

CANADA / JUDGMENT

Lawson v. Lawson

2024 BCSC 1586

COURT

Supreme Court of British Columbia

DECIDED

24 July 2024

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2024 BCSC 1586 Lawson v. Lawson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Lawson v. Lawson, 2024 BCSC 1586 Date: 20240724 Docket: E180903 Registry: Vancouver Between: Gayle Robyn Lawson Claimant And Blake James Lawson Respondent Before: The Honourable Mr. Justice Thomas Oral Reasons for Judgment In Chambers The Plaintiff, appearing in person: G. Lawson The Respondent, appearing in person: B. Lawson Place and Date of Trial/Hearing: Vancouver, B.C. June 18, 2024 Place and Date of Judgment: Vancouver, B.C. July 24, 2024

[1] THE COURT: This is an application to determine the relevant income for the respondent for purposes of child support and proportionate allocation of s. 7 expenses. The claimant says that the respondent's income should have been higher than what was used from 2021 to 2024, and the respondent says his income should be lower than what was used during the same period. The balance of the relief sought in the notice of application has been abandoned.

Background

- [2] The Lawsons were married on July 25, 2009, and separated October 14, 2017.
- [3] There is one child of the marriage, born September 21, 2009, Makayla. She has severe ADHD and perhaps autism. She attends a private school for children with severe learning disabilities, it is likely she will not achieve independence at age 19.
- [4] The claimant is an executive at a bank who earns a base salary and usually a significant bonus which is determined at the end of the year.
- [5] The respondent is a pilot with no post-secondary education. He worked for Sunwing until the end of 2019, after which he obtained employment at Air Canada. He was furloughed in February of 2020 by Air Canada due to the COVID-19 pandemic. He was not recalled to work until the spring of 2022. After being recalled his salary consists of a full-time base pay with the opportunity to work overtime, which he usually does. His final annual income is therefore only determined at the end of the year. It is expected his income will increase in the fall of 2024 due to labour negotiations and/or a strike.

- [6] The parties entered into a consent order in 2020. The following terms of the order are relevant to this application.
1. BY CONSENT, the parenting arrangements made with respect to Makayla qualifies as shared custody within the meaning of the Federal Child Support Guidelines (the "Guidelines").
 2. BY CONSENT, the basic child support payable by the Claimant to the Respondent on her current Guidelines income of \$123,800 is \$1,145.
 3. BY CONSENT, the basic child support payable by the Respondent to the Claimant on his current Guidelines income of \$45,000 is \$423.
 4. BY CONSENT, commencing October 1st, 2020, and continuing on the first day of each month thereafter until further review and agreement of the parties in writing or court order, the Respondent will pay the Claimant \$423 and the Claimant will pay the Respondent \$1,145 (the "Child Support").
 5. BY CONSENT, in order to comply with Canada Revenue Agency requirements to allow the parties to claim Makayla as eligible dependents as set out herein, and notwithstanding that child support should be calculated pursuant to the set-off formula and that the net result of the parties meeting their respective child support obligations has the Respondent receiving a net amount of \$722 per month, both the Respondent and the Claimant will have paid the support amounts set out in the preceding paragraphs to each other.
 6. BY CONSENT, the Child Support and proportionate sharing of the Special Expenses, as provided for herein, will be non-variable until the first review of child support in May, 2021 regardless of any change in circumstances of either party.
 17. BY CONSENT, each year, commencing in June, 2021, the Respondent and the Claimant will exchange all information required by the Guidelines by June 1st to determine each of the Respondent and the Claimant's respective incomes pursuant to the Federal Child Support, including but not limited to the following:
 - a. a copy of his or her income tax return for the previous calendar year;
 - b. a copy of his or her notice of assessment or reassessment for the previous calendar year;
 - c. a copy of the financial statements for any incorporated or unincorporated business operated by the party for the previous calendar year.
 18. BY CONSENT, in addition to the financial information in the preceding paragraph, in the event that either the Respondent or the Claimant is self-employed, that party's obligation to disclose financial information annually will include the obligation to disclose the information set out in Section 21(1)(d) through (f) inclusive, of the Federal Child Support Guidelines.

