
CANADA / JUDGMENT

K.L.N. v. B.D.P.

2020 BCSC 328

COURT

Supreme Court of British Columbia

DECIDED

9 March 2020

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2020 BCSC 328 K.L.N. v. B.D.P.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.L.N. v. B.D.P.,

2020 BCSC 328

Date: 20200309

Docket: E42541

Registry: Kelowna

Between:

K.L.N.

Claimant

And

B.D.P.

Respondent

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

Reasons for Judgment

Counsel for the Claimant:

B.J. Hardwick

Counsel for the Respondent:

D.L. Polley

Place and Date of Trial/Hearing:

Kelowna, B.C.

February 25, 2020

Place and Date of Judgment:

Kelowna, B.C.

March 9, 2020

Introduction

- [1] At issue is the interpretation of paragraph 5 of a consent final order entered May 4, 2015 ("Final Order") relating to the parties' daughter's ("Daughter") post-secondary school education expenses. Paragraph 5 of the Final Order reads:
5. Upon the Child's full time enrolment in post-secondary educational institution and pursuing a reasonable course of studies, the Respondent shall pay 80% of the Child's post-secondary educational and living expenses to a maximum of \$20,000 per annum for a maximum of 3 years to commence after the Child's 19th birthday on March 28, 2017.
- [2] From September 2018 through April 2019, the Daughter was enrolled in the first of a four-year nursing program at the University of British Columbia Okanagan ("UBCO"). The claimant seeks an order that the respondent pay the \$20,000 cap ("Cap") on account of the Daughter's post-secondary educational and living expenses for the 2018-2019 academic year in accordance with her interpretation of the Final Order.

Background

- [3] The claimant and respondent were involved in an extramarital relationship that resulted in the birth of the Daughter on March 28, 1998. The Daughter is now approaching her 22nd birthday. The respondent was not aware he was the Daughter's father until genetic testing in 2013 revealed that he was. Negotiations between the parties for child support resulted in the Final Order. For two years preceding the Final Order the respondent had voluntarily paid the claimant a total of \$96,000 in child support at the rate of \$4,000 per month. Pursuant to the Final Order, he paid the claimant an additional \$48,000 in retroactive child support, \$50,000 for a horse purchased for the Daughter by the claimant and \$6,000 per month inclusive of special and extraordinary expenses until the Daughter turned 19 years old on March 28, 2017.
- [4] For all intents and purposes the respondent has never had a relationship with the Daughter.
- [5] On July 2, 2019, the respondent received an email from the claimant, complete with a spreadsheet, detailing the Daughter's UBCO-related expenses. Pursuant to paragraph 5 of the Final Order, and because the total expenses exceeded \$25,000 (80 percent of which was \$20,000) she requested the respondent pay her the Cap. Prior to receiving that email, the

respondent had no knowledge that the Daughter was attending UBCO nor did he have any input into the expenses the claimant says were incurred, over half of which related to the Daughter's rental accommodation near the UBCO campus where she lives with her boyfriend. Claimed living expenses include rent, utilities, parking, clothing, hair, gym, phone, tuition, medical, car expenses, entertainment and furnishings / furniture / bedding / utensils.

- [6] The respondent takes issue with many of these expenses, in particular the rent, as being unreasonable and unnecessary and asserts that the claimant and the child are unreasonably claiming expenses well in excess of \$25,000 in order to obtain the maximum possible reimbursement from the respondent.

Claimant's Position

- [7] The claimant asserts that the terms of the Final Order:
- a) require the respondent to contribute 80 percent of the Daughter's post-secondary educational and living expenses up to the Cap;
 - b) does not differentiate between the respondent's obligation to contribute to the Daughter's living expenses whether she attends UBCO or elsewhere;
 - c) does not require the Daughter to reside with the claimant if she decides to attend UBCO; and
 - d) does not require the Daughter's post-secondary educational and living expenses to be pre-approved by the respondent, or that those expenses be reasonable.
- [8] In sum, the claimant says the Final Order is clear on its face. The respondent has no input into the matter of the reasonableness of the Daughter's decisions respecting her living arrangements and, in any event, it is reasonable for the Daughter, now nearly age 22, to live on her own with her boyfriend and not with her parent.
- [9] Even if the reasonableness of the Daughter's expenses is a term that can be implied to para. 5 of the Final Order, the claimant says the amounts claimed by the Daughter for her post-secondary and living expenses are reasonable.

Respondent's Position

- [10] The respondent does not challenge the validity of the Final Order nor does he seek to vary it. The parties agreed in the Final Order that until the Daughter's 19th birthday, the respondent would pay \$6,000 per month child support including s. 7 extraordinary expenses without any requirement for the claimant to justify them. He has complied with his obligations under that order.
- [11] The respondent says that the parties intended that he would pay 80 percent of the Daughter's post-secondary educational and living expenses reasonably necessary for her attendance at the post-secondary school of her choice. The Daughter, quite reasonably in the respondent's

view, chose to attend UBCO which is approximately a 20 minute drive from the claimant's residence. He argues that her living expenses must be considered in the context that the claimant lives nearby in a large home and it is unreasonable to expect him to pay 80 percent of the rent in the circumstances. While he does not take issue with his obligation to pay reasonable living expenses, the cost of the Daughter living with her boyfriend when she could continue to reside with the claimant is not one of them.

