

CANADA / JUDGMENT

M.G.T. v. L.S.R.

2024 BCSC 411

COURT

Supreme Court of British Columbia

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2024 BCSC 411 M.G.T. v. L.S.R.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.G.T. v. L.S.R.,

2024 BCSC 411

Date: 20240312

Docket: E123106

Registry: Vancouver

Between:

M.G.T.

Claimant

And

L.S.R.

Respondent

In Chambers

Before: The Honourable Mr. Justice Gomery

Reasons for Judgment

Counsel for the Claimant:

P.M. Daykin, K.C.

The Respondent, appearing in person:

L.S.R.

Place and Date of Hearing:

Vancouver, B.C.

February 16, 2024

Place and Date of Judgment:

Vancouver, B.C.

March 12, 2024

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Introduction

- [1] The parties are the parents of S, who is 15 years old. The claimant is the father and the respondent is the mother. They have been separated since the end of 2011, when S was three years old, and divorced since June 2014, when S was five. Both parents work as legal professionals. Both have repartnered.
- [2] The parents settled the issues consequent on their separation by a consent order made in 2014. It provided for shared parenting of S, who spent equal amounts of time living with each parent. That arrangement persisted until June 2021, when S indicated that she no longer wished to stay with her father at his house. The mother says that this was the culmination of a breakdown in the relationship between father and daughter that began in 2019. The father has a different perspective on the timing but agrees that a rift has developed.
- [3] The reasons for the breakdown are unclear. Both father and daughter would like to repair the relationship but to this point have not succeeded in doing so. The mother says that she would like to see the relationship restored. At the hearing, I made a parenting order to address the parenting issues, at least for the time being. It was for the most part in terms proposed by the father with the mother's agreement, and I commend the parents for their thoughtful efforts to resolve a difficult issue.
- [4] What remains unresolved is an issue over equestrian expenses. S is committed to horse riding as a recreational and sporting activity, and perhaps as a future vocation. She has been riding since she was nine years old, and competes at equestrian events with some notable recent successes. The father supported her riding financially from 2018 until mid-2022. Since then, the mother has paid the entire cost. In October 2023, she purchased a horse for S.
- [5] The mother maintains that the equestrian expenses she has incurred to support S's riding are all extraordinary expenses within the meaning of s. 7(1)(f) of the Child Support Guidelines [Guidelines]. She seeks a contribution from the father for these expenses, or part of them, in proportion to the parents' relative incomes, as provided in the Guidelines.
- [6] The father opposes contributing to the equestrian expenses incurred by the mother for S's riding. He raises two objections. First, he says that the mother's entire claim for past expenses reimbursable under s. 7 was settled by an exchange of correspondence in October 2023. Second, he says that the expenses in question do not qualify as extraordinary expenses, and are neither necessary nor reasonable in amount. Underlying the father's opposition is his belief that S's growing passion for riding, encouraged by her mother, has unbalanced her life and contributed to her estrangement from him.

Settlement issue

Background

- [7] In December 2022, the mother filed a notice of application seeking: a determination of child support for the period since July 1, 2015 and going forward; a variation of the 2014 order to reflect the de facto end of the shared parenting arrangement with S's move to reside with the mother full time; and a determination of special and extraordinary expenses under s. 7 from July 2022. In 2023, the parties were negotiating to resolve the mother's application. The father's income had fluctuated significantly over the years. While there were issues as to whether income should be imputed to the mother during the period of shared parenting, it was clear that the father had not been paying the full amount required under the Guidelines and would have to make a substantial payment in respect of past child support. The issue was the amount.
- [8] There were administrative issues involving physiotherapy and counselling expenses for S. These were largely (and perhaps entirely) special expenses to be divided in proportion to the parents' respective incomes, pursuant to s. 7(1)(c) of the Guidelines, to the extent that they were not covered by the parents' benefits plans. Difficulties had arisen in satisfying the plan requirements. The mother wanted to address how these special expenses would be handled in the future.
- [9] In February 2023, the father made payments totalling \$100,000 to the mother on account of his obligation to pay past child support, on a without prejudice basis. The mother's claim for past child support was larger.
- [10] On October 4, 2023, following direct discussions between the parents, the father's counsel, Mr. Daykin, K.C., wrote the mother setting out the terms of a proposal for "a settlement for the payment of all past child support and special expenses". The father was to pay the mother \$41,600 to fully discharge the settled obligations. The mother replied in an email setting out what "the monetary settlement represents". I quote this correspondence below. The father contends that the correspondence effected a settlement of some of the mother's claims. The mother maintains that there remained the "one outstanding issue" of how special expenses were to be handled going forward, and that nothing was settled until everything was settled.

