
CANADA / JUDGMENT

K.F.N. v. B.K.N.

2022 BCSC 1437

COURT

Supreme Court of British Columbia

DECIDED

19 August 2022

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2022 BCSC 1437 K.F.N. v. B.K.N.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.F.N. v. B.K.N.,

2022 BCSC 1437

Date: 20220819

Docket: E59588

Registry: New Westminster

Between:

K.F.N.

Claimant

And

B.K.N.

Respondent

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for the Claimant:

A. Kahlon

The Respondent, appearing on his own behalf:

B.K.N.

Place and Date of Hearing:

New Westminster, B.C.

November 29, 2021

Place and Date of Judgment:

New Westminster, B.C.

August 19, 2022

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Introduction

- [1] This family matter commenced on March 30, 2021, when the claimant filed her notice of family claim. On November 16, 2021, the claimant filed a notice of application seeking relief under the Family Law Act, S.B.C. 2011, c. 25 [FLA]. In this Notice of Application, the claimant sought:
- a) a declaration that the respondent's imputed annual income is \$250,000;
 - b) child support;
 - c) spousal support; and
 - d) an order for production of documents concerning the annual income of the respondent.
- [2] As these reasons include references to the children of the marriage, I intend to refer to the claimant and respondent by those titles and I will refer to the children of the marriage collectively as "the children of the marriage" or by their initials. This is intended to preserve the children's privacy.

Consent Orders

[3] At the outset of the hearing of this application, the Court was advised that the respondent consented to the granting of the orders sought in the notice of application at para. 6, sub-paras. iv, v, vi, vii, viii and ix, as follows:

within 30 days of the date of this order the Respondent list and produce copies of the following documents:

iv. For the period from March 2020 onwards, all agreements between [A.N.] and the Respondent regarding a proposed reduction to the Respondent's salary;

v. For the period from March 2020 onwards, all correspondence between [A.N.], including the agents, officers and employees of [A.N.], and the Respondent regarding a proposed reduction to the Respondent's salary;

vi. All agreements concerning the Respondent's partnership interest in [B.L.];

vii. For the period from 2020 to present, all financial statements for [B.L.];

viii. Receipts or invoices for all expenses that the Respondent has deducted or intends to deduct from the income he derives from [B.L.];

ix. For the period from 2019 to present, statements for any and all debit, credit, charge, investment or any other like accounts held by the Respondent or for his benefit

[4] Each of the orders above is granted.

Background Facts

[5] As at the date of this hearing, the claimant was 46 years old and the respondent was 53 years old. The parties began to reside together in a marriage-like relationship in July 2001. They were married on August 27, 2006. After approximately 19 years together, the parties separated on January 29, 2020.

[6] The parties have two children of the marriage. As at the time of this hearing, the parties' eldest child, S.N., was 19 years old and attending post-secondary education. The parties' youngest child, E.N., was 14 years old and attending high school. Both children reside primarily with the claimant.

[7] During the parties' marriage, the respondent was the primary income earner, earning approximately \$250,000 per year with additional bonuses for reaching specific sales targets. From 2017 to September 2019, the respondent was employed as the vice-president of Company M., earning an annual salary of over \$250,000 as well as a number of shares which entitled the respondent as a matter of contract to share directly in Company M.'s income. From September 2019 to May 1, 2021, the respondent received severance payments from Company M. in the amount of \$16,000 per month and a payment of \$5,000 for the last month. From January 6, 2020, to June 26, 2020, the respondent was employed as the Chief

Marketing Officer for A.N., a nutritional supplement company. On June 26, 2020, the respondent resigned or was "let go" from his position with A.N. On September 30, 2022, the respondent announced online that he had purchased a partnership interest in B.L., another nutritional supplement company. No details of the purchase price, or other consideration for the purchase of the partnership interest, were revealed by the respondent.

