
CANADA / JUDGMENT

Landa v. Landa

2019 BCSC 1122

COURT

Supreme Court of British Columbia

DECIDED

10 July 2019

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2019 BCSC 1122 Landa v. Landa

THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Landa v. Landa,

2019 BCSC 1122

Date: 20190710

Docket: E5236

Registry: Campbell River

Between:

Veronica Thelma Landa

Claimant

And

Gilbert Ross Landa

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment in Chambers

Counsel for the Claimant:

Michael K. Cantwell

Counsel for Respondent:

Karen D. Stevan

Place and Date of Trial/Hearing:

Campbell River, B.C.

December 6, 2018

Place and Date of Judgment:

Campbell River, B.C.

July 10, 2019

- [1] The respondent, Mr. Landa, applies in a family summary trial for two orders. Firstly, Mr. Landa seeks a final order that child support for his daughters, Stephanie, born December 13, 1991 and Haley, born April 1, 1998 terminate as of December 31, 2010. Secondly, Mr. Landa seeks a declaration that the arrears of child support payable by him are in an amount of \$2,524.
- [2] The former Ms. Landa is now known as Ms. Billows and I will refer to her current name although the style of cause has not been amended.
- [3] The order sought is to determine how much child support should Mr. Landa have paid from the date of the 2002 order until his daughters were no longer children of the marriage.
- [4] Ms. Billows does not oppose a final order being granted in this matter but submits the arrears of child support are \$22,576 and not \$2,524 as submitted by Mr. Landa.
- [5] On November 21, 2017, on application of Ms. Billows and FMEP, a judge of the Provincial Court of British Columbia ordered arrears of child support to be owing of \$26,746.83 plus interest and statutory fees. Mr. Landa was also ordered to pay \$100 per month towards the arrears which, to say the least, appeared to reflect the minimal income which Mr. Landa was earned for many years. At that hearing, Mr. Landa was self-represented.
- [6] As a provincial court judge does not have jurisdiction to amend, vary or set aside a Supreme Court order, it is clear that the order of November 21, 2017 is a nullity which has led to the application now before this court.

Factual Background

- [7] There were two children born of this marriage, Stephanie, born December 13, 1991 and Haley, born April 1, 1998 which as of the date of the hearing made Stephanie 27 years old and Haley 20 years old.
- [8] In 2002, the parties consented to an interim order under the Divorce Act R.S.C. 1985, c.3 requiring Mr. Landa to pay \$343 per month in child support for their two daughters based upon his Guideline income at the time of \$23,040. The order from 2002 is still in effect and has never been varied. The Family Maintenance Enforcement Program in B.C. has continued to enforce payments due under the 2002 order.

- [9] It is agreed by the parties that child support for Stephanie terminated in June 2011, six months after she turned nineteen years old.
- [10] Similarly, it is agreed that child support for Haley terminated in April 2018.
- [11] It is not disputed that the children were, at all material times until they achieved the age of majority or where beyond that age and continued to be "children of the marriage", that the children lived with their mother.
- [12] Therefore, it is agreed that Mr. Landa had no further obligations for child support for either daughter after the above dates.
- [13] What is left to consider is the amount of arrears of child support that is owing under the interim order made in 2002 and the terms for payment of the arrears.
- [14] Mr. Landa has deposed in his affidavit #1 dated June 2, 2018 that between September 2002 and December 2009, he paid child support of \$27,967.89 whereas the 2002 order covering that period of time required payment of \$28,812 which results in arrears of \$844.11.
- [15] Ms. Billows disagrees with the amount Mr. Landa alleges has been paid and in her 2nd affidavit made September 13, 2018 deposes that the corrected amount owing to her for past child support up to August 1, 2018 is \$22,576.61.
- [16] Mr. Landa further deposes in the same affidavit that his circumstances changed in 2011 in that his income was limited to \$13,811 which would have resulted in an amount payable under the Guidelines of \$140 per month as opposed to \$343 per month as stated in the 2002 order.
- [17] Mr. Landa's calculation of the arrears of child support are based upon his declared and assessed income. He submits his income between 2011 and 2017 was so low that it did not support any amount payable for child support under the Guidelines.
- [18] Also attached to his affidavit #1 are assessments from CRA of his income between 2012 and 2017 which range between \$2012 and \$8,863, never above or below those amounts. He deposed in his 2nd affidavit of September 25, 2018 as to the reasons why his income was so low in those years which include:
- In 2009, Mr. Landa was living in Ontario with his second wife and their two sons and lost his trucking job, became depressed, had a problem with alcohol which affected his marriage and resulted in him attempting suicide, eventually being admitted into a psychiatric hospital in October 2010.
 - Due to his problems described above, he deposes that he stayed home to care for his sons and earned no income. He separated from his second wife in the spring of 2012 and moved into his mother's home in Qualicum Bay, B.C. He deposed to having no money and that his mother paid for his plane ticket.