Legal framework

- [11] There is no dispute as to the legal framework. It is canvassed in *Hutton v. Hutton*, 2020 BCSC 2046 at paras. 31-34, leave to appeal ref'd 2021 BCCA 170, citing *Fieguth v. Acklands Ltd.* (1989), 59 D.L.R. (4th) 114 (B.C.C.A.) at 121, 1989 CanLII 2744, *Salminen v. Garvie*, 2011 BCSC 339 at para. 26, and *Apotex Inc. v. Allergan, Inc.*, 2016 FCA 155 at paras. 32-33. I take from the cases the following propositions:
- a) Parties may settle a lawsuit or issues within a lawsuit by agreement;

- b) The existence of a settlement agreement is determined objectively, having regard to the communications between the parties in the context of the facts known to them at the time;
- c) The burden of proof lies on the party asserting the agreement;
- d) The parties' communications and behaviour must indicate that they intended to be bound;
- e) There must be agreement on essential terms; and
- f) If essential terms are agreed, the court may imply ancillary terms required to give effect to the agreement, such as terms concerning the granting of a release, manner of payment, and timing of payment.

Analysis

[12] In the correspondence, the parties distinguished past and future support and s. 7 expenses. Mr. Daykin's letter dated October 4, 2023 to the mother unequivocally offered a further \$41,600 payment in full satisfaction of the mother's claims in relation to past support but not future support and expenses. It stated:

[MGT] has forwarded to me an exchange of emails between the two of you, setting out a proposed settlement for the payment of all past child support and special expenses.

[MGT] has instructed me to propose that he will pay to you, within 30 days of a written acceptance of this offer, \$41,600, in full and final settlement of:

1. past child support;
2. past s. 7 expenses; and
3. past health care expenses that were or could have been submitted to [MGT's] health care plan.

If accepted, this would leave, as the only remaining issues to be settled by either negotiation or court application, the following:

1. parenting plan arrangements for [S];
2. identification and allocation of responsibility for future s. 7 expenses.

This offer is open for acceptance until 5:00 pm on Friday, October 6, 2023.

[Emphasis added.]

[13] The mother replied by email at 5:12 pm on October 6, 2023. With one small change (at para. 3) she accepted the proposed distinction between past and future support and expenses. She stated:

I received your letter. I agree that the monetary settlement represents:

1. Past child support

2. Past s. 7 expenses
3. Physio and counselling expenses that might have been submitted to [MGT's] health care plan before June 2023.

Going forward, [MGT] will need to agree to submit physio and counselling expenses as described in my earlier correspondence (from June 2023, each month, in the order in which the expenses are incurred, must separate out those of the joint counselling expenses that relate to [S], and must reimburse me the amounts for which our health care plan compensates).

I agree that leaves outstanding extraordinary expenses going forward and your client may want to establish an order with respect to parenting time.

[Emphasis added.]

[14] On October 20, 2023, Mr. Daykin's assistant forwarded to the mother a draft consent order. It provided:

1. By Consent, the Claimant shall pay to the Respondent \$41,600 in full and final settlement of:
 - a. the Respondent's claims for past child support;
 - b. the Respondent's claims for past s. 7 expenses; and
 - c. physiotherapy and counselling expenses for [S] that might have been submitted to the Claimant's health care plan before June of 2023.
2. By Consent, the application of the Claimant for parenting time, and the Respondent's application for a determination of prospective s. 7 expenses are hereby adjourned generally.

[Emphasis added.]

[15] Nothing turns on the mother's failure (by 12 minutes) to respond before the 5:00 p.m. deadline for acceptance of the offer contained in Mr. Daykin's letter of October 4, 2023, because the father affirmed his continuing acceptance of the proposed bargain by tendering the draft consent order. With the consent order, the father accepted the mother's wording in paragraph 3 of her email of October 6 (referring to the physiotherapy and counselling expenses that might have been submitted to the father's health care plan "before June 2023").

[16] Construing the correspondence objectively, I conclude that the parties intended to settle the mother's claims for past child support and s. 7 expenses on the terms set out in the draft consent order. The mother's qualified acceptance of the father's proposal is manifested by her reference to "the monetary settlement" and her agreement that what was left for determination was "outstanding extraordinary expenses going forward". By tendering the draft consent order, the father accepted the mother's qualification of his original proposal, and an agreement was concluded.

