
CANADA / JUDGMENT

J.M.P. v. E.J.P.

2021 BCSC 161

COURT

Supreme Court of British Columbia

DECIDED

3 February 2021

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IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

J.M.P. v. E.J.P.,

2021 BCSC 161

Date: 20210203

Docket: E195440

Registry: Victoria

Between:

J.M.P

Claimant

And

E.J.P

Respondent

Before: The Honourable Mr. Justice Edelmann

Reasons for Judgment

Counsel for the Claimant:

A. Atwood-Brewka

The Respondent, appearing in person:

E.J.P

Place and Dates of Trial:

Victoria, B.C.

December 15-18, 2020

Place and Date of Judgment:

Victoria, B.C.

February 3, 2021

Table of Contents

Introduction. 3

Child Support. 3

Spousal Support. 5

History of the relationship. 5

Breakdown of the marriage. 6

Entitlement to Spousal Support 7

Quantum of Spousal Support 9

Duration of Spousal Support 11

Review. 11

Disposition. 11

Introduction

[1] The Claimant in this proceeding was seeking various forms of relief under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and the Family Law Act, S.B.C. 2011, c. 25. The parties have resolved all issues by consent with the exception of the divorce, spousal support, and arrears of support. The division of property, guardianship, and parenting are set out in an order of Master Keighley dated January 13, 2020. I issued an order for divorce at the request of the parties at the time of the hearing. These reasons address the outstanding requests for corollary relief.

Child Support

[2] The parties were married on December 5, 1998 and separated on January 4, 2019. They have three of their own children and the Respondent stood in the place of a parent to the Claimant's eldest daughter, A., until she moved out of the house when she was in high school.

- [3] The parties' three children are R. (born August 24, 2000), E. (born August 22, 2002), and T. (born February 10, 2004). E. and T. remain children of the marriage and reside with the Claimant.
- [4] The eldest child, R. was a child of the marriage until he turned 19 on August 24, 2019. Although R. continues to reside with the Claimant, he is working and pays room and board. The Claimant accepts that R. is no longer a child of the marriage and does not seek child support for him after his 19th birthday.
- [5] Although the parties separated in January 2019, the Claimant remained in the family residence with the three boys. They lived in military housing that provides accommodation for families at reduced rent. The Respondent paid the rent along with other household bills until he moved back into the military housing with his new partner in August 2019. The Claimant accepts that payments made by the Respondent during this time period stand in lieu of support and does not seek retroactive support prior to August 1, 2019.
- [6] Based on the Respondent's annual income at the time in the amount of \$98,983, the amount of child support that would have been payable for August 2019, when there were three children of the marriage, under the Federal Child Support Guidelines, SOR/97-175 was \$1,965. From September 2019 until December 2020, the amount payable for two children (since R. was no longer a child of the marriage after he turned 19 on August 24, 2019) was \$1,508 per month. The total amount in child support payable during the period in question was \$26,093 (\$1965 + (\$1508 per month x 16 months)). The amount of child support paid by the Respondent was \$23,270, leaving a difference of \$2,823.
- [7] The Respondent did contribute to non-section 7 extraordinary expenses related to the children during the relevant period, notably in relation to their cellular phones. This Court has found in the past that the cost of a cell phone is not an extraordinary expense: P.J.D. v W.K.W, 2020 BCSC 1851, and the Claimant has not argued otherwise.
- [8] In his materials and in his testimony, the Respondent indicates that from August 2019 to December 2020, he paid \$732 towards E.'s cell phone and \$1,288 towards T.'s. The Respondent also outlines a number of other expenses related to the children to which he has contributed. Although some of the expenses outlined by the Respondent were gifts, I agree that a portion of the expenses should be credited towards the arrears in child support in the circumstances. In my view, \$2,000 fairly reflects the Respondent's contributions to supporting the children over the relevant period, and I will therefore order that the Respondent pay arrears of \$823 (\$2,823 - \$2,000).
- [9] There is evidence before me that the Respondent will begin receiving military benefits known as Career Sea Pay starting on January 1, 2021 for an annual amount of \$9,840, which will increase his 2021 annual income to \$108,823. I will therefore make an order for payment of child support of \$1,637 per month starting in February 2021, with an annual review on June 30 each year based on the Respondent's tax assessment from the previous year.

