

CANADA / JUDGMENT

J.P.S. v. T.E.S.

2003 BCSC 1098

COURT

Supreme Court of British Columbia

DECIDED

30 July 2003

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2003BCSC1098 IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: J.P.S. v. T.E.S., 2003 BCSC 1098 Date: 20030730 Docket: E37075 Registry: Nanaimo Between: J.P.S. Applicant And T.E.S. Respondent Before: The Honourable Mr. Justice Taylor Reasons for Judgment No one appearing for the applicant Counsel for the respondent: A. Lunny Date and Place of Confirmation hearing May 12, 2003 Nanaimo, B.C.

- [1] This is an application to confirm a Provisional Order made by Mr. Justice Bolan of the Superior Court of Justice in North Bay, Ontario. For the purpose of these reasons I will hereinafter refer to the applicant as "the father" and the respondent hereinafter refer to as "the mother" for clarity.
- [2] That order, made the 1st of March 2002, varied the provisions of a divorce order made on the 5th of October 1987 by deleting the provision for the support of the defendant.
- [3] As well, Mr. Justice Bolan also ordered that "any and all arrears that have accumulated since the making of the divorce judgment of October 5th, 1987 be and same are hereby rescinded."
- [4] Mr. Justice Bolan then ordered that his order for variation and cancellation was not to take effect "until it is confirmed."
- [5] The original divorce in its provisions for support of the defendant were as follows:
3. AND THIS COURT FURTHER ORDERS AND ADJUDGES that the Respondent [applicant here] pay to the Petitioner [respondent here] the sum of \$200.00 per month for the support of the Petitioner and the child.
- [6] The "child" referred to in the order was born on [], 1983, and thus, turned 19 in 2002. Thereafter, he was no longer a "child of the marriage."
- [7] The defendant does not quarrel with any cessation or cancellation of periodic support or arrears for herself nor does she suggest any basis to extend the support for the child after his 19th birthday. She opposes however, any cancellation of arrears in respect of the child's support that has arisen prior to his 19th birthday arguing that those are funds the child should receive from his father.

- [8] The material filed in support of the application before Mr. Justice Bolan shows that the father denies paternity of the child but does not deny that he was born during the second month of the marriage. While that may have been an issue to be argued in 1987 such a submission loses any efficacy when raised some 15 years later.
- [9] The mother in her affidavit sets forth her view of the relationship with the father. It is her view that he, in essence, "dropped out of sight" to avoid having to pay the child or spousal support. She could not afford to pursue him and left the matter with the Ontario Maintenance Enforcement Program but has received nothing from them for the benefit of herself or the child.
- [10] The original order was intended for the benefit of the mother and child yet it makes no distinction between the two.
- [11] The fundamental premise in dealing with support orders is that those for children take preference over those for spouses.
- [12] The problem here is that the order was for the benefit of both but it did not distinguish between either. Justice Bolan's order deals only with support for the spouse in terms of variation and cancellation and is silent with respect to such for the child.
- [13] I think there has to be an apportionment and somewhat arbitrarily I would conclude that as the order was for the benefit of both it should be viewed as benefiting each equally.
- [14] Accordingly, to the extent that Judge Bolan's order cancels the obligations and any arrears in respect of the mother that order is confirmed as is the cancellation of any arrears that may arise after the child's 19th birthday. However, I do not confirm the order insofar as it purports to vary and cancel support in respect of the child up to his 19th birthday. All arrears should be calculated on the basis of the apportionment that I have noted in these reasons subject to confirmation in the courts of Ontario. "J.D. Taylor, J." The Honourable Mr. Justice J.D. Taylor

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Prepared on 29 October 2026 · Esheria