- On arriving in B.C., he worked at a seafood company and earned \$7,977 in 2013 according to his CRA assessment after which he returned to Ontario to care for his sons once again but continued to be depressed and was unable to control his alcoholism which led to a second separation from his second wife.
- In 2014 he moved to Washington State and lived with his brother during which he received \$100 per month from his brother which was paid to Ms. Billows for child support. His problems with alcoholism and depression have continued and between 2016 and 2018 he lived principally in a van which had been purchased by his father.
- He has worked on occasion but due to his depression and alcoholism, the tenure of his jobs have been short.
- In the fall of 2017, Mr. Landa was designated as a Person with Disability which provided a disability pension and an income of \$8,863 in 2017.
- Attached to his 2nd affidavit is a letter from his consulting psychiatrist confirming he had treated Mr. Landa for Post-Traumatic Stress Disorder since November 2016. The psychiatrist also reviewed Mr. Landa's history of depression, alcoholism and treatment for the same as far back as 2011. Also attached was a Discharge Summary of records from the Ontario hospital with diagnoses of depression, asthma and other disorders.

- [19] Although it is not common to accept letters from physicians as to the condition of a patient without an affidavit from that physician, in this case, it is readily apparent that Mr. Landa could not afford a medical report included in an affidavit. I have no reason to doubt what was said in those letters is the best evidence available in the circumstances. As a result of his personal situation and without evidence to the contrary from Ms. Billows, I accept that Mr. Landa has suffered from the above maladies for several years, dating back to approximately 2009.
- [20] Earlier in these reasons, I referred to a Provincial Court order in which the judge ordered payment of \$100 per month by Mr. Landa on account of substantial arrears. Although that order was a nullity for the reason referred to above, I accept that the Provincial Court judge was realistic in ordering payment of \$100 per month on account of the arrears. There has been a significant and material change in Mr. Landa's income since the time of the 2002 order.
- [21] I have reviewed the several authorities provided by both counsel including *D.B.S. v. S.R.G.*, [2006] 2 S.C.R. 231 and *Earle v. Earle*, 1999 BCSC 283 and find that over the past eight to nine years, it would not have been possible for him to earn sufficient funds to be able to satisfy his obligation under the 2002 order. He has only been able to carry on with his life in general with the support of his family and others.
- [22] However, with Mr. Landa now receiving a disability pension, he is able to pay \$150 per month on account of the arrears which I order him to pay for a period of 48 months from the date of the hearing of this matter in satisfaction of his obligation for arrears of child

support. The eldest daughter has been independent for several years and the younger daughter, Haley, has suffered with health issues and has applied for a disability pension so that she, at age 21, may withdraw from the support of her mother and hopefully work, at least part time. The above nominal payments will assist Haley in particular and are in an amount that Mr. Landa can realistically afford.

[23] There will be no order for costs in these circumstances.

"Jenkins J."

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