

CANADA / JUDGMENT

Lopez v. Romanova

2025 BCSC 1421

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1421 Lopez v. Romanova

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Lopez v. Romanova,

2025 BCSC 1421

Date: 20250106

Docket: E59994

Registry: New Westminster

Between:

Javier Lopez

a.k.a. Javier Londono Lopez

Claimant

And

Natalia Romanova

a.k.a. Natalia Serafimovna Romanova

Respondent

Before: The Honourable Justice Schultes

Oral Reasons for Judgment

In Chambers

The Claimant, Appearing in person:

J. Lopez

The Respondent, Appearing in person:

N. Romanova

Place and Date of Hearing:

New Westminster, B.C.

October 23, 2024

Place and Date of Judgment:

New Westminster, B.C.

January 6, 2025

Introduction

- [1] This is an application by the claimant in this family law matter to vary a final order to terminate his obligation to pay spousal support to the respondent. The basis for the termination is that the claimant has retired from the well-paying position that he held when the order was made. The respondent opposes his application.

Background

- [2] The order in question was made in October 2023, following a summary trial. The reasons for judgment have the neutral citation of 2023 BCSC 1825. The trial dealt with issues of spousal support and property division that arose from the end of the parties' 36-year marriage.
- [3] The trial judge found that the respondent had a strong claim to spousal support on a compensatory basis "because of her role in the family, the moves she made to support [the claimant]'s career, and her extended period out of the workforce." She found that it was unrealistic to anticipate that at this stage of her life the respondent would find employment that would allow her to support herself; para. 18. She also found that there was entitlement to support on a non-compensatory basis because of the economic hardship that the respondent faced following the breakdown of the marriage: para. 16.
- [4] The income imputed to the claimant for this purpose was \$200,000 per year (para.19), based on his employment as a team lead with an engineering firm (he is an electrical engineer). The judge concluded that support should be paid at the higher end of the range for that income as provided in the Spousal Support Advisory Guidelines, which was \$8,124 per month. The reasons for that conclusion included the following:

[21] She has received spousal support for less than two years at this point after a 36-year marriage. She continues to have a strong compensatory claim for support. The fact that [the claimant] is nearing retirement and that he will likely only pay spousal support for a few years factors into my finding that spousal support at the upper end of the range is appropriate.

[Emphasis added.]

[5] In light of the direction in the Spousal Support Advisory Guidelines with respect to marriages that endured for longer than 20 years, the judge ordered that support would be of indefinite duration. Addressing the claimant's request for a fixed termination date, the judge made the following comments:

[23] [The claimant] seeks an order terminating spousal support on September 18, 2024. He plans to retire on that day because he will turn 65 years old. In my view, it is appropriate given the duration of the marriage that the spousal support order should be indefinite. The SSAG specifically contemplate indefinite spousal support where a marriage is 20 years or longer; here, as mentioned above, the parties were married for 36 years. [The claimant] may apply to court for a review of spousal support upon retirement or other material change of circumstance if [the respondent] will not otherwise consent.

[Emphasis added.]

[6] The claimant was also required to pay the respondent retroactive support of just under \$50,000, based on the difference between the amount of support in the final order and the interim support that he had previously been ordered to pay, plus some arrears of that interim support. This was to be paid out of the proceeds of sale of the former family home. In addition, the family property was unequally divided by requiring the respondent to pay the claimant \$50,000 to compensate her for family funds that he sent to a person in Columbia with whom he was alleged to have been in a romantic relationship.

[7] It is also relevant to know that at the start of the summary trial the parties consented to orders that 50% of the RRSPs and the Pension Savings Plan in the claimant's name were to be transferred to the respondent, and that either party could apply for division of the other's CPP earnings for the period of the marriage.

Positions

[8] As referred to in the reasons for judgement, the claimant did indeed give notice of his retirement following his 65th birthday in September 2024, and ceased working on October 30. He deposes that he now plans to live on the payments from the divided RRSP and CPP amounts, as well as Old Age Security, and from the amount that was ultimately allocated to him in the proceeds of the sale of the family home (about \$260,000). He expects that he will also qualify for the Guaranteed Income Supplement. He lives in a rented basement suite.

