
CANADA / JUDGMENT

J.L.T. v. K.L.H.

2014 BCSC 220

COURT

Supreme Court of British Columbia

DECIDED

11 February 2014

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2014 BCSC 220 J.L.T. v. K.L.H.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.L.T. v. K.L.H.,

2014 BCSC 220

Date: 20140211

Docket: 49831

Registry: Kelowna

Between:

J.L.T.

Claimant

And

K.L.H.

Respondent

Before: Master Young

Reasons for Judgment

Appearing on her own behalf:

J.L.K.

(previously known as J.L.T.)

Appearing on his own behalf:

K.L.H.

Tracey Brice-Nicolson

(for first three appearances)

Place and Date of Trial/Hearing:

Kelowna, B.C.

October 21, November 18, 25 and December 18, 2013

Place and Date of Judgment:

Kelowna, B.C.

February 11, 2014

- [1] By notice of application filed on October 8, 2013, the respondent, applied for an order that he cease paying child support to the claimant for their two children: CT, born July 3, 1992; and BT, born July 21, 1995, (the "children").
- [2] He also applied for an order that he cease paying child support arrears fixed by the order of Master Young dated May 2, 2011. By the time this application was completed, he had already paid off the arrears so this application was not pursued.
- [3] In addition, the respondent applied for an order that the respondent provide him with:
 - (a) an up-to-date Form F8 Financial Statement
 - (b) school records, including but not limited to transcripts, interim and final marks for BT
 - (c) school records including but not limited to transcripts, interim and final marks for CT
 - (d) documents relating to student loans for CT and/or BT 2011 to the present;
 - (e) detailed work history for CT and BT from 2011 the present;
 - (f) copies of income tax returns, T4's and other documents verifying employment income for CT and BT 2011 the present; and
 - (g) the rental [contract] between the Claimant and CT;

Procedural History

- [4] The matter first came on for hearing before me on October 21, 2013. I ordered the parties to exchange updated Form F8 financial statements by November 1, 2013. I further ordered the claimant to provide the respondent with copies of all the documents that were requested by the respondent in his notice of application, and I adjourned the matter over to November 18, 2013.

- [5] On November 18, 2013, I heard submissions from counsel for the respondent. She did not complete her submissions in the allotted time, so the application continued on November 25th and, again, did not complete. I ordered that the children be interviewed by Jeff Peterson so that a "views of the child" report be made available to me. The case was adjourned until the report was completed. Mr. Peterson conducted his interviews, completed his report on November 30, 2013, and this matter came back on for hearing before me on December 18, 2013.

Background Facts

- [6] The parties were married in 1991 and separated October 1997. They are divorced and have both re-partnered. The two children, CT and BT, are the biological children of the parties.
- [7] In December 1997, the parties entered into a separation agreement wherein they agreed to share joint guardianship of the children. The respondent was to have sole custody of the children. The claimant agreed to pay \$300 per month child support.
- [8] In October 2007, an application was made to court and I varied the child support to a higher amount.
- [9] In September 2010, another application came before me after BT moved in with his father with little or no notice to his mother. Child support changed to \$350 per month based on a split custody arrangement.
- [10] By December 2010, BT moved back in with his mother with no notice to his father. A further application was made before me, and my reasons are reported that 2011 BCSC 560.
- [11] I ordered that the claimant and respondent share joint custody of BT and that BT would primarily reside with his mother and have reasonable and generous access with his father.
- [12] I ordered that the claimant and respondent were to discuss all significant issues affecting BT, including any change in residence or school, before any further significant change occurred. If the parties were unable to reach an agreement on the major decision affecting BT, then they were required to attend mediation using a private mediator or family justice service. If, after that, they were still unable to reach an agreement, they could bring an application to court.
- [13] At that time, CT had withdrawn from school so that she could attend a mission trip with the plan that she would return to school once the trip ended. The respondent was not consulted at all about this major decision in CT's life. I found CT had temporarily withdrawn from parental charge for eight months while she traveled to do the mission trip. She was clearly making these decisions without any consultation with her father, who was at time paying child support for her.

