
CANADA / JUDGMENT

K.M.M. v. D.R.M.

2016 BCSC 1263

COURT

Supreme Court of British Columbia

DECIDED

8 July 2016

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

2016 BCSC 1263 K.M.M. v. D.R.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

K.M.M. v. D.R.M.,

2016 BCSC 1263

Date: 20160708

Docket: E130570

Registry: Vancouver

Between:

K.M.M.

Claimant

And

D.R.M.

Respondent

Before: The Honourable Mr. Justice Tindale

Reasons for Judgment

Re: Notice of Application dated December 1, 2015

Appearing for the claimant:

K.M.M., In Person

Appearing for the respondent:

D.R.M., In Person

Place and Date of Hearing:

Prince George, B.C.

January 27, 2016

Place and Date of Judgment:

Vancouver, B.C.

July 8, 2016

- [1] The claimant by way of a Notice of Application filed December 1, 2015 seeks a variety of relief in this matrimonial action. The claimant seeks the following orders in her Notice of Application:
- (1) That the parties be allowed to remove an additional sum of \$20,000 from the same investment account accessed for the first \$20,000, for the sole purpose of the Court Ordered Family Counseling. If this account no longer exist, that the \$20,000 be removed from a similar investment account held in the Respondent's name or a shareholder's loan from one of the company assets such as calling on some of the \$2.5 million demand loans receivable held in Commonwealth Mortgages assets.
 - (2) As per the Court Order of Justice Tindale dated July 9, 2015, the Respondent to reimburse the Claimant for the Court Ordered Counseling travel expenses for September 21, 2015, October 16, 2015 and November 16, 2015. The Respondent is in contempt of Court.
 - (3) As per the Court Order of Master Taylor dated June 25, 2013, the Respondent to pay the child support payments owing from October 1, 2015 and November 1, 2015. The Respondent is in contempt of Court.
 - (4) As per the Court Order of Master Taylor dated June 25, 2013, the Respondent to pay the Child Support to the Claimant on the first day of each month. The Respondent is in contempt of Court.
 - (5) As per the Court Order of Master Taylor dated June 25, 2015, the Respondent to pay the Cluculz Lake Mortgage owing from October 1, 2015 and November 1, 2015. The Respondent is in contempt of Court.
 - (6) The Respondent to pay the Cluculz Late Mortgage to the Claimant on the first day of each month as it is due on the first day of each month.
 - (7) The parties be allowed to list the Cluculz Lake property for sale to relieve the debt held solely by the Claimant.
 - (8) To have the Respondent gave to the Claimant the alarm code and the key for the Cluculz Lake property that the Respondent changed.

- (9) As per the Court Order of Justice Tindale dated June 23, 2015 and June 24, 2015, the Respondent to pay C.C.C. the monthly lease payment of \$9,765 on the 10th day of each month. The Respondent is in contempt of Court.
- (10) That the Respondent pays the outstanding lease payments owing to C.C.C. so it may meet its debt obligations. Specifically, the amount for property taxes outstanding at approximately \$18,528.46 plus interest as it is a requirement of the Forbearance Agreement with the Royal Bank of Canada that has now been signed by both the Claimant and the Respondent.
- (11) Costs.
- [2] At the beginning of this hearing the claimant clarified that she was not seeking to prosecute the respondent in contempt with regard to paras. 2, 3, 4, 5, and 9 of her Notice of Application dated December 1, 2015. In addition the claimant indicated that the payments with regard to the mortgage on the Cluculz Lake property for the months of October and November 2015 had been paid and she is no longer seeking an order in that regard.
- [3] The respondent is opposed to the application.

