
CANADA / JUDGMENT

M.J.R. v. B.L.D.

2020 BCSC 2131

COURT

Supreme Court of British Columbia

DECIDED

27 November 2020

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2020 BCSC 2131 M.J.R. v. B.L.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.J.R. v. B.L.D.,

2020 BCSC 2131

Date: 20201127

Docket: E-171164

Registry: Williams Lake

Between:

M.J.R.

Claimant

And

B.L.D.

Respondent

Before: The Honourable Madam Justice Church

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant

appearing by teleconference:

A. Sadvoska

Appearing on her own behalf

by teleconference:

B.L.D.

Place and Date of Hearing:

Williams Lake, B.C.

November 23, 2020

Place and Date of Judgment:

Williams Lake, B.C.

November 27, 2020

- [1] THE COURT: M.J.R. and B.L.D. were divorced by order of the Court of Queen's Bench in Alberta on April 16, 2012. The divorce order provided, amongst other things, that the parties would share joint custody and guardianship of their four children, K., G., E., and C., and the children would reside primarily with B.L.D. in Red Deer. The order also provided that M.J.R. would pay child support of \$1,804 each month until the children were no longer children of the marriage and he would pay an additional amount of \$333 per month as his proportional share of s. 7 special expenses.
- [2] On February 12, 2017, the Honourable Madam Justice Bast of the Court of Queen's Bench in Alberta granted a provisional order to vary the s. 3 child support in the divorce order, in part based on a Consent Variation Agreement entered into between the parties in July 2015 (the "Variation Agreement").
- [3] The Variation Agreement was concluded when B.L.D. decided to relocate with the children from Red Deer to Williams Lake. B.L.D. did, in fact, relocate with the children to Williams Lake shortly after the Variation Agreement was concluded. The Variation Agreement was signed by both parties and provided that M.J.R.'s monthly child support obligation pursuant to the Alberta child support tables would be reduced by 6.7 percent to account for his increased transportation costs to see the children in Williams Lake. The agreement also provided that, "The special expenses amount paid to B.L.D. by M.J.R. shall be reduced to zero dollars commencing August 26, 2015."
- [4] The order made by Madam Justice Bast on February 15, 2017, was a provisional order and was sent to British Columbia for hearing pursuant to the Interjurisdictional Support Orders Act. The provisional order came before me for confirmation on April 9, 2018, at which time, both B.L.D. and M.J.R. appeared as did amicus curiae. During the confirmation hearing, it became apparent that some of the information regarding whether the oldest child, K., born XXXX, had ceased to be a child of the marriage was inaccurate because he was in full-time attendance at the University of the Fraser Valley. When I suggested that the provisional

order might need to be referred back to the Alberta Court of Queen's Bench, M.J.R. expressed concern about how long that process would take and he eventually consented to the provisional order being varied and confirmed to include child support for K. despite the fact that he was over the age of the majority.