- [9] He anticipates that CPP, OAS, and RRSP income will be just over \$18,000 per year, and calculates his expenses as substantially exceeding that - just under \$40,000 per year.
- [10] The health concerns that he refers to do not appear to be of an acute nature. He explains that his overall health "is not what it used to be," with the specific issues of a decline in his vision that will likely require a new prescription for his glasses, a decline in his energy level, and his need to see a physiotherapist on an ongoing basis for what he describes as "some chronic issues."
- [11] In her material, the respondent, who is 64, reiterates the marital role that led her to be awarded compensatory support and explains that, as the trial judge anticipated, she has not been able to find employment. Instead she has relied on the spousal support as her income. She spent the bulk of her share of the proceeds of the family home, in her case \$453,624, on buying a house in Nanaimo out of foreclosure, with the balance going to fees for her lawyer. As the photos that she has attached to her affidavit show, the house is in poor condition. Her point, as I took it, is that while the division of property might have provided her with shelter of a sort, it is not capable of providing an income stream in addition to the spousal support payments.
- [12] She points out that the claimant's annual income over the last four years has been in the \$200,000 range, and that he remains physically able to work, not having provided any medical evidence to the contrary. She also expresses the view that "he will likely have pension money" from his former employer; although, that concern would seem to have been addressed by the equal division of his RRSPs and pension and savings plan.

Discussion

- [13] The threshold for varying of spousal support order was explained in *Brouwer v. Brouwer*, 2019 BCSC 274:

[41] On an application to vary a spousal support order, s. 17(4.1) of the Divorce Act states:

Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration.

- [42] The required change in the condition, means, needs or circumstances of either former spouse must be "material" in the sense that had it been known at the time of the order, it would likely have resulted in different terms (*Willick v. Willick* [1994] 3 S.C.R. 670). Whether a material change is made out will depend on "what the parties actually contemplated at the time the order was entered," not "what one party knew or reasonably foresaw" at that time: *Dedes v. Dedes*, 2015 BCCA 194 at para. 25 citing *L.M.P. v. L.S.*, 2011 SCC 64.

- [43] If the threshold test for variation is met, then the court approaches any variation based on the objectives in s. 17(7) of the Divorce Act.
- [44] Section 17(7) provides:
- (7) A variation order varying a spousal support order should
- (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
 - (b) apportion between the former 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 former spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.
- [14] Retirement may constitute a material change in circumstances, but that is not inevitably the case, particularly when it is taken voluntarily by the payor at an earlier than normal age, or is characterized as an effort to evade their support responsibilities: *Peters v. MacLean*, 2014 BCSC 990, at paras. 33-34. Generally "double-dipping" (that is, requiring to pay or to continue paying support out of the proceeds of pensions or assets that have already been divided) is to be avoided, although that will not always be possible: *Boston v Boston*, 2001 SCC 43, at paras. 63-65.
- [15] *Stones v. Stones*, 2004 BCCA 99 address the issue of whether a change was foreseen at the time of the agreement or order in the context of retirement:
- [15] In my opinion, the question of what is a material change of circumstance may vary from one case to another. That is particularly so in relation to foreseeability. There are a group of cases which decide that retirement from employment, even at the retirement age set by the employer, or by collective agreement, can be a material change of circumstances, although clearly it would be foreseeable.
- [16] I suppose that the question should really be asked in each case of whether the circumstance in question was one which the parties must have had in contemplation and built into the framing of their agreement. Perhaps it is a change that the parties were prepared to leave out of contemplation in the agreement because of complexity or some other reason, so that when it occurs it is a material change of circumstances, even though the parties knew it must be going to happen at some time or another.
- [16] In the present circumstances these principles can be applied by substituting the question of whether the trial judge had the claimant's retirement in contemplation and built it into the framing of her order.

