
CANADA / JUDGMENT

Johal v. Johal

2013 BCSC 1592

COURT

Supreme Court of British Columbia

DECIDED

30 August 2013

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2013 BCSC 1592 Johal v. Johal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Johal v. Johal,

2013 BCSC 1592

Date: 20130830

Docket: E036068

Registry: New Westminster

Between:

Kalvinder Johal

Claimant

And

Jagroop Johal and Paramjit Kaur Johal

Respondents

Before: The Honourable Mr. Justice Crawford

Reasons for Judgment

Counsel for Claimant:

P.S. Virk

Counsel for Respondent:

J.L. Straith

Place and Date of Hearing:

New Westminster, B.C.

June 27, 2013

Place and Date of Judgment:

New Westminster, B.C.

August 30, 2013

- [1] The parties seek a determination on the appropriate child support calculation and whether payment of court order interest on settlement monies is required.

Court ordered interest:

- [2] At a settlement conference on September 20, 2012, Madam Justice Ballance appeared to resolve all matters between the parties which included an agreement that the respondent pay the claimant \$375,000 for property division, retroactive child support and spousal support, both past and future. The agreement was for these monies to be paid on or before October 31, 2012. The payment was not forthcoming until April 30, 2013.
- [3] However, after the settlement conference a to and fro between counsel then took place. I have carefully reviewed the numerous affidavits that have been filed in this matter. I set out below my findings of the chronology.
- [4] On October 4, 2012, the respondent's counsel had advised the claimant's counsel the respondent had obtained financing approval for \$375,000 together with interest at prime plus 0.5% from a credit union.
- [5] The claimant's solicitors forwarded a draft agreement to the respondent's counsel on October 5, 2012.
- [6] On October 9, 2012, at a trial management conference before Fisher J., the parties' divorce was granted. It appeared that only one matter, namely the amount of the monthly amount of child support prevented the signing of the agreement.
- [7] On October 10 and again on October 17, respondent's counsel raised the following issues:
1. The correct amount for child support payments was not agreed upon;
 2. The pension division claim could not begin until the respondent started his employment in September 1992;
 3. An argument over Canada Savings Bonds;
 4. The definition of debts; and,
 5. Whether the claimant would provide a certified copy of her birth certificate.

- [8] The argument as to the correct amount of child support continued.
- [9] On October 30, 2012, respondent's counsel asked for documents releasing a lis pendens registered against the land title.
- [10] On October 31, 2012, the claimant's counsel's office advised the CPL documents were being drafted and that they would be forwarded upon the respondent's counsel's agreement to forward funds which would be held in trust until a final order was settled.
- [11] It then appears matters started to drag. There was discussion in November 2012 about attending before a judge.
- [12] On December 12, 2012, a document confirming the release of the CPL was forwarded to respondent's counsel on his undertaking not to file without forwarding the \$375,000.
- [13] After the 2012 Christmas holidays, on January 9, 2013, claimant's counsel forwarded another proposed settlement agreement but this time the child support term was deleted so that issue could be dealt with separately.
- [14] On February 7, 2013, claimant's counsel pointed out financing was now urgently required as the claimant mother was trying to settle the retainer with a builder regarding prospective work for home renovations. Changes to the home were necessary to accommodate one of the children with special needs.
- [15] On February 20, 2013, after receiving no response, claimant's counsel warned he would apply to Court for payment of the settlement monies plus interest and costs. On February 21, 2013, respondent's counsel responded by pointing out the wording complained of in previous correspondence on October 10 and 17, 2012 had not been dealt with. On February 25, 2013, correspondence from the claimant's counsel's office asked what specified wording was required. On February 26, 2013, respondent's counsel provided wording for the settlement agreement regarding the definition of debt.
- [16] On March 5, 2013, claimant's counsel agreed to specify the debt. On March 8, 2013, a revised agreement including the account numbers regarding the debt was forwarded.
- [17] In return, respondent's counsel pointed out the pension issue and the birth certificate issue still had not been remedied. On March 8, 2013, those amendments were made.
- [18] The respondent signed the settlement agreement on March 11, 2013 and the signed agreement was forwarded March 12, 2013 to the claimant's solicitor.
- [19] However, the \$375,000 was not forthcoming from the respondent as the financing for the monies was in the hands of a separate solicitor. Subsequent correspondence indicates that the respondent still had to deal with removing some \$85,000 owed on a line of credit with the Royal Bank of Canada ("RBC") before the mortgage monies would be released. A formal letter from the RBC was not provided until April 22, 2013. It was not until April 29, 2013, that the \$375,000 settlement monies were forwarded to the claimant's solicitor's offices.