- [8] The claimant is a high school teacher earning approximately \$80,000 per year.
- [9] On the evidence before the Court, I find that the claimant was the primary caregiver of the children of the marriage throughout the marriage and also provided care for the respondent's children from a prior marriage. This caregiving is detailed in the claimant's second affidavit at paras. 32, 63 and 85 to 87.
- [10] Following the parties' separation, the respondent paid certain expenses directly, which included payments for rent, utilities, groceries and the family cell phone plan. These expenses amounted to approximately \$3,300 per month and were paid in an unspecified manner and timed in an irregular way. Counsel for the claimant contacted then-counsel for the respondent and requested that a regular monthly payment of \$4,711 be made for child support and spousal support, rather than the disorganized payments being made. The respondent made a single payment of \$4,711. However, in May 2020 the respondent advised the claimant that he intended to resign from his employment with A.N., to permit him an opportunity "to grow" another enterprise. The respondent made no further payments of the \$4,711 monthly amount. The respondent was not forthcoming about the details of his income.
- [11] There were certain inconsistencies in his evidence about his income. For example, it is noteworthy that although the respondent ceased employment with Company M. in September 2019, severance payments to the respondent were fixed at \$16,000 per month for 20 months with a \$5,000 payment in the 21st month, for a total of \$325,000.
- [12] The respondent also indicated he owned shares in Company M. which he believed would be valued at \$1,000,000. However, at the hearing the respondent swore these shares were worth "less than a third of that" amount. The respondent did not provide any details with respect to the value or sale of those shares.
- [13] On September 30, 2022, the respondent announced that he had purchased a majority interest in B.L. In the incomplete financial statement provided to this Court, the respondent stated that he expects his income to decline to a net income of \$88,900 from \$127,000 gross income. However, the respondent provided no documentary evidence that would allow a third party to determine if the \$38,100 in deductions are properly deductible business expenses. There is also no reference in the filed financial statement to income derived by the respondent from B.L.

- [14] The claimant submits that the respondent is deliberately under-employed as he had an annual income of over \$250,000 while working with Company M., and over \$300,000 at A.N. The respondent is determined that his opportunity at B.L. will pay him a high income eventually and he refuses to seek other employment at a salary commensurate with his former income. In February 2021, the respondent told the claimant that he would no longer be paying the \$3,300 rent on the home occupied by the claimant and the children and would remove his name from the utility bills for the rented home.
- [15] As a result of the respondent withdrawing his financial support, the claimant could no longer afford to pay for the rented home. Together with the two children and the family dog, the claimant has had to rent a 925 square foot apartment at a monthly cost of \$2,350. Together with other expenses, including groceries and other child-related costs, the claimant's annual expenses approximate \$142,000, which is well in excess of her annual income.
- [16] The respondent appears to be significantly under-employed. He seeks to fulfil his dream of future financial success while ignoring his present obligation to support the claimant and their children. The respondent has stated that he is deeply in debt and owes considerable income tax because he has repeatedly failed to file his income tax returns; he may declare bankruptcy. The respondent's hope of future financial success will do nothing to address his debt issues or the lack of support for his family. Declaring bankruptcy would bring an end to the respondent's ownership interest in B.L.
- [17] The first affidavit of the respondent contains many paragraphs containing hearsay opinion evidence or otherwise inadmissible evidence. In particular, at para. 49 of his affidavit, the respondent states: "Now when it's not convenient for them I should suddenly just take a high paying job with some other company. This is short sighted and will leave my children with nothing when I die." In my view, the approach taken by the respondent is completely inconsistent with his obligations to his family under the FLA or the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).
- [18] The claimant and the children are receiving virtually no financial support from the respondent. There is certainly no assurance that the claimant and those children, whom the respondent is obliged as a matter of law to support to the best of his ability now, will receive any support in the near future.
- [19] While the content of these reasons could be extended to describe the respondent's failure to act in a reasonable way to provide spousal and child support, those extended reasons would provide little purpose at this stage of this proceeding. Simply put, the respondent is not meeting his legal obligation to support his family, although he clearly has the capacity and ability to do so.

Child Support

[20] Parents have an obligation to provide financial support for their children as a matter of law, pursuant to s. 147 of the FLA. The court may make an order requiring a child's parent to pay child support to a designated person: FLA s. 149. Section 150(1) of the FLA specifies that child support must be determined in accordance with the Federal Child Support Guidelines [Guidelines].

[21] Section 19 of the Guidelines permits the court to impute income to a parent in certain circumstances:

19 (1) The court may impute such amount of income to a spouse as it considers appropriate in the circumstances, which circumstances include the following:

- (a) the spouse is intentionally under-employed or unemployed, other than where the under-employment or unemployment is required by the needs of a child of the marriage or any child under the age of majority or by the reasonable educational or health needs of the spouse;
- (b) the spouse is exempt from paying federal or provincial income tax;
- (c) the spouse lives in a country that has effective rates of income tax that are significantly lower than those in Canada;
- (d) it appears that income has been diverted which would affect the level of child support to be determined under these Guidelines;
- (e) the spouse's property is not reasonably utilized to generate income;
- (f) the spouse has failed to provide income information when under a legal obligation to do so;
- (g) the spouse unreasonably deducts expenses from income;
- (h) the spouse derives a significant portion of income from dividends, capital gains or other sources that are taxed at a lower rate than employment or business income or that are exempt from tax; and
- (i) the spouse is a beneficiary under a trust and is or will be in receipt of income or other benefits from the trust.