- [14] I did order that once CT returned to the University of British Columbia ("UBC") or another post-secondary institution to continue her education, the respondent would have an obligation to continue to support her. I fixed his contribution at \$357 per month.
- [15] I allowed some limited special extraordinary expenses for graduation costs and healthcare costs, and denied many of the requested extracurricular activity expenses. I ordered the respondent to pay 50 percent of the cost of one activity for BT for the coming year.
- [16] I backdated the order and fixed arrears at \$4,144 to be paid in installments of \$200 per month.

Current Facts

- [17] At present, CT is 21 years old and attending UBC Okanagan, but at the time this application was filed, he says that she did not advise her father of what courses she was taking. The claimant says that CT told her father what she was studying. The respondent had formed the impression that CT did not want a relationship with him or his new partner or stepdaughter. CT denies this.
- [18] At the time of this application, BT is now 18 years of age. He graduated from secondary school in June 2013 and moved to Calgary to be with his girlfriend. He was working in a restaurant and hoping to take some computer classes in Calgary but has provided his father with no details. He did not tell him he was moving to Calgary.
- [19] The respondent has applied to be relieved from supporting his children any further, given that they do not consult him with respect to these major decisions in their life and they apparently wanted no contact with him.
- [20] The claimant says that if there has been a breakdown in the relationship between the children and the respondent, it is the respondent's fault. She says that their relationship began to suffer when CT went to his house for a visit and she no longer had a bed to sleep in. Visits to the respondent's home became less frequent. CT had a strained relationship with the respondent's wife. CT was not advised that her stepsister had a baby and was not acknowledged for the gifts she provided for the new baby. When the stepdaughter got married, CT was not invited to the wedding.
- [21] The claimant says in her Affidavit #3 at para. 13:

13 Every effort has been made by myself to tell [KLH] everything about [CT]'s education, work and residence. In his Affidavit dated October 8, 2013, he attached emails dated March 12 through March 14, 2012 from myself, giving him all the information he requested. I did not have access to the documents [KLH] was requesting, as [CT] maintains her right to privacy, and she believes that telling [KLH] in person, as she has done each year, about what courses she is taking and what her goals are, should be enough, as that is all she does for myself.

- [22] I have reviewed the attachments to the respondent's affidavit dated October 8, 2013, and they include transcripts from two semesters completed by CT with her final grades and a letter from the claimant to the respondent dated March 14, 2012, with further details. Included also as an attachment is a scholarship program application which CT completed. The respondent does not say how he came to possess this document, but it does provide more details of what CT's plans are.
- [23] In 2013, CT moved into the basement suite of the claimant's home. She does not pay rent. CT's best friend lives there with her and does contribute to food and household utilities. CT does not and this is the claimant's contribution CT's education.
- [24] The claimant says that CT has not terminated her relationship with the respondent but decided that she would wait for the respondent to initiate contact with her. She does not want third parties interfering. She would like a relationship with her father that is built on the foundation of love, trust and respect, but at this point in time, she does not feel that they have that in their relationship. She is advised that the respondent moved his residence and did not provide either child with the address. Neither child has been to his new home.
- [25] BT graduated from Kelowna Secondary School in June 2013. The claimant told him to invite his father to his graduation. The respondent did attend the commencement ceremony. BT said that he invited the respondent to see him walk at the Dolphins, and when he realized that KLH did not attend, he was very upset.
- [26] BT moved to Calgary in September 2013 for part-time work and enrolled in upgrading courses so that he could become accepted into the computer science program. He has now changed his focus to engineering, which has required him to upgrade his math and take additional science courses. It is his plan to start his degree program in January 2014.
- [27] When this matter came back before me on November 18, 2013, CT had provided an account summary by term, which I recognize to be a printout from the UBC website. It shows all of the charges for each term and the payments that were made. There is also in it a verification of enrollment into the Bachelor of Arts program for the 2012 winter session and for the 2013 winter session. Certain entries on these documents have been blacked out without explanation.
- [28] CT did provide a copy of her income tax return for 2012 showing that she had earned \$13,386.38. She also provided several T-4 slips showing that she had earned \$13,130 in 2012 from Vida Chiropractic, and a further \$255.86 from UBC Okanagan.
- [29] BT provided T-4 slips for 2012 showing that he earned \$381.10 from Coulthard Coffee Inc. and \$3,252.60 from Brown's Beans Inc. dba Blenz Coffee. He provided a copy of his 2012 income tax return showing he made \$3,632.74 in 2012.
- [30] CT has not provided details of her textbook costs. My guess is that texts are about \$100 per course.

