
CANADA / JUDGMENT

Hodgson v. Hodgson

2014 BCSC 1372

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Supreme Court of British Columbia

DECIDED

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2014 BCSC 1372 Hodgson v. Hodgson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hodgson v. Hodgson,

2014 BCSC 1372

Date: 20140722

Docket: 94176

Registry: Kelowna

Between:

David William Hodgson

Claimant

And

Karen Edith Hodgson

Respondent

Before: The Honourable Madam Justice Ross

Reasons for Judgment

Counsel for the Claimant:

Aurora Johansson

Counsel for the Respondent:

Wesley Shields

Place and Date of Hearing:

Kelowna, B.C.

June 18, 2014

Place and Date of Judgment:

Kelowna, B.C.

July 22, 2014

Introduction

[1] This is a family proceeding in which the parties reached a settlement with respect to the division of assets and all corollary relief. The parties could not agree upon the terms of a consent order to embody the terms of the settlement. Eventually, the terms were settled by the court. The respondent in the action, Karen Hodgson, brings this application seeking to vary or supplement the terms of the consent order issued by Mr. Justice Cole (the "Order") as follows:

Part 1: ORDERS SOUGHT

1. That the child support payable by the Respondent to the Claimant for the benefit of Mason Colby Hodgson, born June 19, 1997, in the sum of \$249.00 per month, be cancelled;
2. That the arrears of child support payable by the Respondent to the Claimant in the sum of \$249.00 per month for the benefit of Mason Colby Hodgson, which commenced on September 15, 2013, shall be cancelled;
3. That the Order of Mr. Justice Cole, designating the Claimant as the primary caregiver for Mason Colby Hodgson as at September 1, 2013, shall be varied;
4. That the Claimant forthwith provide documentation confirming that the Respondent is the designated beneficiary of the SunLife Insurance Policy #LI-F790,295-2, in the sum of \$250,000.00;
5. That the Claimant provide to the Respondent, documentation on the 30th day of March each year, commencing in 2014, confirming that the premiums for the SunLife Insurance Policy # LI-F790,295-2 are paid in full, and that the Respondent is the beneficiary under the policy in the sum of \$250,000.00;
6. That the Claimant authorize the administrator of the SunLife Insurance Policy # LI-F790,295-2 to provide documentation directly to the Respondent, confirming that she is the beneficiary of the said life insurance policy and confirmation on an annual basis that the premiums have been paid, and, where appropriate, notify the Respondent forthwith if the premiums are unpaid and the terms of the life insurance policy are subject to cancellation;

7. That the Claimant provide a schedule for the re-payment of the Scotiabank Loan Account #4538152821398, and the Bank of Montreal Loan Account #5191230109946674 and/or proof of arrangements to pay these loans within 14 days of the date of this Order;
8. That the Claimant disclose the following information and documentation within 30 days of the date of this Order:
 - (a) Filed 2012 income tax return and Notice of Assessment;
 - (b) 2013 Financial Statement for Civil Design & Consulting Inc.;
 - (c) 2013 and 2014 bank statements for all accounts held in the name of the Claimant and/or Civil Design & Consulting Inc., including any accounts held in trust;
 - (d) 2013 T4 slips confirming income from all sources;
 - (e) December 2013 and January 2014 payslips;
 - (f) Copies of all invoices submitted by the Claimant to his employer for services rendered in 2013 and 2014.
9. That on June 30th of each year, commencing in 2014, the Claimant provide to the Respondent his income tax return and Notice of Assessment, so long as the Respondent remains liable for the Scotiabank loan.
10. Costs of this application.
- [2] The claimant in the action, David Hodgson, opposes the relief sought. Essentially, his position is that the settlement embodied in the Order disposed of all the issues in the action and that no basis has been established to vary or supplement its terms.

Facts

- [3] The parties have two children, Mason, born June 19, 1997, and Keaton, born May 21, 1995. Mason remains a child of the marriage.
- [4] The parties separated and signed a separation agreement in May 2011. They are not yet divorced. In February 2012, Mr. Hodgson commenced this action seeking to set aside or vary the separation agreement. The matter was set for trial commencing July 8, 2013.
- [5] In June 2013, the parties discussed settlement. Mason had been living and attending school in Erin, Ontario, where he and Mr. Hodgson had moved in September 2012 to live with Mr. Hodgson's sister, Pam White. While Mr. Hodgson could not find employment in Erin, he did secure employment in Grand Prairie, Alberta in March 2013.
- [6] Mr. Hodgson deposed that Mason was enjoying stability with Ms. White and he did not want to disrupt his son's schooling. In consultation with Ms. White and Mason, he decided that Mason would continue to reside with Ms. White while he relocated to Grand Prairie.

