court of British Columbia

DECIDED

26 January 2024

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

2024 BCSC 117 H.S.S. v. D.K.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

H.S.S. v. D.K.G.,

2024 BCSC 117

Date: 20240126

Docket: E211910

Registry: Vancouver

Between:

H.S.S. also known as R.S.S.

Claimant

And

D.K.G.

Respondent

Before: Associate Judge Harper

Reasons for Judgment

The Claimant, appearing in person:

H.S.S.

The Respondent, appearing in person:

D.K.G.

Place and Dates of Hearing:

Vancouver, B.C.

December 18 and 22, 2023

Place and Date of Judgment:

Vancouver, B.C.

January 26, 2024

Introduction

- [1] This is a family law case. The respondent wife, Ms. G., seeks orders for document production and other types of information related to her potential claim for retroactive child support for the parties' son, J., born January 8, 2012.
- [2] The parties were married on May 27, 2006, separated in August 2013, and were divorced by order made January 23, 2015.
- [3] This application arises from a notice of family claim filed by the claimant husband, Mr. S., on June 14, 2021 in which he seeks orders for shared parenting and child support. Ms. G. filed a counterclaim seeking child support.
- [4] On October 30, 2023, Ms. G. filed a notice of application (the "October application") setting a hearing date of November 14, 2023. Ms. G. switched the order of the parties' names in the style of proceeding. This is a mistake. The parties' names must be listed in the same way as in the notice of family claim.
- [5] On November 14, 2023, the court adjourned the hearing to December 14, 2023, and ordered Mr. S. to file his application response to the October application and any affidavit in support by December 7, 2023.
- [6] On December 7, 2023, Ms. G. filed a new notice of application that included changes in the orders sought from the October application (the "December application"). At the hearing before me, Ms. G. sought to proceed on the December application.
- [7] The December application is not properly before the court. Mr. S. has responded to the October application. The December application was not served with sufficient time for Mr. S. to respond. Therefore, I will deal only with the October application. For completeness on the record, the application filed December 7, 2023 is dismissed.
- [8] There are several procedural flaws with the October application. First, the Legal Basis is completely blank. Second, the facts set out in the Factual Basis are not supported by affidavit; A "Factual Basis" is not evidence. Third, under Part 4: Material to be Relied On, there are no affidavits listed. The only affidavit before the court from Ms. G. is her affidavit sworn and filed December 7, 2023. This affidavit is not properly before the court because it post-dates the October application and Mr. S. has not had an opportunity to respond to it.

Fourth, the affidavit is improper in that it does not attach as exhibits the documents Ms. G. has included in her application record.

- [9] Despite these serious procedural flaws, which would justify a dismissal of the October application with costs payable to Mr. S., I have determined that it is in the interests of the parties to determine Ms. G.'s application on its merits.

Background

- [10] Ms. G. is a pharmacist employed at the Vancouver General Hospital. Mr. S. is a software engineer.
- [11] The parties entered into a separation agreement dated September 24, 2014 (the "2014 Agreement"). Ms. G. had primary care of J. Ms. G.'s Guideline income was set at \$72,000 and Mr. S.'s Guideline income was set at \$50,000. Mr. S. is described in the 2014 Agreement as a self-employed software engineer and venture capitalist. Further, Mr. S. "is in the process of applying for employment and expects his income to increase significantly".
- [12] The 2014 Agreement provided that Mr. S. pay basic child support of \$458 per month plus his proportionate share of the s. 7 special or extraordinary expenses.
- [13] The 2014 Agreement provides that the parties will review child support, and, if necessary, revise it by May 31 every year. The parties are to exchange income tax information by May 31 in each year. If the parties do not review child support or review the child support but do not vary it in writing, both parties are deemed to consider that the child support continues to satisfy the requirements of the Federal Child Support Guidelines, SOR/97-175.
- [14] In January or February, 2015 (Ms. G. says February 1, 2015), the parties started sharing parenting time with J. on an equal basis.
- [15] Shortly after the parties began their shared parenting arrangement, they verbally agreed that no child support would be paid by either of them and that they would share the s. 7 special or extraordinary expenses equally. The agreement was not reduced to writing.
- [16] Neither party sought a formal review of child support, but both accepted that no child support was payable by either (special or extraordinary expenses were handled by ad hoc agreement). As I understand the evidence, neither party provided the other with the income information required to be exchanged pursuant to the 2014 Agreement.
- [17] The parties' arrangement worked satisfactorily until Mr. S. told Ms. G. in 2020 about his upcoming remarriage. It was only at that point that Ms. G. raised the issue of a review of child support. Ms. G. denies that her feelings about the remarriage were her motivation to pursue child support. However, the fact is that Ms. G. filed the 2014 Agreement with the Family Maintenance Enforcement Program ("FMEP") on November 24, 2020, two months after Mr. S.'s remarriage despite the agreement that no child support was payable by either party from and after the shared parenting arrangement. Filing with FMEP caused

