

---

CANADA / JUDGMENT

## Harrison v. Harrison

2014 BCSC 1220

---

COURT

Supreme Court of British Columbia

DECIDED

2 July 2014

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

---

2014 BCSC 1220 Harrison v. Harrison

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Harrison v. Harrison,

2014 BCSC 1220

Date: 20140702

Docket: 46482

Registry: Kamloops

Between:

Deena Charlene Harrison

Claimant

And

Walter Ross Christopher Harrison

Respondent

Before: The Honourable Madam Justice Donegan

Reasons for Judgment

Counsel for the Claimant:

R.L. Lammers

Counsel for the Respondent:

S.M. McKinley

Place and Date of Hearing:

Kamloops, B.C.

June 9, 2014

Place and Date of Judgment:

Kamloops, B.C.

July 2, 2014

## INTRODUCTION

- [1] Slightly over a year ago, following a summary trial, Madam Justice Hyslop made a number of final orders (the "Orders") for corollary relief in this family law case. Mr. Harrison now applies to vary or cancel some of those Orders. He seeks to cancel or reduce his spousal support obligation, to cancel child support payable for Tyrel Harrison, or alternatively to have child support paid directly to Tyrel Harrison and to have all support payments made on a bi-weekly basis. Mr. Harrison also seeks to have arrears that have accumulated since the Orders reduced or cancelled. Alternatively, he seeks to have the "credit" given to him by Hyslop J. applied to the outstanding arrears.
- [2] Mrs. Harrison is not opposed to bi-weekly support payments, but opposes the balance of the relief sought

## BACKGROUND AND SUMMARY TRIAL DECISION

- [3] The parties commenced cohabitation on May 1, 1993 and were married on September 2, 1995. During their marriage, they had two children, Tyrel, born March 20, 1994 and Jessica, born April 15, 1997. The parties separated on February 18, 2011.
- [4] A summary trial was held on April 5, 2013. In written reasons released on April 19, 2013 (cited at 2013 BCSC 685), Hyslop J. granted the parties' divorce and made the Orders.
- [5] For the purposes of child and spousal support, Mr. Harrison's income was found to be \$107,063.00. Mrs. Harrison's income was found to be \$40,000.00. With respect to child support, the real dispute was whether Tyrel remained a "child of the marriage" under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp) [DA].
- [6] In concluding that he was a child of the marriage, Hyslop J. made the following findings at paras. 31 - 34:
- [31] Since graduating from high school, Tyrel has been working part-time. Starting in January 2013, Tyrel has been enrolled part-time at TRU. The courses he takes are university preparation courses, except a physical education course. The preparation courses require no fee. The physical education course is a credit course and requires a tuition fee. Tyrel has incurred registration fees and text book expenses.

- [32] Tyrel expects to enrol in the Bachelor of Science program in September 2013. Mrs. Harrison swears that Tyrel has always been a good student. It should not come as a surprise that Tyrel is taking post-secondary education. Further, the Harrisons had an education fund for the children which they used to meet their debt.
- [33] Mr. Harrison argues that he has no documents as to Tyrel's enrollment and costs at TRU, and that Tyrel has no firm educational plans. On the contrary, he does. Tyrel is a recent graduate from high school and he is now a part-time student. If all goes well, he will be a full-time university student in September 2013. His educational plans are reasonable. The Harrisons expected Tyrel to take further education beyond high school. Through his own employment, Tyrel has the ability to assist in his education by part-time employment at this time.
- [34] Mr. Harrison suggested that Tyrel will move to Kamloops. There are no plans as yet that Tyrel will move to Kamloops. As a result, I conclude that under the Divorce Act, Tyrel is still a "child of the marriage" requiring financial support from his parents.
- [7] Mr. Harrison was ordered to pay child support in the amount of \$1,569.00 per month for the support of both children, commencing January 1, 2013. He was also ordered to pay \$70.00 per month for his portion of Jessica's extraordinary expenses.
- [8] With respect to spousal support, the court found the strength of Mrs. Harrison's claim to be compensatory. Using the Spousal Support Advisory Guidelines [SSAG], Mr. Harrison was ordered to pay Mrs. Harrison \$1,000.00 per month, commencing January 1, 2013. No duration was specified.