- [5] M.J.R. now applies to vary the confirmation order of April 9, 2018, to retroactively recalculate his child support obligations. He asserts that K. ceased full-time attendance at the University of Fraser Valley shortly after the confirmation order was made and he ceased to be a child of the marriage as of his birthdate in 2016.
- [6] He also seeks to vary the confirmation order with respect to the child support payable with respect to G., born XXXX. G. is now over the age of majority and in full-time attendance at the University of Northern British Columbia ("UNBC") and living in Prince George while attending university. As I understand it, M.J.R. does not dispute that G. remains a child of the marriage by virtue of his full-time attendance at university, but he takes the position that the table amount of child support is not appropriate in this case as G. only lives with B.L.D. during the summer months and is contributing to the cost of his own education with student loans, scholarships, and summer employment.
- [7] I note that, in the same notice of application, M.J.R. seeks to terminate his obligation to pay s. 7 expenses in the amount of \$333 per month in part because he has not been provided with any receipts or documentation with respect to any of the children's special or extraordinary expenses or consulted about those expenses prior to their being incurred.
- [8] With respect to this part of the application, I am not sure what jurisdiction I have to vary the April 2012 order of the Alberta Court of Queen's Bench. The provisional order that came before me for confirmation in April 2018 was a retroactive variation of M.J.R.'s s. 3 child support obligations in the divorce judgment. The provisional order did not vary the s. 7 child support obligations as is evident from the way that M.J.R.'s notice of application is framed in this proceeding, that he is seeking to vary the April 2012 divorce order.
- [9] Outside of the framework set out in the Interjurisdictional Support Orders Act, it is not clear to me that I have any jurisdiction to vary the divorce order granted in Alberta. I confess that I did not ask for or receive any submissions from M.J.R.'s counsel on this point and thus, rather than dismiss that application, I will simply adjourn generally paragraph 1 of the notice of application so that counsel may provide further submissions on this point.
- [10] If I am mistaken with respect to the issue of jurisdiction and the issue of the s. 7 order does come back before me for determination, I can advise the parties that my inclination would be to grant M.J.R.'s application to terminate or vary the April 16, 2012, order as to s. 7 child support as a result of the following.

- [11] According to the April 16, 2012, order, the parties' proportionate shares of the special expenses were calculated based on M.J.R. having a Guidelines income of \$80,000 and B.L.D. having a Guidelines income of \$20,000, which required M.J.R. to pay 80% of the children's special expenses. M.J.R.'s Guidelines income is now \$93,258.35 and B.L.D.'s Guidelines income is now \$56,175.00, which would lower M.J.R.'s proportionate share to 62%.
- [12] It is not disputed that the parties entered into the Variation Agreement in July 2015 in which they agreed that M.J.R.'s special expenses were to be reduced to \$0 effective August 26, 2015. That provision likely should have been included in the application for a provisional order that was heard in Alberta on February 15, 2017 but it appears to have been omitted.
- [13] B.L.D. acknowledged that she has not provided M.J.R. with any receipts or information with respect to the s. 7 expenses for the children since B.L.D. relocated with them to Williams Lake. She takes the position that M.J.R. knows what the special expenses are and she tries to keep her communication with M.J.R. to a minimum. B.L.D. also relies on the fact that the April 2012 divorce order does not require her to provide receipts as the parties consented to a fixed monthly amount.
- [14] While I agree that the divorce order is silent on the provision of s. 7 receipts, in my view, it is not reasonable for B.L.D. to suggest that she should not have to provide either receipts for such expenses or at least some indication as to the nature of the special and extraordinary expenses.
- [15] The purpose of s. 7 of the Child Support Guidelines is to share such special and extraordinary expenses in proportion to the parties' incomes and the section permits the court to provide an amount to cover all or any portion of certain categories of expenses, taking into account the necessity of the expense and the reasonableness of the expense. While M.J.R. may well have known what the special expenses for the children were in 2012, we are now more than eight years beyond that and M.J.R. has no way of determining either necessity or reasonableness, without information from B.L.D. regarding the nature and amount of those expenses. B.L.D. is the only one who has that information.
- [16] To be clear, I am not making any order with respect to the s. 7 expenses because of the uncertainty regarding the issue of jurisdiction. However, I would strongly advise the parties to attempt to resolve this narrow issue by agreement and I am providing my comments in order to inform the parties of the possible outcome if they are unable to settle this issue between them.
- [17] With respect to the variation of the s. 3 child support obligation to account for K. ceasing to be a child of the marriage, B.L.D. acknowledges that K. did cease to attend the University of Fraser Valley shortly after the confirmation order was made and he has been independent since that time. Although she is opposed to retroactive adjustment, she agrees that K. ceased to be a child of the marriage on April 30, 2018.