[12] In support of his interpretation of the Final Order, he refers to *Tully v. Haber*, 2016 BCCA 399, where the Court of Appeal was asked to interpret an order of the court:

[9] [O]ur task on this appeal is governed by the observation that most cases of interpretation of a contract engage questions of mixed fact and law: *Sattva Capital Corporation v. Creston Moly Corporation*, [2014] S.C.R. 633, and we are governed in our task by the standard of review that is commensurate with the issue under consideration. In respect to the legal principles, the standard is correctness but in respect to matters engaging context or evidence, the deferential standard applies, always recognizing that the task of the judge in respect to interpreting the agreement, as to which a consent order is a species, is to search for the common "intent of the parties and the scope of their understanding" (para. 47 *Sattva*).

[Emphasis added.]

[13] In this case, the respondent says the claimant and the Daughter are simply attempting to use the respondent as a bank without concern for the reasonableness or necessity of her expenses. If the Final Order was interpreted to allow the Daughter's post-secondary expenses to be incurred as she saw fit without regard to reasonableness and necessity, the language of para. 5 would have provided for it. The intention of the parties in negotiating the Final Order was not to allow the Daughter to incur whatever expenses she felt in order to max out the \$20,000 cap. The interpretation of para. 5 should invite a consideration of reasonableness and necessity and that expecting him to pay 80 percent of the rent in these circumstances is neither reasonable nor necessary.

Discussion

[14] The interpretation of the Final Order requires a consideration of the circumstances that existed when it was negotiated and made. A practical, common sense approach is required. The Court must ask what the parties' understanding and intention were in the context of those circumstances when they agreed to the Final Order: *Sattva Capital Corp. v. Creston Moly Corp.*, 2014 SCC 53 at para. 47.

[15] At the time, both parties were represented by their current counsel, both exceptionally capable and experienced in family law matters. I conclude that when negotiations were reached and the Final Order was consented to, the parties must have contemplated the provisions of s. 7(1) of the Federal Child Support Guidelines, the relevant portions of which read:

7 (1) In a child support order the court may, 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 :

(e) expenses for post-secondary education;

[16] I conclude that the Guidelines require that the Daughter's expenses for post-secondary education and living expenses be both necessary and reasonable before the respondent is required to pay his proportionate share as required by the Final Order.

[17] The respondent's main complaint is that the Daughter is living in an apartment with her boyfriend, despite the fact that UBCO is approximately 20 minutes by car from the claimant's residence. He questions the fairness of him having to pay for the Daughter's rental accommodation in circumstances where she has chosen to live with her boyfriend, and she could be staying with the claimant a short distance away; in other words, he questions the necessity of the expense.

[18] The evidence indicates that the reason that the Daughter chose to live in an apartment is because she was:

. . . desirous of moving into her own accommodation while pursuing her university studies, . . . in order to be close to the university and attend classes, late night labs, and study sessions with other students. Attending UBCO and living independently has great benefits as it allows her to acquire the life skills and maturity required to live a fulfilling life after her studies are complete.

[19] The claimant says that the rent the Daughter claims, \$1,350 per month plus utilities, equates to what she would pay if she lived on her own on campus in the campus accommodation. That may be correct, but it misses the point of the requirement that the expense be "necessary" for and related to her post-secondary education.

[20] I conclude that the real reason for her living in rental accommodation is that she wants to live with her boyfriend. They are a couple and even have a dog together. I make no finding on the reasonableness of the Daughter choosing to live with her boyfriend, but I do conclude that living in rental accommodations in the circumstances of this case is not necessary for her attendance at UBCO within the framework of s. 7(1) of the Guidelines. The term "necessary" implies "need". What the Daughter prefers or desires does not equate to what is "needed". In my view, the fact that the Daughter is taking her nursing degree in her hometown where the claimant resides does not necessarily bring it within the luxury of living in the rental accommodation at the respondent's expense.

- [21] There is no evidence to suggest the Daughter could not live at the claimant's house while she attends UBCO. Save for attending a private school on Vancouver Island for grades eleven and twelve and a short stint at the University of Victoria, she has done so most of her life. On the facts before me, the rent and related household expenses are therefore not post-secondary education or living expenses within the meaning of the Final Order.
- [22] In my view, the intent and correct interpretation of para. 5 of the Final Order was that the respondent would pay 80 percent of the Daughter's educational and living expenses necessitated by her post-secondary education.
- [23] In support of my conclusion that the expenses for which the claimant now seeks reimbursement were not "needed", I note the timing of the claimant's request for payment was not until June 2019, months after the Daughter's first year of university had completed. That, in my view, does not demonstrate need. Further, on July 8, 2019, the respondent sent the Daughter a cheque for approximately \$10,000, without conditions, but the Daughter chose not to cash it. Instead, the claimant brought this application seeking that the respondent pay the Cap.
- [24] In sum, the evidence falls short of establishing that all of the expenses claimed by the claimant totalling \$30,000 are necessary or reasonable. In my view, the expenses the respondent should be contributing to are for tuition (\$6,406.89); books and other school requirements (\$1,045.04); phone (\$1,724.75); medical (\$426.70); clothing (\$1,074); and car (\$3,055.74).
- [25] Respecting the Daughter's monthly living expenses, I note that in July 2019, the respondent proposed that he pay \$500 per month for eight months. Given this proposal, I infer that he conceded that \$500 per month living expense is reasonable and necessary.
- [26] The Daughter's total necessary and reasonable educational and living expenses for the 2018-2019 academic school year, therefore, are assessed at \$17,833, rounded to \$18,000. The respondent is responsible 80 percent of those expenses, or \$14,400.

Costs

- [27] While costs were not spoken to, in my view, the respondent was the substantially successful party and is entitled to costs.

"G.P. Weatherill J."

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