- [17] The mother submits that there was no settlement because there was no agreement on how special expenses would be handled going forward. She submits that agreement on this point was an essential term. I disagree. Agreement on how future s. 7 expenses were to be addressed was not essential to the bargain in relation to past expenses proposed in Mr. Daykin's letter of October 4, 2023. Future s. 7 expenses were expressly reserved to be dealt with separately in Mr. Daykin's letter and the mother's response.
- [18] It was open to the parties to narrow the issues by resolving some of them, leaving others for future negotiation or judicial determination. Indeed, this is how family litigation is often resolved. As with all litigation, public policy supports the settlement of family litigation (as set out in Part 2 of the Family Law Act, S.B.C. 2011, c. 25), and that policy underlies the court's willingness to enforce agreements to settle some but not all of the issues. It was open to the mother not to agree to settle the past claims until everything was resolved, but that is not what she communicated to Mr. Daykin in her email of October 6, 2023.
- [19] I find that the parties concluded a partial settlement of the issues raised by the mother's notice of application in the terms set out in the draft consent order. As proposed by the father, there should be an ancillary term requiring the father to pay the \$41,600 within 30 days of this order. The order should provide that the effective date of the settlement is October 6, 2023.

Extraordinary expense issue

- [20] The partial settlement has resolved the question of equestrian expenses incurred by the mother prior to October 6, 2023. They are addressed by the settlement payment made by the father. The father's responsibility to contribute to equestrian expenses since October 6, 2023 has not been settled.
- [21] At the hearing, the parties addressed the handling of special expenses for counselling and physiotherapy, going forward, by a consent order.

Legal framework

- [22] Section 7 makes provision for the sharing of expenses that are special or extraordinary in the sense that they exceed the ordinary costs of raising a child; *Clarke v. Clarke*, 2014 BCSC 824 at paras. 48-49. An order under s. 7 is discretionary. Section 7(1)(f) and (1.1) are pertinent. They provide as follows:

Special or extraordinary expenses

7 (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:

- (f) extraordinary expenses for extracurricular activities.

Definition of "extraordinary expenses"

(1.1) For the purposes of paragraphs (1)(d) and (f), the term extraordinary expenses means

- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
- (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
- (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
- (ii) the nature and number of the educational programs and extracurricular activities,
- (iii) any special needs and talents of the child or children,
- (iv) the overall cost of the programs and activities, and
- (v) any other similar factor that the court considers relevant.

[23] Section 7(1) requires that the expense be both necessary in relation to the child's best interests and reasonable in relation to the means of the spouses and the child and the family's spending pattern prior to the separation. The parties agree that in this case, in which the parties have been separated since S was three years old, I should also have regard to the family's spending pattern since separation.

[24] In considering the parents' means, the court may have regard to the entirety of their finances; *Bodine-Shah v. Shah*, 2014 BCCA 191 at para. 66. Where there has been a history of spending for an extraordinary expense but the expense has increased in relation to the parties' means, the court may order the payor to contribute to a fixed cap; *Delichte v. Rogers*, 2013 MBCA 106 at para. 43.

- [25] The court may take into account a lack of consultation, though a lack of consultation does not automatically preclude a claim; Bodine-Shah at para. 66; Delichte at para. 44. A lack of consultation may justify the imposition of a cap on expenditures.
- [26] Equestrian expenses sometimes qualify as extraordinary expenses under s. 7(1)(f); Boucher v. Boucher, 2018 BCSC 2191 at paras. 66-69. Sometimes they do not; Catallo v. Catallo, 2015 BCSC 1276 at paras. 67-82; Beruschi v. Muller, 2021 BCSC 78 at paras. 31-34. Everything depends on the facts of the case at hand.
- [27] In L.A.M. v. S.C.M., 2020 BCSC 67 at para. 29, G.P. Weatherill J. proposed a two stage analysis that has been adopted in subsequent jurisprudence. First, the court must consider whether an extracurricular expense qualifies as an extraordinary expense having regard to the considerations listed in s. 7(1.1). If it is, the court must then address the considerations of necessity and reasonableness. While Weatherill J. did not address this point, it would appear that lack of consultation may be considered at either stage: as an "other similar factor that the court considers relevant" at stage one; or as bearing on the reasonableness of the expense at stage two.

