
CANADA / JUDGMENT

Lewis v. Lewis

2016 BCSC 2040

COURT

Supreme Court of British Columbia

DECIDED

11 October 2016

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2016 BCSC 2040 Lewis v. Lewis

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lewis v. Lewis,

2016 BCSC 2040

Date: 20161011

Docket: E040939

Registry: Vancouver

Between:

Bogumila Lewis

Claimant

And

Connel Ambrose Lewis

Respondent

Before: The Honourable Madam Justice Gray

Oral Reasons for Judgment

In Chambers

The Claimant, Bogumila Lewis:

In Person

The Respondent, Connel A. Lewis:

In Person

Place and Date of Hearing:

Vancouver, B.C.

October 11, 2016

Place and Date of Judgment:

Vancouver, B.C.

October 11, 2016

- [1] THE COURT: There are applications before me this morning with respect to support for a child who is 16 years old. She was born in July 2000. I will refer to her as the "Child". I will refer to the Claimant as the "Mother" and the Respondent as the "Father".
- [2] I made an order in this case on January 25, 2015, and my order was entered in the Court records on March 11, 2015. The first part of the order deals with where the Child will live. The Child is living with the Father in the Lower Mainland. The Child is doing well, and I understand that the parties are not seeking to change the living arrangements for the Child.
- [3] The application before me today related to child support. I am going to give a bit of background.
- [4] In my order of January 2015, almost two years ago, I ordered that both parties were to prepare a Form F8 financial statement under the Supreme Court Family Rules, B.C. Reg. 169/2009, and provide a copy to the other within 60 days.
- [5] The Father did that and his financial statement is dated March 31, 2015.
- [6] The Mother did not provide the financial statement within 60 days. She said this relates to what was happening in her life, and that she was living in remote locations, not near a lawyer or notary public who could take her oath on a financial statement.
- [7] In my view, the Mother should have filled one out properly and sent it, unsworn, to the Father, so he could see the contents of it. She should then have appeared before a lawyer or notary public to take her oath when she was near one.
- [8] The Mother also said that she had lost her job around the time of the previous court order, although she said that she was hired back to train the next person, and that extension continued for a month and then three months, and then beyond that.
- [9] I pointed out during submissions that a Form F8 financial statement has a paragraph that deals with changing circumstances. That is Item 2, where the person filling out the form can say "I anticipate the following significant changes".

- [10] So the Mother ought to have provided the Father with full financial information well over a year ago. What she did provide was a financial statement dated October 6, 2016, which was just last week.
- [11] The Mother's recent financial statement is defective. It is incomplete, because it does not attach what is required regarding her income under Part B. It fails to attach any personal income tax returns or any notices of assessment.
- [12] The Mother said that recently she suffered some problems. She said that there was a break-in where she stored some records, and she did not have them all available.
- [13] For future reference, when there is a financial statement required, the Mother should comply with all the requirements of the form. If that means getting records from Canada Revenue Agency, she needs to do that.
- [14] During the course of the hearing, the Mother made statements about her income.
- [15] Both parties were willing to proceed on the basis of those statements made to me in the courtroom, rather than on the Mother's financial statement.
- [16] The Mother said that she is employed by a First Nation. I understand it is the Vuntut Gwitchin First Nation. I understand that the Mother is working in a remote location in the Yukon Territory, a place called Old Crow, which is north of the Arctic Circle. The Mother showed a cellphone display to me and the Father showing what appeared to be her recent pay stub. It showed that her earnings are \$2,953 gross, biweekly. I multiply that by 26 because of the biweekly payments. That is a total annual income from the First Nation, gross of tax and other expenses, of \$76,778.
- [17] The Mother explained that she has another job. I assume, based on a reference in her financial statement, that it is with a company called Master Stucco Ltd., but I may be wrong about that. In any event, the Mother stated that she receives gross income of \$1,000 biweekly, so that is \$26,000 a year.
- [18] The Mother said she rents out a place to a tenant. She said it rents for \$600 a month. She said there were strata fees of \$280 and then other expenses like utilities and taxes. She said that the result is a net of about \$250 a month in rental income, and so that is a total of \$3,000 per year.
- [19] When I add up those three figures, being \$76,778, plus \$26,000, plus \$3,000, I get a total of \$105,778. I am going to proceed on the basis that that is the Mother's line 150 income for the purposes of child support.
- [20] There was some discussion during the hearing about whether we should adjourn the hearing to enable the Mother to provide all of the attachments required from her Form F8 financial statement but, in the end, the decision was made to proceed today with the application.