19. BY CONSENT, commencing May 1, 2021, the Claimant will pay ongoing child support as follows:
 - a. she will pay based on her base salary;
 - b. upon 14 days of receipt of any bonus, she will retroactively adjust (to May 1st) the set off amount of child support and the proportionate sharing of Special Expenses to reflect her income including the bonus;
 - c. the new amount of child support and proportionate sharing of Special Expenses shall be retroactive to May 1st of each year, commencing 2021.
 - d. she will commence paying the new amount of basic child support and proportionate sharing of Special Expenses reflect of her base salary and bonus in the month following the month she receives the bonus, for greater clarity, if she receives the bonus in December then the new amount of support shall be paid commencing January 1 of the following year. Commencing in May, of that same year, the Claimant will pay the child support and proportionate sharing of Special Expense on her base salary, which will be subject to same adjustment as provided for herein;
 - e. The Claimant will provide documentary proof of her bonus each year upon receipt of the bonus.
 20. BY CONSENT, following the exchange of income information as set forth in the preceding paragraphs, the Respondent and the Claimant will review and adjust, if necessary, the Child Support payable by each party and proportionate sharing of the Special Expenses.
 21. BY CONSENT, at the May 2021 review of child support, there will be no retroactive adjustment to child support or the proportionate sharing of the Special Expenses and any increase or decrease in the child support will be prospective only.
 22. BY CONSENT, the new amount of child support will be effective as of May 1st of each year.
- [7] In reviewing the consent order, it is clear that the order stipulates:
- a) the financial information that is to be exchanged by the parties;
 - b) how the claimant's income will be calculated in 2020, and then how her income will be calculated going forward;
 - c) what income will be attributed to the respondent for 2020. The order is silent as to how the respondent's income will be calculated after 2020.
- [8] There is no dispute over the claimant's income. There is no agreement on how the respondent's income will be calculated after 2020. Despite no agreement on the respondent's income, the following incomes were used on an interim basis for calculating child support and for s. 7 purposes:

- a) in 2020, the respondent's income was \$45,000;
 - b) in 2021, \$45,000 was used again. Although the respondent's income tax returns indicate he earned \$83,000, \$58,000 came from cashing out his RRSPs. The rest came from COVID-related benefits.
 - c) in 2022, \$83,000 was used, but the respondent only earned \$47,267 from Air Canada. The respondent returned to work sometime in April of that year;
 - d) in 2023, \$83,000 was used, and the respondent's income was approximately \$75,000.
 - e) in 2024, \$115,000 was used. The respondent expects to earn a minimum of \$72,000 in 2024, and it is quite likely or possible that he will earn between 85 to \$95,000.
- [9] There is considerable distrust and animosity between the parties such that it is difficult to discuss, and nearly impossible for them to resolve even minor disputes. Since the consent order, additional difficulties have arisen due to the fact that support is set in May, but final incomes are not determined until the end of the calendar year causing the parties to make complicated retroactive calculations during each calendar year. Given the current circumstances of the parties, this aggravates an already difficult situation and in my view is unworkable.
- [10] The two main issues to be resolved during this application are:
- a) what income should be attributed to the respondent during his furlough caused by COVID-19 when he was unable to fly; and
 - b) should the respondent be attributed income commiserate with what he would have earned had he remained at Sunwing while he is working at Air Canada. Furlough Income
- [11] The respondent has no post-secondary education and has always worked as a pilot. The consent order attributed \$45,000 to him for 2020, which was based on working full-time at an hourly wage based on 50-work weeks per year at 35 hours per week. Given the respondent's work history, this is a fair compromise. I see no reason why the same calculation would not be appropriate to use for 2021. I therefore attribute \$55,000 to him for 2021. I have some additional income to the attributed income for this year to reflect the fact the respondent was off work for an entire year as opposed to the majority of the year in 2020.
- [12] Although the respondent's income in 2021 was \$83,000, more than \$55,000 of this was created by the respondent cashing his RRSP income to support himself and payments for his child. In my view, given the financial distress reflected in the respondent's records and the impact on his standard of living compared to the claimant, it is not appropriate to use the RRSP income in calculating income for child support and s. 7 purposes.
- [13] With this adjustment, the remaining income earned by the respondent through covid related benefits was less than the \$55,000 in income I attribute to him, \$55,000 will be used for child support and s. 7 purposes for 2021. Sunwing versus Air Canada Income