[7] Ms. Hodgson's counsel made what was described as a "final offer to settle" by letter dated June 17, 2013. The terms of the offer stated in part:

3. Child support shall be paid commencing on September 15, 2013 based upon the Federal Child Support Guidelines .Mason has not decided where he will live in September;
4. The principal residence of the children will be decided based upon their input and that of the parties.
9. Mr. Hodgson shall be responsible for the following debts and liabilities:

a.

BMO Mastercard

\$23,096.75

b.

Scotiabank Line of Credit

\$36,796.52

Total

\$59,893.27

[8] A further letter dealing with settlement was dated June 24, 2013. It stated in part:

C. Child Support - We confirm that child support should be paid by either party, pursuant to the Federal Child Support Guidelines for the support of Mason depending on where he will reside on a fulltime basis.

We request that \$250,000.00 of the Life Insurance Policy be set aside and that Ms. Hodgson be named as the irrevocable beneficiary of the same so long as Mr. Hodgson is obligated to pay spousal support.

[9] The letters of June 17 and 24 do not make reference to the matters on which Ms. Hodgson seeks orders in paragraphs 5, 6, 7, 8 or 9 of the present notice of application.

[10] On July 4, 2013, the parties agreed to settle the litigation based upon letters exchanged between their respective counsel. The trial was adjourned and it was agreed that a consent order would be prepared incorporating the terms of the settlement. The letter from Mr. Hodgson's then counsel accepting the offer stated in part:

Our client has instructed us to accept the offer to settle contained in your letters dated June 17 and 24, 2013.

Mason has confirmed that he intends to continue to reside in Ontario. The consent order should therefore provide that child support in the amount of \$249 per month be paid by Ms. Hodgson.

[11] Counsel then exchanged drafts of the consent order to implement the settlement; however they were unable to reach agreement. One of the points of contention was the inclusion by Ms. Hodgson's counsel of the following term:

19 The Claimant shall provide written confirmation from BMO Mastercard and Scotia Bank that the Respondent has been released from the debts and liabilities referred to in paragraph 18(a) and 18(b) within 30 days of filing this Order.

[12] Mr. Hodgson's counsel took the position that this clause must be deleted, stating:

There was no agreement for the Claimant to provide written confirmation to the Respondent that she would be released from debts and liabilities within 30 days. Our client intends to arrange for a payment plan for the debts, and the creditors will not agree to release the Respondent until the debts are paid in full;

[13] Ultimately an application was brought to settle the order. Ms. Hodgson's submissions stated the issues to be addressed on that application were as follows:

The specific issues the Court will need to consider in hearing this Application and addressing the terms of settlement are as follows:

- a) Whether child support should be payable by the Respondent to the Claimant given that the child Mason Hodgson has resided with Pam White (the Claimant's sister) in Erin, Ontario since September, 2013 and does not reside with the Claimant;
- b) If child support is payable, what amount of child support the Respondent should pay and for what duration;
- c) Whether the interest and penalties that have accrued since July 4, 2013, on the Family Maintenance Enforcement Program (FMEP) arrears owed by the Claimant in the amount of \$25,107.98 should be cancelled by the Respondent;
- d) Whether the Claimant has an obligation to release the Respondent from the Bank of Montreal loan and Scotia Bank loan in consideration of her releasing the Family Maintenance Enforcement Program (FMEP) arrears in the sum of \$25,107.98;
- e) Whether the Claimant should maintain the Respondent as an irrevocable beneficiary of his SunLife Insurance Policy or another yet to be determined life insurance policy;
- f) Should there be a requirement that the Claimant provide post dated cheques to the Respondent for the \$850.00 per month he is required to pay for spousal maintenance?

[14] Mr. Justice Cole settled the consent order, which ultimately stated in part:

1. The Claimant and the Respondent shall have joint custody and joint guardianship of the Children of the marriage, namely:
 - a) Keaton Spencer Hodgson, born May 21, 1995; and

b) Mason Colby Hodgson, born June 19, 1997.