BACKGROUND

- [4] The parties were married on September 7, 1991 and separated on December 27, 2012. They have two children namely:
 - (i) S.M., born May 16, 1999;
 - (ii) K.M., born November 8, 2000.
- [5] The claimant is a businesswoman and chartered accountant. The respondent is a businessman and mortgage broker. The parties own a number of companies and corporate assets.
- [6] On June 30, 2015 after a lengthy trial with regard to child custody and parenting issues I pronounced in part the following orders:
 - (i) The parties would share joint custody and joint guardianship of S.M. S.M. would reside equally on a one week on one week off rotation with the parties.
 - (ii) The claimant would have sole custody of K.M. and that both parties would be the guardians of K.M.
 - (iii) The respondent would have reasonable parenting time with K.M. at the request of K.M.
 - (iv) The parties as well as S.M. and K.M. will attend, participate in and successfully complete the Family Forward Reunification Program. The parties will share equally in the cost of the program.
 - (v) The respondent is at liberty to apply to review his parenting time with K.M. after the completion of or the family's discharge from the program.

- [7] Those reasons for judgment are indexed at K.M.M. v. D.R.M. 2015 BCSC 1126.
- [8] Since the order of June 30, 2015 the respondent has had virtually no contact with K.M.
- [9] On July 9, 2015 I pronounced an order with the consent of the claimant allowing the respondent to withdraw \$20,000 from his non-registered investment account to pay for the Family Forward Reunification Program. A further term of that order was that the respondent would reimburse the claimant for her travel costs to attend the counseling program within seven days. The understanding between the parties was that both parties were responsible for the payment of the counseling and the \$20,000 would be accounted for when the division of family property occurred.
- [10] On December 18, 2015, I granted an order that the respondent's parenting time order with K.M. be amended to read "The respondent shall have reasonable parenting time with K.M. at the request of K.M. or at the direction of the Family Forward Reunification Program".
- [11] On January 13, 2016, I adjourned the trial which was set to commence January 25, 2016 for 10 days regarding the division of family property to be set after the parties' disclosure issues had been resolved.
- [12] On January 27, 2016, I further amended the order of June 30, 2015 with regard to the respondent's parenting time with K.M. thoughts that the respondent is to have "reasonable parenting time with K.M."

POSITION OF THE PARTIES

The Claimant

- [13] The claimant argues that the counseling for K.M. has been extremely expensive in part because the parties have to travel to Vancouver. She further argues that the respondent has had access to the proceeds from the various businesses owned by the parties for approximately 3 years and he is better able to pay for the counseling.
- [14] The claimant in her 24th affidavit made on December 1, 2015 deposes that she is responsible for the mortgage on the Former Family Home as well as the mortgage on the Cluculz Lake property. She argues that she does not have sufficient funds to pay for the counseling.
- [15] The claimant on October 21, 2015 requested that the respondent remove an additional \$20,000 from his investment account for the purpose of family counseling. The claimant made this request on the understanding that this amount would be reconciled upon the division of the family property.
- [16] The claimant has provided significant documentation which indicates that she has a considerable amount of debt. In particular her personal line of credit with the Scotiabank on October 13, 2015 was overdrawn by over \$30,000.

- [17] The claimant is prepared to sell the Cluculz Lake property in order to reduce family debt. The mortgage on that property is approximately \$270,000.
- [18] The claimant argues that the respondent has access to monies from the family property in his control which he could easily use to pay the costs for the counseling.
- [19] The claimant argues that the respondent has not reimbursed her in the amount of \$2,525.99 for expenses related to the family counseling which she incurred on September 21, 2015, October 16, 2015 and November 16, 2015.
- [20] The claimant also argues that the respondent has not paid her child support in the full amount of \$1,811 as ordered by Master Taylor on June 25, 2013 since June 1, 2015. The claimant says that the respondent has not made any child support payments since September 1, 2015.
- [21] The claimant argues that the lack of disclosure especially with regard to the respondent's income has become problematic. In her view the respondent earns considerably more than what he has declared.
- [22] The claimant also argues that the company in her control C.C.C. has considerable debt with its sole source of income being lease payments made by the respondent's companies. The respondent is often late with the lease payment which creates more financial problems for her.

