

CANADA / JUDGMENT

Jakob v. Jakob

2008 BCSC 900

COURT

Supreme Court of British Columbia

DECIDED

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2008 BSC 900 Jakob v. Jakob IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Jakob v. Jakob, 2008 BCSC 900 Date: 20080624 Docket: F993333 Registry: Vancouver Between: Marguerite Jakob also known as Marguerite Ann Jakob Plaintiff And: Paul Jakob Defendant Before: The Honourable Madam Justice Dillon Oral Reasons for Judgment In Chambers June 24, 2008 Appearing on her own behalf: Marguerite Jakob Appearing on his own behalf: Paul Jakob Place of Hearing: Vancouver, B.C.

- [1] THE COURT: This is an application by the plaintiff, Mrs. Jakob, to vary spousal maintenance from the \$200 per month to \$1,000 per month. There is also an application to revise the Air Canada pension order to expand the period of entitlement. The balance of the notice of motion is not actual motions.
- [2] Dealing with the second, that is to change the period of entitlement, that was established at trial and no appeal was taken and there is no basis to vary the pension entitlement period. That was also dealt with extensively in subsequent orders of this court at various times. After a tremendous amount of work by this court, Air Canada is finally paying the proper pension to Mrs. Jakob in the amount of her proportionate share of \$385.90 per month and there is absolutely no basis to re-enter the forum to recalculate entitlement, and I should add that the entitlement as found by the trial court was accurate according to law.
- [3] With respect to the application to vary spousal maintenance, this is an application to vary the order of Mr. Justice Rogers made on February 3, 2005. At that time, Mr. Jakob sought an order for directions concerning arrears and variance of maintenance and sought to extend an order that had suspended his obligation to pay \$475 per month spousal support to Mrs. Jakob. In the course of extensive reasons for judgment in 2005, Mr. Justice Rogers went through the history of these parties, which I am not going to repeat. However, briefly stated, there was interim spousal support established in 2000 of \$1,700 per month. Following summary trial in October 2001, spousal support was set at \$1,000 per month. Subsequent to that, in 2003, the spousal support was reduced to \$475 per month. There were further applications in 2004 for suspension of spousal maintenance which was ordered.

- [4] The matter then had repeated applications concerning that issue and eventually came to Mr. Justice Rogers in February 2005. At that time, Mr. Justice Rogers found that there had been a change in the income since trial of Mr. Jakob, and he concluded that there should be a reduction of the \$475 per month to \$200 per month retroactive to October 1, 2004. This was based on an income of \$873 per month to Mr. Jakob.
- [5] The parties were married in 1986 and were divorced in 2000. They are both elderly. Mrs. Jakob is 60 years old and Mr. Jakob is 68 years old. They are still bitterly fighting their matrimonial matters and the number of applications before this court is tremendous. Due to the number of applications, I had seized myself of these matters over a year ago and Mr. and Mrs. Jakob have been in this court on numerous occasions since then. Both parties have significant health conditions. Mrs. Jakob suffers from diabetes among other things and, on balance, has greater health needs. Mrs. Jakob has not worked since 1999. Mr. Jakob has now retired from his position with Air Canada and receives the Air Canada pension and a small pension from IBM. That Air Canada pension is, as I have indicated, shared proportionately between the parties. Mrs. Jakob lives in rental accommodation for which she pays \$275 per month and receives a supplement support for her accommodation through --
- [6] MARGUERITE JAKOB: B.C. Housing.
- [7] THE COURT: -- a person with disabilities income assistance. Mr. Jakob lives in a condominium that he owns and he resides there with his stepson and granddaughter. It should be noted that in 2005 Mr. Justice Rogers attributed rental income to Mr. Jakob of \$350 per month as, historically, that amount had been received from Mr. Jakob at one time for rental of the master bedroom. It was noted that Mr. Jakob had not filed a property and financial statement at that time and Mr. Jakob had been found by the court to have been recalcitrant in his cooperation concerning these matters.
- [8] Quite frankly, in the last year, I have found Mr. Jakob to be attempting to cooperate with the orders of the court. He has abided by the orders of the court for payment of significant sums in retroactive spousal support and other expenses. At this time, I accept that there should be no rental income attributed to Mr. Jakob. The condominium is approximately 800 square feet. He lives there in a familial situation and I accept that it is not feasible to receive rental income from sharing of that one bedroom.
- [9] Mr. Jakob's income in 2007 was \$31,359; in 2006, his income was \$22,454; and in 2005, his income was \$15,276. Averaging those incomes over the last three years, his average income has been \$23,029, which is the income that I find for purposes of these proceedings. That results in a net disposable income to him of approximately \$1,548 per month. Mrs. Jakob's income based on the calculation that I have received from Persons With Disabilities, the Ministry of Employment and Income Assistance, indicates that Mrs. Jakob receives \$115 from Canada Pension, \$386 from Air Canada, and \$177 per month from Persons With Disabilities. In addition, she has been receiving spousal support in the amount of \$200 per month for a total monthly income of \$878 per month.