- [14] The claimant says the respondent has failed in his obligations to earn income by moving to a lower-paying job with Air Canada. Therefore the income that he earned for Sunwing should be attributed to him while he works at Air Canada until the Air Canada income exceeds what he would have earned at Sunwing.
- [15] The respondent says that, although Air Canada initially pays less income, it offers the advantage of job security and perhaps future greater earnings. Sunwing is a vacation-based airline and lacks the stability of Air Canada. In my view there is a much greater risk that Sunwing, might cease operations with little notice in comparison to Air Canada. In addition, after four to five years, it is likely that Air Canada will pay more than Sunwing.
- [16] In my view, it was reasonable for the respondent to seek increased job security and higher future income in these circumstances. In my view, this change in employment does not give rise to the need to attribute income to what he would have earned at Sunwing while he works at Air Canada. The claimant ignores the real risk that the respondent might become unemployed without any immediate means of earning income should he have remained at Sunwing.
- [17] The respondent returned to work for Air Canada in the spring of 2022. He earned \$47,267 in income. In addition, he should be attributed an additional \$12,733 to account for the period of time that he was furloughed in 2022 before he returned to work. Therefore, his income for child support and s. 7 purposes for 2022 will be \$60,000.
- [18] In 2023, he earned \$75,182, and this should be used as his income. Calculation of Income
- [19] A further concern raised by the claimant is that the respondent is not working enough overtime. The respondent is required by Air Canada to work full-time hours and then has the ability to earn income through overtime, which he has been pursuing, but it is difficult or impossible to predict at the start of the year. There is no legal obligation for him to work overtime, but if he does work overtime this income falls within income for child support and s. 7 purposes.
- [20] It is clear that the parties intend and have been attempting to pay child support and s. 7 expenses based on their actual incomes. However, given the manner in which both of them are paid and their inability to resolve disagreements, the current methodology, in my view, must be changed. 2024 Income and Income Going Forward
- [21] In my view, the parties need a way to determine what income will be used from May to May of each year. The respondent estimates that his income for 2024 will range from \$85,000 to \$90,000. Therefore, I will assign him income of \$90,000 for 2024.
- [22] For child support and section 7 purposes the claimant's income for 2024 will be the income she earned in 2023 recorded in her tax return filed in 2024 and subsequent notice of assessment.

- [23] For 2025, each party will use their 2024 income as recorded in their tax return filed in 2025 and reflected in their subsequent assessments. This methodology will be used going forward until support and section 7 payments are no longer required. Result
- [24] For these reasons I make the following order.
- [25] The following incomes will be used for calculation for child support and s. 7 expenses: · 2021: Claimant, 2021 earned income as indicated on her tax return filed in 2022; Respondent, \$55,000. · 2022: Claimant, 2022 earned income as indicated on her tax return filed in 2022; Respondent, \$60,000. · 2023: Claimant, 2023 earned income as indicated on her tax return filed in 2024; Respondent, \$75,182. · 2024: Claimant, earned income as indicated on her tax return filed in 2024; Respondent, \$90,000. · 2025: Claimant, 2024 earned income as indicated on her tax return filed in 2025; Respondent, 2024 earned income as indicated on tax return filed in 2025. · The same methodology will be used going forward as long as payments are required. Costs
- [26] Although the respondent has been the more successful party in this application, in my view he is not entitled to costs. He has refused to make timely responses to applications and refused to cooperate in pursuing mediation or arbitration as required by the consent order.
- [27] Therefore, each party will bear their own costs for this application. Order
- [28] Either party may request a copy of the clerk's notes and receive a copy of the notes by email.
- [29] The claimant will draft the order and provide it to the respondent by email. If the respondent does not sign the draft order, or provide comments to the draft order within seven days, the respondent may submit the order for entry with the registry.
- [30] If the parties are unable to agree on the form of the order, they may have the terms of the order set by the registrar.
- [31] These terms should be included in the order. Additional Issues
- [32] If the parties are unable to agree on the amount of child support and s. 7 expenses arising from this order, they are directed to appear before the registrar to resolve the dispute; that is, they do not appear before me. It is set for a registrar's hearing.
- [33] This term should be included in the order as well. "Thomas J."

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