The Respondent

- [23] The respondent argues that the claimant's application for counseling monies is unnecessary. The parties are allowed to remove money from their family property by consent. The respondent argues that the claimant does not want to use any of the assets currently in her name to pay for the counseling. He further argues that the parties agreed to pay equal shares for the counseling.
- [24] The respondent also points to the fact that the claimant disposed of approximately \$179,000 from her RRSP account without any accounting as to where those monies went.
- [25] The respondent argues that the claimant's employment income for 2015 is approximately \$123,900 which is similar to his income.
- [26] The respondent argues that the claimant owns a policy with the Equitable Life Insurance Company of Canada which she could withdraw funds from in the amount of \$22,731.06.
- [27] The respondent also argues he negotiated on behalf of C.C.C. a settlement with a former tenant in the amount of approximately \$90,000. The respondent consents to \$10,000 of these settlement funds being used for counseling.

- [28] The respondent argues that with regard to traveling expenses for counseling the initial monies that were withdrawn from his account have been depleted which is why he has not reimbursed the claimant for some of her expenses.
- [29] The respondent argues that with regard to child support after my order of June 30, 2015 was pronounced he thought that he was entitled to reduce the child support payable because the child S.M. was residing with him 50% of the time. The respondent disagrees that he has not paid any child support to the claimant since September 1, 2015. He has however unilaterally reduced the amount for child support from \$1,811 to \$791 per month.
- [30] The respondent requests that the relief sought by the claimant with regard to child support be adjourned so that he can bring an application to vary the amount of child support and cancel any arrears which may be owing to the claimant.
- [31] The respondent argues that the mortgage payments are up to date on the Cluculz Lake property. He is opposed to selling that property in part because the disclosure issues relating to family property have not been resolved. Also the claimant has not provided an explanation as to what has occurred with the approximately \$179,000 that she cashed in from her RRSP account.
- [32] The respondent also argues that he has paid all of the expenses in relationship to the mortgage, taxes, insurance, Hydro, satellite, and other maintenance issues with regard to the Cluculz Lake property. He says that there are no orders requiring him to pay the mortgage on the first day of the month.
- [33] The respondent argues that with regard to C.C.C. he has had to pay a number of operating costs with respect to the company that the claimant neglects to pay. The respondent agrees that \$9,765 per month should be paid in lease payments to C.C.C. He has paid the mortgage in the amount of \$6,582 per month as well as other expenses. Exhibit J to his 37th affidavit made on December 3, 2015 is a Rental Report which he says shows that the monies have been paid to C.C.C.
- [34] The respondent says that the alarm code with regard to the Cluculz lake property has not been changed and he is prepared to provide a key to the claimant.

DECISION

- [35] The parties are required to equally share the counseling expense for K.M. There is no question that this counseling is expensive, however, it is in the best interests of K.M. that there be counseling.
- [36] The parties have considerable family property. There has been no claims by either party to exclude any of the family property. The claimant has made a claim for a reapportionment of family property, however in these proceedings she indicated that she no longer wishes to pursue that claim.