#### VARIATION OF SPOUSAL SUPPORT

- [9] The factors a court must consider in an application to vary a final spousal support order are set out in s. 17(4.1) of the DA:

(4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

- [10] The objectives the court must consider in varying a final spousal support order are set out in s. 17(7) of the DA:

#### Objectives of variation order varying spousal support order

- (7) A variation order varying a spousal support order should
- (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;

- (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
- (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and
- (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.

[11] A variation may only be ordered if the applicant has established that there has been a material change in circumstances of either party since the original order; that is, a change, if known at the time of the original order would likely have resulted in different terms: *Willick v. Willick*, [1994] 3 S.C.R. 670 and *L.M.P. v. L.S.*, 2011 SCC 64.

[12] In *Walters v. Walters*, 2011 BCCA 331 at para. 48, Smith J.A. reaffirmed the principles upon which an application to vary an order for support is based, as set out in *Oakley v. Oakley* (1985), 48 R.F.L. (2d) 307 (B.C.C.A.) at 313:

An application to vary or rescind maintenance payments will proceed on the basis of the following principles: the court is to take the amount of maintenance originally ordered as the correct amount at the time the order was made and then to consider to what extent the circumstances of the parties have altered or changed since the decree nisi was granted. The onus to show that such changes have occurred lies on the applicant. Maintenance will be varied where the balance between the parties has become so distorted that it has become unjust. Where a decree nisi is obtained by consent or where the decree nisi has incorporated maintenance provisions contained in the separation agreement made between the parties the court should not lightly disturb the order and the party seeking the variation must show not only some changes in circumstances, but conditions which arouse the conscience of the court and call for action.

[13] Mr. Harrison asserts a material change in Mrs. Harrison's circumstances. He believes that Mrs. Harrison has been living in a common-law relationship since August of 2013. By sharing living expenses and benefitting from an additional household income, he asserts that a material change has occurred to her means and needs.

[14] Mrs. Harrison denies living in a common-law relationship. She was forced from the former family residence in August of 2013 as a result of foreclosure proceedings. Since she needed to remain in Savona, where she worked, her boyfriend offered to rent her his home for \$800.00 per month. She and the children moved into that home on September 1, 2013. Mrs. Harrison entered into a residential tenancy agreement with Mr. Harper, a copy of which is attached to her affidavit. That agreement reflects a number of terms and conditions, including that Mrs. Harrison must pay \$800.00 per month to Mr. Harper for rent. She has paid this amount every month.

- [15] Mr. Harper pays the utilities. He works in Alberta and is away from Savona all but four days per month. For those four days, he stays with Mrs. Harrison. He contributes to groceries. They do not share finances or bank accounts. They do not have any joint assets or liabilities. Mr. Harper does not support Mrs. Harrison or the children. He does not act as a father to them. Mrs. Harrison is not privy to Mr. Harper's income or other financial information.
- [16] In response, Mr. Harrison asserts that no proof has been offered that Mrs. Harrison is in a rental situation and that common sense must prevail. However, evidence does exist that Mrs. Harrison is in a rental situation. Cross-examination of Mrs. Harrison on her affidavit was not sought. I have no reason not to accept her sworn, unchallenged evidence.
- [17] I find that Mrs. Harrison is not in a common-law relationship. She does not share living expenses and does not benefit from Mr. Harper's income. Her expenses remain largely unchanged from the time of trial last year. If anything, her expenses have increased because she now pays rent. At the time of trial, she had no housing costs because the mortgage was not being paid.
- [18] I find Mr. Harrison has not met the burden of establishing the threshold issue of a material change in circumstances.
- [19] I would add that even if there was some factual basis upon which to conclude there has been a material change in circumstances over the last year, I would still have to be satisfied that a variation or cancellation of spousal support is in accordance with the objectives of the DA.
- [20] No submissions were made with respect to these objectives. The law is clear that both compensatory and non-compensatory factors are relevant considerations in striking a balance for an appropriate award for spousal support. This is true of both initial and variation applications: *Walters* at para. 39; *Moge v. Moge*, [1992] 3 S.C.R. 813 and *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420.
- [21] In this case, Hyslop J. found the strength of Mrs. Harrison's claim for spousal support to be compensatory. She ordered monthly spousal support on an indefinite basis. Any reduction or elimination in that award at this time, in the circumstances as presented, would not be in accordance with the compensatory nature of her claim and the objectives outlined in s. 17(7) of the DA.
- [22] Mr. Harrison's application to cancel or reduce his spousal support obligation is dismissed.

