

CANADA / JUDGMENT

Leslie v. Leslie

2000 BCSC 343

COURT

Supreme Court of British Columbia

DECIDED

24 February 2000

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Citation:

Leslie v. Leslie
Date: 20000224
2000 BCSC 343

Docket:

D12375
Registry: Kelowna
IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

KATHERINE JEAN LESLIE
plaintiff

AND:

william james leslie
defendant

REASONS FOR JUDGMENT

OF THE

HONOURABLE madam JUSTICE beames

Counsel for the Plaintiff:

John Maguire

Counsel for the Defendant:

G. Leigh Harrison, Q.C.

Date and Place of Hearing:

February 14, 2000

Kelowna, B.C.

- [1] The plaintiff and the defendant were married in August of 1972, when the plaintiff was 18 and the defendant was 21. They separated in early 1994, and on October 4, 1994, an interim maintenance order was made. That order required that the defendant pay to the plaintiff for her support the sum of \$600.00 per month and for the support of their younger child, Briann, then 14, the sum of \$400.00 per month. No support was ordered to be paid for the couple's older child, Benjamin, who was then 18. In February of 1995, the parties entered into a separation agreement, which dealt with property and custody of the children, but was silent with respect to maintenance issues. A divorce order was granted on April 29, 1996, and all corollary relief was adjourned generally.
- [2] The matter comes before me now on the Notice of Motion of the defendant husband. He seeks, pursuant to Rule 18A, a final determination with respect to the duration of spousal support, and in particular, on the face of his motion, seeks an order that the spousal maintenance be terminated 31 days from the date of the order. The issue of quantum of maintenance, if any, for the future is not before me. Apparently counsel have spoken about a further application, or perhaps trial, on the issue of quantum, after the younger child becomes financially independent. The parties hope that will occur soon, as the daughter is currently in her final term of an educational program.
- [3] It is necessary, in the context of this application, to summarize some further background. The plaintiff, as I have indicated, was 18 years old at the date of the marriage. She became engaged to the defendant while she was in high school, and married him in the summer following grade 12, which she had successfully completed. Her courses in high school had a secretarial and clerical focus, rather than having an academic focus. She had applied for, and obtained, a job at the Nelson Courthouse, to commence in July of 1972, but declined the job as she and the defendant planned to live in Trail. At that time, the defendant was employed as a labourer at Cominco in Trail, and in fact, he has remained employed at Cominco ever since.
- [4] From the time the parties were married until 1991, the plaintiff had no employment outside of the home. The plaintiff and the defendant made this arrangement by mutual consent. In 1991, the plaintiff obtained part-time work at the 7-11 store in Trail, and remained employed there until she left Trail, upon the parties' separation. Following separation, the plaintiff moved to Vernon, originally with just the parties' younger child, but she was joined shortly thereafter by the older child as well. She was initially unemployed, and appears to have been on a UIC medical claim, but was applying for work by September of 1994. She obtained her first job in Vernon in December of that year, and has worked at a variety of jobs since. The jobs have been in retail, as a clerk, and with a motel as a chambermaid.
- [5] In 1996, she participated in a Job Club, sponsored by Employment Canada. By some unspecified date in 1996, she was working as a clerk at Nolan's Drugs in Vernon. She enrolled at the Okanagan College in level one and level two accounting courses in the fall of 1997. She completed the level one course, but withdrew from the second course as a result of conflicts between her scheduled working hours and the hours of the course. By August of 1999, she

was working 32 hours per week at Nolan's, and was being paid \$8.35 per hour with some benefits. In August of 1999, another employee went on sick leave, and the plaintiff has been working in the accounting office at Nolan's since that time. She now works between 32 and 40 hours per week. She has become somewhat computer literate with the assistance of training given to her by the parties' daughter, and she is receiving on the job training in accounts receivable and payable. Her hourly wage is currently \$9.09 per hour. The regular employee is about to return to work on a work hardening program through WCB, and it is possible that the plaintiff will be returned to her former position and have a reduction in her hours and in her pay rate to \$8.40 per hour.

