

CANADA / JUDGMENT

McGuckin v. McGuckin

2006 BCSC 582

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 582 McGuckin v. McGuckin IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: McGuckin v. McGuckin, 2006 BCSC 582 Date: 20060411 Docket: E020509 Registry: New Westminster Between: Frances Rose McGuckin Plaintiff And Michael James McGuckin Defendant Before: Master Keighley Reasons for Decision Counsel for the Plaintiff David D. Hart Counsel for the Defendant Michael J. Edwards Date and Place of Hearing: April 4, 2006 New Westminster, B.C.

- [1] The Plaintiff (hereinafter referred to as the "Wife") applies for interim spousal support retroactive to February 1, 2005 payable on a periodic or lump sum basis together with the costs of her application.
- [2] The Motion is brought pursuant to sections 9, 89 and 93 of the Family Relations Act, R.S.B.C. 1996, c. 128, and sections 15.2(1) and (2) of the Divorce Act, R.S.C. 1985, c. 3 (2nd supp.).
- [3] I have considered all of the factors enumerated in both statutes although, as this is an interim application, the means and needs of the parties assume greater significance: Threlfall v. Threlfall 2001 B.C.S.C. 1592. On an interim application and on the basis of affidavit material alone, it is seldom possible to engage in an extensive analysis of all of the enumerated considerations. Once the applicant has established a prima facie case of entitlement to support, and need, the appropriate quantum may be considered: Fallis v. Fallis, 2000 B.C.S.C 1446.

BACKGROUND

- [4] The Wife is 55 years of age and the Defendant (hereinafter referred to as the "Husband"), 49. The parties were married January 8, 1982 and separated on or about August 30, 2004. They have one child, Katrina, who is now 16 years of age. Katrina has resided with the Wife since separation.
- [5] The Husband is employed as a relief supervisor, Southern Zone, with Canada Post. His earnings are in the vicinity of \$54,000 per annum. The Wife has an entrepreneurial background. In 1983 she launched a public accounting and consulting practice, known as Eastleigh Management Services. She composed weekly business columns for the local Langley newspaper from 1984 onwards and in 1986 taught a continuing education

accounting class in the evenings. She conducted some seminars for the Federal Business Development Bank. She sold the accounting practice in 1989, due to the pending birth of Katrina, for the sum of \$52,500 and in 1990/1991 re-launched the business that she currently runs, a public accounting, public speaking and business writing enterprise.

- [6] The Wife wrote her first book in 1997 and in 1998 one of her self-published works was incorporated into a software program named Business Suite Deluxe, a program distributed across North America. When Intuit Canada purchased the electronic rights to this program for their Quick Tax programs, the funds she earned were substantial and were, she says, used to pay off family debts, pay for family vacations, purchase family vehicles, purchase RRSP's and conduct home renovations. In 2000, the Wife sold off the accounting side of her business, yet again and from that point on focussed on professional speaking, consulting and writing. She spent from January to August 2004, preparing the second edition of one of her books and writing two American versions of her books currently in print. She says that the unexpected demise of the relationship in August of that year led to a "nervous breakdown" and says that since that time, her capacity to operate her business has been severely affected.
- [7] On July 13, 2005 the Wife was involved in a motor vehicle accident which she characterizes as serious and which the Husband characterizes as minor. Since the accident, she has complained of headaches, fatigue, sleeping problems, deeper depression, short-term memory loss, difficulties with concentration, focus, emotional instability and an inability to plan or organize. She says that she also suffers from constant and chronic neck pain, backache and pain in her shoulders, hips, arms and hands. She says that her difficulties with concentration and organization are the most troublesome in her field. She has, she says, difficulty organizing her speech and thoughts and can no longer "multi-task" as before. She says that she has lost a significant degree of self-confidence.
- [8] The parties have significant assets, a clear title home located at 21944, 6th Avenue, Langley, British Columbia, occupied by the Wife, Katrina, and the Wife's mother, valued at \$480,000 as at July of 2005. The Wife has mutual fund RRSP's valued at approximately \$58,000 and the Husband has a mutual fund account valued at approximately \$49,000. The parties have debt in the order of \$81,000 not yet allocated between them in terms of responsibility.
- [9] The Husband has commenced a separate proceeding seeking partition and sale of the former matrimonial home. That matter has not yet proceeded to hearing. It appears that the Wife has not yet instituted any claims arising out her motor vehicle accident and has not yet made claim for Part 7 "no fault" benefits. It is not clear why she has not done so although her counsel, who is not her counsel in the motor vehicle matter, indicated that uncertainty in her medical situation has resulted in a decision to "hold off" on any claims or proceedings to this point. DISCUSSION

- [10] I have reviewed the parties' financial statements. On April 15, 2005, the Husband was cross-examined on his statement by Mr. Hart and I have had an opportunity to review the transcript of that examination. I have considered the Husband's responses in reducing his actual monthly expenses to something in the order of \$2,100 per month from the \$7,042.38 per month claimed. The Husband is presently living with his parents and has minimal costs associated with shelter. He wishes to establish a residence of his own however, and his expenses will then increase significantly. For the purpose of this application, I have considered his present circumstances solely.
- [11] The Wife deposes to monthly expenses of \$4,594. The extent to which these expenses include provision for the care of her mother is not clear. She deposes to an annual income of \$12,109, but a review of the statement of business activities for her most recent income tax return indicates that her income is more reasonably in the area of \$16,250.
- [12] If the Husband pays the Wife the sum of \$700 per month he will be left with \$2,152 per month which should be sufficient to pay his present expenses. Given her income of \$1,354 per month, the Wife will net, including the sum of \$469 paid as child support by the Husband for Katrina, the sum of \$1,869 per month. If she receives a sum of \$700 from the Husband, her monthly net will be increased to something in the order of \$2,472 per month: a sum which while not sufficient to meet her stated needs, provides her with more of the family's after-tax income than the Husband receives and balances her needs and the Husband's ability to pay.
- [13] Accordingly, the Husband will, commencing as of April 1, 2006, continuing on the first day of each and every month thereafter until further order of this Court, pay to the Wife spousal support the sum of \$700 per month. In the event that he wishes to make the payment bi-weekly, he will pay the sum of \$323.08 every two weeks commencing as of the same date. I might say that with the assistance of counsel, I have had reference to the Spousal Support Advisory Guidelines. I note that the sum which I have ordered the Husband to pay appears to be within the range of figures suggested by those Guidelines.
- [14] The Wife's application for retroactive support is adjourned for consideration by the trial judge.
- [15] Each party will bear their own costs of this application. "Master P. Keighley"

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