

CANADA / JUDGMENT

Moffat v. Moffat

2020 BCSC 2287

COURT

Supreme Court of British Columbia

DECIDED

10 November 2020

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

2020 BCSC 2287 Moffat v. Moffat

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Moffat v. Moffat,

2020 BCSC 2287

Date: 20201110

Docket: E47974

Registry: New Westminster

Between:

Zachery William Jason Moffat aka Jason Moffat

Claimant

And

Tracey Ellen Moffat

Respondent

Before: The Honourable Mr. Justice Sewell

(appearing by teleconference)

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant appearing by teleconference:

J.H. Bryant

Counsel for the Respondent appearing by teleconference:

T.E. Hoover

Place and Date of Hearing:

New Westminster, B.C.

October 30, 2020

Place and Date of Judgment:

New Westminster, B.C.

November 10, 2020

Introduction

- [1] THE COURT: In this family law matter, the parties bring cross-applications.
- [2] The applicant father, who is the claimant in this application and case, seeks an order declaring that his daughter H. ceased to be a child of the marriage as of June 2019 when she completed four years of university at the University of Victoria.
- [3] The claimant's notice of application also sought an order that his son R., who reached the age of 19 on January 27, 2019, was no longer a child of the marriage. However, since the time the application was filed in January of this year, the parties have reached an agreement that R. returned to the status of child of the marriage when he enrolled in post-secondary education in September 2019 at BCIT, after having taken some time away from school to work. I therefore find that R. was not a child of the marriage for the period from February to August of 2019, but again became a child of the marriage effective September 2019 and became entitled at that time to child support pursuant to para. 4(b) of the consent order the parties entered into in 2016.
- [4] In an associated application, the claimant also sought various disclosure orders which have become moot in view of the exchange of affidavits and argument between the parties, beginning with the filing of the claimant's notice of application in January of this year.
- [5] The respondent has filed an application in which she seeks an order declaring that H. continued to be a child of the marriage until April 2020, when she received a bachelor's degree in psychology from the University of Victoria. She also seeks an order for payment of arrears of child support for both children from January 1, 2016, to date, and an order that the claimant pay a fine of \$5,000 pursuant to the Family Law Act for providing misleading information with respect to his income from the time of the 2016 consent order up to October of this year.

the context of the application

- [6] The parties were married in 1997, separated in 2014, and divorced and entered into the consent order on March 1, 2016. In that consent order, the parties made the following agreement with respect to child support (quoting from paras. 3 and 4 of the order):
3. Commencing January 01, 2016 and continuing thereafter so long as each child remains a child of the marriage, the Claimant shall pay child support in the amount of \$755 per month.
 4. The obligation to pay child support ceases in respect of a child who:
 - a. ceases to be a "child" as defined in the Family Law Act; or,
 - b. turns 19, unless the child is unable to become self-supporting due to illness, disability, education or other cause; or,
 - c. becomes self-supporting; or,
 - d. obtains one post-secondary degree or diploma; or,
 - e. marries
- [7] The 2016 order has two further provisions addressing changes in the amount of child support that will be payable after the order. Paragraph 5(a) provides that the parties may review the amount of child support and adjust it to ensure that it accords with the requirements of the Federal Child Support Guidelines by July 1st of each year commencing on July 1, 2016; and para. 5(b) gives the parties the right to seek a review of child support on certain specified grounds, including a change in either party's income.
- [8] However, those provisions must be read in connection with para. 6 of the order which requires the parties to provide a copy of their most recent income tax returns, their most recent notices of assessment, and their most recent statement of annual earnings, together with any other relevant information, to facilitate a determination of appropriate child support payable, by June 30th each year beginning in 2016.
- [9] In my view, para. 6, to which I have just referred, makes it clear that the parties agreed to adjust child support annually based on fluctuation in the claimant's income, as contemplated by the Federal Child Support Guidelines, without the necessity of making a formal application for review.
- [10] On this application, the parties filed lengthy affidavits making various allegations against each other. These included allegations of lack of disclosure of income tax information on the part of the claimant, and a lack of information about the educational and living arrangements of the children of the marriage by the respondent and by the children themselves. However, as I have already indicated, in the course of the time between the filing of the claimant's application and the hearing of this matter, almost all of the information necessary to determine those issues has been provided.

- [11] The additional financial disclosure has satisfied me that the claimant has not been paying child support at the level required by the Child Support Guidelines. I am also satisfied, based on the evidence presented at the hearing of this application, that the claimant did not comply with the provisions of para. 6 of the 2016 order.
- [12] I find that para. 6 was intended to require the claimant to produce that documentation to allow the respondent to determine the amount of child support that was payable pursuant to the Guidelines and to ensure that that amount was payable. I accept as correct that the table amount in para. 20 of the respondent's notice of application except in one respect, to which I will return later, sets out the amount of child support payable pursuant to the Guidelines and the amount actually paid by the claimant in the relevant period. The table shows that the claimant ceased paying child support to the respondent in January 2019. The evidence filed on these applications satisfies me that the claimant's total income for 2019 for child support purposes was \$71,399.

