

CANADA / JUDGMENT

Hancock v. Hancock

2006 BCSC 411

COURT

Supreme Court of British Columbia

DECIDED

13 March 2006

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2006 BCSC 411 Hancock v. Hancock IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hancock v. Hancock, 2006 BCSC 411 Date: 20060313 Docket: D032571 Registry: New Westminster Between: Rosemary Anne Hancock Plaintiff And David John Hancock Defendant Before: The Honourable Mr. Justice Bernard Reasons for Judgment Counsel for the Plaintiff J.A. Thomson Counsel for the Defendant G.A. Lang Date and Place of Trial: February 24, 2006 New Westminster, B.C.

- [1] By consent order made May 29, 1995, Mr. Hancock was required to pay Mrs. Hancock spousal support of \$1,200 per month for three years. The support payments ended on March 1, 1998, in accordance with the court order. On October 25, 2005, Mrs. Hancock filed a motion to vary the support order.
- [2] Mrs. Hancock is 50 years of age. She suffers from chronic depression and lives on a disability pension. She seeks a prospective resumption of spousal support in the amount of \$2,000 per month for an indeterminate period likely to be the balance of her lifetime.
- [3] When the parties divorced, Mrs. Hancock received significantly greater than half of the family assets (which included the family home) and time-limited spousal support, apparently in recognition of an economic disadvantage suffered by the marriage and its breakdown, and to assist her in becoming economically self-sufficient. Mrs. Hancock was gainfully employed, on a part-time basis, throughout the marriage. At the time of divorce, Mr. Hancock worked as a police officer; he continues to do so, presently earning \$80,000 per year.
- [4] In June 1995 and February 1996, Mrs. Hancock was injured in motor vehicle collisions. She sustained soft-tissue injuries and eventually received \$50,000 in collective settlement of the civil suits. In July 1996, Mrs. Hancock tore her anterior cruciate ligament, an injury which ended her ability to earn income as a dance instructor.
- [5] Mrs. Hancock says that the aforementioned injuries and the emotional upset or the marriage breakdown gave rise to her chronic clinical depression which has, since 1996, rendered her unable to earn an income. Since her spousal support ended in 1998, she has used the \$50,000 settlement funds and the proceeds from the sale of the assets (worth as

estimated \$135,000) she received upon divorce to support herself. Since 2002, she has qualified for Canada Pension Plan Disability, presently \$9,500 annually. She lives in government-subsidized housing.

- [6] Mrs. Hancock submits that her present impoverished circumstances were not reasonably anticipated by the parties at the time of the 1995 consent order, and they have led to a situation that cannot be condoned. She submits that she has suffered economic hardship arising from the marriage and its breakdown and that Mr. Hancock can afford to alleviate that hardship through spousal support payments.
- [7] Section 17(10) of the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3, prescribes two prerequisites to making a variation which resumes spousal support:
 - (a) It is necessary to relieve economic hardship arising from a change described in subsection (4.1) that is related to the marriage; and,
 - (b) The changed circumstances, had they existed at the time of the making of the spousal support order . . . would likely have resulted in a different order.
- [8] The change described in subsection (4.1) is a change in the "condition, means, needs, or other circumstances of either former spouse."
- [9] The gist of Mr. Hancock's position is that Mrs. Hancock's present economic hardship arising from her chronic depression and consequent inability to earn an income is unrelated to the marriage; accordingly, her application must fail for lack of proof of a prerequisite to the resumption of spousal support. The need for proof of a relationship between the alleged economic hardship and the former marriage has been confirmed by our courts (see H.L. v. M.H.L. 2003 BCCA 484).
- [10] The evidence of the cause of Mrs. Hancock's chronic depression and unemployment is as follows:
 - (a) Mrs. Hancock In July 1996 I suffered an anterior cruciate ligament tear which required surgery. This essentially ended my ability to be a dance instructor and, compounded with the injury suffered in the motor vehicle accident and my emotional situation at the time of my divorce from the defendant, I became clinically depressed which further prevented me from obtaining gainful employment. The reason that I did not continue with my academic pursuits after separation was because I was involved in two motor vehicle accidents and became mentally, as well as physically, disabled. Further due to the fact that I was unable to work due to injuries sustained in motor vehicle accidents, I had incurred personal loans to relatives which totalled over \$30,000, which had to be paid back.
 - (b) Dr. Griffin, Psychiatrist She was somewhat distraught following this rejection from her husband and consulted a psychiatrist who I believe was Dr. Kogan, on about four or five times following this separation. She tells me that she was depressed at the time but did not require any antidepressants. She tells me that she eventually recovered and her mood

returned to normal. She actually returned to work and was earning something like \$40.00 per hour. When I asked her further about the effects of these MVAs she tells me that she became suicidally depressed following the 1995 MVA and that when she experienced the last MVA in 1996 she tells me that she was "knocked unconscious" for about ½ hour. Her left leg was also injured. She tells me that her mood had improved however by January 1996 so much so that she was even offered a dance teaching job before her last accident. This, of course, was in February 1996. Thus, it can be seen that these last accidents, particularly the one in 1996 basically destroyed her career, a career which she describes as "it was my passion. In any event, she became even more depressed quite naturally following this last accident and certainly in my office I would place her depression as severe.

- [11] The foregoing evidence does not establish that Mrs. Hancock's chronic depression is related to the marriage. Rather, it shows that it is attributable to a number of independent intervening events: two motor vehicle accidents and a subsequent knee injury. Accordingly, Mrs. Hancock has failed to prove one of the legislated prerequisites to the order she seeks, and her application must fail. Mr. Hancock will have his costs, at scale 3. "L. Bernard, J." The Honourable Mr. Justice L. Bernard

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Prepared on 29 October 2026 · Esheria