- [37] The parties have not been able to agree on the division of family property. A trial has not been heard in that regard.
- [38] The available information would suggest that both parties have similar incomes. The evidence also discloses that there are assets available which could be used to fund the counseling. Indeed both parties are in agreement that family property be used to fund the counseling however each party requests that the family property that is used should be property that is in the name of the other party.
- [39] The claimant does not want to use the monies which are being held in trust on behalf of C.C.C. as she is concerned about being able to meet the day-to-day expenses for that company.
- [40] The respondent is concerned about the use of any assets in his name because the claimant has already disposed of approximately \$179,000 from her RRSP account.
- [41] It is not for this court to manage the assets or financial affairs of the parties. I cannot based on the evidence determine whether or not the interim distribution of any particular asset may be harmful to either the claimant's or the respondent's interest.
- [42] The respondent is prepared to consent to the claimant disposing of assets in her name to fund the counseling. However the claimant's application is for the use of assets in the respondent's name. I am not prepared to make that order without the consent of the respondent because I cannot determine whether it would be harmful to the respondent's interest to do so.
- [43] I accept the evidence of the respondent that the monies initially used from his investment portfolio to fund the counseling have been exhausted to pay for counseling and the related travel expenses of the parties. I do not accede to the claimant's request that the respondent should reimburse her for her travel expenses for September 21, 2015, October 16, 2015 and November 16, 2015 given the fact that the monies from his investment portfolios have been exhausted. The monies ordered to be used for counseling were used for counseling.
- [44] The order of Master Taylor made June 25, 2013 with regard to child support has not been varied. The claimant asked that the order be enforced. The respondent asked that this portion of the application be adjourned so that he can bring his application to vary the above noted order.
- [45] I am not prepared to adjourn that portion of the claimant's application. There has not been a variation of the child support order. The respondent was aware of that and unilaterally reduced his child support payments. I will order that the respondent forthwith pay to the claimant the amount of \$1,811 for child support for both the months of October and November, 2015, less any monies already paid in that regard.
- [46] I will direct that the respondent pay child support to the claimant on the first day of each month pursuant to the order of Master Taylor made on June 25, 2013.

- [47] I will also order that the respondent pay the mortgage on the Cluculz Lake property on the first day of each month. That is when the mortgage is due and in doing so that will relieve a considerable amount of financial stress from the claimant.
- [48] I further order that the respondent forthwith provide a key for the Cluculz Lake property to the claimant.
- [49] I accept the evidence of the respondent that he has continued to pay the mortgage and all other expenses associated with the Cluculz Lake property. I am not satisfied that an interim order to have the property sold would be appropriate. There is no evidence that this property is a "wasting asset". I am also not satisfied on the evidence that it would not be harmful to the interests of the parties to order an interim distribution of that asset.
- [50] On June 24, 2015 I ordered that the respondent shall cause the companies in his control, C.B.C. and/or C.M.C. to pay \$9,765 per month to C.C.C. for lease payments. The respondent has paid the mortgage payments for C.C.C. and other related expenses since the order was made, however, he has not paid the full amount directly to C.C.C.
- [51] For clarity I order that the respondent shall cause C.B.C. and/or C.M.C. to pay the full amount of \$9,765 per month to C.C.C. for lease payments. The respondent shall not determine which expenses of C.C.C. are to be paid.
- [52] I am however satisfied based on the evidence of the respondent that a total of \$9,765 per month has been paid for the benefit of C.C.C. all be it not directly to that company. Given the interrelated nature of the three companies and the fact that the \$9,765 was paid towards debt obligations of C.C.C., I do not find that there are any outstanding lease payments to be made.

CONCLUSION

- [53] I dismiss the relief sought in Part 1 paras 1, 2, 5, 7 and 10 of the claimant's Notice of Application filed December 1, 2015.
- [54] I order that the respondent forthwith pay to the claimant amount of \$1,811 per month for child support the months of October and November 2015. I also direct that the child support payments made by the respondent to the claimant be made on the first day of each month.
- [55] I order that the respondent pay the mortgage payments on the Cluculz Lake property on the first day of each month.
- [56] I order that the respondent forthwith provide the claimant with a key to the Cluculz Lake property.
- [57] I order that the respondent shall cause C.B.C. and/or C.M.C. to pay the full amount of \$9,765 per month to C.C.C. for lease payments. The respondent shall not determine which expenses of C.C.C. are to be paid.

[58] The parties have had divided success on this application and will bear their own costs.

"R.S. Tindale, J."

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/16/12/2016BCSC1263.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/k-m-m-v-d-r-m-2016>

Prepared on 26 October 2026 · Esheria