
CANADA / JUDGMENT

Mayall v. Kebarle

2013 BCSC 2605

COURT

Supreme Court of British Columbia

DECIDED

25 April 2013

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2013 BCSC 2605 Mayall v. Kebarle

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mayall v. Kebarle,

2013 BCSC 2605

Date: 20130425

Docket: E112105

Registry: Vancouver

Between:

Brent Mayall

Claimant

And

Paula Kebarle

Respondent

Before: The Honourable Madam Justice Gropper

Oral Reasons for Judgment

In Chambers

Counsel for Claimant:

C. Linde

Counsel for Respondent:

D.J. Miller

Place and Date of Hearing:

Vancouver, B.C.

April 25, 2013

Place and Date of Judgment:

Vancouver, B.C.

April 25, 2013

- [1] THE COURT: The issue in dispute between the parties is whether income should be imputed to Mr. Mayall, the claimant, for the purpose of child support of the parties' almost 12-year-old child, L. L. is the product of the parties' 13-year common-law relationship which ended in July of 2009.
- [2] The respondent seeks child support retroactively from May 2011 plus a proportionate share of extraordinary expenses based on an imputed income for Mr. Mayall.
- [3] The parties have agreed to some aspects of the application. Specifically, they agree that:
- the Guideline income of Dr. Kebarle is \$176,311;
 - the claimant shall pay interim child support commencing May 1, 2013, based on the Federal Child Support Guidelines;
 - the parties will share special and extraordinary expenses in proportion to their respective incomes including, without limitation, caregiver expenses, medical and dental expenses, counselling expenses, education expenses including fees and supplies, tutoring expenses and extracurricular sporting expenses including mountain biking and snowboarding;
 - the claimant shall provide his 2011 income tax return and all attachments and all documents pertaining to his 2012 income; and
 - each of the parties will provide updated financial information on August 1, 2013, and each year thereafter.
- [4] Mr. Mayall is 59 years old. He was financial planner/investment advisor for 20 years, until 2001. From 1999 to 2010 he was the owner of a dive shop that unfortunately failed. Since 2010 he has worked to the extent that he wishes. He lives off his investments. He has also pursued a real estate business from which he has derived no income and renovation business that has produced only a small income.

- [5] From July 2009, when the parties separated, until May of 2011, the parties shared joint custody of L. and neither paid child support to the other. Since May of 2011 L. has primarily lived with his mother, and since November of 2011 to the present Mr. Mayall has paid child support in the amount of \$200 per month.
- [6] In relation to the imputing of income I wish to refer to the following facts which I have derived from Mr. Mayall's evidence regarding his income.
- [7] Some time just before January of 2012 when she prepared a s. 15 report, Dr. Rebecca England interviewed Mr. Mayall and he advised her that he had chosen not to pursue gainful employment since August 2010; that he had always been able to find a job and that he can still work; and that he works approximately 10 hours per week.
- [8] In his affidavit Mr. Mayall says that in 2012 he earned \$15,257.67 through self-employment in investment opportunities, over a 10-week period, doing a renovation in Alberta: four days painting a house and some period of unknown duration doing a cabin renovation. I have assumed that Mr. Mayall worked 13 weeks in 2012, which includes the 10 weeks, the four days and some amount for the cabin renovation and earned, as he stated, \$15,257.67 in that period. I have, on the basis of those figures, determined that when he was working he earned approximately \$1,174 per week.
- [9] Mr. Linde has also provided a summary of Mr. Mayall's investment income. Counsel for the respondent suggests that it averages about \$26,000 per year. Mr. Mayall says that that is in error, that only \$3,463 should be included for 2011.
- [10] I have calculated Mr. Mayall average annual investment income of \$18,400. I will come back to those numbers.
- [11] I will refer now to the principles regarding the imputation of income. They are set out by Madam Justice Martinson in *Hanson v. Hanson*, [1999] B.C.J. No 2532, 1999 CanLII 6307 (S.C.), and summarized by Ms. Miller at page 15 of her submission:
- [7] Section 19(1) of the Guidelines allows the court to impute such amount of income to a parent as it considers appropriate in the circumstances. One of the circumstances is that the parent is intentionally under-employed or unemployed. (s. 19(1)(a))
- [8] Parents have a joint and ongoing legal obligation to support their children. In order to meet this legal obligation, a parent must earn what the parent is capable of earning.
- [9] Imputing income is the way in which the court gives effect to the legal requirement that a parent must earn what the parent is capable of earning.
- [13] ... bad faith is not required [to be found to be intentionally under-employed]. The parent required to pay is intentionally under-employed if that parent chooses to earn less than he or she is capable of earning.
- [14] The following principles apply when determining capacity to earn an income...

