

CANADA / JUDGMENT

Lewis v. Lewis

2007 BCSC 374

COURT

Supreme Court of British Columbia

DECIDED

19 March 2007

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2007 BCSC 374 Lewis v. Lewis IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Lewis v. Lewis, 2007 BCSC 374 Date: 20070319 Docket: D26576 Registry: Kamloops Between: Deryn Jane Lewis Plaintiff And Robert Douglas Hilton Lewis Defendant Before: The Honourable Mr. Justice Powers Reasons for Judgment Counsel for the Plaintiff C.J. Oien Counsel for the Defendant E.A. Harris Date and Place of Trial/Hearing: March 12, 2007 Kamloops, B.C.

- [1] Mr. Lewis seeks an order that his obligation to pay spousal support to Ms. Lewis be reduced. The parties were married July 3, 1965 and separated August 1, 1994, after approximately twenty-nine years. The parties entered into a separation agreement December 25, 1995. Mr. Lewis agreed to pay Ms. Lewis \$2,700.00 per month spousal support. The agreement was varied by a second agreement April 7, 2000, and the spousal support was reduced to \$2,500.00 per month payable \$1,250.00 on the 1st and 15th of each month. The agreement also provided that Ms. Lewis' entitlement to support would terminate on her death or on her becoming self-sufficient.
- [2] The agreement also provided that either party would be at liberty to have the level of maintenance reviewed based on a substantial change in circumstances as provided by s. 17 of the Divorce Act, 1985, c. 3 (2nd Supp). The amount of spousal support was based on income to Mr. Lewis of \$80,000.00 per year. The terms of the agreement were to be incorporated into the divorce order, but that did not occur.
- [3] The notice of motion was filed in the divorce proceeding, but the parties have asked me to proceed as if it were pursuant to a separate petition. I have done so. MR. LEWIS
- [4] Mr. Lewis was a professional engineer with his own company. The company was dealt with as part of the property settlement. In 2000, Ms. Lewis received \$28,000.00 in full satisfaction of her interest in the company.
- [5] It has not been suggested that the property settlement was unfair.
- [6] Mr. Lewis has now retired at the age of 68 years. He sold the company for \$550,000.00. He has received \$400,000.00 and expects to receive \$140,000.00 to \$150,000.00 in November of 2007.

- [7] Mr. Lewis' present income consists of the following: Old Age Pension: \$492.00 Canada Pension Plan: \$846.00 RRSPs: \$518.00 Non-registered savings: \$2,060.00 Total: \$3,916.00 $\$3,916.00 \times 12 = \$46,992.00$ per year.
- [8] In November of 2007, Mr. Lewis expects to receive a further \$140,000.00 to \$150,000.00, and expects to earn the same return (7.5%) that he presently earns on his non-registered retirement savings. This would produce a further \$875.00 per month or \$10,500.00 per year. His total income beginning in November then would be approximately \$57,492.00. This would be without any encroachment upon his capital.
- [9] Mr. Lewis says that his income in 2003 was \$86,348.00. However, his Line 150 income was \$126,348.03. He arrived at the \$86,000.00 figure by deducting \$30,000.00 in spousal support and a \$10,000.00 contribution to RRSPs.
- [10] Mr. Lewis' income for 2004 is claimed to be \$56,897.18. However, his Line 150 income was \$126,897.18. He deducted \$30,000.00 for spousal support and \$47,232.00 for RRSP contributions.
- [11] His income in 2005 is stated to be \$402,145.86. However, his Line 150 income was \$480,663.00, less \$30,000.00 spousal support and an additional \$48,000.00 which is not identified. A large portion of the income in 2005 related to the sale of the company.
- [12] Mr. Lewis estimated his income for 2006 at \$85,513.00, including pre-retirement income.
- [13] His retirement income will be less than \$80,000.00 per year.
- [14] His expenses are estimated to be \$5,271.10. This includes the \$2,500.00 per month spousal support. Without spousal support his expenses would be \$2,771.10. This includes food at \$450.00 per month and a charity contribution at \$266.00 per month. With some adjustment to those amounts, his expenses could be reduced to \$2,500.00 per month or the equivalent of \$30,000.00 per annum.
- [15] Mr. Lewis has significant assets, including: A condominium which he estimates at \$122,100.00, but it has an assessed value of \$176,000.00: \$122,100.00 to \$176,000.00 2006 automobile: \$35,000.00 Savings - TD Waterhouse: \$312,242.00 RRSP - TD Waterhouse: \$134,475.00 Total: \$603,817.00 to \$657,717.00
- [16] If he receives an additional \$140,000.00 in November, he will have capital assets of approximately \$603,817.00 to \$657,717.00. MS. LEWIS
- [17] Ms. Lewis is 64 years of age and will be 65 in August of 2007. Her only income other than spousal support is: Canada Pension Plan: \$900.00 Contribution to housing expenses from her common law spouse: \$300.00 Total: \$1,200.00 $\$1,200.00 \times 12 = \$14,400.00$ per year.
- [18] Ms. Lewis worked in the home throughout the marriage and has not worked outside the home since separation.