The Issues for Determination

- [13] The issues to be resolved, therefore, are the following:
1. when did the claimant's obligation to pay child support for H. cease
 2. for what period of time should the claimant be required to pay arrears of child support
 3. should the claimant be required to pay a fine pursuant to the Family Law Act for failure to disclose relevant financial information to the respondent, and
 4. what orders should be made for the costs of the application.

ANALYSIS

- [14] Dealing first with the issue of when the claimant's obligation to pay child support for H. ceased.
1. When did the claimant's obligation to pay child support for H. cease?
- [15] Both the Divorce Act and the Family Law Act provide that child support can be payable after children of the marriage reach the age of majority if the children are unable to withdraw from the charge of their parents.
- [16] Beginning with *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, 1993 CanLII 2570 (B.C.S.C), the courts have established a number of factors to be taken into account in determining whether there is a continuing obligation to pay child support for a child over the age of majority. The case law has established that a child may continue to be a child of the marriage if they are unable to support themselves by reason of pursuing higher education.

- [17] I do not need to address what have been called the Farden factors in this case, because the parties agree that the 2016 order said the claimant would continue to pay child support for each child until they obtain one post-secondary degree or diploma. The parties agree that this provision continues to be binding on them.
- [18] The issue of when H. ceased to be a child of the marriage therefore depends upon the proper construction of para. 4(d) of the 2016 order.
- [19] The undisputed evidence is that H. did not obtain a degree from the University of Victoria until April 2020, after attending there for five years. However, the claimant's submission is that he should only be required to pay child support up to April 2019, when H. completed four years at the University of Victoria. The claimant submits that H. could have obtained a degree within the usual four-year period, and that he should not be responsible for the extra year it took H. to graduate. In support of this argument, the claimant also points to what appears to be a certain degree of estrangement between himself and H.
- [20] I do not accept the claimant's position on this issue. In my view, the terms of the 2016 order are clear. The claimant was liable to pay child support until H. obtained one post-secondary degree. That event did not occur until April 2020. The claimant attempted to demonstrate that H. had accumulated enough credits to graduate from university in April 2019. However, I find H. lacked the required courses to obtain a degree with a major in psychology until a year later.
- [21] In the absence of a finding that H. unreasonably delayed the obtaining of such degree, in my view, the claimant continued to be obligated to pay child support until the event contemplated in the order, that is, the obtaining of a degree or a diploma occurred.
- [22] The claimant has not persuaded me that H. unreasonably extended her time at the university. It is not unusual for a student to take some time to determine the field in which they wish to major, particularly when they commence university shortly after leaving high school.
- [23] I note also that the claimant obtained certainty in the 2016 order with respect to his obligation to pay child support while the children undertook post-secondary education. This provision in the order protected the claimant from the prospect of facing claims for child support if the children decided to pursue post-graduate studies, as H. now appears to be contemplating.
- [24] I find that it should have been apparent to a reasonable person in the claimant's position that more than four years of post-secondary education might be required by his children to obtain their first degree.
- [25] I therefore find that the claimant's obligation to pay child support for H. continued until April 2020.
- [26] Turning then to a consideration of the situation for R.

- [27] As I understand it, the parties now agree that R. has been a child of the marriage for child support purposes and pursuant to the order of 2016, except for the period from February 2019 to August 2019. As I indicated earlier, R. was born on January 27, 2000, and therefore turned 19 late in January of that year. I find that there was no obligation on the claimant to pay child support for R. from the period from February 1, 2019, to August 2019, inclusive. Beginning in September 2019, R. has been enrolled at BCIT. The claimant is therefore liable to pay child support for him until he obtains either a diploma or a degree from that institution, subject of course to his pursuing his education with reasonable diligence.
- [28] I have been unable to determine the end date for child support for R. on the basis of the evidence filed on the application. I do find, however, that the 2016 order does not require R. to obtain the earliest possible degree or diploma available. As with H., the question of whether the claimant's obligation to pay child support for R. has come to an end depends on the date that R. obtains a diploma or degree, subject to a requirement that R. acts with reasonable diligence in pursuit of a diploma or degree.
- [29] The next question that I wish to address is for how far back should arrears be awarded.
2. For what period of time should the claimant be required to pay arrears of child support?
- [30] In *D.B.S. v. S.R.G.*, 2006 SCC 337, the Supreme Court stated that as a general rule, arrears should not be ordered to be paid for a period of more than three years before the recipient spouse sought to enforce the obligation to pay support. However, the question of when that event occurred should be construed contextually, and that time period can be extended in circumstances in which the payor has been guilty of blameworthy conduct.
- [31] In this case, I find that the 2016 order required that the claimant provide the information necessary to allow the respondent to determine the amount of child support payable under the Child Support Guidelines annually, an obligation that is also contained in the Guidelines themselves. The 2016 order does not require the respondent to request that information before it is provided. In my view, the failure of the claimant to comply with the requirement of para. 6 of the 2016 order is blameworthy conduct justifying the extension of the usual three-year limitation on the collection of arrears.
- [32] I have concluded that the claimant must pay all arrears that have arisen from July 2016 to the date of these reasons. I am satisfied that such an order will not impose any undue hardship on the claimant. The 2016 order fixed the amount of child support payable as of the time of that order at \$755 per month. I accept that that amount was negotiated between the parties as the amount that was then payable. The claimant's obligation to pay child support to July 1, 2016, was fixed at \$755 per month, and the claimant appears to have complied with that obligation. However, as I have already stated, the 2016 order also contemplated that the amount would be adjusted annually in July to comply with the Child Support Guidelines.