1. There is a duty to seek employment in a case where a parent is healthy and there is no reason why the parent cannot work. It is "no answer for a person liable to support a child to say he is unemployed and does not intend to seek work or that his potential to earn income is an irrelevant factor."
 2. When imputing income on the basis of intentional under-employment, a court must consider what is reasonable under the circumstances. The age, education, experience, skills and health of the parent are factors to be considered in addition to such matters as availability of work, freedom to relocate and other obligations.
 3. A parent's limited work experience and job skills do not justify a failure to pursue employment that does not require significant skills, or employment in which the necessary skills can be learned on the job. While this may mean that job availability will be at the lower end of the wage scale, courts have never sanctioned the refusal of a parent to take reasonable steps to support his . . . children simply because the parent cannot obtain interesting or highly paid employment.
 4. Persistence in unremunerative employment may entitle the court to impute income.
 5. A parent cannot be excused from his or her child support obligations in furtherance of unrealistic or unproductive career aspirations.
 6. As a general rule, a parent cannot avoid child support obligations by a self-induced reduction of income.
- [12] It is not required that I find that the parent intended to evade or minimize the payment of child support for a finding of intentional underemployment or unemployment. What matters is whether the parent is earning what the parent is capable of earning. (See *McCaffrey v. Paleolog*, 2011 BCCA 378, especially at paras. 50-53).
- [13] When I apply those principles to the case here, I find that Mr. Mayall has not actively sought employment. In terms of his age, education, experience, skills and health I find that Mr. Mayall is 59 years of age, he is healthy and he says that he could still work if he chose to; indeed, he has always been able to obtain work.
- [14] In regard to the suggestion that he has limited work experience and job skills, I find that not to be the case. He has broad skills from that of an investment advisor on through painter and renovator.
- [15] I also point out in this context that it is not the respondent's obligation to demonstrate what the claimant can do; she does not have to find a job for him. She can merely assert that he has a broad skill set and that he would be able to obtain higher income.

- [16] In regard to whether there has been persistence in unremunerated employment, I find that that is the case. Mr. Mayall has engaged in real estate and renovation, but so far these have been non-remunerative. Further, I find that he has a self-induced reduction of income as he has expressed to Dr. England.
- [17] It is therefore my decision that income ought to be imputed to the claimant. As I mentioned earlier, I am satisfied that in 2012 Mr. Mayall could earn approximately \$1,174 per week of work. I calculated that he worked 13 weeks in 2012. I consider that he is able to work 48 work weeks, which allows him four weeks off annually. With a weekly income of \$1,174 per week for 48 weeks this amounts to \$56,352 of employment income, which I impute to Mr. Mayall as employment income.
- [18] In regard to the investment income, I am prepared to accept Mr. Mayall's calculation of his investment income, which is \$18,400 per year which combines with the \$56,352 a year to produce an imputed income of \$75,000 per year.
- [19] I find that to be the income of the claimant for the purposes of child support and for the purposes of Mr. Mayall's proportionate share of s. 7 expenses.
- [20] In regard to what are s. 7 expenses, bearing in mind the consent that the parties made in respect of that, I find child care is an extraordinary expense. Mountain biking, any camps related to mountain biking or instruction with regard to mountain biking is a proper extraordinary expense, although I am not including the bicycle in that. Snowboarding, any instruction in snowboarding and the snowboard are extraordinary expenses. I make a distinction between a snowboard and a bicycle. All kids have bicycles; not all kids have snowboards; that is an extraordinary expense.
- [21] In regard to school fees and supplies, I include all those that are required to address L.'s special needs, including computer equipment.
- [22] In respect of a specialized school, if necessary, in accordance with the parties' consent, this falls within the definition that the parties have agreed to as extraordinary expenses. I order that if this is something which the respondent considers, it is subject to discussion between the parties. Dr. Kebarle will advise Mr. Mayall of the school, the cost, and the reasons why L. ought to be enrolled there. If there is no resolution within one month of that notice to Dr. Kebarle, the respondent may make the decision to send L. to a specialized school. The claimant will be required to pay his proportionate share, but he has leave to apply to the court for review of that decision, that is, whether L. ought to be attending a specialized school.
- [23] Therefore, I find that Mr. Mayall's imputed income is \$75,000 per year and child support and extraordinary expenses will be paid on that basis. No argument was made in respect of whether these amounts should be retroactive except to say that no income should be imputed. I am satisfied that the child support must be retroactive to May of 2011 and ongoing.

[24] That leaves the issue of costs.

[25] MS. MILLER: I just want to clarify, My Lady, is the retroactive child support based on the court's retroactive date to 2011, is the --

[26] THE COURT: Seventy-five thousand.

[27] MS. MILLER: The \$75,000 to May of 2011?

[28] THE COURT: Yes.

[29] MS. MILLER: Is the special and ordinary expenses retroactive to May 2011 as well?

[30] THE COURT: Yes.

[SUBMISSIONS RE COSTS]

[31] THE COURT: I do not want to have to have evidence from counsel, so I am going to deny costs for the November hearing but order them in respect of February and today on an attendance basis, two units for today and I am, based on the offer, ordering that those be double costs and disbursements which are not to be doubled.

[32] MR. LINDE: I just want to make sure that offer and the February date falls in there, and I just don't know.

[33] THE COURT: It says so.

[34] MS. MILLER: It does, it's in anticipation of the notice of application for March the 20th.

[35] MR. LINDE: Okay.

[36] MS. MILLER: And I just pass that and clarify that's payable forthwith in any event of the cause?

[37] THE COURT: Well, there is no cause, so it will be payable forthwith. As you pointed out, there is nothing ongoing.

"Gropper J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/13/26/2013BCSC2605.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mayall-v-kebarle-2013>

Prepared on 30 October 2026 · Esheria