unnecessary and unfair hardship to Mr. S. FMEP reported him to the credit bureau and his wages were garnisheed. The FMEP process has now been put on hold.

- [18] The timing of Ms. G.'s demand for retroactive child support is also suspicious in that, by her own evidence, Ms. G. was off work for about five years due to a workplace injury sustained in August 2017. Despite receiving Workers Compensation benefits and/or long-term disability benefits (the evidence was not clear on the source of the benefits), Ms. G. says she had to draw on her savings. Despite experiencing alleged financial hardship, and possibly having a lower income than Mr. S., Ms. G. did not request a review of child support until three years after her workplace injury. In fact, on April 26, 2018--while off work due to her workplace injury--Ms. G. signed a letter addressed to the Canada Revenue Agency indicating that the parties share parenting and neither pay child support.
- [19] With the involvement of legal counsel on both sides, the parties entered into an amending agreement dated March 9, 2022 (the "Amending Agreement") to reflect the changed parenting time arrangement. For the purposes of this application, the following terms of the Amending Agreement are relevant:
- (a) Mr. S. will pay retroactive basic child support of \$1,832, which is \$458 per month from October 1, 2014 to and including January 1, 2015 (the "Retroactive Child Support").
 - (b) The Retroactive Child Support is in full and final satisfaction of all retroactive child support payable to the date of this Amending Agreement, based on the parties' current disclosed incomes, and takes into consideration the parties having shared custody. Should further disclosure provided by either party give rise to income beyond that previously disclosed, or the imputation of income by the court, either party shall have liberty to apply to vary the terms of this Amending Agreement.
 - (c) There will be no child support payable from either party to the other based on the parties' currently disclosed incomes.
 - (d) The parties will exchange income information each year.
- [20] As a result of the Amending Agreement, the parties have come to an agreement about ongoing child support.
- [21] The Amending Agreement is the result of significant effort on the part of the parties and their former legal counsel to reach resolution on all issues. The Amending Agreement provides a clear path forward with respect to assessing future child support. Ms. G., however, seeks to revisit past child support arrangements. Although the notice of family claim pleads a claim for child support on the part of Mr. S., I did not get the impression from him at the hearing of this application that he intended to pursue Ms. G. for retroactive child support (unless she pursues him, in which case, he will attempt to establish that she owes him, rather than the other way around).

- [22] Regardless of Ms. G.'s motivation for pursuing retroactive child support, her late demand for a review of child support with the accompanying request for financial documents dating back to 2013 create practical problems. It is not surprising that a complete record of financial transactions is not currently available given that Mr. S. had no reason to believe he would need to retain them for this many years.
- [23] The Amending Agreement provides the basis for this application. To be clear, an order for the production of documents does not assume that there will be an order for retroactive child support; rather, the documents produced pursuant to a disclosure order are simply the foundation on which an application for child support may be made. If Ms. G. determines that pursuing retroactive child support is a productive exercise, she will be required to produce her own income documentation for the same time period.

The Application

- [24] The parties attended a Judicial Case Conference ("JCC") on February 16, 2022. The parties were each represented by legal counsel at the JCC. The court made a series of consent orders for disclosure of financial information as follows:
1. the claimant shall sign an authorization for release of information from the IRS in favour of his counsel, Jane Reid, for the last 3 years.
 2. the Parties shall exchange bank account statements for accounts held in their names alone or jointly with another party for the last 3 years.
 3. the claimant shall provide documents relating to the purchase and financing of the 2016 Subaru.
 4. the Parties shall list and produce documents relating to income from all sources, for the last 3 years, including in relation to any WCB benefits, deductions, or repayments.
 5. the claimant shall provide unredacted copies of employment and service contracts that were previously provided in a redacted form. The respondent shall not disclose the names of, or contact the entities disclosed by the removal of the redaction other than as is required for the purposes of this litigation.
- [25] Ms. G. seeks a large number of documents dating back many years. In considering the application, the court must take into account the object of the rules of the Supreme Court Family Rules as set out in Rule 1-3:

Object

- (1) The object of these Supreme Court Family Rules is to
 - (a) help parties resolve the legal issues in a family law case fairly and in a way that will
 - (i) take into account the impact that the conduct of the family law case may have on a child, and

- (ii) minimize conflict and promote cooperation between the parties, and
- (b) secure the just, speedy and inexpensive determination of every family law case on its merits.

Proportionality

- (2) Securing the just, speedy and inexpensive determination of a family law case on its merits includes, so far as is practicable, conducting the family law case in ways that are proportionate to
 - (a) the interests of any child affected,
 - (b) the importance of the issues in dispute, and
 - (c) the complexity of the family law case.
- [26] Proportionality is a key principle. The breadth of documents sought on this application is out of proportion to the narrow issue of determining Mr. S.'s Guideline income back to 2014. Ms. G. could have sought a review as per the 2014 Agreement, but she declined to do so. The first amended list of documents dated July 25, 2023 provided on behalf of Mr. S. is extensive and discloses sufficient documents to determine his Guideline income.
- [27] Ms. G. does not cite any specific Rule in the legal basis of her notice of application. I infer that she relies on the general obligations of financial disclosure and the terms of the Amending Agreement.
- [28] Ms. G. failed to follow the protocol required by Rule 9-1 of the Supreme Court Family Rules. She was required to make a demand in writing under Rule 9-1(8) and indicate the reason in the demand why the documents should be disclosed. One of the difficulties with this application is that it is not clear why the additional documents, if they exist and have not yet been produced, relate to the determination of Mr. S.'s Guideline income, especially given the requirement for family law litigation to be conducted proportionately to the issues involved.
- [29] Counsel for Ms. G. conducted an examination for discovery of Mr. S. on August 3, 2023. Several requests were put on the record. However, just because requests are made at an examination for discovery does not mean that the protocol for making demand for further documents under Rule 9-1 can be avoided.
- [30] The payment of child support for 2021 and 2022 was resolved by agreement between the parties reflected in the letter dated August 30, 2023 from Mr. S.'s counsel to Ms. G.'s counsel. It appears to me that Mr. S.'s Guideline income as set out in the letter is adjusted to reflect some "add-backs" of business expenses that, while perfectly legitimate to deduct for income tax purposes, should be added back to income for Guideline income purposes. Ms. G.'s counsel did not object to the calculation of child support set out by Mr. S.'s counsel in the letter. There is no evidence before me justifying disclosure of any documents that would result in a revisiting of that agreement. This letter agreement reflects the diligent efforts made by counsel for both parties to assist their clients in reaching a resolution. It is unlikely

that either counsel overlooked relevant document disclosure.

- [31] Mr. S. deposed at his examination for discovery that he reports all income. There is no evidence before me that undermines that evidence.

Discussion

- [32] In answer to the application as a whole, I have determined that Mr. S. has provided adequate responses to Ms. G.'s demands for further documents. The documents sought have either been produced or do not exist. Ms. G. has sufficient information in hand to analyze Mr. S.'s Guideline income.

- [33] I will provide some comments about some of the documents sought using the numbers of the paragraphs in the notice of application in Part 1.

Request #1 - An order that the respondent has wrongfully denied all employment contracts payable to him and/or any entity he holds an interest in for the purposes of child support and s. 7 expenses

- [34] This request does not fit within any category of document production under the Rules. To be blunt, it does not make sense.

Request #2 - An order the respondent's unaltered complete employment and/service contracts, such as, Trustworthy, Camino, be provided. In addition to the contracts, the corresponding payments from 2014 to the present. Not limited to payments made to [Mr. S.] and or any entity/ persons receiving payment for services on the respondents behalf to the Claimant within 2 weeks of this Order

- [35] All contracts that exist have been provided. Camino is the name of the app developed by the company IVC Soundsystem ("IVC") and Mr. S. has produced the employment contract for his work IVC. The corresponding T4 slip has been provided for Mr. S.'s full-time employment with IVC.

