
CANADA / JUDGMENT

Ko v. Beedham

2021 BCSC 1500

COURT

Supreme Court of British Columbia

DECIDED

23 June 2021

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2021 BCSC 1500 Ko v. Beedham

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ko v. Beedham,

2021 BCSC 1500

Date: 20210623

Docket: E69269

Registry: Nanaimo

Between:

Jee Yon Ko also known as Jeeyon Ko

Claimant

And:

Matthew Albert Beedham

Respondent

Before: The Honourable Mr. Justice Branch

Oral Reasons for Judgment

In Chambers

Appearing on her own behalf:

J. Ko

Appearing on his own behalf:

M. Beedham

Place and Date of Hearing:

Nanaimo, B.C.

June 23, 2021

Place and Date of Judgment:

Nanaimo, B.C.

June 23, 2021

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Introduction

- [1] The respondent seeks to reduce his support arrears primarily as a result of the fact that he lost his employment in February 2020, and did not obtain a new position until January 2021. He also seeks a reduction in his obligations for child and spousal support going forward, and an arrears credit to offset certain tax obligations.
- [2] The support obligations that the respondent seeks to change were established by court order filed October 24, 2016, which followed a summary trial before Justice Bracken. The basic facts of the relationship and the basis for the spousal and child support are noted in Justice Bracken's unreported oral reasons for judgment ("Reasons"). In this regard, I note the following pertinent comments from Reasons:

- [18] The consent order of February 7, 2014 set child support at \$1,392 per month for the support of both children, plus the additional amount of \$450 per month for daycare expenses. Those amounts were based upon the income for the respondent being C\$93,500 per year and the income of the claimant being \$3,000 per year.
- [26] The other relevant factor in calculating support is that the respondent is taxed at a somewhat higher rate in the United Kingdom and he is not able to deduct his child or spousal support payments from his income. Obviously, he is not able to deduct child support payments in Canada either under the current scheme of child support; however, the higher rate of taxation is a factor to consider, as is the inability to deduct spousal support. In addition, the respondent is in a new relationship with two young people to support from that relationship. Again, it is one of the factors to be considered under the Family Law Act.
- [32] Section 20(2) of the Canadian Support Guidelines allows an adjustment for the higher taxation rate the respondent experiences in the United Kingdom. Although I am not able to make any precise calculation, I have taken that factor into account in setting the guidelines for child and spousal support.
- [33] It is my view, subject to further submissions of counsel, that the respondent should pay child and spousal support based on an income of C\$95,000, as at today's rate of exchange, with the sum of \$3,840 per annum attributed to the claimant as income. I suggest that the calculation will result in a figure in the approximate range of \$2,500 per month. That amount is roughly C\$1,500 for child support and \$1,000 for spousal support. In addition, the figure of \$450 per month for day care is also appropriate for the months it is incurred.
- [34] I expect and hope that counsel can fine tune the calculations using the applicable guidelines. I have reduced the amounts to specify numbers so that my view of the appropriate range of amounts can be seen.
- [35] As for the exchange rate, I do not think it is useful to calculate more frequently than once every six months. The appropriate exchange rate for the date of this order and the amount that I have set should be in effect for a period of six months from today's date, and the parties should adjust on the first day of the sixth month following this order. The appropriate exchange rate for the following six-month period would then be determined. Again, I trust the parties will be able to find a suitable way of determining the applicable rate of exchange.
- [36] The amounts I have used are lower than the amount suggested in the very thorough submissions of Mr. Vining. I have used them to reflect what I believe is the reality of the current value in Canadian dollars of the sum of £58,179. I also accept the respondent's submission that some consideration must be given to the respondent's new family obligations and the higher and more restrictive tax regime that he lives under in the United Kingdom.

- [39] However once these proceedings are at least finally finished, I expect that the claimant's mental health might improve somewhat and, if she follows the recommended course of action of the vocational rehabilitation expert, as set out in the vocational report, she will undertake to improve her language skills as well. In view of that prospect, I direct that this order for child and spousal support be reviewed in two years to determine if the claimant is able to find employment and to earn an independent income.
- [40] I also direct that the issue of s. 7 expenses be reviewed at that time. It does not appear that it is an issue at the moment, but it may become a significant issue in the relatively near future. Until then, s. 7 expenses will be shared by the parties in proportion to their respective incomes.
- [3] In the order flowing from the Reasons ("Trial Order"), the approximate \$1,500 in child support was increased to \$1,559.
- [4] On June 14, 2017, the plaintiff sought to reopen the Trial Order so that the court could clarify the amount of the support payable, given that, inter alia.
- i. The Respondent was taxed at a higher rate in the U.K. than in Canada.
 - ii. The Respondent was not able to deduct his spousal support payments from his income.
 - iii. The Respondent also raised that he had two young children to support from his new relationship.
- [5] On July 21, 2017, the court considered the matter. The trial was not reopened, but the court did order that his spousal support payments be suspended.
- [6] On January 29, 2018, the court heard another package of requests from Mr. Beedham. The court set aside the suspension of spousal support made in the July 21, 2017 order, and the request to reduce the amount of child and/or spousal support was dismissed.
- [7] Certain accounting issues were subsequently resolved by the court and, on August 20, 2018, the arrears that had accrued up to that point were included in a final accounting determined by the court.
- [8] The review at two years contemplated by the Reasons has not yet occurred. As such, I am prepared to treat this application as that review, meaning that Mr. Beedham need not show a material change in circumstances in order to support his request for an alteration in the support amounts.
- [9] I turn now to the changes being sought.