- [10] In my view, Mr. Jakob's income has almost doubled since the order of Mr. Justice Rogers where he attributed income to Mr. Jakob of \$873 per month. He now has a greater disposable income. However, Mrs. Jakob's income has also increased in so far as she is receiving the Air Canada pension. Both parties, however, live extremely modestly. Obviously, Mrs. Jakob is impoverished. Mr. Jakob does not have significant income. Mrs. Jakob's request for reinstatement of \$1,000 per month income is simply fantastic. The parties cannot afford that amount.
- [11] In the circumstances, there has been a variation from February 2005 in that Mr. Jakob's net disposable income per month has almost doubled. Accordingly, I order that spousal maintenance be payable in the amount of \$375 per month.
- [12] I also order that there be no further applications for spousal maintenance for a period of two years. At that point in time, either party may apply to the court for review of spousal maintenance payable. I make that order because it appears to me at this time that the incomes of both parties are relatively fixed in so far as both are in receipt of pension payments and there is no portent that any party will have any significant incomes. There will be an order, as well, that each party shall provide to the other their income tax return no later than May 30 of each year and shall provide, upon receipt, the notice of assessment received from Revenue Canada in each year.
- [13] Mrs. Jakob's address for delivery was allowed to be a post office box by Mr. Justice Rogers in 2005. There has been tremendous difficulty with respect to delivery to that post office box. Mrs. Jakob will be required to provide a specific address for delivery. She will have to provide a proper address for delivery where documents can be delivered, within 15 days of the date of this order. That will be a street address, a house address, where documents may be delivered, and that address for delivery shall be provided to the court by provision of a notice of intention to act in person with a proper address for delivery on that notice of intention. That must be provided within 15 days.
- [14] I consider myself still seized of this matter.
- [15] The only outstanding application that I am aware of at this time is the application by Mr. Jakob to have Mrs. Jakob removed from the title of the condominium. That is still outstanding, sir?
- [16] PAUL JAKOB: Yes.
- [17] THE COURT: All right. I am going to leave that matter in abeyance for a period of one year. That application is adjourned for a period of one year. If the parties have settled into some reasonable accommodation within that year, I will consider the application to remove Mrs. Jakob from the title. I have the expectation that during that year, spousal maintenance will be regularly paid and there will be no problems arising. Anything further?
- [18] MARGUERITE JAKOB: Yes, Your Honour, I would like to bring to your attention one thing.

- [19] THE COURT: Yes.
- [20] MARGUERITE JAKOB: I believe you have made an order for the maintenance for \$375 just now?
- [21] THE COURT: Yes, I did.
- [22] MARGUERITE JAKOB: Okay, that order is just going to get me --
- [23] THE COURT: I am sorry, I am not hearing further submissions. If there is something that is not clear about the order, you can let me know, but I am not aware --
- [24] MARGUERITE JAKOB: It is clear, but I'm just going to bring to your attention one little thing. With the \$375, it's going to take me out of my disability and yet I'm short already \$2 -- \$375, \$2.
- [25] THE COURT: Mrs. Jakob, I asked you what was the threshold amount in your submissions and you said nothing to me. It was not provided in the letter. I am not changing the order. That is my order, madam. That is the amount that can be paid.
- [26] PAUL JAKOB: Can I say one last thing?
- [27] THE COURT: No, I cannot imagine that there would be any further submissions --
- [28] PAUL JAKOB: No, it's not a submission. It's regarding the --
- [29] THE COURT: -- unless there is an error in the order.
- [30] PAUL JAKOB: -- order. It's regarding the order.
- [31] THE COURT: Yes.
- [32] PAUL JAKOB: Yes, the FMFP is taking the money and I have no control. They take it straight out of my, probably, Canada Pension --
- [33] THE COURT: Well, that is good, then.
- [34] PAUL JAKOB: -- in this case. So this thing of adjourning it with respect to removing her name from the title of the condominium doesn't really serve much point because I got no control over these payments, anyway. They take --
- [35] THE COURT: That may be so, sir. I look forward to seeing that proven at the end of a year and you may then renew your application. In the meantime, that application is adjourned generally.
- [36] PAUL JAKOB: It's just for one year or at the end of this year?
- [37] THE COURT: One year.
- [38] PAUL JAKOB: One year.

[39] THE COURT: One year, and maintenance cannot be considered for a period of two years.
"Dillon J."

The Honourable Madam Justice Dillon

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