Request #3 - An order to fulfill the outstanding JCC order: An order for an independent accounting firm specializing in US-Canada taxes and complete the [Internal Revenue Service] authorization for release of information with the Respondent signing the completed application. Application to be completed within 7 business days of the order and provide all response documents provided to the designated independent accounting firm and to the Claimant within 2 weeks of this Order

- [36] There is no basis for the court to make the order sought. It is vague. If Ms. G. wishes to retain an accountant to provide her with an expert opinion, she is free to do that at her own expense. Mr. S. provided an authorization for Ms. G. to obtain any information she wished from the Internal Revenue Service. Mr. S. has received payments from clients in US dollars, but he has never been required to pay income tax in the United States, nor to file an income tax return in the United States. He does not have a social security number or a green card.

He has never had a US taxpayer number. Mr. S. declares all his income in his Canadian income tax returns.

Request #4 - An order for all income generated from companies the respondent has founded such as but not limited to: Sunrise, Camino custom radio, Weather Hippie within 2 weeks of this Order

[37] Mr. S. says he has fulfilled this request. Sunrise was a hobby app that was started and shut down with no users and no income in 2017. Mr. S. was a T4 employee only for Camino, which was the app developed by IVC. Weather Hippie is another hobby project and the nominal income of \$250 per year approximately is reported as part of his business income.

Request #5 - An order the respondent's current contract with the Trustworthy company to provide a list of all reimbursements paid to the respondent and/or any entity/person receiving payment on behalf of the respondent for office equipment, computer software and hardware, electronics directly to the Claimant within 2 weeks of this Order

[38] The contract with Trustworthy has been produced. Income from Trustworthy has been reported in Mr. S.'s income tax returns.

Request #9 - An order for the respondent's mortgage application and supporting documents with CIBC resulting approval for mortgages for 7804 110A Street, Delta, BC and 833 Homer Street, Vancouver, BC provided directly to the Claimant within 2 weeks of this Order

[39] The evidence confirms that the mortgage application for the Delta property did not require any income documents from Mr. S. because his income was not used to qualify for the mortgage.

Request #10 - An order for all respondent's bank accounts in his name or jointly held and/or corporate accounts in Canadian or US Dollars provided by Canadian and United States of America (USA) financial institutions to the claimant within 2 weeks of this Order

[40] Ms. G. asserts in her notice of application under Factual Basis, paragraph 8 that Mr. S. has not provided all bank account statements required to be produced under the JCC order. However, she provides no evidence to support this assertion.

Request #11 - An order for all construction, trade, contract paid invoices and cancelled cheques and source of funds for the Construction of a house at 7804 110A Street, Delta, BC provided by the respondent directly to the claimant within 2 weeks of this Order

[41] Ms. G.'s theory behind this request seems to be that because Mr. S. has an interest in this property, he should receive income from it. If Ms. G. had followed the protocol required by Rule 9-1, she would have had to provide a rationale for this request. She provides no rationale in her notice of application or affidavit. Mr. S. asserts that he owns an interest in the Delta property together with his parents. His parents pay the expenses for the property and receive the income.

Request #12 - An order to require the respondent to provide any and all entities including but not limited to corporations, limited partnerships, limited liability where he is a shareholder, director, or related to the company/corporation in any capacity

[42] There are no such "entities". Mr. S. conducts business as a sole proprietor.

Request #13 - An order for all rental receipts and/supporting documentation of all rental income and BC Hydro bills, property tax statements for the following properties from 2014 to present: 8866 134A Street, Surrey, BC, 15283-97 Avenue, Surrey, BC, and 7804-110A Street, Delta, BC

[43] These properties are managed by Mr. S.'s parents. They pay the mortgage and expenses and receive the rental income. Mr. S. is on title for estate planning purposes for the two Surrey properties.

Conclusion

[44] The October 30, 2023 and December 7, 2023 applications of Ms. G. are dismissed.

[45] I have dismissed the October application on its merits and the December application on procedural grounds. Further, as noted at the beginning of these reasons, the application was procedurally flawed and justified a dismissal with costs on those grounds. Therefore, Ms. G. will pay Mr. S. his costs of both applications in any event of the cause.

"Associate Judge Harper"

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/24/01/2024BCSC0117.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/h-s-s-v-d-k-g-2024>

Prepared on 28 October 2026 · Esheria