
CANADA / JUDGMENT

Jeet v. Lata

2019 BCSC 26

COURT

Supreme Court of British Columbia

DECIDED

9 January 2019

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2019 BCSC 26 Jeet v. Lata

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jeet v. Lata,

2019 BCSC 26

Date: 20190109

Docket: E53511

Registry: New Westminster

Between:

Umesh Jeet

Claimant

And:

Roshini Lata

Respondent

Before: The Honourable Mr. Justice G.C. Weatherill

Oral Reasons for Judgment

The Claimant appearing in person:

U. Jeet

Counsel for the Respondent:

J. Tchezganova

Place and Dates of Trial:

New Westminster, B.C.

January 7-8, 2019

Place and Date of Judgment:

New Westminster, B.C.

January 9, 2019

Introduction

- [1] After opening skirmishes at the commencement of the trial, the parties to this family dispute settled all of the issues between them except the respondent's entitlement to spousal support. The trial proceeded on that issue.

Background

- [2] The claimant and the respondent are currently 59 and 53 years of age respectively. They were married on November 10, 1981 in Fiji at the ages of 22 and 16 respectively. It was what is commonly referred to as an "arranged marriage". They separated just short of 32 years later on October 22, 2013.
- [3] The claimant has a Grade 10 education. The respondent has a Grade 11 education. She emigrated with him from Fiji to Canada in 1982 shortly after they were married. They had their first child when the respondent was 17 and their second when she was 22. The two children of their relationship are now 35 and 30, are living independently, and are no longer children of the marriage as defined by the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).
- [4] Until the children became self-sufficient, the respondent was their primary caregiver as was customary in the parties' culture. The respondent also worked full-time at the Hyatt Regency Hotel in Vancouver ("Hyatt"), initially as a housekeeper from 1988 to 2003, and from 2003 to the present as a switchboard operator. As is also the parties' custom, the respondent was the primary homemaker during their relationship. She prepared the family's meals and did the household cleaning, albeit with occasional assistance from the claimant's mother. The respondent also took care of the claimant's mother when she was ill.
- [5] The claimant has been employed full-time during the daytime as a janitor by the Willingdon Church for the past 25 years. In addition to that employment, for the past ten years, he has also been employed during the evenings as a janitor by the Langley Golf Course. He is paid on a combined basis of an 80-hour-work week.
- [6] During the course of the parties' relationship and in addition to his two full time jobs, the claimant started a cleaning business through a corporate entity called Leading Edge Maintenance Inc. ("Leading Edge"). The claimant was the sole shareholder of the company. It provided cleaning services by way of contracts with various clients, including the Surrey

Memorial Hospital. The cleaning services provided by Leading Edge were performed by the claimant and the respondent, although others were occasionally employed to assist with the work. The claimant testified that most of Leading Edge's contracts were lost as a result of the stress he was under after the parties separated. However, he continued to work in his full-time jobs at Willingdon Church and Langley Golf Course.

- [7] The respondent testified that, in 2006, she was offered an opportunity to become a housekeeping supervisor at Hyatt but that taking the job would have resulted in her becoming the supervisor of the claimant's parents who also worked there. After discussing the opportunity with the claimant, she decided that it would be better for the family if she did not accept the job.
- [8] In 2014, after separating from the claimant, the respondent was offered the position of "manager on duty" at Hyatt. She turned down the job because she was suffering from high stress and anxiety as a result of the parties' separation.
- [9] The respondent testified that, throughout the parties' relationship, the claimant made the parties' mortgage payments but she paid all other household expenses, including utilities, food, phones, and car payments. The parties owned and occupied a home in Surrey, British Columbia at the time of their separation ("matrimonial home"). The matrimonial home has a coach house as well as a basement suite that the parties rented to tenants for \$800 per month and \$700 per month respectively.
- [10] After separation, the claimant continued to occupy the matrimonial home. He testified that the rental income has been intermittent since their separation as a result of various legal issues he encountered with the Municipality of Surrey as well as repairs that were necessary to the rental suites. In addition to rental of the coach house and basement suite, the claimant has rented out an upstairs bedroom for \$400 per month.
- [11] The claimant testified that all of the parties' income, including the rental income, was pooled by them and used for living expenses. The respondent testified that much of the money was kept by the claimant and that she is unaware of how he used it.
- [12] Since leaving the matrimonial home in October 2013, the respondent has lived in furnished rental accommodation in White Rock, BC. Her rent is \$800 per month. She testified that her standard of living has declined since the separation. She no longer has the "luxury" of living in her own home and cannot afford to do many of the things that she was able to do when she was living with the claimant, such as attending movies and regularly going to restaurants.
- [13] The respondent testified that, at the time of separation, she had personal debt of \$5,000 but now she has debt of approximately \$37,000 because she is unable to make ends meet. She conceded that some of her current debt was incurred for legal fees in respect of this proceeding but she did not say how much.