Spousal Support

- [10] The Claimant seeks spousal support payable from August 2019 and ongoing support at the high end of the Spousal Support Advisory Guidelines [SSAGs] to continue indefinitely. The Respondent submits that he should pay spousal support of no more than \$403 per month for a period of 43 months.
- [11] I will begin by reviewing the history of the relationship before discussing the factors in assessing spousal support.

History of the relationship

- [12] The parties met in mid-1998 and married in December the same year. At the time of the marriage, the Respondent was a seaman in the Canadian navy. Over the course of the marriage, the Respondent has received promotions some seven times and is now a Chief Petty Officer Second Class. The Respondent's ambition from the time they met was to go as high as he could in the Canadian Armed Forces, and the Claimant was supportive of that ambition.
- [13] During the marriage, the Respondent would be at sea for lengthy periods. His most recent deployment was eight and a-half months, although most deployments were for three to six months. In 2016 or 2017, the Respondent received a gold anchor in recognition of having been at sea for the equivalent of four years, not counting days in port.
- [14] Throughout the marriage, the Respondent was responsible for the household finances. In the words of the Respondent, he was the "minister of finance" and the Claimant was the "minister of education". In particular, when he was away, he dealt with the finances so that the Claimant could focus on the children.
- [15] In the home, the Claimant did most of the cooking, cleaning, washing, and other housework. She was the primary point of contact for the children's schools, including in relation to the individual educational plans for R. and T., both of whom had special needs. The Claimant was heavily engaged in working with the schools to address her children's needs.
- [16] During the marriage, the Claimant worked in various part-time jobs including at the bakery department at Costco, as a lunch supervisor at the children's schools, and as a server. Aside from a ten-week course in bartending and serving, her only specialized training is in hairdressing and related skills. The Claimant has worked as a hairdresser in salons as well as from her home over the course of the past twenty or thirty years.
- [17] In 2015, the Respondent filed a consumer proposal as his debt overtook his ability to service the payments and support the family. The total amount of debt addressed in the context of the consumer proposal was over \$130,000. While there was not detailed evidence about the precise source of the debt, I accept that a significant portion would be properly characterized as debt related to family expenses. I also accept that the filing of the consumer

proposal has had an ongoing impact on the Respondent's financial situation, in particular in relation to his ability to get credit and the rate at which credit would be offered.

Breakdown of the marriage

- [18] The parties separated in January 2019, at which point the Respondent moved out of the family residence and stayed in the barracks available to members of the armed forces. Starting around February 2019, the Respondent told the Claimant that she would need to move. In May or June 2019, the Respondent made it clear the Claimant would need to move out of the family residence in military housing, so she found a three-bedroom house in the same area so the boys would be able to attend the same school. The rent for a four-bedroom house in military housing was \$1,100 per month. The rent in the Claimant's new residence is \$2,550 per month. Her mother assisted her with a deposit.
- [19] The Claimant also purchased a used car in August 2019 with her mother's assistance. Despite an offer from the Respondent, the Claimant did not want to take on responsibility for the family van which she felt would need expensive repairs on an ongoing basis. The Claimant needs a vehicle as her workplace and her daughter are both in Duncan, BC.
- [20] The Claimant is currently employed as a hairdresser in a salon in Duncan, and sees clients at home. The COVID-19 pandemic has clearly had an impact on the ability of the Claimant to work in her field. The income on her financial declaration is \$23,239 which she confirmed in her testimony. The Claimant says she struggles to make ends meet, rotating the payment of bills such as hydro and phone so they do not get cut-off.
- [21] The Respondent presented some internet searches for hairdressing positions and suggested that if the Claimant had full-time employment she could make more money than she is making at this time. There was also some suggestion that she might not have been keeping track of all the cash payments received in tips and in the course of giving haircuts at home.
- [22] The Respondent seeks to impute an annual income of between \$40,000 and \$50,000 to the Claimant. Given the challenges she was facing entering the workforce following the separation, I do not find her efforts to secure employment to have been unreasonable during 2019 and early 2020. Unfortunately, the COVID-19 pandemic has had a significant impact on the hairdressing industry and the current situation in which the Claimant finds herself is quite understandable. In my view, it would not be justified to impute additional income to the Claimant in the circumstances.
- [23] The Respondent's declared yearly income for 2019 and 2020 was \$98,983. For a brief period from November 2019 until February 2020, the Respondent was working a second job at Garda World. He found he could not maintain the pace of working a second job and did not continue in that role. He does not appear to have declared the limited income he earned from that employment. Starting in January 2021, the Respondent will begin receiving Career Sea Pay as he is assigned to a ship, which will increase his salary to \$108,823 per year.