- [6] The defendant, who has since remarried, still works as a labourer for Cominco in Trail. His new wife works, but she has refused to disclose her income. With respect to the defendant's income, he earned between \$42,832.00 and \$49,752.00 for each of the years 1994 to 1998, and earned more than that for 1999.
- [7] Starting in 1996, some attempts were made by the defendant to determine what efforts the plaintiff was making with respect to achieving self-sufficiency. In late 1996, interrogatories were served on the plaintiff. Included in the questions posed were questions with respect to whether the plaintiff had taken advantage of any job skills upgrading programs, what jobs she had applied for and what her plans were with respect to obtaining full time work.
- [8] In October of 1997, counsel for the defendant wrote to counsel for the plaintiff and said the following:

Mr. Leslie has asked me to give formal notice to Mrs. Leslie that she needs to take prompt steps to either become fully employed at a wage upon which she can be self-supporting or to get a plan in place, whereby she can get the training to do so. If this has financial consequences for Mr. Leslie for a short term while she is training, he is prepared to consider that, but your client may anticipate an application to the Court late next Spring to terminate her spousal support particularly if she has not satisfied him that she is making reasonable efforts to become self-supporting.

- [9] Nothing changed as a result of this letter, which counsel for the defendant says was just an effort to get the plaintiff to move forward with a self-sufficiency plan. Examinations for discovery were conducted in the summer of 1999. In the discovery of the plaintiff, the issue of retraining and full time employment were canvassed, and the plaintiff indicated that she planned to get into a situation where she would be able to be financially independent. She said that she would love to take a course, but that she had been doing what she thought was the best that she could.
- [10] After the discovery, counsel for the defendant wrote again to counsel for the plaintiff, and said that he was of the view that the plaintiff could be doing more to improve her situation. He said:

I have not reviewed my correspondence [referring to the letter of October 7, 1997, quoted above] to see if there was an end date in terms of my client's offers to be of assistance should your client come up with an appropriate plan for educating herself. Obviously, the reason he would agree to pay more support for an interim period would be with the hope of being rid of that obligation in the long run. You indicated to me that your response to the proposal had been negative because it proposed an end date. With respect, I think Mrs. Leslie's responsibility is to come up with a plan that will get her into a position where she can be employed at higher rates of pay including benefits and then let Mr. Leslie or the court decide whether those plans are supportable and under what terms. I hope you will find this of some assistance in assisting both our clients improve Mrs. Leslie's financial situation. She struck me as a bright but very sheltered woman who unfortunately, has never really come to grips with the idea that she now is solely responsible for her lot in life. I hope to hear from you soon as to a plan that might allow this matter to be dealt with other than through litigation.

- [11] Nothing further of significance to this application occurred until the defendant's Notice of Motion was filed in January of this year.
- [12] The position that the defendant takes is that the plaintiff appears to have resolved herself to a lifetime of part-time and non-lucrative employment, and that she could and should be doing more to become self-sufficient. It is pointed out by the defendant that the plaintiff was only 39 years old at the time of separation, and had, at that time, 20 to 25 years of working life ahead of her, which she should have made the best of. To use the expression of counsel for the defendant, she has already frittered away the first 6 of those years. The defendant has made several attempts to draw a plan for self-sufficiency out of the plaintiff, and her failure to produce one, according to the defendant, is a result of her defeatist attitude, and her satisfaction with her current existence. The defendant acknowledges that there may be a need for some further support, and submits a lump sum of \$10,000.00 would be appropriate to assist the plaintiff with retraining, if she chooses to do so.
- [13] On the other hand, the position of the plaintiff is that she is entitled to permanent maintenance, given the traditional marriage she and the defendant had, and the economic disadvantages she has sustained as a result. Indeed, in her affidavit, she says categorically that her lawyer has told her she is entitled to permanent maintenance. She points to the job she had lined up at the end of grade 12, which she ended up declining in order to marry the defendant. She submits that even with retraining, her most probable pay rate will be in the order of \$15.00 per hour, at which rate, assuming she finds full time work, she will not be able to earn anything close to the income earned by the defendant.
- [14] As she could, according to her counsel, never hope to achieve the kind of income her former husband earns, there is no onus on her to take up the defendant's suggestions that she retrain, and have a period of increased maintenance to cover that period. Further, she is now in a job which gives her 32 to 40 hours a week, and has since 1996. She has some benefits, and has received some on the job training. She has been able to regularly find work, and has only changed jobs due to being laid off or to take a better job, and she has

continued, until very recently, to have at least some responsibilities for the care of the younger child.

