

CANADA / JUDGMENT

Johnson v. Obert

2015 BCSC 2062

COURT

Supreme Court of British Columbia

DECIDED

10 November 2015

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2015 BCSC 2062 Johnson v. Obert IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Johnson v. Obert, 2015 BCSC 2062 Date: 20151110 Docket: E152509 Registry: Vancouver Between: Karen Gera Johnson Appellant And Paul Edward Obert Respondent Before: The Honourable Madam Justice Gropper In Chambers On appeal from: An order of the Provincial Court, dated September 1, 2015 (K.J. v. P.O., Port Coquitlam Action No.: F12464) Reasons for Judgment The Appellant: In Person Counsel for the Respondent: No one appearing Place and Date of Hearing: Vancouver, B.C. October 23, 2015 Place and Date of Judgment: Vancouver, B.C. November 10, 2015

Introduction

- [1] Karen Johnson appeals the decision of the Honourable Judge P. Janzen, the trial judge, of September 1, 2015, dismissing her application for child support, particularly the expenses associated with proposed post-secondary education of her son William and her daughter Anaka, as special expenses under the Federal Child Support Guidelines, SOR/97-175, as amended.
- [2] The respondent, Mr. Obert, was served with this notice of appeal. He did not provide a response or appear. The Decision
- [3] The trial judge began her consideration of Ms. Johnson's application by addressing the factors to be taken into account in whether post-secondary education expenses or any portion of them should be provided for in a court order:
- [3] The factors to be taken into account in considering whether post-secondary education expenses, or any portion of them, should be provided for in a court order is the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouse and those of the child and the family's spending pattern prior to the separation. (Bodine-Shah v. Shah, 2014 BCCA 191 at paragraph 66).

- [4] The trial judge reviewed the claim for William's expenses by beginning with a consideration of his high school transcript and his performance in post-secondary education at Douglas College. She reviewed the claim Ms. Johnson made in respect of the costs of William's educational pursuits. The court determined that it was not in William's best interests to pursue post-secondary education at this time. She stated at paras. 31 and 32:
- [31] In my view it cannot be in W's best interests, after an undistinguished high school record, to immediately repeat the pattern of failure in post-secondary studies. As demonstrated by W's achievement at Douglas College so far, Ms. J's current plan of education for W is impractical and unrealistic. At his current rate of progress, it will take him three and a half semesters to complete two semesters of a fulltime program and likely four semesters to complete two semesters if he is to achieve C+ grades in required courses. At that pace, a four year program of studies will take eight years to complete. Most professional education programs, like the nursing program, require all students to progress at the same pace based on a fulltime program of studies.
- [32] Whether W's poor performance is due to a lack of aptitude or a lack of motivation or a combination of both, of greatest concern is that this education plan places W in an unhealthy long term trap of dependence and underachievement that will injure his self-confidence and self-esteem. That cannot be in his best interests. This claim for W's post-secondary education expenses is denied on the basis that the expenses are not necessary in the best interests of W.
- [5] The court went on to consider Ms. Johnson's claims for Anaka's expenses. She rejected that claim as entirely unfounded. She accepted Mr. Obert's testimony that Anaka works full time; is not enrolled in any post-secondary program; and does not intend to enrol in such a program. No expenses in respect of post-secondary education have been incurred. The Appeal
- [6] Section 233(3) of the Family Law Act provides: After hearing the appeal, the Supreme Court may do one or more of the following:
- (a) confirm or set aside the order of the Provincial Court;
 - (b) make any order that the Provincial Court could have made;
 - (c) direct the Provincial Court to conduct a new hearing.
- [7] The standard of review to be applied in appeals was addressed in *Burchill v. Roberts*, 2013 BCCA 39 at para. 16:
- [16] The standard of review to be applied by an appellate court in reviewing child support orders is set out in the following passage from *Hickey v. Hickey*, [1999] 2 S.C.R. 518, at paras. 11 and 12: Our Court has often emphasized the rule that appeal courts should not overturn support orders unless the reasons disclose an error in principle, a significant misapprehension of the evidence, or unless the award is clearly wrong... Though an appeal court must

intervene when there is a material error, a serious misapprehension of the evidence, or an error in law, it is not entitled to overturn a support order simply because it would have made a different decision or balanced the factors differently.

Analysis

- [8] Ms. Johnson asserts that the trial judge made an error in fact and law by allowing an affidavit into evidence of which Ms. Johnson had no notice and that the trial judge exhibited a reasonable apprehension of bias in her conduct of the trial.
- [9] I cannot find that either assertion is supportable. The trial judge referred to the appropriate factors in relation to whether a parent ought to be ordered to pay special expenses of a child pursuing post-secondary education. She considered the circumstances of both children and determined that the expenses claimed were not necessary or reasonable.
- [10] The trial judge referred to the affidavit to which Ms. Johnson objected, at para 29, but she did not rely on it in making her determination. In respect of the allegation that the trial judge exhibited bias, Ms. Johnson has not provided any evidence in support of this allegation.
- [11] In my view, the trial judge applied the appropriate tests and reached a reasonable conclusion based on the evidence before her. There is no sound reason to interfere with her decision: it does not disclose a material error.
- [12] The appeal is dismissed. "Gropper J."

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