- [21] On my calculations, the Father is earning \$69,000 a year, being \$5,750 gross per month for 12 months. That is based on the Father's Form F8 financial statement of about eighteen months ago. The Father said that it is essentially correct, with only minor changes since then. On my calculations, the Mother is earning \$105,778 per year gross. When I add those two incomes together, I get a total parental income of \$174,778, of which 61 percent is the Mother's income, and 39 percent is the Father's income.
- [22] I explained to the parties that I am required to apply the Federal Child Support Guidelines, S.O.R./97-175. Those require me to look at a parent's gross income and see what the table says should be paid on that income. I explained that the government created the table based on gross incomes, taking into account ordinary expenses and so on.
- [23] The Mother protested that her expenses are high because she works in a remote location. She also said during the course of the hearing that she owns a home in Hope, B.C. She said that previously it was rented out. She said that the tenants were very bad tenants and that they damaged the premises, and that she was required to get some kind of order for them to move out, and that she needs to improve the home. She referred to electrical problems and no floor, and said that there had been drug and alcohol use in the home.
- [24] The Mother said she is now going to live in this Hope residence, and will be there during the periods when she comes into the Lower Mainland. She said in the course of argument that every couple of months, she would come down for a couple of weeks. The Father was not sure that the Mother correctly stated the periods when the Mother is in the lower mainland but, in any event, that is what the Mother said.
- [25] Because she has told me that she is living in British Columbia and will be living in this Hope home, I am using the British Columbia table for what is payable for child support. I do not, in fact, know what is payable for someone who is residing in the Yukon. I have not heard argument about whether it would be appropriate to use the figures applicable to a Yukon resident, if the figures are different from those applicable to a B.C. resident, and I do not know whether they are. Of course, the Mother can seek legal advice about that if she chooses. As I said, she also commented that her expenses are high.

- [26] I will read s. 10(1) of the Federal Child Support Guidelines:

On either spouse's application, a court may award an amount of child support that is different from the amount determined under any of sections 3 to 5, 8 or 9 if the court finds that the spouse making the request, or a child in respect of whom the request is made, would otherwise suffer undue hardship.

- [27] Then subsection 10(2) sets out circumstances that may cause a spouse or child to suffer "undue hardship". The references in subsection (2) are to debt incurred before separation, unusually high expenses in relation to exercising access to a child, and orders to support somebody else or another child or somebody with disability.

- [28] It is possible the Mother could argue she has unusually high expenses in relation to exercising access to a child, but if she wants to argue that she should pay less for child support than the amount set out in the table, she should get some legal advice. At the very least, she would need to provide the evidence supporting such an argument.
- [29] So I am going to apply the ordinary law, which is that, having found that the Father's guideline income is \$69,000 per year, and the Mother's is \$105,778 per year, the Mother is to pay to the Father, for the support of the Child, \$970 per month. In addition, the Mother is to contribute 61 percent and the Father is to contribute 39 percent of the Child's special and extraordinary expenses.
- [30] The Mother suggested that she continue to pay her contribution to the child's tuition directly to the school, and that she pay directly to the Father the \$970 a month.
- [31] Those are my reasons on determination of the amounts and the calculation. I suppose I need to hear submissions about when this should begin.
- [SUBMISSIONS]
- [32] THE COURT: It will start then April 1st. Effective April 1, 2016, the Mother is to pay the new amount for basic child support, being \$970 a month.
- [33] Then with respect to the special expenses for school, the Father says that it should start just this school year, and so the Mother will pay 61 percent of the school fees. The school year has just begun, so I imagine you would agree with that Ms. Lewis. Do you agree?
- [34] BOGUMILA LEWIS: Your Honour, I -- I would, but I would like to say that I never thought that -- I mean, at least up to now, the way we pay child support to each other was with an understanding that private school is optional, so it's not like let's say medical expense. So this is why the tuition fee was always part of the child support payment, so I would like to -- now when I am ending up with the child support payments, he tried to equal it and have that child -- that tuition fee portion included in the calculation of my -- my child support payment, so --
- [35] THE COURT: All right. Well, what do you say, Mr. Lewis? She says that the school fees were included in the basic child support in the past.
- [36] BOGUMILA LEWIS: Yes.
- [37] CONNEL LEWIS: I don't agree, Your Honour.
- [38] THE COURT: Pardon?
- [39] CONNEL LEWIS: I don't agree.
- [40] THE COURT: You do not agree.
- [41] CONNEL LEWIS: She has got greater income. She doesn't have too many expenses.

[42] THE COURT: Well, ordinarily, basic child support does not include private school fees. I will read to you from s. 7 of the Child Support Guidelines:

- (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation

Then it has a whole list of items and it can include --

BOGUMILA LEWIS: Is there a private school?

THE COURT:

- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs

[43] Historically, the Child has been attending private school. It appears that both parents would like that to continue, but the Mother would like that to be included --

[44] BOGUMILA LEWIS: In the same --

[45] THE COURT: -- in the basic child support, but that is not the law.

[46] It is reasonable, with these parents' incomes, to have the Child go to the private school. So the Mother's contribution for the school fees is to begin with the school fees starting September 1, 2016.

[47] All right, so Mr. Lewis you need to do your calculations and recalculations, and send that information to Ms. Lewis.

[48] CONNEL LEWIS: Yes, I will forward it to her, Your Honour.

[49] BOGUMILA LEWIS: And my child support payments, may I please ask that they will be effective going forward, Your Honour?

[50] THE COURT: No, I have made that decision. It will start effective April 1, 2016.

[51] BOGUMILA LEWIS: April 1.

[52] THE COURT: You told me your new job started in March of 2016.

[53] BOGUMILA LEWIS: March 23rd, yes.

[54] THE COURT: Yes, so the new amount for basic child support will start as of April 1, 2016.

"Gray J."

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