[14] Since separation, the respondent has received only \$1,600 from the claimant in spousal support, although he also made car payments on her behalf in the amount of \$400 per month for the period from March 1, 2018 to August 1, 2018. Accordingly, she has received a total of \$4,000 in spousal support from the claimant.

[15] The parties' respective Line 150 income since separation was as follows:

Claimant

Respondent

2014

\$69,926

\$41,079

2015

\$73,530

\$42,074

2016

\$74,142

\$47,129

2017

\$74,994

\$46,952

[16] On questioning by the Court, the claimant stated that he expected his Line 150 income for 2018 to be approximately the same as it was in 2017.

[17] In addition to his employment income, the claimant disclosed the following income in his Form F8 Financial Statements sworn December 18, 2017 and December 10, 2018:

Rental Income

Cleaning Contracts

Total

2017

\$11,700

\$4,000

\$15,700

2018

\$12,600

\$12,300

\$24,900

[18] During the period from May 19, 2017 to August 7, 2018, the claimant made payments to his Visa credit card totalling \$59,127, which averages almost \$4,000 per month. He could not explain where this money had come from. He did not produce his bank account records despite them having been requested by counsel for the respondent.

[19] The claimant is under the care of a cardiologist and, for at least the past year, he has been advised by his family doctor not to work more than 40 hours per week due to various medical symptoms which include hypertension, obstructive sleep apnea and a cardiac condition. However, he had not heeded that advice and has continued to work at both of his jobs.

[20] The claimant testified that, approximately three weeks ago, he suffered a lower back injury and has been unable to work since. He has filed a claim with the WorkSafeBC and has been told to take one month off work.

Divorce

[21] During his direct examination, the claimant provided the evidence necessary to establish his entitlement to a divorce. That evidence was unchallenged and his claim for a divorce is unopposed.

[22] Accordingly, I am granting an order of divorce to be effective 31 days after the date of these reasons for judgment, subject only to an appeal of this divorce order being filed in the interim, in which case the divorce will be subject to the outcome of the appeal.

Issues

[23] The sole issue for determination is whether the respondent is entitled to spousal support and, if so, in what amount.

Analysis

[24] Section 161 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] provides as follows:

161. In determining entitlement to spousal support the court must consider the following objectives:

(a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;

- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
 - (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
 - (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.
- [25] Section 162 of the FLA provides that the amount and duration of spousal support, if any, must be determined on consideration of the conditions, means, needs and other circumstances of each spouse, including the length of time the spouses lived together and the functions performed by each spouse during the period they lived together.
- [26] Similar provisions are contained in ss. 15.2(4) and (6) of the Divorce Act.
- [27] The respondent seeks both retroactive and ongoing spousal support on a compensatory (economic disadvantage) and non-compensatory (needs) basis. Compensatory support relates primarily to the first two objectives of spousal support referred to in s. 161 of the FLA, while non-compensatory support primarily relates to the third and fourth objectives.

Compensatory Spousal Support

- [28] The respondent has failed to demonstrate that she suffered an economic disadvantage arising from the parties' relationship or the breakdown of that relationship. The Court was left to speculate that her decision to turn down the housekeeping supervisor and manager on duty positions would have resulted in an economic advantage to her. No evidence was presented regarding her management qualifications or aptitude for either position, the hours she would have had to work, the pay she would have received, or the likelihood that she would have succeeded in the position. More was needed to be shown than merely that the positions were offered to her.
- [29] Moreover, the evidence is that both parties contributed financially to their relationship throughout their marriage. They both made sacrifices--the claimant in the form of working additional jobs and the respondent in the form of child care, household chores, and assisting the claimant in his cleaning jobs. No attempt was made by the respondent to show that she contributed a greater amount than did the claimant. No attempt was made by the respondent to show that she was economically disadvantaged by being the primary caregiver to the children. Indeed, the evidence is to the contrary. She continued to work full-time in her career at Hyatt.
- [30] In summary, the evidence is insufficient to support the respondent's claim for compensatory spousal support.

