

CANADA / JUDGMENT

Joynt v. Darby

2013 BCSC 1149

COURT

Supreme Court of British Columbia

DECIDED

26 June 2013

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2013 BCSC 1149 Joynt v. Darby IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Joynt v. Darby, 2013 BCSC 1149 Date: 20130626 Docket: E035459 Registry: New Westminster Between: Karen Marie Kathleen Joynt Claimant And Gordon Thomas Darby Respondent Before: The Honourable Mr. Justice Crawford Reasons for Judgment Counsel for Claimant: Self-represented Counsel for Respondent: Self-represented Place and Date of Hearing: New Westminster, B.C. June 13, 2013 Place and Date of Judgment: New Westminster, B.C. June 26, 2013

Introduction

- [1] Ms. Joynt sought to vary a child maintenance order made December 14, 2010 where Mr. Darby agreed to pay \$504 monthly in child support based on his income of \$24,000 per annum.
- [2] In particular, she sought an order imputing income to Mr. Darby of \$60,000-\$70,000 per year from May 2010, a retroactive order of child maintenance, retroactive s. 7 expenses and costs.

Background

- [3] Ms. Joynt and Mr. Darby began cohabiting in mid-1991 and separated in May 2010. During their relationship, they had three children, B., born April 19, 1992, now age 21, S., born April 12, 1994 and now age 19 and H., born March 28, 1997, now age 16.
- [4] The eldest child has left home, while the second child turned 19 on April 12, 2013 and is working part-time with the intention of returning to school. She is not paying room or board to her mother. Mr. Darby's Income
- [5] Mr. Darby is self-employed as a landscaper, handyman, and occasionally does snow removal.
- [6] Ms. Joynt's application was premised on the belief that Mr. Darby was making as much, if not more than she believed he made during the course of their relationship.
- [7] However, Mr. Darby filed his form 8 financial information which shows the following:

1. In 2010 his tax return was eventually assessed by the CRA as \$20,862.
2. His statement of business activities shows a gross income of \$25,552 and after deduction of costs of goods sold and total business expenses, net income of \$9,728.02.
3. His statement of expenses includes motor vehicle expenses of \$8,608.43.
4. For 2011, the notice of assessment shows his income at \$11,884.
5. His profit and loss statement shows income at \$38,197.81 and after costs of goods sold and total expenses, a net of \$17,755.04.
6. His motor vehicle expenses on the statement of business activities was \$7,642.88 with a net income of \$6,602.00.
7. For 2012, the assessed income was \$10,674.
8. His statement of business activities showed gross sales at \$45,621 and after deduction of costs of goods sold and total business expenses, a net income of \$10,174.
9. Motor vehicle expenses were put at \$7,243.00, allowance on an eligible culpable property \$5,126 and a capital cost allowance of \$7,370.
- [8] The motor vehicle expense was complicated by the fact that Mr. Darby evidently used two old trucks that stopped working and sold his Harley-Davidson motor cycle at a substantial personal loss to obtain a new truck.
- [9] The Harley-Davidson has been bought with his share of the division of the proceeds of the sale of the matrimonial house.
- [10] The business statements show the payment of employees and Mr. Darby said he hires his children and/or boyfriends to assist in his business, which in large part consists of readying houses seized by the provincial and federal governments in proceeds of crime proceedings, and readying them in somewhat spartan form for resale, which work has to be performed on relatively short notice.
- [11] None of the evidence indicates that Mr. Darby earns anywhere in the order of \$60,000 and he has kept his payments pursuant to the base figure of \$24,000 per annum up to date. As well, Mr. Darby said he will continue to meet his obligations on that premise in spite of the fact that his tax return figures reflect much lower figures.
- [12] As I have nothing other than Ms. Joynt's "suspicions", I accept Mr. Darby's agreement that the \$24,000 base figure be used to compute his child support obligations and he will continue to meet them.
- [13] Accordingly, there is no need for an order for retroactive child support. Section 7 expenses

[14] Section 7 of the Child Support Guidelines provides that: .the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account 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 spouses and those of the child and to the family's spending pattern prior to the separation:

[15] Section 7(1)(c) reads:

(c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;

[16] Mrs. Joynt's affidavit as to s. 7 expenses read:

14. The Respondent refused to pay dental expenses for the two elder children and the orthodontic expenses (\$6,000.00 estimated) and dental expenses for the younger child.

[17] Para. 15 reads:

15. I have asked the Respondent to contribute to the baseball expenses for the girls. Both the younger children are good softball players. He does contribute some things to the s. 7 expenses, but not half of them. The receipts are attached as Exhibit C are for dental and medical expenses.

[18] Ms. Joynt provided summaries which show in 2010 dental expenses of \$1,774.20, prescription costs \$355.89, physiotherapy costs \$220, chiropractor, \$25.00 and eye doctor \$34.83 for a total of 2,409.92. For 2011, dental expenses were \$1,144.10, and prescription costs \$69.22 for a total of \$1,213.32. For 2012, dental expenses were \$2,262.10; prescription costs \$148.33 for a total of \$2,410.43. For the three years, the total is \$6,033.67.

[19] There is no health insurance available on either parent.

[20] Mr. Darby's response is found at para. 16 of his affidavit where he says that: The respondent has on many occasions told the claimant and his daughters that he cannot afford dental work for them as he does not have the money to do so. Yet the claimant continues to insist on having work done.

[21] He concedes he has been asked to pay for dental and orthodontic work and says he "has never refused to pay just that he cannot afford to pay."

[22] He has evidently paid MSP premiums in 2010 and because of his low taxable income has not had to pay premiums in 2011 and 2012.

[23] As well, he notes he works as an executive member with the local fast pitch association which has assisted in the childrens' fast ball expenses.

- [24] Section 7(2) of the Federal Child Support Guidelines provides that: . that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child.
- [25] All of the expenses appear necessary for the health of the children particularly the dental costs. Mr. Darby has agreed to his income being put at \$24,000 while Ms. Joynt's income for these purposes is set out in her affidavit is \$45,792.16.
- [26] However, I expect the child support for one child on \$24,000 is \$206 per month or \$2,476 per annum and as well, the Universal Child Care Benefits may well be reduced and accordingly, I will fix Ms. Joynt's child support guideline for special expenses at \$37,000.
- [27] The sharing of expenses will then be on a 37/24 basis i.e. Mr. Darby will need to pay his share of the special expenses on 24/61 basis which I calculate to be \$2,373.90.
- [28] In terms of repayment to Ms. Joynt, payments are to be made monthly at the rate of \$200.
- [29] In terms of orthodontic treatment, there will need to be a letter of assessment from the orthodontist showing the orthodontic treatment is a necessary health related expense for the youngest child, H. Usually the orthodontic treatments are spread out by the surgeon over several years and once the appropriate letter is obtained and a payment schedule put in place, this is to be forwarded to Mr. Darby so that he can assist in paying his appropriate share. Costs
- [30] Ms. Joynt's application was not in the usual form under the Court Rules which provide for costs in the event of success in a court proceeding.
- [31] Rather, it was a reference to the fact that she had been caused legal expense by Mr. Darby's intended attack on the support order which he subsequently withdrew but left Ms. Joynt with a bill from her own solicitors in excess of \$6,000. That is not the process to obtain payment of such costs and I dismiss the application.
- [32] With respects to the costs of this application, there is divided success and there will be no order as to the costs of this proceeding. "The Honourable Mr. Justice Crawford"

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