- [15] Any consideration of spousal maintenance must necessarily start with a consideration of the relevant legislative provisions. In this case, the plaintiff's claims for spousal maintenance are made pursuant to either the Divorce Act, R.S. 1985, c. 3 or the Family Relations Act, R.S.B.C. 1996, c. 128. The relevant sections of each are as follows:

Divorce Act

- (4) Factors - In making an order under subsection (1) or an interim order under subsection (2), the court shall take into consideration the condition, means, needs and other circumstances of each spouse, including
- (a) the length of time the spouses cohabited;
 - (b) the functions performed by each spouse during cohabitation; and
 - (c) any order, agreement or arrangement relating to support of either spouse.
- (6) Objectives of spousal support order - An order made under subsection (1) or an interim order under subsection (2) that provides for the support of a spouse should
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
 - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

Family Relations Act

Obligation to support spouse

89 (1) A spouse is responsible and liable for the support and maintenance of the other spouse having regard to the following:

- (a) the role of each spouse in their family;
- (b) an express or implied agreement between the spouses that one has the responsibility to support and maintain the other;
- (c) custodial obligations respecting a child;

(d) the ability and capacity of, and the reasonable efforts made by, either or both spouses to support themselves;

(e) economic circumstances.

(2) Except as provided in subsection (1), a spouse or former spouse is required to be self sufficient in relation to the other spouse or former spouse.

[16] In this case, while all of the factors in both Acts have relevance to this case, I find that the most relevant factors under the Divorce Act are s. 15.2(4)(b) and (c), and the objectives of most relevance are 15.2(6)(a), (b) and (c). Under the Family Relations Act, the most relevant factors are s. 89 (a), (b), (c) and (e). The evidence before me clearly establishes that the parties had a very traditional relationship. The plaintiff excluded herself from the work force, and all of its benefits including experience, training, and job security, from 1972 to 1991. During that time, it was agreed that she would assume the homemaking and child rearing role, and that the defendant would financially provide for the family. There can be no question that she suffered an economic disadvantage as a result, and that her homemaking and child rearing role has had financial consequences for her. It is to her credit that she has had employment since separation, and particularly, that she has had the regular employment she has had since 1996 with Nolan's Pharmacy.

[17] It is difficult to second guess the various steps taken by the plaintiff since 1994 with respect to employment. She has been receiving only \$1,000.00 per month in total support from the defendant, and has had at least one, and sometimes two, dependent children living with her. She obviously cannot be faulted for wanting to find work to produce immediate revenue to the family unit, rather than take full time training which would have cost money.

[18] Having said that, the self-sufficiency factor is an important factor in both Acts, and must be given some weight. In this case, it is my view that the plaintiff could have, and should have, given some thought to a plan which would have put her in a position, on the long term, to earn a better and more steady income. Had she done that, she could then have approached the defendant, or this court, on the issue of increased maintenance to support that plan. The defendant has made it clearly known that he was open to such a discussion. The plaintiff is, in my view, too young to have given up the hope of training to improve her long term employment prospects. It is possible that even with some retraining, the plaintiff will not be in a position to become self-sufficient, but I cannot make that determination at this time.

[19] Under all of the circumstances of this case, I have concluded that it would not be appropriate to set a termination date now for the payment of spousal maintenance. However, I will direct that the defendant may apply for a review of the issue of the duration of maintenance any time after September 1, 2001. The plaintiff is at liberty, either before or after that date, to apply to this court for a variation of the quantum of spousal maintenance.

"A.J. Beames, J."

The Honourable Madam Justice A.J. Beames

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