Declaration of Income

[10] Mr. Beedham seeks a declaration that his income is presently \$130,900 CDN. That appears consistent with the information provided. Ms. Ko consents to this declaration, and I am prepared to issue the declaration.

Child Support

[11] Mr. Beedham seeks a reduction in the child support from its current \$1,559 level down to \$1,190. This is based on his own calculation of how much he would pay under the U.K.'s family law regime, the country in which he presently resides. I find that this calculation is not relevant to the determination of the proper outcome on this review, particularly given that no expert evidence was submitted to confirm or explain the basis for the U.K. family law structure. Further, I find that Mr. Beedham does not have the expertise himself to provide an opinion on what his obligations would be under U.K. law.

[12] Of greater moment is the application of the Canadian Child Support Guidelines. Given Mr. Beedham's current income of \$130,900 Canadian, Ms. Ko provided a DivorceMate calculation that appears to be correct in material respects, and which yields a child support figure of \$1,920.

[13] Mr. Beedham provided the following bases for an order that the child support payable should be lower.

(a) The cost of living in the U.K. is higher than in Nanaimo

[14] I find that there was inadequate evidence to establish that this is necessarily so. Mr. Beedham simply provided a page from a website. I cannot determine whether this is accurate or not. I note that in Canada, the Child Support Guidelines' basic mathematics do not account for regional variation in the cost of living, even between Nanaimo and potentially higher cost centres such as Vancouver and Toronto.

(b) The higher burden of government taxes and insurance fees in the U.K.

[15] Again, I do not find that there was adequate information for me to accept this submission. Mr. Beedham provided a website calculation of the national insurance premiums payable in the U.K., but I have no way of knowing whether the overall government services and taxation burden is higher there than in British Columbia.

(c) Ms. Ko's lack of need for child support.

[16] There is little information provided to support this assertion, and it is rebutted by Ms. Ko in any event. It does not appear that she is living a luxurious lifestyle. Furthermore, the Canadian Guidelines generally seek to avoid this level of assessment of need in establishing child support levels. As always, it is important to recall that child support is the right of the child, not a gift to the custodial parent.

- [17] On this requested review of child support, I find that the appropriate monthly figure should actually be increased to \$1,920 on a going forward basis. Paragraph 21 of the Bracken order shall be amended to provide for that increased amount effective today. I note that I expressly warned Mr. Beedham that if the court were being asked to review the appropriate amount of support for the children, the evidence might support a higher rather than a lower figure, but Mr. Beedham indicated that he wished to proceed nonetheless.

Spousal Support

- [18] The present spousal support being paid is \$1,000 per month. It is subject to the same review right. Mr. Beedham takes issue with this amount, relying on two primary points:
- (1) Mrs. Ko should be attributed a higher income than she was in the Reasons, and;
 - (2) In any event, the spousal support obligation should now come to an end.
- [19] On the income attribution question, Mr. Beedham suggests that Ms. Ko should be attributed \$20,000 annually. He suggests that she could, at a minimum, perform a minimum wage position. In B.C. that would translate to approximately \$28,000 per year. Mr. Beedham proposes a lower attribution at \$20,000. Applying the Spousal Support Advisory Guideline calculations to that figure yields a midpoint monthly figure of 1,435, with a suggested minimum duration of 5.75 years and a maximum duration of 11.5 years from separation. The parties are already 8.5 years post-separation, as the separation date was in or about January 6, 2013.
- [20] Ms. Ko admits that she has not applied for any employment positions since separation. She suggests that she remains unemployable given her health condition, her poor English, and the fact that she needs to care for her two children, who she says are autistic.
- [21] I accept that her English is not particularly strong, but I do not accept that there are no minimum wage positions that she could fulfil with her language level. She was able to make her own submissions in court, albeit with some difficulty. Furthermore, at the \$20,000 level, Mr. Beedham's proposal effectively asks only that she be deemed to have the capacity for a part-time minimum wage position at about two-thirds time.
- [22] In terms of the alleged inability to work in light of the need to care for her children, there was a large hole in the evidence. Specifically, there was no evidence from a professional indicating that the children's current condition is so poor that it requires fulltime care, or that Ms. Ko needs respite care. In the Reasons, at para. 13, the court noted that the children had been diagnosed with autism and have special needs, although the Reasons also note that this was disputed by Mr. Beedham. Before me, there was some evidence from Ms. Ko about the children having ongoing difficulties at school, but again without any third party validation. I find that there is simply not enough evidence to support a conclusion that Ms. Ko should be completely exempted from the obligation to pursue self-sufficiency as a result of her children's condition.