#### CHILD SUPPORT FOR TYREL

- [23] Mr. Harrison seeks a declaration that Tyrel is no longer a "child of the marriage" pursuant to the DA.
- [24] Section 2(1) of the DA defines "child of the marriage" as follows:

"child of the marriage" means a child of two spouses or former spouses who, at the material time,

- (a) is under the age of majority and who has not withdrawn from their charge, or
  - (b) is the age of majority or over and under their charge but unable, by reason of illness, disability or other cause, to withdraw from their charge or to obtain the necessities of life;
- [25] The pursuit of post-secondary education can result in an adult child remaining a "child of the marriage": *Nordeen v. Nordeen*, 2013 BCCA 178 at para. 15.
- [26] In *W.P.N. v. B.J.N.*, 2005 BCCA 7, Levine J.A. summarized this general proposition at para. 18:
- [18] The pursuit of education necessary to equip a child with a career qualifies as "other cause" for continuing dependence of a child of or over the age of majority: *Martin v. Martin* (1988), 26 B.C.L.R. (2d) 390 at 393 (C.A.). In determining whether a child pursuing an education is unable to withdraw from her parents' charge or obtain the necessities of life a court must consider the surrounding circumstances; mere attendance at an educational institution is not sufficient: *Ciardullo v. Ciardullo* (1995), 15 R.F.L. (4th) 121 at para. 17 (B.C.S.C.).
- [27] In determining whether pursuit of education is a valid reason for continued dependence, a court must consider two complex and value-laden questions. The first is whether, considering all of the child's circumstances, the child's educational pursuits are reasonable. If so, the court must next consider whether it is appropriate that the pursuits be financed by the parents: *Nordeen* at para. 16.
- [28] In *Farden v. Farden*, 48 R.F.L. (3d) 60 at 64-65, Master Joyce set out a list of eight factors that may assist a court in making these determinations:
1. Whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
  2. Whether or not the child has applied for or is eligible for student loans or other financial assistance;
  3. The career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
  4. The ability of the child to contribute to his own support through part-time employment;
  5. The age of the child;
  6. The child's past academic performance, and whether the child is demonstrating success in the chosen course of studies;
  7. What plans the parents made for the education of their children, particularly where those were plans were made during cohabitation; and
  8. At least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.

[29] Of course, as is often emphasized, the Farden factors are neither a checklist nor a set of statutorily mandated criteria. Rather, they are considerations for the court in assessing whether the child's situation is consistent with the definition of "child of the marriage" in the DA: Nordeen at para. 17.

a) Tyrel's Educational Pursuits

[30] Tyrel swore an affidavit and a financial statement in this proceeding. He is 20 years old. He graduated from high school in June of 2012. Since then, he has been working and continuing with his education on a part-time basis.

[31] Since January of 2013, Tyrel has been taking courses at Thompson Rivers University ("TRU") in Kamloops. In the 2013 winter/spring term, his transcripts reflect that Tyrel took three classes - English, mathematics and physical education. He did very well. In the 2013 fall term, Tyrel took three courses - chemistry, English and mathematics. He obtained average grades.

[32] In the 2014 winter term, Tyrel took two courses - biology and pre-calculus.

[33] Tyrel has been accepted into the Bachelor of Science program at TRU commencing full time in January of 2015. His acceptance is conditional on completion of his two remaining prerequisites, which he intends to complete this fall term.