- [18] The parties seem to agree, however, that G. remains a child of the marriage despite the fact that he turned 19 years of age on XXXX. He has been in full-time attendance at UNBC since September 2018 in a four-year degree program. By all accounts, he is excelling in his academics and is an honour roll student. B.L.D's evidence is that she is still supporting G. financially during his post-secondary studies as he devotes himself to his studies during the school year and only works during the summer months.
- [19] M.J.R. asserts that K. reaching the age of majority and ceasing to attend university is a material change in circumstances. He also asserts that G.'s full-time attendance at university commencing September 2018 while living away from B.L.D's home is also a material change in circumstances. He submits that the confirmation order of April 9, 2018 should be varied retroactively to account for these changes and reduce his child support obligations.
- [20] The Supreme Court of Canada said in *Willick v. Willick*, [1994] 3 S.C.R. 670, at para. 21: the change must be a material change of circumstances. This means a change, such that, if known at the time, would likely have resulted in different terms. The corollary to this is that if the matter which is relied on as constituting a change was known at the relevant time it cannot be relied on as the basis for variation.
- [21] On the facts before me, I am satisfied that K. ceased attending post-secondary education shortly after the provisional order was confirmed by me on April 9, 2018. At that time, K. was over the age of majority and he ceased to be a child of the marriage for whom support was payable. Had that information been known at the time of my order, it would have resulted in different terms and thus it is a material change in circumstances.
- [22] M.J.R.'s child support obligation should be re-calculated from May 1, 2018, to reflect that he was obliged to pay child support for three children rather than four children. M.J.R.'s child support obligation from May 1, 2018, to December 1, 2018, should be the three-child amount in the Alberta child support tables based on his Guidelines income for that year of \$92,974.93.
- [23] From January 1, 2019, M.J.R.'s child support obligation should be based on his Guidelines income of \$93,258.35.
- [24] With respect to child support for G., s. 3(1) of the Child Support Guidelines sets out the presumptive rule that:
- Unless otherwise provided under these Guidelines, the amount of a child support order for children under the age of majority is
- (a) the amount set out in the applicable table, according to the number of children under the age of majority to whom the order relates and the income of the spouse against whom the order is sought; and
 - (b) the amount, if any, determined under section 7.

[25] The B.C. Court of Appeal in *Bockhold v. Bockhold*, 2006 BCCA 472, makes it clear that this presumptive rule applies to children under the age of majority even if they are attending university and living away from home. Therefore, child support for G. continued to be payable by M.J.R. after September 18, 2018, even though G. was attending UNBC in Prince George as he remained a child under the age of majority.

[26] G. turned 19 years of age on XXXX and at that point, s. 3(2) of the Child Support Guidelines becomes applicable, which provides that:

Unless otherwise provided under these Guidelines, where a child to whom a child support order relates is the age of majority or over, the amount of the child support order is

- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
- (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.

[27] In all of the circumstances and based on the evidence before me, I am not satisfied that it would be inappropriate for M.J.R. to continue to pay child support in accordance with the child support tables with respect to G. I accept the evidence of B.L.D. that she continues to provide financial support to G. during the school year including contribution to his tuition and living expenses. When G. is not attending university in Prince George, he resides with B.L.D. at her home in Williams Lake. B.L.D. maintains her home in the reasonable expectation that G. lives with her when he is not attending university including Christmas and summer vacations and likely other shorter timeframes given the relatively short distance between Prince George and Williams Lake. It is reasonable to infer that B.L.D. incurs some of her household expenses in relation to G. living with her from time to time. In my view, it is reasonable in those circumstances for M.J.R. to continue to pay support to B.L.D. for G. in accordance with the tables, not just during the summer months, but year round for so long as he remains a child of the marriage.

[28] Although B.L.D. urged me not to include this provision, it is clear that the provisional order as confirmed by me on April 9, 2018, included a provision that the table amount of s. 3 child support to be paid by M.J.R. was to be reduced by 6.7% to account for the increased cost to M.J.R. of exercising access to the children. That reflected a longstanding agreement between the parties regarding the terms on which B.L.D. would relocate with the children to Williams Lake. It was agreed to by the parties at the confirmation hearing and the order granted today should reflect that agreement.

