

CANADA / JUDGMENT

Laidlaw v. Laidlaw

2020 BCSC 1055

COURT

Supreme Court of British Columbia

DECIDED

16 July 2020

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2020 BCSC 1055 Laidlaw v. Laidlaw IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Laidlaw v. Laidlaw, 2020 BCSC 1055 Date: 20200716 Docket: E057541 Registry: New Westminster Between: Janet Leslie Laidlaw a.k.a. Janet Leslie Van Meenen a.k.a. Janet Leslie Hjorth Claimant And Thomas Harry Peter Laidlaw Respondent Before: The Honourable Mr. Justice Punnett Reasons for Judgment Counsel for the Claimant: G.K. Kang Counsel for the Respondent: J.M. Hibbard Written Submissions Received: July 9, 2020 Place and Date of Judgment: New Westminster, B.C. July 16, 2020

Introduction

- [1] The parties' efforts to resolve matters since their separation have been unsuccessful hence this application. The claimant seeks interim spousal support under the Divorce Act, R.S.C. 1985 (2nd Supp.), c. 3 and the Family Law Act, S.B.C. 2011, c. 25. The application came before the court as a written submission.

Background

- [2] The parties began living together in a marriage-like relationship in January 1998 and were married on September 22, 2000. They separated September 23, 2017. The claimant left the matrimonial home and moved to a condominium purchased after separation in her name alone, however she recently sold it to avoid foreclosure. She resides with her sister as she lacks the means to have her own residence. The respondent resides in the former matrimonial home, which remains in joint tenancy.
- [3] The claimant is 52 years of age. She suffered a brain aneurysm in September 1998. She has not been employed since. Her only source of income during the marriage was, and remains, Long-Term Disability payments through Desjardins and Canada Pension Plan benefits. Her 2019 income from those sources totalled \$16,079.16.

- [4] The respondent is 56 years of age and is employed by Optimil Machinery Inc. in the forestry industry. His income in 2018 was \$90,545, consisting of \$83,140 in employment income and \$7,405 in Worker's Compensation benefits. In 2019 his employment income was \$97,012.87 and \$7,512 in Worker's Compensation benefits, for a total of \$104,524.87. He also receives \$322 net rental income per annum.
- [5] The respondent has paid no spousal support since the parties separated. Position of the Claimant
- [6] The claimant seeks compensatory and needs based support in the mid-range of the Spousal Support Advisory Guidelines (the "Guidelines") which based on the respondent's anticipated 2020 income of \$106,499 (as calculated by Divorcemate) and the claimants of \$16,079, provide a range of \$2,192 at the low end, \$2,557 at the mid-range and \$2,922 at the high end. Position of the Respondent
- [7] The respondent submits that his income for 2020 from employment, rental income and worker's compensation benefits will be \$81,580, not as claimed by the claimant. He acknowledges the claimant is entitled to support but submits that it should be \$750 per month, which is below the low end of the Guidelines range which is \$1,615 based on his income of \$81,580. He advances that claim given his obligation to service the \$1,750 per month mortgage payments on the former matrimonial home and the claimant's refusal to agree to its sale. He submits that once the former matrimonial home is sold spousal support can be reviewed. Findings of Fact
- [8] There is a dispute over when the parties began cohabiting as the claimant states it was January 1998 and the respondent July 2000. This does not require resolution on this application given the admitted length of the relationship. Throughout the entire history of the relationship the claimant was not employed. The evidence does not establish that she can currently work.
- [9] The claimant disputes the respondent's estimated income for 2020 noting that his July 3, 2020 pay statement for the period ending June 28, 2020 shows a gross income for the year to date of \$47,064.74. This despite his work absence in April 2020 because of COVID-19 limitations. Given that amount earned in one-half of the year, there is no evidence he will not earn an equivalent amount for the remaining one-half of the year. I find that his income for 2020 will be \$94,129.48 plus annual net rental income of \$322 plus his Worker's Compensation benefits of \$7,615 for a total Guidelines income as calculated by Divorcemate of \$106,499, not the \$81,580 he claims.
- [10] In addition, the respondent's assertion the \$1,750 per month mortgage payment is a basis for a reduced spousal support payment is contradicted by his own submission that he receives annual rental income of \$21,600 with a net of \$322 per year. I am satisfied that his rental income covers his mortgage payment. I reject his submission that he cannot afford Guidelines spousal support because of his mortgage payments and other house related costs and his attempt to blame the claimant being responsible because they cannot agree on the

sale of the former family home. I note there is no evidence he has sought the sale of the home by application to the court. Discussion

- [11] The Divorcemate calculations for spousal support based on the parties' respective incomes show a range with a low end of \$2,192, a mid-point of \$2,557 and a high end of \$2,922.
- [12] On an interim support application as observed by Justice Joyce in *R.C.G. v. C.L.G.*, 2010 BCSC 1596 at para. 11, "the focus is very often on the one spouse's needs and the other spouse's ability to pay, rather than on compensatory factors". He then referred to an earlier decision of his as follows:
- [11] In *Johnson v. Johnson*, [1993] B.C.J. No. 2140 (S.C.) at para. 16, I discussed some of the reasons why such an approach is necessary:
16. ... It is obvious that the determination of entitlement to and quantum of spousal support upon the dissolution of the marriage under the Divorce Act, 1985 requires consideration of a variety of factors through an examination of the evidence relating to the whole history of the relationship, the spouses' roles in that relationship, the economic circumstances throughout the marriage and, most particularly, the economic consequences of the marriage and its breakdown. In many cases, perhaps in the majority of cases, there will be insufficient evidence available at the chambers hearing for interim support to enable the court to engage in this in-depth consideration. It will often be too early to make determinations as to the probable degree of success of one spouse re-entering the work force and achieving self-sufficiency. It may be very difficult or impossible to attempt a determination of the economic advantages or disadvantages arising from the marriage or its breakdown and what degree of compensatory maintenance may be appropriate until the property division has been resolved. While it is an error for the chambers judge or master to consider only the parties' needs and means to the exclusion of other relevant factors, if they are shown to exist, it is my opinion that on an interim application the factors of means and needs will often assume the greatest importance.
- [13] Given the claimant is disabled and on a limited income, there is no issue regarding her entitlement. The respondent raises the fact the claimant is debt free and has \$164,000 in savings from the sale of the condo she had to sell. He appears to imply her financial circumstances are better than his given his debts and expenses.
- [14] The claimant need not further deplete her assets. She deposes she has been doing so since the parties' separation as the respondent has not paid spousal support.
- [15] The respondent claims monthly expenses of \$7,902.17 although this includes the mortgage payment of \$1,750. He has the ability to pay spousal support although that will require adjustment of his expenses. The sale of the house may as well be required.

- [16] I order interim spousal support be paid at the low end of the Guidelines range in recognition of the financial obligations of the respondent, including his responsibility for the former matrimonial home and his ability to pay, as well as the needs of the recipient. The respondent shall pay \$2,192 per month in interim spousal support commencing August 1, 2020. This leaves the respondent with approximately 61% of the parties' net disposable income. Costs
- [17] As the claimant has been successful on this application, she is entitled to her costs in any event of the cause. "The Honourable Mr. Justice Punnett"

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