Non-Compensatory Spousal Support

[31] In *Chutter v. Chutter*, 2008 BCCA 507, the Court of Appeal described non-compensable spousal support in the following terms at paras. 54 and 55:

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support. Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state. Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[32] In *V.B v. M.B.*, 2017 BCSC 1761, this Court stated at paras. 240 to 242:

[240] The goal of needs-based spousal support is to narrow the gap between the needs and means of former spouses. As explained in *Chutter v. Chutter*, 2008 BCCA 507, in longer marriages, the courts have measured need against the marital standard of living by looking at the difference between the spouses' post-separation standard of living: see paras. 58-59. See also *Hodgkinson v. Hodgkinson*, 2006 BCCA 158 at paras. 68-69.

[241] In *Lee v. Lee*, 2014 BCCA 383, the Court of Appeal upheld a trial judge's dismissal of a husband's claim for non-compensatory spousal support based on the disparity in the parties' post-separation incomes. In that case, the husband claimed an income of less than \$20,000 compared to his wife's income of \$120,000.

[242] In her majority reasons, Justice Newbury carefully examined the cases dealing with non-compensatory support. At para. 65, Justice Newbury wrote:

To rule as a matter of law that Mr. Lee should be compensated indefinitely for the "loss" of the ability to share in Ms. Lee's income and lifestyle would, taken to its logical conclusion, mean that support must be ordered on one model or the other in virtually every case that comes before the court. The concept of need (in the true sense) of the applicant spouse would be supplanted by the sole criterion of the respondent spouse's ability to pay. Marriage would, contrary to what was said

in Moge, automatically entitle a spouse to the standard of living enjoyed during the marriage, or as much as the payor could afford. I respectfully agree with Professor Rogerson's suggestion, and with the Court in Griffiths, supra, that this cannot be correct. A 'clean break' is clearly possible in this case, and again as stated in Moge, the mere fact of marriage or its breakdown does not activate a "general tool of redistribution." As far as I am aware, this principle has not been overruled.

- [33] It is clear from the foregoing case law that mere disparity of post-separation income is insufficient to establish a right to non-compensatory spousal support.
- [34] This was a long-term marriage of 32 years. The standard of living the parties enjoyed during their relationship was a result of their combined incomes. While together, they worked in their separate jobs as well as together in the cleaning business. They were able to live within their means.
- [35] However, after separation, while the claimant has continued to support his pre-separation lifestyle, the respondent has been unable to. I am satisfied on the evidence that she is barely eking out a living despite her minimal expenses and that she struggles to make ends meet.
- [36] Having considered these cases and the parties' post-separation lifestyles, I have concluded that this is an appropriate case to award the respondent non-compensatory spousal support based upon need and to relieve the economic hardship arising from the breakdown of the marriage. I have also concluded that a lump sum award is appropriate in this case. It will allow the parties to make a clean break from each other and will promote the economic self-sufficiency of both of them.
- [37] In my view, given the length of the parties' marriage, the functions that each party performed during their marriage and the agreement that the claimant will purchase the respondent's equity interest in the matrimonial home for \$240,000, the respondent's needs will be met by an award at the low end of the scale under the Spousal Support Advisory Guidelines. I have taken into account the parties' respective incomes since separation, including the undeclared rental and cleaning contract income of the claimant. I have also taken into account the \$4,000 the respondent has already received in spousal support. I have considered, as well, the claimant's health issues and that he will unlikely be able to maintain the feverish work pace that he has engaged in over the previous years.
- [38] Pursuant to s. 170(c) of the FLA and s. 15.2(1) of the Divorce Act, I am ordering that the claimant pay to the respondent a lump sum amount of \$40,000 in respect of retroactive and prospective spousal support.
- [39] Given that most of the issues raised by the parties were settled at the opening of the trial and that the amount awarded for the final issue, spousal support, is substantially less than what was sought by respondent's counsel during her submissions, it is my view that an award of costs is not appropriate in this case.

"G.C. Weatherill J."

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