[29] I will therefore grant M.J.R.'s application in part. The order of April 9, 2018, is varied to provide that:

1. As of April 30, 2018, K. is no longer a child of the marriage for whom support is payable.

2. From May 1, 2018, to December 1, 2018, inclusive, M.J.R.'s s. 3 child support obligation is \$1,793, being the Alberta table support amount for three children, less 6.7%, which I calculate to be \$120.13, leaving a monthly child support amount payable of \$1,672.87. M.J.R.'s child support obligation for three children during this timeframe is based on a Guidelines income of \$92,974.93.
 3. From January 1, 2019, to the present, M.J.R.'s s. 3 child support obligation is \$1,798, being the Alberta table amount for three children, less 6.7%, which I calculate to be \$120.46, leaving a child support amount payable of \$1,677.54 per month. M.J.R.'s child support obligation for three children is based on a Guidelines income of \$93,258.25.
 4. M.J.R. should be credited with any excess s. 3 children support he has paid over and above these amounts since May 1, 2018.
 5. By consent and commencing June 1, 2021, and for so long as there is a child of the marriage for whom support is payable, the parties will exchange copies of their income tax returns and notices of assessment and reassessment for the previous year.
- [30] I have not determined what impact this recalculation will have on any calculations with respect to M.J.R.'s outstanding arrears of child support and I leave that calculation to M.J.R. and his counsel to sort out with the Alberta Maintenance Enforcement Program once this order is entered and a copy provided to the Program.
- [31] With respect to the issue of costs, M.J.R. seeks his costs of the application on the grounds that he made considerable effort to resolve this matter out of court and B.L.D. unreasonably refused to do so, making this application necessary. B.L.D. is opposed to an order for costs and expressed some suspicion and mistrust of M.J.R. and his counsel. She said that she was reluctant to agree to anything outside of the court process.
- [32] I note that while I have granted some of the relief sought by M.J.R., he was unsuccessful with respect to reducing his child support for G. and he was unsuccessful in having K. declared to be no longer a child of the marriage as of XXXX. The determination of the application with respect to termination of his obligation to pay s. 7 child support remains undetermined.
- [33] In all of the circumstances, I am of the view that success on this application has been divided and that each party should bear their own costs. However, I am going to adjourn the issue of costs generally pending determination of M.J.R.'s application to terminate his s. 7 support obligations. His application for costs can be revisited at that time.
- [34] Finally, I am going to dispense with B.L.D.'s signature approving the form of the order.
- [35] So, B.L.D., what that means is that M.J.R.'s counsel will draft the order, it will be submitted to the court registry for checking and it will be reviewed by me to ensure that it matches what it is that I ordered today. If it does, I will sign it, the order will be entered, and a copy will be provided to you by mail.

- [36] All right, anything else, counsel, Ms. Sadovska?
- [37] MS. SADOVSKA: Yes, My Lady, one thing, actually the calculation, if there is -- the arrears owing around \$4,000, maybe \$5,000, and if he is credited more than the arrears [indiscernible/teleconference] --
- [38] THE COURT: Then he will have a credit -- I suspect he will have a credit going forward in terms of his child support obligation.
- [39] MS. SADOVSKA: Thank you, My Lady.
- [40] THE COURT: That will be something that he will have to address with Maintenance Enforcement, Ms. Sadovska.
- [41] MS. SADOVSKA: Thank you.
- [42] THE COURT: Anything else? Ms. Sadovska, anything else?
- [43] MS. SADOVSKA: Nothing from me, My Lady.
- [44] THE COURT: All right. B.L.D., anything else?
- [45] BEVERLEY DAWES: Not from me.
- [46] THE COURT: All right, thank you.

"The Honourable Madam Justice Church"

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