- [31] BT provided proof of enrollment to the BC Online School or is taking a pre-calculus 12 course. He provided transcript of his grades from Kelowna Secondary School.
- [32] In the respondent's correspondence with the claimant attached to his Affidavit #2 sworn October 7, 2013, the respondent raises an issue as to whether CT is attending school full-time because she is only carrying four courses in the fall term. CT took the winter term off which, I assume, was in 2011 when she went on the mission.
- [33] In the fall of 2012, she enrolled in English, philosophy, economics and two political science classes and then dropped economics due to difficulty.
- [34] In the winter of 2012, Susan enrolled in philosophy, political science and geography.
- [35] CT is paying her own tuition online and continues to work a split shift four days per week, which works out to approximately \$800 per month. She fits her work around her classes.
- [36] I find it odd that the claimant has no access to CT's educational information directly and that CT maintains her right to privacy. In my view, CT needs to make a choice between privacy and refusing to withdraw from parental support. She cannot have it both ways. If her father is being asked to assist in supporting her post-secondary education, then she needs to be transparent about her courses, her grades and her goals.

The Law

- [37] Section 3(2) of the Federal Child Support Guidelines says that where a child to whom a child support order relates is the age of majority or over, the amount of 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.
- [38] The respondent bases his application on the following cases which have interpreted s. 3(2) of the Child Support Guidelines: *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C.S.C.); *Darlington v. Darlington* (1997), 32 R.F.L. (4th) 406 (B.C.C.A.); *Wesemann v. Wesemann* (19 May 1999), New Westminster D18139 (B.C.S.C.); *Marsland v. Gibb*, 2000 BCSC 471; *R.O.M. V. R.J.M.*, 2005 BCSC 1861.
- [39] In *Wesemann*, Justice Martinson (as she then was) sent out a four-step analysis for determining what child support is payable for children over the age of majority.

Step One

Decide whether the child is a "child of the marriage" as defined in the Divorce Act? If s/he is not, that ends the matter.

Step Two

Determine whether the approach of applying the Guidelines as if the child were under the age of majority ("the usual Guidelines approach") is challenged. If that approach is not challenged, determine the amount payable based on the usual Guidelines approach.

Step Three

If the usual Guidelines approach is challenged, decide whether the challenger has proven that the usual Guidelines approach is inappropriate. If not, the usual Guidelines amount applies.

Step Four

If the usual Guidelines approach is inappropriate, decide what amount is 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?

[40] The Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), sets out when a child continues to be entitled to support. It defines "child of the marriage" as:

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

(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;

[41] In *Farden*, Master Joyce (as he then was) set out factors to be taken into account in deciding when a child over the age of majority remains a child of the marriage for the purpose of payment of maintenance. These factors have been adopted by a number of British Columbia Court of Appeal decisions and are referred to as the *Farden* factors:

- (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, 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 plans were made during cohabitation;

- (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.
- [42] The Court of Appeal determined in *Darlington* that there does not have to be evidence on all of the factors in order to be successful.
- [43] In this case, the respondent's main challenge is that CT has ceased to be a child of the marriage primarily because she has unilaterally terminated the relationship with the respondent.
- [44] In the alternative, if I do not find that she has unilaterally terminated the relationship with the respondent, then the respondent says that she is not engaged in full-time studies, she has not demonstrated success in her studies, and she has not communicated with the respondent.
- [45] The claimant disagrees with the respondent's submission that the children have unilaterally withdrawn from his support. She says that the children are hurt because the respondent has left them out of significant events in his life. After hearing these submissions, I ordered the "views of the child" report be prepared.
- [46] It is reported that CT has said that she believes it is her father who terminated the relationship between her brother and her. She recalled an incident where she went to visit her father and he had redone the room she used to live in. Their beds were gone. For the next couple of weeks, she slept on the floor, and she says that "although it does not seem like much of a deal when you are 13 years old and are looking forward to spending time with your father, it is a big deal".
- [47] On another occasion when the respondent was canceling a lease for a storage unit, he dumped contents of the storage unit on the front lawn of the claimant's house and told CT and BT that they could have anything they wanted because he was getting rid of it. They found their baby pictures and family albums in the pile and were hurt by this. The respondent explained that the items had been destroyed by a flood and that was why he was discarding them.
- [48] She describes a situation at the respondent's house as "so toxic that I would come home almost every week crying". At the time of her graduation, the respondent told her that he was not going to come to graduation dinner because he believed he was not needed and they did not want him there. Her mother called the respondent and he did actually go to the graduation. When her brother graduated, he went to the graduation but did not come to the promenade. This made her brother very sad.
- [49] When her stepsister got married this summer, she and her brother were not invited to the wedding. She said:

I don't think our dad knows anything about us. He has no idea who we are and it makes me sad for him by just putting the time aside to have lunch with us, or just taking us for coffee would make a world of difference for us.

[50] She concluded by saying:

I don't think that my dad is a bad person and I would absolutely welcome the opportunity to have a good relationship with him again but a relationship is something that is two sided. Both sides have to be willing to participate.

[51] When BT was interviewed by telephone, he said that he heard that there is a court case where his father is trying to stop paying child support because he says they do not want a relationship with him. BT indicated that he has made efforts to have a relationship with his father, but his father is a very busy man and often attempts would meet with failure. Sometimes it would be successful. BT admitted to feeling crushed that his father missed his promenade. He concluded his interview by saying:

Even with all the hurt he brought on me whether intentional or non-intentional there was never a moment when I thought I should stop trying

there has never been a time when I didn't want to see him or spend time with him because he is my dad

[52] It is clear from these interviews that the children have not unilaterally terminated their relationship with her father.

[53] BT will not be 19 until July 2014 and so is entitled to child support. I find that he is not self-sufficient. He is earning some money from a part-time job but is also saving up to attend university. He has not ceased to be a child of the marriage.

[54] CT is 21 years of age, but I find that she is still a child of the marriage because she is pursuing post-secondary education. I also find that enrollment in four courses per semester is a reasonable course load and that for the most part her grades are quite acceptable. I am uncertain whether CT has been eligible for any student loans. She is working and contributing to her tuition and book expenses. She lives in the basement of the home owned by her mother and has her room and board provided for by her mother. Her earnings are approximately \$800 per month. Tuition is about \$2,300 per term. I am assuming that books cost between \$300 and \$400 per semester. I do not know what CT's transportation costs are. I know that she is able to cover her tuition and books herself, and her mother is covering her room and board. The balance of her income would go to her own clothing, entertainment and transportation.

[55] Since her father has an obligation to continue supporting her, I find that the amount set in my previous decision is still reasonable. The respondent was ordered to pay \$357 per month for CT and \$580 per month for BT for total of \$937 per month.

- [56] I order that the \$580 per month child support continue for BT until his 19th birthday, at which time there should be a review to determine what his educational needs are.
- [57] I further order that the respondent pay \$357 per month to CT for those months when CT is attending university and taking a minimum of four courses per semester. If CT decides to take a semester off, she is to notify her father in writing (email would be fine), and he is at liberty to stop paying child support for those months when she is not attending university and taking a minimum of four courses. This order will stop when CT has attained her first diploma or degree, withdraws from university, or if there is a material change in the respondent's income.
- [58] The respondent's income has increased from what it was in 2011. At that time, it was \$62,000 per year; now it is \$70,756 per year. I am intentionally not increasing the child support as I find that the lack of communication has been a two-way street. The children have not terminated their relationship with their father, but they have not been forthcoming with information about their educational plans and needs either. If they want privacy and lack of communication, then they should withdraw from parental support. However, while they are asking for parental support, then they have an obligation to keep the parents informed of their course selection, their grades and their academic plans.
- [59] CT is still residing with the claimant but BT is living in Calgary independently. Nonetheless, I ordered that these payments be made to the claimant, and she is responsible for forwarding the payment to the children. I do this so that the order is enforceable; I do not want to put BT in the situation where he is required to register with the Family Maintenance Enforcement Program to ensure that he receives payment. I think to do so would just contribute to the strain on the already tenuous relationship he has with his father.

"Barbara M. Young"

Master Barbara M. Young

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