Entitlement to Spousal Support

[24] The factors to be considered in deciding whether to order spousal support are set out in the Divorce Act at s.15.2(4):

- (4) In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
 - (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.

[25] The principles to be applied in this context are set out in s.15.2(6):

- (6) An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
 - (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the 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 spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[26] In *Moge v. Moge*, [1992] 3 S.C.R. 813, the Supreme Court of Canada made it clear that order to achieve a fair and equitable distribution of resources, all of the objectives in the section must be taken into account and no single objective is paramount. The Court also discussed the underlying rationale for compensatory spousal support in the following terms:

[79] The financial consequences of the end of a marriage extend beyond the simple loss of future earning power or losses directly related to the care of children. They will often encompass loss of seniority, missed promotions and lack of access to fringe benefits such as pension plans, life, disability, dental and health insurance (see H. Joshi and H. Davies, "Pensions, Divorce and Wives' Double Burden" (1992), 6 Int'l J. L. & Fam. 289). As persons outside of the work force cannot take advantage of job-retraining and the upgrading of skills provided by employers, one serious economic consequence of remaining out of the work force is that the value of education and job training often decreases with each year in comparison to those who remain active in the work force and may even become redundant after several years of non-use. All of these factors contribute to the inability of a person not in the labour force to

develop economic security for retirement in his or her later years.

- [80] The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.
- [81] If childcare responsibilities continue past the dissolution of the marriage, the existing disadvantages continue, only to be exacerbated by the need to accommodate and integrate those demands with the requirements of paid employment.
- [27] In my view, these comments are very relevant to the case before me, and illustrate the reasons why spousal support is justified in the circumstances, as I will address in greater detail below. The Respondent quite appropriately does not take the position that the Claimant should not receive any spousal support, and accepts that there is entitlement to some level of support. The divergence in the positions of the parties is on the issues of quantum and duration.

Quantum of Spousal Support

- [28] The Claimant points to several factors which would favour an order for spousal support at the higher end of the SSAGs. The most fundamental is the nature of the relationship during the marriage, in which the Claimant clearly took on the bulk of the household and child rearing responsibilities. There was a clear decision by the parties to prioritize the Respondent's career. He was absent for substantial periods of time throughout the marriage, and even when he was not at sea, it is clear that the Claimant took on the primary responsibilities in the home and with respect to the children.
- [29] This has undoubtedly had an impact on the Claimant's current financial situation and her career prospects at this stage in her life. The vulnerable economic situation of the Claimant has been illustrated several times as a result of decisions by the Respondent following the breakdown of the marriage. The Claimant and the children were required to move out of military housing into more expensive rental housing. She has had to go into debt to support herself and the children during a time when the Respondent was establishing himself with a new family in subsidized housing. At various points of the marriage, the Claimant was removed from the Respondent's medical benefits, put back on, and removed again in favour of his new partner. I have heard evidence that the Claimant requires medication with a monthly cost of \$185 for which she now relies on Pharmacare. In my view, these circumstances strongly militate in favour of compensatory support at the higher end of the range.