(hereinafter called the 'Children')

5. The Claimant shall be the primary caregiver for Mason Colby Hodgson and the principal residence of Mason Colby Hodgson as at September 1, 2013 shall be with the Claimant, by consent.
6. The Respondent shall pay child support to the Claimant for the benefit of Mason Colby Hodgson pursuant to the Federal Child Support Guidelines in the amount of \$249.00 per month commencing on September 15, 2013 and continuing on the 15th day of each and every month thereafter;
8. The Claimant and Respondent shall not be required to make any payments to one another for any contributions towards the Children's special and extraordinary expenses, by consent;
16. The Claimant shall be solely responsible for the following debts and liabilities and shall save the Respondent harmless and indemnify her from any liability arising therefrom, by consent:
 - a. BMO MasterCard, Account Number 5191230109946674 (\$24,683.18 plus interest and costs in British Columbia Provincial Court Action 12-70539);
 - b. Scotia Bank Line of Credit, Account Number 4538152821398 (\$37,657.99 plus interest and costs); and
 - c. Any interest and penalties which has accrued or will accrue on these liabilities since July 4, 2013.
20. The Claimant shall maintain the SunLife Financial Life Insurance Policy, Policy Ll-F790, 295-2, and designate the Respondent as the irrevocable beneficiary of the minimal amount of \$250,000 [of] the total policy so long as the Claimant is obligated to pay support or maintenance for the Respondent;
21. The Claimant shall provide proof to the Respondent, each calendar year, that the life insurance policy remains in good standing and the Respondent is the beneficiary;
22. Subject to the terms of the herein Order, all other claims by the Claimant and Respondent for division of assets or corollary relief pursuant to the Family Relations Act, R.S.B.C. 1996 c. 128 and amendments thereto, and the Family Law Act, SBC 2012 c. 25, and the Divorce Act, RSC 1985 c. 3, except the claim for an order for divorce, are hereby dismissed as if heard on the merits at Trial;

- [15] At the conclusion of the hearing, counsel for Ms. Hodgson submitted that there were additional outstanding issues to be resolved. Mr. Justice Cole suggested the parties attend a settlement conference. Mr. Hodgson took the position that there were no outstanding issues and did not agree to attend a settlement conference. In the result, this application was brought.

Cancellation of arrears

- [16] Ms. Hodgson has not paid child support. She advances several reasons for this. First, she states that Mason is living with Ms. White in Ontario, while Mr. Hodgson has for the most part resided in Alberta. She submits that Mr. Hodgson does not require the child support and that Mason is not in need because Ms. White is in comfortable financial circumstances and has advanced no claim for support. She also submits that she has paid for many of Mason's expenses, amounting to even more than the child support required pursuant to the Order. Finally, she submits that Mr. Hodgson has not been paying spousal support. She submits that her financial circumstances are precarious, as her income consists only of a disability pension, whereas Mr. Hodgson is employed.
- [17] Mr. Hodgson deposed that he has made some payments of spousal support and has entered into an arrangement with the Family Maintenance Enforcement Program to deal with the arrears. He deposes that he has been making payments to Ms. White for Mason's needs.
- [18] The Order does not specify whether the child support order was made pursuant to the Divorce Act, R.S.C., 1985, c. 3 (2nd Supp.) or the Family Relations Act, R.S.B.C. 1996, c. 128, now the Family Law Act, S.B.C. 2011, c. 25. In such a case, a court reviewing the support order is to assume that it was made pursuant to the provisions of the Divorce Act, as that is the paramount legislation: see *Yu v. Jordan*, 2012 BCCA 367 at paras. 47-58. At any rate, the test is similar under each statute.
- [19] An order cancelling arrears is a retroactive variation under s. 17 of the Divorce Act, which provides in part:
17. (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,
 - (a) a support order or any provision thereof on application by either or both former spouses;
 - (4) Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order or the last variation order made in respect of that order.

[20] Arrears will not be cancelled or reduced under the Divorce Act in the absence of a material and long lasting change: see *Earle v. Earle*, 1999 BCSC 283, [1999] B.C.J. No. 383 [Earle]. The "grossly unfair" principle has been found appropriate for consideration on variation applications under the Divorce Act: see *S.A.R. v. L.G.R.*, 2011 BCSC 712 at para. 45; and *Lewis v. Lewis* (1999), 2 R.F.L. (5th) 417 at para. 16, [1999] B.C.J. No. 2537 (S.C.).

[21] Cancellation of arrears is dealt with in s. 174 of the Family Law Act, which provides:

174 (1) On application, a court may reduce or cancel arrears owing under an agreement or order respecting child support or spousal support if satisfied that it would be grossly unfair not to reduce or cancel the arrears.