- [33] I therefore find that effective July 2016, the amount payable for child support became payable based on the claimant's 2015 total income. With regard to the period up to July of 2016, there was no evidence before me as to what the claimant's income in 2014, which would have determined the amount payable in that period, was. However, as I have indicated, I do accept that the \$755 per month was negotiated between the parties and I infer from that, that it did represent the amount payable pursuant to the Guidelines at that time.
- [34] Turning to the question of the determination of the arrears.
- [35] Counsel are of the view that they could determine the arrears once I made the necessary findings of fact with respect to the status of H. and R. in the period from the 2016 order to the date of appearing before me. I will therefore not make a final determination of the amount owing to the respondent. However, to assist the parties, I do find that the amount that the claimant paid directly to H. should be taken into account in determining the arrears.
- [36] For the period in which R. was employed in 2019, the amount payable should be based on the amount payable for one child in that period, that is the period from February to August of 2019. And, as I have already indicated, in my view the arrears did not start to accrue until July 2016.
- [37] If the parties cannot agree on the amount of arrears fully, they may make a reference to the registrar for a determination of the amount of arrears in accordance with these reasons.
3. Should the claimant be required to pay a fine pursuant to the Family Law Act for failure to disclose relevant financial information to the respondent?
- [38] The respondent seeks an order that the claimant pay a fine, which she suggested should be in the amount of \$5,000, pursuant to s. 213(2) of the Family Law Act. The respondent submits that the failure of the claimant to comply with the provisions of the 2016 order with respect to the providing of Canada Revenue Agency information has led to extra expense and has frustrated her ability to enforce compliance with that order.
- [39] However, I am not satisfied that the circumstances of this case warrant the imposition of a fine. The wording of s. 213 of the Family Law Act suggests that its object is to encourage proper disclosure of information in the course of litigation, rather than to punish a spouse for failure to provide information post-litigation relating to their continuing obligation to pay child support.
- [40] I have difficulty in seeing how the conduct of the claimant falls within any of the three circumstances specified in s. 213(1)(a) and (b). These circumstances, in my view, relate to the conduct of the parties who are engaged in family law litigation. I also accept the claimant's explanation that his accountant prepared his income tax returns and that there was some misunderstanding about the number of T4 forms he was required to file with CRA, and that this partially explains some of the failures on the part of the claimant to pay

the proper amount of child support.

[41] I also agree with the comments of Justice Walker of this Court in *McDermott v. McDermott*, 2014 BCSC 1740, that the purpose of s. 213 of the Family Law Act was not to punish a party, but to ensure compliance with the disclosure obligations of parties to family law proceedings.

[42] Accordingly, the application for the imposition of a fine is dismissed.

4. What orders should be made for the costs of the application?

[43] With respect to costs, I am satisfied that the respondent was the successful party on these applications in that she has succeeded on a majority of the issues which I was called upon to decide. In fact, she substantially succeeded on all of those issues except the issue of the fine. I therefore order that the claimant pay the costs of the application to the respondent as a matter of ordinary difficulty forthwith after assessment thereof.

conclusion

[44] That concludes my reasons.

[45] THE CLERK: My Lord. Would you mind just recapping what your actual orders were, right from the beginning. I am just unclear which was an order and which wasn't.

[46] THE COURT: All right. To summarize then, my orders are as follows.