Analysis

History of the child's equestrian activities and expenses

- [28] The mother owns a horse. In 2017, when S was nine years old, she began riding her mother's horse twice weekly. In 2018, she began taking riding lessons at the North Shore Equestrian Centre ("NSEC") at the father's expense.
- [29] In the fall of 2020, the father arranged a lease of a horse for S. The riding lessons at NSEC continued.
- [30] In April 2021, the existing horse lease ended and the father arranged a lease of a second horse for S.
- [31] In early 2022, the father changed jobs and experienced a significant reduction in his income. His relationship with S was strained. In July 2022, the existing horse lease ended and S stopped riding at NSEC. The father declined to contribute further to equestrian costs. The mother arranged riding lessons for S in Maple Ridge where her own horse was boarded.
- [32] The mother estimates the equestrian costs assumed by the father from 2018 through July 2022, when he stopped contributing, at \$70,859. The father says that the total cost he incurred was slightly higher, approximately \$73,245.
- [33] In October 2022, the mother leased a horse so that S would be able to ride three days a week. In May and August 2023, S competed in equestrian competitions on this horse.
- [34] In October 2023, the mother moved with S from North Vancouver to Langley. In conjunction with the move, she purchased a horse ("KD") for S for \$41,500.

Current equestrian activities and expenses

- [35] S rides KD five days a week, Tuesdays through Thursdays and both days on the weekend. She takes lessons with an experienced coach, Ms. K, who was the lessor of the horse S rode before KD was purchased.
- [36] The costs of maintaining KD, necessary supplies, and S's riding lessons total approximately \$2,000 per month or \$24,000 per year. They include board, farrier, insurance, veterinary, supplements, training rides, tack and other equipment. The lessons from Ms. K cost \$380 per month or \$4,560 per year. These figures do not include costs associated with equestrian competitions that S will wish to enter.

Parents' means and income

- [37] The father's guideline income is \$380,825 and the mother's is \$158,500. The combined total is \$539,325. Effective March 1, 2024, the father pays Guideline child support of \$3,156 per month.
- [38] The mother owns a house in Maple Ridge. The father rents a house in North Vancouver. In their affidavits, each parent lists non-equestrian expenses appropriate to their incomes. The evidence does not disclose the contributions, if any, made by either parent's partner to household expenses.

Child's equestrian prospects

- [39] The mother describes S as "a talented young rider who progressed this past year from competing at 2 feet 9 inch jumpers (.85 metre) to 3 foot jumpers (.9 metre) and competed in 3 three day event style competitions". Ms. K states, in a letter addressed "to whom it may concern" to which both parties made reference in argument:

I have had the pleasure of coaching [S] for the past year and a half or so. Her growth over this period has been astounding. I am so proud to call her my student as she is such a talented, considerate and motivated young lady; both in and out of the tack. As a coach there is nothing more satisfying than seeing a talented young rider come along. She has what it takes to not only be a good rider, but a great rider.

[S] had huge achievements in her 2023 show season. Her biggest being a Championship in the .85m open division and Reserve Championship in the .90m open division ('open' means competing against both amateurs and professionals). [S] shows huge potential in her equestrian abilities and has already achieved more than most people do in an entire lifetime in the sport.

[Italics in original.]

- [40] The mother and Ms. K describe KD as young (5 years), athletic, and green, a "project horse". Ms. K views it as a plus that S is learning how to train a young horse, adding that, despite the learning that must occur, she expects that S and KD will compete together and succeed in the coming show season.

Lack of consultation

- [41] The father was not consulted about the purchase of KD and would not have agreed had he been consulted. From his perspective, S is spending more time than is good for her attending to KD and riding, at the expense of time spent with her peers, attending school, and with him. He states:

I have tried to be supportive of [S's] horseback riding in association with school, friends, family and other activities. However, I have not been successful in placing any moderation on the access that [LSR] provides to [S] with respect to horse back riding or time spent with her at the barn in Maple ridge. In my view, the excessive importance that [LSR] places on horseback riding and spending time at the barn is not in [S's] best interest and has caused a significant rift between [S] and myself.

- [42] The mother responds that it is S's love for horses and riding that takes them to the barn more than three times a week. She adds:

I have chosen to support [S] in her pursuit of equestrian activities for a number of reasons, primarily that she loves riding and appears relaxed and joyful at the barn and around horses. She has had a difficult time emotionally in the last couple of years and I couldn't imagine not making the financial choices necessary to support her continued riding when the Claimant withdrew his financial support. Having said that, my salary is my main source of income and supporting her continued riding means that I am not able to afford other activities and purchases. Were it not for my move to Langley, I could not have purchased her horse nor continued to fund her participation in equestrian sports without going into significant debt.

- [43] S's most recent report card indicates that she is doing well at school. The mother says that there are five young people around S's age at the barn in Maple Ridge with whom she rides and socializes. On the other hand, the father is probably right that S's deep and time-consuming engagement with equestrian activities in Maple Ridge is an obstacle to the renewal of their relationship. The parenting order I have made attempts to address this obstacle by clearing most of a weekend day of equestrian activities to make room for parenting activities with the father.