- [30] The portion of the Respondent's pension which was accumulated during the marriage has been divided as part of the consent order. The Respondent in argument suggested that the division of the pension should be taken into consideration in assessing the level of compensatory support. In my view, this is a mischaracterization of the pension, which was the primary family asset accumulated during the marriage and has been divided equally. I do not consider this a relevant factor in relation to compensatory support.
- [31] I do accept, however, that the Respondent has also suffered economic consequences following the breakdown of the marriage. I have found that the Respondent's consumer proposal was largely related to family debt. Had he not chosen to suffer the consequences of filing a consumer proposal at that time, the assets and debts to be divided among the parties would have been very different at the time of the dissolution of the marriage. In my view, the ongoing financial repercussions of his decision are a relevant factor to consider in the assessing the quantum of spousal support.
- [32] I am satisfied that at this time an award of spousal support towards the higher end of the range is justified, although not at the highest end of the range sought by the Claimant. In my view, monthly support in the amount of \$1,400 strikes an appropriate balance in the overall circumstances of the case given the age of the children and financial situation of both parties. I therefore order spousal support in the amount of \$1,400 per month to be paid by the Respondent beginning February 1, 2021.
- [33] Applying the SSAGs at a similar level for the relevant periods from August 2019 to January 2021, arrears for spousal support are set at \$23,021 (\$865 (August 2019) + \$4,736 (\$1,184/month x 4 months from September 2019 to December 2019) + \$16,020 (\$1,335/month x 12 months from January to December 2020) + \$1,400 (\$1,400/month x 1 month for January 2021)). The Claimant accepts that the Respondent should get credit for \$1,800 paid towards family debt after the breakdown of the relationship, leaving an outstanding amount of \$21,221 (\$23,021 - \$1,800).

Duration of Spousal Support

- [34] Given the duration of the marriage in this case and the factors discussed above, in my view, spousal support should continue indefinitely, although as I will address in the following section, the quantum of support should be reviewed sooner. I note that this assessment is consistent with the SSAGs.

Review

- [35] The Claimant accepts that, given the uncertainty surrounding the hairdressing industry in which she is employed, it would be appropriate to order a review of this order. I am hopeful that the situation will have stabilized within the next 24 months such that there will be more clarity about the situation going forward.

[36] I will therefore order a review in relation to the quantum of spousal support at the request of either party two years from the date of this order.

Disposition

[37] In summary, I make the following orders pursuant to the Divorce Act:

- 1) Starting February 1, 2021 and continuing on the first day of each month, the Respondent shall pay child support to the Claimant for the children, E. J. P. P. (born August 22, 2002) and T. R. T. P. (born February 10, 2004), in the amount of \$1,637 per month, based on his annual income of \$108,823.
- 2) An annual review of child support shall take place by June 30 each year, initiated by the parties exchanging copies of their tax returns for the prior year. Child support shall be adjusted by the first day of July of each year to accord with the Federal Child Support Guidelines and the incomes of the parties as set out in their respective tax returns at Line 150.
- 3) The Respondent shall pay \$1,400.00 per month in spousal support to the Claimant commencing February 1, 2021 and continuing on the first day of each month.
- 4) The Respondent shall pay to the Claimant the sum of \$22,044 (\$21,221 + \$823) in full and final satisfaction of arrears accumulated for child and spousal support up to January 31, 2021.
- 5) Two years after the date of this order, either party may request a review of the quantum of spousal support.
- 6) All other claims in this proceeding are dismissed.

[38] I am told there were significant delays in obtaining the signature of the Respondent on the order of Master Keighley for reasons that have not been explained. I will therefore direct that the signature of the Respondent to the form of this order is dispensed with.

[39] The Claimant has been substantially successful in this proceeding and is entitled to her costs.

"Edelmann J."

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Prepared on 28 October 2026 · Esheria