- [23] I agree with Mr. Beedham that it is appropriate to now establish an end point for the spousal support obligation. We are already at the midpoint of the SSAG recommended duration. I do accept that her language challenges merit a duration somewhat beyond the midpoint, as does the challenges faced by both she and her children. I find that the spousal support obligation should come to an end in one year, such that the last payment will be in June 2022.
- [24] In terms of the amount of going-forward spousal support, I accept Mr. Beedham's proposal that Ms. Ko be attributed \$20,000 annually. I also find that the SAGG midpoint position with that income level is reasonable. As such, the going forward amount payable through June 2022 shall be a midpoint monthly figure of \$1,435.

Cancellation of Certain Basic Child and Spousal Support Arrears

- [25] Mr. Beedham gave evidence that he was unemployed from February 2020 until January 2021. He lost his position as a professor at a Chinese University unexpectedly. He seeks a declaration cancelling any arrears that accrued over this period. I agree that this is reasonable in the circumstances: *The Director of Maintenance Enforcement v. Jamal*, 1992 CanLII 2085; *Kelsey v. Lindsay*, 1996 CanLII 2557. Mr. Beedham has given evidence of his efforts to find work over that unemployed period. Given that he was dismissed from a position in China and returned to the U.K., and that that employment gap occurred during the middle of a worldwide pandemic, it is understandable that there would be a gap of some months before he could find work again, particularly given that his position as a university professor is not the type of position that can be easily or quickly re-established. The cross-border challenges also provide a reasonable explanation as to why he would not have been entitled to unemployment insurance benefits during that period. For her part, Ms. Ko questions whether Mr. Beedham was actually out of work at all. I find that Mr. Beedham has provided sufficient evidence to establish that this was indeed the case.
- [26] I find that it would be grossly unfair not to cancel the arrears that accrued over this period: FLA s. 174. There was no material delay in the making of his application.

Cancellation of Daycare-Associated Arrears

- [27] Mr. Beedham seeks an order that any arrears that have accrued as a result of his obligation to pay his share of \$450 a month in daycare expenses be cancelled.
- [28] Ms. Ko agreed that no such expenses have been incurred since December 2019, and that the children have been home with her since then. However, she indicated that she would still like to maintain that term as she really requires some respite-type care.

[29] I find that a need for respite care is not supported by the available evidence. I find that the obligation to pay daycare should cease immediately. It is not necessary to make any retroactive orders since I do not see that any daycare arrears have accrued since December 2019, based on the Family Maintenance Enforcement Program printout in the record. This is consistent with Ms. Ko's representation that she advised FMEP of the change in the children's status.

Canada Revenue Agency Demand

[30] Mr. Beedham seeks an arrears credit of \$5182 because he says the CRA have been pursuing him for taxes that he says he should not have had to pay because they arose from rental income on properties that are now in Ms. Ko's control.

[31] However, Mr. Beedham did not provide any documentation establishing the basis for the CRA demand. He simply attached an invoice from CRA that has no such explanation. I find that he has not met the evidentiary burden necessary to receive such an order.

Costs

[32] I find that there was mixed success on this application such that both parties should bear their own costs.

Summary

[33] In summary, and tracking Mr. Beedham's application:

- a) Paragraph 1 is granted on consent.
- b) Paragraph 2 is granted.
- c) Paragraph 3 is rejected.
- d) Paragraph 4 is rejected.
- e) Paragraph 5(a)'s application to replace paragraph 21 of the trial order is granted, save that the \$1190 requested should be \$1920.
- f) Paragraph 5(b)'s request to delete paragraph 22 of the trial order is rejected. Rather, paragraph 22 shall be amended to increase the \$1,000 to \$1,435 starting July 1, 2021 and an end point applied of June 1, 2022.
- g) Paragraph 5(c) shall be granted.
- h) As a necessary implication of the attribution of \$20,000 in income to Ms., Ko, and the new income level for Mr. Beedham, the percentage ratio for s. 7 expenses in paragraph 26 of the Trial Order must also be altered to 87 percent to Mr. Beedham and 13 percent for Ms. Ko.
- i) Each party shall bear their own costs of this application.

"Branch J."

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