- [19] Her common law spouse, whom she has lived with since sometime in 2004, has a disability pension of \$9,066.89 per year.
- [20] Her 27 year old daughter resides in the home with her and pays for one-third of the food bill. Her daughter works and is self-sufficient, but is retiring student loans.
- [21] Ms. Lewis claims expenses of approximately \$3,458.00, including \$650.00 income tax. I assume this tax is based on the receipt of spousal support in the amount of \$2,500.00 per month.
- [22] Her expenses include: Food (a portion of which is her daughter's): \$600.00 Car lease: \$334.00 Vacation expense: \$100.00 Drug expenses: \$200.00 Total: \$1,234.00
- [23] With some adjustment, these expenses could be reduced to somewhat closer to \$3,000.00 or an amount reasonably similar to Mr. Lewis', but he does not have the car lease expense.
- [24] Ms. Lewis has the following assets: Home: \$280,000.00 Savings: \$49,795.00 Total: \$329,795.00
- [25] Ms. Lewis has debts on a line of credit of \$13,611.00 and American Express in the amount of \$1,436.00.
- [26] Without any spousal support Ms. Lewis has a shortfall of income over expenses of approximately \$1,800.00 per month, including the \$650.00 per month tax expense.
- [27] Mr. Lewis' position, even with income of \$3,900.00 per month at present and expenses of \$2,500.00 per month, has a surplus of \$1,400.00 per month.
- [28] Mr. Lewis argues that any spousal support order should be based on his actual income without requiring him to draw on his capital, including his RRSPs for the purposes of paying spousal support. He suggests an appropriate amount would be somewhere between \$203.00 to \$904.00 per month. The Spousal Support Advisory Guidelines (the "Guidelines") suggest that if Mr. Lewis' income was \$43,342.00 and Ms. Lewis' \$14,400.00 that the appropriate range would be \$904.00 to \$1,206.00 per month, although I note that his income at present is approximately \$46,992.00 per annum.
- [29] He also argues that Ms. Lewis' income should be treated as greater than \$14,400.00 because she should be receiving a greater contribution towards household expenses from her common law spouse and from her daughter.
- [30] Ms. Lewis' common law spouse has very little income of (Canada Pension Plan \$9,066.89 and investment income of \$1,394.00 for a total of \$10,460.89 per annum) less than \$900.00 per month. He has very little ability to contribute much more than he is. He pays something towards the rent and for his own expenses.
- [31] Ms. Lewis' daughter could contribute something more than she does, but even that would be reasonably insignificant.

- [32] Ms. Lewis suggests that Mr. Lewis should contribute between \$1,738.00 to \$2,317.00 per month in spousal support based on attributing income to him of a total of \$70,000.00. The Guidelines suggest the following: Mr. Lewis' Income: Ms. Lewis' Income: Guideline Recommendation per month: \$50,000.00 \$14,400.00 \$1,113.00 to \$1,483.00 \$55,000.00 \$14,400.00 \$1,269.00 to \$1,692.00 \$60,000.00 \$14,400.00 \$1,425.00 to \$1,900.00 \$70,000.00 \$14,400.00 \$1,738.00 to \$2,317.00
- [33] Mr. Lewis' present income is just under \$47,000.00 per year, and in the beginning of November 2007 it can be expected to be approximately \$57,500.00 without encroachment on capital.
- [34] Mr. Lewis has RRSPs of \$134,000.00, and even if those were reduced by \$10,000.00 per year, it would still take approximately thirteen years or more to spend that RRSP. I do note, however, that as the capital is reduced so would the interest income. If he did reduce the RRSP amount by \$10,000.00 per year it would leave him with income of approximately \$67,500.00.
- [35] It is certainly reasonable to expect him to draw on his RRSPs to some extent and for Ms. Lewis to do the same. Therefore, I find it is reasonable to treat Mr. Lewis' income at approximately in the range of \$60,000.00 to \$65,000.00 per annum.
- [36] I find in these circumstances that an appropriate amount of spousal support is \$1,750.00 per month. This can be paid \$875.00 on the 1st and 15th of each month. I note that this amount is tax deductible to Mr. Lewis and taxable in Ms. Lewis' hands. Mr. Lewis has significantly more assets than Ms. Lewis, but she will be able to meet all of her reasonable expenses.
- [37] I have considered the case cited by counsel. This is not a case of requiring Mr. Lewis to pay support from his share of the family assets after they have been divided.
- [38] The decision merely recognizes both parties' condition, means and circumstances required by the Divorce Act. This decision also recognizes the terms of their separation agreement. "R.E. Powers, J." The Honourable Mr. Justice R.E. Powers

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Prepared on 26 October 2026 · Esheria