

CANADA / JUDGMENT

Jakob v. Jakob

2008 BCCA 321

COURT

British Columbia Court of Appeal

DECIDED

13 August 2008

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2008 BCCA 321 Jakob v. Jakob

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Jakob v. Jakob,

2008 BCCA 321

Date: 20080813

Docket: CA036213

Between:

Marguerite Jakob

Appellant

(Plaintiff)

And

Paul Jakob

Respondent

(Defendant)

Before:

The Honourable Mr. Justice Bauman

(In Chambers)

Appellant appearing in person

Respondent appearing in person

Place and Date of Hearing:

Vancouver, British Columbia

31 July 2008

Place and Date of Judgment:

Vancouver, British Columbia

13 August 2008

Reasons for Judgment of the Honourable Mr. Justice Bauman:

- [1] In these matrimonial proceedings the parties are self-represented.
- [2] Mrs. Jakob wishes to appeal from two orders by Madam Justice Dillon, made respectively on 1 February 2008 and 24 June 2008.
- [3] The appellant apparently brought the appeal from the order of 24 June 2008 within time, but she seeks an extension of time with respect to her appeal of the order of 1 February 2008.
- [4] In respect of both orders, Mrs. Jakob seeks directions on whether leave to appeal is required, leave to appeal if it is, and an order granting her indigent status.
- [5] The unfortunate background to these proceedings was summarized by Dillon J. in her reasons on an earlier application indexed at 2007 BCSC 642 at para. 1:

This matrimonial matter has a long and bitter history in this court. There were many interim applications that preceded the orders for divorce in April 2000 and for division of property and spousal maintenance in October 2001. The applications have continued, with at least ten court orders being made since the final resolution of these matters in October 2001. The parties exhausted one master who became seized of these matters and are now before me as the second judge seized with this file in an effort to provide finality between the parties. The parties act for themselves and only communicate derogatorily. Little restraint is exercised.

- [6] The order of 1 February 2008 dealt with the final calculations in the division of Mr. Jakob's Air Canada pension initially ordered by Mr. Justice Coultras following the trial of the matrimonial action in 2001. The order of 1 February 2008 was made with the apparent consent of Mrs. Jakob and the transcript of the proceedings indicates her unqualified acceptance of, and appreciation for, Madam Justice Dillon's disposition of the matter.
- [7] In the application before Dillon J. on 24 June 2008, Mrs. Jakob sought to revise the earlier order to expand the period of entitlement under the pension, as I understand it, to include the period 1986 to 1988. In the 2007 proceedings, Madam Justice Dillon had explained (at para. 19):

The plaintiff is entitled to a half share of the pension based upon her entitlement from the date of employment/membership in the pension to April 10, 2000, the date when a divorce was granted. The order of October 2001 stated that the entitlement was from June 4, 1986; however, this was in error as the defendant had not been employed with Canadian Airlines until March, 1988. The defendant received the pension as at September 2005. Therefore, I have calculated the half interest in the pension to be 0.34760765 of the amounts paid pursuant to the pension. This conclusion is based upon the following equation: 145.3 months of plaintiff entitlement, divided by 209 months total contribution, times 50 percent.

[8] Dillon J. then dealt with Mrs. Jakob's application in June 2008 (at para. 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.

[9] On the issue of spousal maintenance, Dillon J. reviewed the needs and means of both parties and increased spousal maintenance payable to Mrs. Jakob from \$200 per month to \$375 per month, far short of the \$1,000 per month sought by Mrs. Jakob.

[10] In addition to the matters expressly dealt with by Madam Justice Dillon on 24 June 2008, Mrs. Jakob also sought these orders in her notice of motion filed on 7 March 2008:

- 2) To vary Air Canada's pension order 1a) adding 2 years from 1986 till 2000. And 1b) from option 2 to option 1.
- 3) To vary the order of Justice Coultas regarding the condo share that I was denied. Mr. Jakob had already varied all the items on that order many times over regarding maintenance. Also the pension was unfairly reduced by two years from the day of the original order made by Justice Coultas.

[11] It is not completely clear what the import is of the relief sought in paragraph 2(1)(b) of the motion.

[12] With that background, I turn to deal with Mrs. Jakob's applications.

[13] First, I conclude that leave to appeal is not required in respect of either order. In respect of the matters covered by them, they are final orders. (I note that while drafted, it does not appear that the order of 24 June 2008 has yet been duly entered.)

[14] Second, as noted above, Mrs. Jakob appears to have filed her notice of appeal in time with respect to the order of 24 June 2008; no order extending time is required in that regard.

- [15] As to an extension of time to appeal the order of 1 February 2008, the test for an order extending time was discussed by Madam Justice Rowles in *Wilson v. Newcomb*, [1998] B.C.J. No. 2042 at para. 24:

On an application to extend the time for taking a step necessary in the prosecution of an appeal, the following questions, with the necessary modifications, will generally be considered: (1) was there a bona fide intention to appeal? (2) when were the respondents informed of the intention? (3) would the respondents be unduly prejudiced by an extension? (4) is there merit in the appeal? (5) is it in the interest of justice that an extension be granted? The fifth question is the most important as it encompasses the other four questions and states the decisive question .

- [16] As to a bona fide intention to appeal, while I have noted that the order of 1 February 2008 was on its face made with the consent of Mrs. Jakob, by her notice of motion filed in the Supreme Court on 7 March 2008, Mrs. Jakob made known her concern with the terms of the order as to the division of the Air Canada pension. True, it is not a notice of appeal, but she is an in person litigant and that weighs in the consideration. In my view, this is evidence of an early intention to appeal.
- [17] The remaining considerations are really overtaken by the fact that the issues which Mrs. Jakob wishes to raise in respect of the order of 1 February 2008 will in any event be before this Court in the appeal from the order of 24 June 2008. I have serious reservations as to the merits of the appeal of the February order given Mrs. Jakob's apparent consent thereto and the background discussed by Madam Justice Dillon. However, because the matters will be before this Court as of right in respect of the appeal from the June order, it is in the interests of justice that the order of 1 February 2008 be as well.
- [18] Accordingly, I extend the time for appealing the order of 1 February 2008 to 24 June 2008, the date on which Mrs. Jakob filed both her notice of application for leave to appeal that order and her notice of appeal therefrom.
- [19] I note that in her written submissions filed on this application, Mrs. Jakob appears to raise issue with previous orders, in particular that of Mr. Justice Coultas in 2001 dealing with her entitlement to a portion of the family's assets. Nothing in these reasons should be taken as extending time to appeal in respect of those matters which are not dealt with in the noted orders of Madam Justice Dillon.
- [20] I turn to Mrs. Jakob's application for indigent status. It is brought under Rule 56 and her affidavit in support is filed. On reviewing that affidavit, I would grant her application in the circumstances of this case.

"The Honourable Mr. Justice Bauman"

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Prepared on 27 October 2026 · Esheria