[34] Tyrel intends to carry on with his university education following his Bachelor of Science degree. His plan is to then obtain his Master's degree in exercise kinesiology and, I infer, obtain employment in that field.

[35] Mr. Harrison and Tyrel have had very little contact in recent years. Mr. Harrison deposed that he believes Tyrel was to start a welding program at TRU in September of 2013, but was not successful in gaining admission. He further believes that Tyrel upgraded and then planned to start the welding course in September of 2014. Mr. Harrison's beliefs are contrary to Tyrel's sworn evidence. I have no reason not to accept Tyrel's evidence.

b) Tyrel's Contribution - Work Pursuits

[36] Tyrel has worked part-time throughout his time at university. He worked full time last summer at HiHium Resort, where he also lived. This employment continued on weekends in the fall of 2013. When it ended, Tyrel again worked part-time at Red Tag Fitness, where he continues to work today. He expects to obtain full time summer employment again, but, as of the date of his affidavit, had not yet secured a job.

[37] In 2013, Tyrel earned \$16,530.54 in employment income. His expenses are modest, yet total \$28,000.00 per year.

c) Tyrel's Living Situation and Support from his Mother

- [38] At the time of Hyslop J.'s order, Tyrel was living in his mother's home in Savona. At the end of August 2013, foreclosure proceedings forced him, his sister and his mother to move out.
- [39] In November of 2013, Tyrel moved to Kamloops to reduce travel costs and save travel time. He now shares accommodation with another TRU student. He pays \$600.00 in rent and shares the cost of utilities.
- [40] So far, Tyrel has paid his own tuition costs, with the exception that Mrs. Harrison paid one-half of his tuition fees for the winter/spring 2013 semester. Mrs. Harrison also helps Tyrel pay for his text books.
- [41] Tyrel purchased a more reliable car in October of 2013 for \$2,600.00. Unable to finance the purchase himself, Mrs. Harrison paid for half of the cost. Since that time, Mrs. Harrison has paid for the monthly insurance on the vehicle in the amount of \$178.35.
- [42] In addition to the monthly car insurance payments, Mrs. Harrison also gives her son, on average, \$286.00 every two weeks. Tyrel uses this money to assist with his rent and other living expenses.
- [43] Tyrel has not taken out any student loans.
- [44] Tyrel deposed that "I definitely continue to rely on my mom quite a bit for financial assistance." (paragraph 21)
- [45] Mrs. Harrison deposed that by paying Tyrel's car insurance, the bi-weekly payments and other occasional expenses, she pays at least \$750.00 per month or \$9,000.00 per year to support Tyrel. She also provides cash, groceries and other household expenses from time-to-time, as Tyrel's need arises.
- d) Analysis
- [46] I find that Tyrel's educational pursuits are reasonable. As found by Hyslop J., Tyrel has always been a good student. His parents should not be surprised that Tyrel is seeking post-secondary education. In fact, the Harrisons had established a children's education fund at one time, but subsequently used it to pay debt.
- [47] Tyrel expected to be in his desired full time university program last September. He now requires further prerequisites in order to maintain his acceptance for full time studies this upcoming January. Given his academic performance over the years, it is reasonable to conclude that Tyrel has the ability to accomplish his educational goals. It may be that, should Tyrel not complete these prerequisites and again have to defer attendance at full time studies, his educational pursuits would no longer be reasonable. However, at this time, based upon all of the circumstances, I find his current educational pursuits are reasonable.
- [48] Is it appropriate that these pursuits be financed by Tyrel's parents? The answer to this question is, in my view, yes.