(2) For the purposes of this section, the court may consider

- (a) the efforts of the person responsible for paying support to comply with the agreement or order respecting support,
 - (b) the reasons why the person responsible for paying support cannot pay the arrears owing, and
 - (c) any circumstances that the court considers relevant.
- (3) If a court reduces arrears under this section, the court may order that interest does not accrue on the reduced arrears if satisfied that it would be grossly unfair not to make such an order.
- (4) If a court cancels arrears under this section, the court may cancel interest that has accrued, under section 11.1 of the Family Maintenance Enforcement Act, on the cancelled arrears if satisfied that it would be grossly unfair not to cancel the accrued interest.

[22] In *Green v. Green*, 2002 BCSC 576 at para. 19, Mr. Justice Crawford summarized the decision of Madam Justice Martinson in *Earle* with respect to the principles governing applications to reduce or cancel arrears of child support:

1. The onus is on the applicant seeking to reduce or cancel arrears to show a change in circumstances.
2. Arrears will only be cancelled if the applicant is unable to pay now and unable to pay in the future.
3. The applicant must provide full financial disclosure under oath that the change in financial circumstances is significant and long-lasting; the change is not the result of choice, and efforts were made to earn money but were unsuccessful.

4 The applicant's responsibility for a second family does not relieve of obligations to support the first family.

5. Delay and enforcement is generally not a factor in arrears of child maintenance.

6. The rule against hoarding does not apply to child maintenance.
 7. Arrears will not be cancelled because someone else had provided financial assistance to the children.
 8. Arrears will not be cancelled because the children no longer need the money.
 9. An agreement between spouses to pay support cannot be relied on because support is the right of the child.
 10. An applicant's lack of access to the children is not a factor.
 11. Money spent directly on the children is not a factor; and
 12. The lack of legal advice is not a reason in itself.
- [23] I conclude that Ms. Hodgson has not met the onus required to justify a cancellation of arrears in the present case. There has been no material change in circumstances established since the time of the Order with respect to Ms. Hodgson's financial circumstances. During the negotiations and at the time the settlement was reached, the parties operated on the basis that Mason would reside either in British Columbia or Ontario, and that the residence decided upon would determine which parent would pay support. At the time the offer was accepted, Mr. Hodgson's counsel stated that Mason would be residing in Ontario. At the time the Order was made, that circumstance had not changed. Further, I note that in *Bockhold v. Bockhold*, 2006 BCCA 472 [Bockhold], the fact that a minor child had moved away from home to attend school was held not to constitute a material change in circumstance. That decision also rejected the notion that the Federal Child Support Guidelines, S.O.R./97-175 [the Guidelines], only apply when a child actually resides with one or both parents.
- [24] Ms. Hodgson has not made the full financial disclosure required and has not established that she is unable to pay. As noted in *Earle*, the fact that Ms. White may be contributing to Mason's support is not a basis to cancel arrears. Likewise, the fact that Mason is not in need is not a basis to cancel arrears, nor is the fact that Ms. Hodgson chose to spend money directly on Mason.
- [25] In the result I dismiss the application to cancel arrears.

Cancellation of the orders for child support and designating Mr. Hodgson as the primary caregiver

- [26] Ms. Hodgson seeks orders cancelling her obligation to pay child support for Mason and cancelling the designation of Mr. Hodgson as Mason's primary caregiver. She submits that Mason is not in need of child support because his needs are being met by Ms. White. She further submits that there should be no obligation on her to pay child support to Mr. Hodgson because Mason does not reside with him and that Mr. Hodgson should neither receive support nor be designated the primary caregiver for that same reason. Counsel cites *Salvadori v. Salvadori*, 2010 ONCJ 387 [Salvadori]; *C.B.C. v. P.D.M.*, 2007 BCSC 1588 [C.B.C.];

and *Lussier v. Lussier*, [1999] B.C.J. No. 339 (available on Q.L.) (S.C.) [Lussier], in support of those submissions.