1. The obligation of the claimant to pay child support for H. ceased at the end of April 2020.
2. The obligation to pay child support to R. ceased on February 1, 2019, and then resumed on September 1, 2019, and will continue until R. obtains a diploma or a degree, subject to his pursuing a degree with reasonable diligence.
3. The claimant shall pay arrears of child support payable commencing July 2016, and continuing to the date of these reasons.
4. If the parties cannot agree on the amount of child support payable, they may make a reference to the registrar to have that amount determined in accordance with these reasons.
5. Fifth, the claimant will pay the costs of this application as a matter of ordinary difficulty forthwith after assessment thereof or, of course, the agreement of the parties as to their amount.

[47] THE CLERK: Okay. And that's everything?

[48] THE COURT: I believe so. Counsel, have I covered everything in that summary?

[49] CNSL T. HOOVER: My Lord, the application for the fine was dismissed also.

[50] THE COURT: Sorry, yes, the application for the fine is dismissed.

- [51] CNSL T. HOOVER: And My Lord, if I could have some clarification that the amount of arrears payable is to be paid by the claimant to the respondent?
- [52] THE COURT: Yes. I can see that is unclear. I am sorry, I did not realize that was an issue.
- [53] CNSL T. HOOVER: Well, it's just because payments had previously been made to the child H., so I wanted to make it clear that these arrears are to be paid to the respondent.
- [54] THE COURT: It is quite clear that the claimant in this case has an obligation to pay the child support to the respondent as the parent. However, I assumed, based on the material before me, that it was agreed that the amounts that were historically paid to H. should be taken into account as a credit against the amount of arrears otherwise owing.
- [55] CNSL T. HOOVER: That is how the respondent calculated it, yes.
- [56] THE COURT: All right.
- [57] THE CLERK: So the --
- [58] THE COURT: On a going-forward basis, H. is no longer entitled to child support, so the only issue is payment in respect of R.
- [59] CNSL T. HOOVER: Yes, and My Lord, can my friend and I insert into the order what the current monthly obligation is with respect to R., to make that as clear as possible?
- [60] THE COURT: Yes. That does not seem be in the materials, so yes. If the parties can agree both on the amount of arrears and the amount which is currently payable for R., that can be inserted into the order.
- [61] CNSL T. HOOVER: And otherwise can that matter be referred to the registrar also? Because the respondent's application is actually for a retroactive variation -- oh sorry, I suppose it wasn't specifically set out that way.
- [62] THE COURT: No, I understood that you were seeking arrears.
- [63] CNSL T. HOOVER: Yes, and seeking at para. 1 of her application, variation of the order to provide that the claimant pay child support to the respondent based on his Guidelines income.
- [64] THE COURT: All right.
- [65] CNSL T. HOOVER: So that would include the current amount.
- [66] THE COURT: Yes. Well, in my view, that is not what the order provided. I think that a fair reading of the order is that the insertion of the figure was only intended to cover the period up to the annual review.

- [67] CNSL T. HOOVER: All right, thank you, My Lord. I was speaking of just the ongoing amount, so that the variation of the divorce order can reflect the ongoing amount of child support payable by the claimant for R.
- [68] THE COURT: Well, it cannot. The consent order and my order is that child support for R. be payable in accordance with the Guidelines.
- [69] CNSL T. HOOVER: Yes. My Lord, if we can insert the correct current amount, which you have already indicated we can, I think we can resolve this. The difficulty is that Family Maintenance won't enforce an amount which isn't specified. They won't enforce updated Guidelines payments. They won't do the calculation or enforce a new amount unless there is a court order or an agreement for it, and so that's why we sought variation of the order to reflect his current Guidelines income.
- [70] THE COURT: I do not really see it as a variation, but I certainly think the order should declare what his Guidelines income has been over the period of time from 2015 to the present, and specify what the amount of child support payable is in those periods.
- [71] CNSL T. HOOVER: Thank you.
- [72] THE COURT: I think, if the court order specifies what the amount of arrears is, it is my understanding that FMEP will enforce that. Is that not right?
- [73] CNSL T. HOOVER: Yes, they will, My Lord.
- [74] THE COURT: All right. So the order should determine the amount of arrears to today and set out an amount based on the Guidelines for R. on an ongoing basis.
- [75] CNSL T. HOOVER: Thank you.
- [76] THE COURT: Mr. Bryant, you do not have any issue with that, I take it?
- [77] CNSL J. BRYANT: No. I -- I took from your order that we would just be basically inserting what the new amounts were.
- [78] THE COURT: Yes.
- [79] CNSL J. BRYANT: And go from there.
- [80] THE COURT: Right. Anything further?
- [81] CNSL T. HOOVER: No, thank you, My Lord.
- [82] THE COURT: No, all right, thank you. We will adjourn.
- [83] THE CLERK: Order in court.

"Sewell 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/20/22/2020BCSC2287.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/moffat-v-moffat-2020>

Prepared on 24 October 2026 · Esheria