- [49] Tyrel contributes to his own support through part-time work, but is unable to meet his education and living expenses on his own. I accept that Tyrel's ability to contribute financially to his education is limited. He currently receives significant monthly financial support from his mother in order for him to carry on with his education.
- [50] Tyrel's decision to move to Kamloops was a reasonable one given the time and cost involved in travelling to and from Savona. It seems that, but for his mother's contribution to his housing, school, transportation and living costs, Tyrel would be unable to support himself on his own through his studies.
- [51] I am mindful that Tyrel has not applied for student loans. Availability of student loans is but one factor that the court is to consider. A child is not required to exhaust every avenue of financing.
- [52] The fact that Tyrel is no longer living in his mother's home is not determinative of the issue: *N. (W.P.) v. N. (B.J.)*, 2005 BCCA 7.
- [53] In considering the Farden factors and all of the other circumstances of this case, I am satisfied that Tyrel is, at this time, unable to withdraw from his parents' charge. He remains a "child of the marriage". Child support as ordered by Hyslop J. is to continue to be paid.

#### **CHILD SUPPORT PAID DIRECTLY TO TYREL**

- [54] Other than his desire to do so, no reason has been offered for this application. On the evidence presented, I am not satisfied it is appropriate or in Tyrel's best interests for child support to be paid directly to Tyrel.
- [55] Mr. Harrison and Tyrel do not have regular contact or communication. Mr. Harrison is currently in arrears with respect to both of his support obligations. Mrs. Harrison has been forced to seek enforcement of those payments. Should he be the direct recipient of his child support, Tyrel would most likely be in the same situation, forced to take enforcement action. This application is denied.

#### **REDUCTION OR CANCELLATION OF ARREARS**

- [56] This application was not significantly pursued. The evidence offered in support of the application is found in Mr. Harrison's affidavit of February 14, 2014 and his financial statement of February 19, 2014. Both documents are confusing in that Mr. Harrison purports to attach his personal taxation documents, but, in some instances, actually attached Tyrel's.
- [57] Mr. Harrison simply deposes at paragraph 6, "I have been unable to maintain my obligations as Ordered and have accumulated arrears". To this affidavit, he purports to attach his own 2012 tax return summary, but actually attaches Tyrel's. He does attach his last pay stub for 2013, which reflects annual gross income of \$105,610.65.

- [58] In his financial statement, Mr. Harrison confirms his 2013 income of \$105,610.65. He again attaches his last 2013 pay stub, but instead of his own 2012 tax return summary and related documents, he attaches Tyrel's.
- [59] Mr. Harrison's income has remained very close to the income found by Hyslop J. Mr. Harrison has not offered any evidence in support of his application to reduce or eliminate the arrears. His simple assertion that he is unable to pay is insufficient.
- [60] The main thrust of Mr. Harrison's argument with respect to arrears is that he has never been given the "credit" awarded by Hyslop J. and that "credit" ought to be applied to the arrears that have accumulated since the Orders.
- [61] I find that the issue of the credit has not been properly settled. Although the parties appeared in front of Master Bishop to settle that term, no reasons were given by Master Bishop for accepting Mrs. Harrison's interpretation. In my view, fairness requires that the matter of the credit ought to be settled by Hyslop J.
- [62] The parties are at liberty to bring the matter before Hyslop J. to settle that term of the order.

#### SUMMARY

1. The respondent's application that his spousal support obligation be reduced or cancelled is dismissed;
2. The respondent's application that child support for the child, Tyrel Harrison, born on March 20, 1994, be cancelled is dismissed. Tyrel Harrison is found to be a "child of the marriage" pursuant to the DA;
3. The respondent's application that any support for the child, Tyrel Harrison, be payable directly to Tyrel Harrison is dismissed;
4. The respondent's application that arrears of child and spousal support accumulated since April 19, 2013 be reduced or cancelled is dismissed;
5. The respondent is at liberty to bring the matter of the "credit" given to him in front of Hyslop J. to be settled;
6. By consent, the respondent's application that all support payments be payable on a bi-weekly basis is granted; and
7. The claimant is entitled to her costs of this application, payable on the ordinary scale.

"S.A. Donegan J."

DONEGAN 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/14/12/2014BCSC1220.htm>

**CASE PAGE**                <https://chat.esheria.ai/case-law/canada/harrison-v-harrison-2014>

Prepared on 29 October 2026 · Esheria