[22] Given the respondent's failure to provide reasonable financial disclosure or to pay child support in accordance with the Guidelines, I find it necessary to impute income to the respondent pursuant to s. 19(10)(f) of the Guidelines.

[23] The claimant submitted that the respondent's income should be imputed at \$250,000 based on the evidence that his income ranged from \$250,000 to \$300,000 per year during the parties' relationship. The respondent acknowledged receiving income in this range in recent years. The respondent, in the less than helpful affidavit he provided, suggested that his income has dropped recently. However, I find that the respondent's reporting of his income

is less than reliable and was not supported by proper documentation. For instance, the respondent provided no financial information about the expenses which he deducted from his stated business income.

- [24] On an interim support application such as this, the court should not embark on an in-depth analysis of the parties' circumstances; that analysis is best left to a trial court. At this stage of the proceedings, the court can do "rough justice" at best: *Randhawa v. Randhawa* (1999), 49 R.F.L. (4th) 144 (B.C.S.C.) and *Newson v. Newson* (1998), 65 B.C.L.R. (3d) 22 (C.A.).
- [25] On the facts of this case, it is evident that the respondent is intentionally under-employed quite contrary to the needs of the children and his obligation to pay spousal support. The respondent has also failed to provide income information when under a legal obligation to do so and has deducted expenses from his income without any explanation. The respondent was not entitled to maximize his interest in a new company at the expense of child and spousal support. Given the foregoing findings and in the circumstances of this case, on an interim basis, I impute income to the respondent in the amount of \$225,000 per annum.
- [26] With respect to the claimant's income, it is reported as \$83,145.52 subject to an adjustment in accordance with Schedule III of the Guidelines. At Schedule B to the claimant's F8 financial statement, she claims a Schedule III adjustment in the amount of \$30,765 for "BCTF Teacher Registration". This is a significant amount of money. The claimant did not adduce any evidence to support a finding that this sum is an appropriate deduction for Guidelines purposes. Further, there is no similar sum deducted on any of the claimant's past income tax returns.
- [27] On a without prejudice basis, this sum will not be deducted for the purposes of the DivorceMate calculations in these reasons. I will allow a deduction for a sum for BCTF Teacher Registration in the amount of \$3,000.53, which is, in my view, more in keeping with historical deductions of this sort. This results in a Guidelines income for the claimant of \$80,145. If the claimant intends to make further submissions with respect to the appropriateness of this deduction, she is granted leave to bring an application to deal with this issue in the normal fashion.
- [28] Applying the annual income figures set out above, \$225,000 imputed for the respondent and \$80,145 for the claimant, the child support payable by the respondent, pursuant to the Guidelines shall be fixed at \$3,044 per month payable commencing on December 1, 2021 and on the first day of each and every month thereafter until further order of this Court.

Spousal Support

- [29] Spousal support entitlement is to be assessed under two categories: compensatory and non-compensatory or needs-based. Compensatory support is based on the fact that a spouse's career advancement or the economic benefits that flow from such advancement may be restricted because they were the parent primarily responsible for the care of the children of the marriage. Needs-based spousal support is based on the "social obligation" model of

marriage. This model is grounded in the philosophy that upon dissolution of a marriage, the obligation to provide for a disadvantaged spouse falls on their former spouse, rather than the state: *Chutter v. Chutter*, 2008 BCCA 507 at para. 54.

- [30] At this early stage of the proceeding, the claimant has demonstrated that she is entitled to spousal support on both compensatory and needs-based grounds. Based on the parties' Guidelines incomes as determined above and using the "With Child Support Formula", the respondent shall pay spousal support at the mid-range level to the claimant in the amount of \$2,454 per month commencing on December 15, 2021, and continuing on the 15th day of each and every month thereafter until further order of this Court.

Fine

- [31] The claimant has applied for a substantial fine based on the respondent's failure to provide timely or complete financial disclosure. At this stage, the Court has determined not to impose a fine, but the imposition of a fine may be revisited at a later date dependent on the respondent's response to the orders for disclosure made above.

Conclusions

- [32] The consent orders are granted as set forth above. Child and spousal support orders are granted as set forth above.
- [33] The claimant is also entitled to her costs of this application as a matter of ordinary difficulty pursuant to appendix B of the Supreme Court Family Rules.

"Ball J."

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