- [20] It is apparent that the claimant's counsel was put on notice of the respondent's concerns about the drafting of the settlement agreement terms by October 17, 2012. In fact, all the requested terms, save the term regarding the Canada Savings Bond, were eventually found in the agreement forwarded on March 12, 2013.
- [21] The real issue appears to be whether or not the \$375,000 was required to be paid on or before October 31, 2012.
- [22] In my view, the agreement to pay \$375,000 was a stand-alone agreement and should have been pursued promptly by claimant's counsel. However it was incorporated into an overall settlement agreement which was in large part accepted by the respondent by mid-October 2012, save for certain changes he requested. It is plain the claimant did not put her mind to those requests until February 25, 2013, then those requests were then inserted in the revised agreement and the respondent signed.
- [23] In the circumstances the claimant's claim is limited. Pursuant to the Court Order Interest Act, R.S.B.C. 1996, c. 79, I invoke my discretion pursuant to s. 8 to order there be interest at 2% per annum payable on the \$375,000 from March 12, 2013 to April 30, 2013.

Child support:

- [24] The parties have five children. The agreement stipulates the parties are to exercise joint custody and guardianship of all the children. The parties agree the eldest child does not enter the child support calculations now before the Court. The second eldest child's primary residence is with the respondent. The three remaining children are shared equally between the parents.
- [25] Regarding the dispute over the proper amount of child support, the difference in opinion lies in the claimant's use of the DIVORCEmate software to calculate child support, while the respondent has relied on the tables included in the Federal Child Support Guidelines, SOR/97-175 ("Guidelines"). Counsel for the parties could not explain how different values were being calculated.
- [26] After some discussion, the parties agreed that the annual incomes of the claimant and the respondent were \$50,000 and \$104,500, respectively.
- [27] The claimant's figures using the DIVORCEmate software relies on the following inputs: there are four children, three of which the parties share access to, while one child is with the respondent. The calculation is based on the respondent being obliged to pay the claimant for three children while the claimant is obliged to pay the respondent for four children. Thus, the respondent is said to owe \$1,997 to the claimant while the claimant owes the respondent \$1,194; a difference of \$803 per month.
- [28] However, the respondent arrives at a different total using the Guidelines tables. Relying on the same incomes of \$50,000 and \$104,500, the apparent difference is the respondent owing \$541 per month. The respondent's calculation relies on the same \$1,997 monthly obligation

for the respondent as derived in the claimant's DIVORCEmate calculations. The disparity in the parties' claims lies in the different method of calculating the claimant's obligation. The claimant's obligation for the three shared children is calculated at \$998. In addition, for the one child whose principal residency is solely with the respondent, the claimant would be obliged to pay \$458 monthly. Therefore, the net difference between the claimant's and the respondent's obligations results in the respondent owing the claimant \$541 per month ($\$1997 - \$998 - \$458 = \$541$).

- [29] The agreement stipulates that child support payment obligations would be in effect as of November 1, 2012 under this regime. I understand the respondent has been paying \$525 per month. Therefore, on the respondent's own calculations he owes \$16 per month, or \$278 per month based on the claimant's calculations, in child support arrears.
- [30] It is to be noted, for counsel did not, that if the two stage process is used utilizing DIVORCEmate, DIVORCEmate comes up with the same answer. The values the respondent's counsel has calculated are consistent with DIVORCEmate outputs if the shared children and sole residency child are calculated separately; in other words, if the two calculations are performed in two stages. Counsel did not advise why one method should be preferred over the other. The issue is: what method is most appropriate?
- [31] The case at bar can be described as a "hybrid" custody case - it contains both a split custody and a shared custody situation, each of which is contemplated by the Guidelines. The relevant provisions of the Guidelines are:

Presumptive rule

3. (1) Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is
 - (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
 - (b) the amount, if any, determined under section 7.

Split custody

8. Where each spouse has custody of one or more children, the amount of a child support order is the difference between the amount that each spouse would otherwise pay if a child support order were sought against each of the spouses.

Shared custody

9. Where a spouse exercises a right of access to, or has physical custody of, a child for not less than 40 per cent of the time over the course of a year, the amount of the child support order must be determined by taking into account