- [27] In *Salvadori*, there was a separation agreement that established that the mother would have custody of the children and the father would pay child support. The children came to visit the father in the summer of 2006 for six weeks, and then from September 2006 to June 2007 the children lived with relatives of the father. The father provided support to the relatives. The father submitted that the mother should have paid support to him commencing at the time the children came for the visit, and sought an order to that effect. The court held that the father's obligation to pay support continued during the vacation period. With respect to the order requiring the mother to pay child support to the father during the time when the children were living with the father's relatives, Mr. Justice Sherr held, at para. 21, that there was:
- [21] no legal basis for making such an order, since the children did not reside with him during this time. The right to seek child support belonged to the third parties.
- [28] *Salvadori* appears not to have been followed or cited in subsequent decisions. The proposition that child support cannot be ordered to be paid to a parent unless the child resides with that parent is inconsistent with *Bockhold* and not the law of this province.
- [29] *C.B.C.* was a case that concerned a shared custody regime. The children had resided with their father for much of their lives, with the mother paying child support. When the father moved closer to the mother, the children moved in with their mother for three months while the father re-established his home. The daughter then lived with her mother for May 2007 and with an aunt in July 2007.
- [30] Counsel before me submitted that *Garson J.*, as she then was, held that no child support was required to be paid during the time the daughter was with the aunt. However, that is not the case. While the mother was not required to pay child support for the period when the children lived exclusively with her and for the daughter for the period when the daughter lived exclusively with her, she was required to pay child support for the period when the daughter lived with the aunt.
- [31] In *Lussier*, the child at issue was profoundly handicapped and lived in a care home operated by the Ministry of Families and Children. Mr. Justice Edwards concluded that the Guidelines do not apply in circumstances in which the child has no need of financial support. However, in my view those circumstances are distinguishable from those of the present case since Mr. Hodgson has deposed that he has paid \$6,000 to Ms. White for Mason's living costs and other expenses, and has paid for Mason's activities, school trips, sports and entertainment. He deposed that he would provide any support paid by Ms. Hodgson to Ms. White.
- [32] In *C.L.B. v. A.H.B.*, 2013 BCCA 472 at paras. 12-16, Madam Justice Smith, for the court, stated the test for variation of a child support order as follows:

[12] Section 17 of the Divorce Act provides:

(4) Factors for child support order -- Before the court makes a variation order in respect of a child support order, the court shall satisfy itself that a change of circumstances as provided for in the applicable guidelines has occurred since the making of the child support order

(6.1) Guidelines apply -- A court making a variation order in respect of a child support order shall do so in accordance with the applicable guidelines.

[13] In *L.M.P. v. L.S.*, 2011 SCC 64, [2011] 3 S.C.R. 775, the Court confirmed its earlier interpretation of the statutory test for a "change of circumstances" in s. 17(4) of the Divorce Act, as articulated in *Willick v. Willick*, [1994] 3 S.C.R. 670, stating:

[32] That "change of circumstances", the majority of the Court concluded in *Willick*, had to be a "material" one, meaning a change that, "if known at the time, would likely have resulted in different terms" (p. 688).

[33] The focus of the analysis is on the prior order and the circumstances in which it was made. *Willick* clarifies that a court ought not to consider the correctness of that order, nor is it to be departed from lightly (p. 687). The test is whether any given change "would likely have resulted in different terms" to the order.

[34] The decision[] in *Willick* also make[s] it clear that what amounts to a material change will depend on the actual circumstances of the parties at the time of the order.

[Emphasis added.]

[14] Section 14 of the Guidelines further provides:

Circumstances for Variation

14 For the purposes of subsection 17(4) of the Act [the Divorce Act], any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:

a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;

[15] In *Bockhold v. Bockhold*, 2006 BCCA 472, 59 B.C.L.R. (4th) 211, this Court confirmed that s. 14 of the Guidelines does not supplant the test of a material change in circumstances as set out in *Willick* (paras. 32-34), and as established in *Wang v. Wang* (1998), 164 D.L.R. (4th) 146, 58 B.C.L.R. (3d) 159 (C.A.) and reiterated in *Baker v. Baker*, 1999 BCCA 433, 127 B.C.A.C. 1. In *Bockhold*, this Court cited with approval para. 36 of *Wang* which states that "[h]ad Parliament intended the Guidelines to be mandatory on all applications to vary, it would have said so explicitly in s. 17(1); Guideline 14(b) would not have been required; and s. 17(6.4) and (6.5) would not have been included" (*Bockhold* at para. 34). As Madam Justice

Kirkpatrick stated, writing for the Court in Bockhold:

- [34] By its amendments to the Divorce Act and establishment of the Guidelines, Parliament altered the preconditions for the court's exercise of discretion to vary child support effective 1 May 1997. This court in Wang, supra specifically considered the new section and the impact of the Guidelines in respect of variation applications. Wang is authority for the proposition that a material change must be demonstrated before the court will vary a child support order made after April 1997.
- [16] Thus, a party seeking to vary an order for child support must first establish a material change in circumstances as that threshold requirement has been interpreted in Willick and confirmed in L.M.P., and if met, and if in the exercise of its discretion the court determines that a variation order should be made, it must make an order that complies with the Guidelines.
- [33] In the present case, as mentioned, there has been no material change in circumstances since the time the Order was made. The Order confirmed the terms of a settlement reached between the parties. It is clear from the letters of June 17 and 24 that the parties contemplated that child support for Mason would be paid by one parent or the other. Mason would decide whether he wanted to live in Ontario or British Columbia. That decision would determine which parent would pay child support. Further, at the time the settlement was reached, Mason had stated that he intended to live in Ontario. Thus there has been no material change in circumstances from the time the settlement was reached.
- [34] Ms. Hodgson argued in the alternative that the court should vary the child support order based upon s. 3(2)(b) of the Guidelines, which provides:
- (2) Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is
 - (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.
- [35] Counsel submitted that this would require evidence from Mr. Hodgson and Ms. White concerning their financial circumstances and evidence with respect to the "condition, means, needs and circumstances" of Mason. However s. 3(2) applies only to children who are over the age of majority. Mason is not. As noted in Bockhold, for children under the age of majority, s. 3(1) applies and the amount of child support is presumptively the Guidelines table amount.

- [36] With respect to the application concerning the designation of Mason's primary caregiver, counsel for Mr. Hodgson notes that Ms. Hodgson is not seeking to be named Mason's primary caregiver and has not stated who ought to be named as such. However, Mason is a child under the age of majority and in need of a caregiver. He has not withdrawn from his father's care. He has not been adopted by another guardian. He is attending school in Ontario while his father has sought work in Alberta. I agree with the submission of Mr. Hodgson's counsel that this is not unlike a situation in which a child is attending boarding school.
- [37] I have concluded that it is not appropriate to cancel or vary the provision of the Order designating Mr. Hodgson as Mason's primary caregiver.
- [38] Ms. Hodgson has not established the threshold necessary for a variation has been met. Accordingly, the applications to cancel child support and vary the designation of primary caregiver are dismissed.

Sun Life policy

- [39] Mr. Hodgson has designated Ms. Hodgson as the beneficiary under the SunLife Policy and has provided her, through her counsel, with the documentation required. He is therefore in compliance with the terms of the Order. However, both counsel agreed that there is a need in this case for the parties to achieve finality and complete the separation of their affairs. To this end, I will direct that Mr. Hodgson provide the authorization requested to SunLife. That will accomplish all that Mr. Hodgson can do to permit Ms. Hodgson to communicate with SunLife directly and should ease Ms. Hodgson's concerns that Mr. Hodgson might allow the policy to lapse without her knowledge. This is not in substitution, however, for clause 21 of the Order.

Debt

- [40] Under the terms of the Order, Mr. Hodgson was to assume sole responsibility for the enumerated debts and to hold Ms. Hodgson harmless from any liability in that regard. It is evident that after the parties had reached a settlement, Ms. Hodgson's counsel attempted to include additional terms in the consent order in relation to the debts. These terms were not embodied in the Order as settled by Cole J., presumably because he concluded they had not been agreed to in the settlement.
- [41] Mr. Hodgson deposes that he has entered into negotiations concerning a payment plan for these debts and has made some partial payments. There is no evidence that Ms. Hodgson has incurred any liability in relation to the debts or that the creditors have looked to her for payment since the date of the Order. In my view, it has not been demonstrated that Mr. Hodgson is in breach of his obligations in this regard under the terms of the Order. The order sought by Ms. Hodgson appears to be an attempt to now include additional terms that could have been incorporated into the settlement at the time it was reached, but were not. I

am not prepared to grant this relief.

Financial disclosure

[42] Ms. Hodgson has sought an order for wide ranging ongoing financial disclosure on the part of Mr. Hodgson. The Order expressly provides that neither party is required to make payments to the other with respect to special and extraordinary child support expenses. Mr. Hodgson is not required to pay child support to Ms. Hodgson. I agree with the submission of Mr. Hodgson's counsel that there is no provision of the Supreme Court Family Rules, B.C. Reg. 169/2009, the Guidelines or the Order requiring Mr. Hodgson to make such disclosure. I note that the Order states that it disposes of the division of assets and all corollary relief pursuant to the Family Relations Act, the Family Law Act and the Divorce Act. I am not persuaded that there is any basis to make the order sought.

Costs

[43] Mr. Hodgson has been substantially successful with respect to this application. He is entitled to his costs.

"Ross J."

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