[17] As I have described, she explicitly adverted to the impending retirement in her analysis, including the date on which the claimant intended to take it, and also recognized that when it occurred it would have the effect of eliminating the payment of spousal support. In her view, this required her to order support at a higher range under the SSAGs in the meantime, in an attempt to achieve its objectives to the maximum extent possible. This was so despite her feeling bound by the SSAGs to make the order indefinite. In addition, she envisioned an application by the claimant to terminate support on what she described as "retirement or other material change of circumstances."

[18] I conclude that the concept of a material change is a poor fit for what the trial judge had in mind here, and her reasoning is better understood as entitling the claimant to a review of the support order upon his likely retirement at 65 actually occurring. The nature of such a review and the circumstances under which it may be appropriate were helpfully summarized in CLEBC's Family Law Sourcebook at Chapter 6.67:

The financial circumstances of the parties may be unsettled at the time of trial. This is particularly so where there is some doubt as to whether spousal support should be continued and if so at what amount. In these cases, the Court may order periodic support subject to review by the court on the occurrence of a specified event or the expiration of a specified period. A review alleviates the need for the parties to meet the strict threshold test of a material change in circumstances required in a variation application (*Schmidt v. Schmidt*, 1999 BCCA 701, and *Hall v. Hall*, 2021 BCCA 115, at paras. 31 to 33).

Such a process better describes the path for the litigants that the judge laid out.

[19] However, even in the absence of an onus on the claimant to show a material change, it is still not a given that the order must be varied or the support terminated. All of the objectives for spousal support must still be considered.

[20] There are factors here weighing both for and against terminating the obligation.

[21] The drastic reduction in the claimant's income, particularly in light of his claimed expenses, and the similarly modest accommodation that he has chosen despite his former income, do raise suspicions that he has made this choice in large part to rid himself of his support obligations. He also has no apparent physical limitations on his ability to work beyond the minor normal features of aging that he cites, there is no indication that the position that he was in is no longer available to him due to his age or any other reason, and he is a professional and a knowledge worker who I infer, in the absence of any evidence to the contrary, continues to have marketable enough skills to earn at least some income to supplement his relatively meager retirement resources. Finally, even with the enhanced support and the unequal division of property that the trial judge ordered, very little of the objective of compensatory support has been able to be accomplished to this point.

- [22] On the other hand, the claimant has reached an age at which it is commonly thought reasonable for a person to retire; although, I take judicial notice that more people are choosing, or are required by their economic circumstances, to work beyond that age. The existing order was also front-loaded to maximize the amount of support to the claimant in anticipation of just this event, and unless he seeks supplementary employment the claimant will be using assets that have already been divided to fund his support obligation - the very type of double-dipping that the courts have said is to be avoided.
- [23] At the end of the day, I think that the fact that the claimant has reached normal retirement age, whatever his other motivations may be, and that the trial judge arrived at the amount of support in anticipation of his retirement occurring along this timeline, tip the balance in favour of concluding that he no longer has the ability to pay support for reasons other than intentional underemployment.
- [24] Any concerns that he will return to employment after the obligation has been terminated can be addressed by imposing an ongoing disclosure obligation on his part, with liberty on the respondent's part to renew the issue of spousal support if that occurs.
- [25] Accordingly, I will order that the claimant's obligation to pay spousal support reflected in the order of October 18, 2023 is terminated effective October 1, 2024, which is the first full month following the filing of this application.
- [26] In addition, until further order of this court, the claimant will:
- 1) provide the respondent with copies of his income tax returns as soon as he files them and copies of his notices of assessment as soon as he receives them, and
 - 2) in the event that he obtains paid employment of any kind, immediately provide the respondent with the name and contact information of his employer, the amount of his pay, and a copy of his most recent pay statement.
- [27] In the event that the claimant obtains such employment, the respondent has liberty to renew her application for spousal support.
- [28] Notwithstanding the claimant's substantial success on this application, I consider it an appropriate case for the parties to each bear their own costs. In light of the unusual role played by the claimant's retirement in the making of the original order, and the difficulty of characterizing it for present purposes, it was not unreasonable for the respondent to have opposed the application.

"Schultes J."

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