- (a) the amounts set out in the applicable tables for each of the spouses;
 - (b) the increased costs of shared custody arrangements; and
 - (c) the conditions, means, needs and other circumstances of each spouse and of any child for whom support is sought.
- [32] The calculation of child support in 'hybrid' scenarios has been analyzed by Zisman J. in *Sadkowski v. Harrison - Sadkowski*, 2008 ONCJ 115 - a decision followed by Hinkson J. (as he then was) in *E.G.P. v. S.L.P.*, 2009 BCSC 1221 and myself in *Hilton v. Hilton*, 2011 BCSC 206.
- [33] In *Sadkowski*, Zisman J. canvassed case law nationwide and summarized the two emergent calculation methods: the "two-stage" or "two-step" approach, as compared to the "economies of scale" approach.
- [34] Describing the two-step approach, Zisman J. said at para. 11:
- [11] [T]he first step is to calculate the support for the child(ren) living full time with one parent as a sole custody calculation. The second step is to calculate the support for the child(ren) living in a shared custody situation. The number of children living in the shared arrangement will be the same number of children in the table used for the calculation (for example, if two children share their time equally with both parents, then the two-children table is used for the calculation). The amount that each parent would owe the other parent if they have full custody of the shared custody child(ren) will then be set-off against one another. The court would then consider the increased cost of shared custody and the conditions, means, needs and other circumstances of the parties and the children. Finally, the difference from this calculation is then added to the sole custody calculation from step one to produce the total amount owing to the parent with full custody. In the end result, Justice Wright assessed support on the basis of the table amount for one child (the one in sole custody) and an offset of the respective table amounts for two children (the two in shared custody). As there was no evidence of any increased cost, this factor could not be considered and, in view of the fact that there was not a great disparity in incomes, the straight set-off approach was deemed appropriate.
- [35] At paras. 15-21 Zisman J. reviewed cases where the economies of scale approach was relied upon. In essence, the economies of scale approach relies upon the table amounts derived when all the children are considered simultaneously and then the disparate values are set-off against each other. Next, the s. 9(b) and (c) Guidelines considerations are contemplated, as detailed below.
- [36] Ultimately, Zisman J. reasoned the economies of scale approach was preferable, stating at paras. 25-27:
- [25] The particular circumstances of children's living arrangements requires the exercise of discretion, consistent with the Child Support Guidelines, in order to achieve a standard of support that is fair to both parents and to all the children of the marriage. Accordingly, it

appears to me that dealing with "hybrid" custody situations under an "economies of scale" approach and applying a section 9 analysis, in accordance with the principles in *Contino v. Leonelli-Contino*, gives the court the most discretion to arrive at a fair and proper quantum of child support. It is my view that this is the approach most consistent with the principles of the guidelines.

- [26] The problem with the "two stage" analysis, is simply that it does not reflect the reality of the custodial situation as it is a fiction to treat the child(ren) living full time with a parent in total isolation from the other child(ren) who live in a shared custodial situation. For example, there may be savings to the parent who has more than one child in his or her care or the cost to the parent who only cares for one child full time-time but exercises access may be greater. There may be a large disparity in incomes between the parents that would result in some of the children living in a household with a significantly lower standard of living. The "two stage" analysis only allows some flexibility to the child's living in the shared custody situation. It may be very difficult to isolate the factors under clauses 9(b) and (c) with respect to the child(ren) living in the shared custody regime.
- [27] The advantage of the "economies of scale" approach is that it recognizes the economies of having more than one child in a residence and yet retains the flexibility to examine the actual financial circumstances of both parties and all of the children. However, I would not follow the mathematical gymnastics used in the cases such as *Burns v. Burns*, *supra*, where child support was calculated for 2.5 and .5 children or in *Blair v. Callow*, *supra*, where there was a pro-rated set-off. In fairness, both of these decisions were rendered prior to the Supreme Court of Canada decision in *Contino v. Leonelli-Contino*. Consistent with the reasoning in that decision, the full guideline amount for the children should be used in determining the appropriate set-off amount.
- [37] Furthermore, s. 9(b) and (c) affords the Court additional discretion:
- [29] However, the simple set-off only serves as a starting point but is not presumptive. Clause 9(b) recognizes that the total cost of raising children in shared custody arrangements may be greater than in situations where there is sole custody. Accordingly, the court is required to examine the budgets and actual expenditures of both parents to address the needs of the children.
- [30] Further, clause 9(c) vests the court with the broad discretion to conduct an analysis of the resources and needs of both the parents and the children. The court can take into account extraordinary expenses when considering 9(c) and presumably also include them in the base child support amount. The court retains the discretion then to modify the set-off amounts when considering whether the financial realities of the parties would lead to any significant variations in the standard of living for the children.

- [38] After consideration, I am of the opinion the claimant's method using DIVORCEmate is likely reflecting the economies of scale method, in particular the factor mentioned in two instances above, the disparity in the parties' incomes. But I do not have evidence or argument on the parents' budgets and expenditures to address the factors found in s. 9(b) and (c).
- [39] For want of a better solution and to save the parties additional expense I will set the child support at \$622.00 per month paid by the respondent.
- [40] As to costs, I make no award. Both matters should have been dealt with by counsel, firstly in clarifying and settling the agreement, and secondly in analysing why there was a disparity in the support calculations, a matter that has been commented on in the published "hybrid" custody cases.

"The Honourable Mr. Justice Crawford"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/13/15/2013BCSC1592.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/johal-v-johal-2013>

Prepared on 27 October 2026 · Esheria