Do the equestrian expenses qualify as extraordinary expenses?

- [44] I find that the equestrian expenses described above are extraordinary expenses within the meaning of s. 7(1)(f), having regard to the following.

- [45] In amount, the equestrian expenses substantially exceed the ordinary expenses of raising and caring for a teenager. Taking the anticipated costs of equestrian competitions into account, they exceed two-thirds of the Guideline child support payable by the father. The total cost is significant in relation to the incomes earned by these relatively well-off, professional parents.
- [46] In my view, the equestrian expenses qualify as extraordinary under sub-s. 7(1.1)(a) because they exceed the amount that the mother could reasonably be expected to cover, taking into account her income and the monthly child support she receives from the father. If I am wrong about this, they qualify as extraordinary under sub-s. (b) considering the mother's income, the child support she receives, and the following.
- [47] Horseback riding and everything associated with it are S's primary focus. Outside of school, these activities take up the greater part of her life. They are more than a hobby or pastime. S has been involved in riding, at increasing levels of intensity, for seven years. Recently, she has won competitions. Her coach's view is that she is talented and has huge potential.
- [48] While the father wishes that S were less committed to riding than she is at present, it is significant that he supported her horseback riding financially from 2018 until mid-2022. That history of support attenuates, though it does not eliminate, the force of his complaint about the lack of consultation by the mother in deciding to purchase KD and commit to the costs in issue.
- [49] Having concluded that the equestrian expenses are extraordinary, I must go on to consider whether they are necessary and reasonable.

Are the equestrian expenses necessary in relation to the child's best interests?

- [50] I find that it is in S's best interests that she continue to pursue horseback riding. She has drive, focus, and at least a measure of talent. It is what she wants to do. While it is too soon to say whether she will make a career of it or maintain her present passion into her adult life, some people do, and it is impossible to predict that she will not.
- [51] I place weight on the mother's observation that S appears relaxed and joyful at the barn and around horses. She is not at ease in her relationship with her father, whom she loves, and who loves her, and it is not at all clear why this is so. On the evidence of both parents and the mother's partner, S has been struggling emotionally. It can only benefit her to have an arena in her life that gives her joy and in which she is able to compete with confidence.

Are the equestrian expenses reasonable?

- [52] In my view, the equestrian expenses incurred as a result of the purchase of KD are unreasonably high in the circumstances of this case.
- [53] The mother emphasizes the amounts contributed by the father from 2018 through 2022. In 2021, he was paying equestrian expenses at an average rate of \$3,300 a month and his proportionate contribution to expenses of \$2,000 per month - at 71% his proportionate share

would be \$1,420 - would be much smaller. However, in 2021 his annual income was approximately \$750,000 and had exceeded \$550,000 since 2018. The reasonableness of the equestrian expenses must be judged based on the parties' financial circumstances in 2024, when he is earning \$380,825.

- [54] It was the mother's decision to purchase KD and commit to the expense of keeping the horse without consultation. There were less expensive alternatives. The monthly cost of leasing the horse that preceded KD's purchase was \$900. In addition there were costs totalling \$1,500 associated with participation in equestrian events and competitions in 2023.
- [55] Owning KD offers S a richer and more fulfilling equestrian experience than leasing a horse. It is reasonable that the father should financially contribute to the increased cost, but not to its full extent, given his present means and that he had no say in the decision to incur the cost.
- [56] In my view, it is reasonable in the circumstances of this case that the father contribute to the equestrian expenses, including any expenses that may be incurred in connection with events or competitions, to a maximum of \$1,000 per month or \$12,000 in each calendar year.

Disposition

[57] For these reasons, I order that:

- a) The father will pay the mother \$41,600 within 30 days of this order in full and final settlement of:
 - i. The mother's claims for child support prior to October 6, 2023;
 - ii. The mother's claims for s. 7 expenses incurred prior to October 6, 2023; and
 - iii. Physiotherapy and counselling expenses for S that might have been submitted to the father's health care plan before June 2023.
- b) The following equestrian expenses incurred by either parent are extraordinary expenses within the meaning of s. 7(1)(f) of the Guidelines: riding lessons for S; equestrian event expenses; and expenses in connection with the horse, KD, including board, farrier, insurance, veterinary, supplements, training rides, tack and other equipment; and
- c) The parents will contribute to the equestrian expenses in proportion to their incomes provided that the father's obligation to contribute will not exceed \$1,000 per month or \$12,000 in a calendar year.

[58] Success on this application has been divided and there will be no order as to costs.

"Gomery J."

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