

CANADA / JUDGMENT

Murphy v. Murphy

2007 BCSC 510

COURT

Supreme Court of British Columbia

DECIDED

22 January 2007

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2007 BCSC 510 Murphy v. Murphy IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Murphy v. Murphy, 2007 BCSC 510 Date: 20070122 Docket: EO11067 Registry: New Westminster Between: Teresita S. Murphy Plaintiff And: Anthony Blaine Murphy Defendant Before: The Honourable Mr. Justice Rice Oral Reasons for Judgment In Chambers January 22, 2007 Counsel for the Plaintiff: F.G. Reif Counsel for the Defendant: T. Lazar Place of Hearing: New Westminster, B.C.

- [1] THE COURT: The precision that we might like to have in determining a cancellation of arrears for spousal maintenance is hard to come by in these kinds of cases.
- [2] We have the fact that in 2002 or 2003, the wife took up residence in a common-law relationship with another person and that his income combined with her income satisfies me that the need for spousal maintenance ceased to exist at some point, and it was time to terminate them. Exactly when is the question.
- [3] I am going to choose January 2004 as a number. It is a number between the two numbers argued on that point. So whatever that calculates to at \$300.00 a month through to the present will be the arrears of spousal maintenance that will be cancelled.
- [4] Then there is the question of child support arrears, and I understand that is \$9,097.00; the parties agree on that.
- [5] MR. REIF: No.
- [6] THE COURT: Is that the right number?
- [7] MR. REIF: The child support arrears after all the payments that have been made since the support orders were made are taken off is the number that I gave Your Lordship earlier which is -- including the January 1st, 2007 payment, it is \$20,997.82 and that is after taking off the payments that -- there have been 14 payments made.
- [8] THE COURT: So what is the difference then, Mr. Lazar?
- [9] MR. LAZAR: The difference my friend I believe is calculating that at a \$40,000.00 income -- \$343.00 a month owing from the order forward and I am --

- [10] THE COURT: Oh, I see.
- [11] MR. REIF: Oh, I am sorry that is --
- [12] MR. LAZAR: -- my charge took into account the actual income and lower Guidelines monthly payments.
- [13] MR. REIF: I thought Your Lordship was asking what the amount of arrears under the orders are.
- [14] THE COURT: Yes. That is exactly what I was asking.
- [15] MR. REIF: Okay. Well, that is the number there. What my friend has given you is a different number based on actual earnings claimed.
- [16] THE COURT: Based on me basically cancelling arrears to the extent of the difference.
- [17] MR. REIF: Yes.
- [18] THE COURT: Okay. Well, on the income of Mr. Murphy, the evidence is that he did earn \$40,000.00 or more a year as a highly-skilled contractor, and he declares an income of \$24,000.00 plus the use of a car for a total of \$30,000.00. He works in a company as the major workforce component and has a common-law wife in a position of nominal control of the company. It just is not credible to me that they are not income splitting in a way to maximize their tax advantages and other advantages and the income that I see for the last year for her persuades me that there was not a full disclosure here and it is exactly the nature of their common income earning capacity. I am going to reduce that but only to \$35,000.00 a year which will be the imputed income for Mr. Murphy and I will leave counsel to calculate what that adds up to in arrears. It is less than the \$20,997.00, but it is more than Mr. Murphy submitted as the appropriate amount.
- [19] The access has been worked out. I will not express the details because it is by consent. I have heard what has been said and I agree with it and the parties may set the order accordingly.
- [20] THE COURT: Yes, Mr. Reif?
- [21] MR. REIF: Yes, I am sorry My Lord, just on the gentleman's income being set at \$35,000.00 a year, when would that commence? Commencing what year?
- [22] THE COURT: That goes back to -- help me out, Mr. Lazar.
- [23] MR. LAZAR: The income changed -- he made \$40,000.00 in both 2000/2001 and then made \$20,000.00 so maybe from 2002 forward, is that --
- [24] THE COURT: What do you say, Mr. Reif?
- [25] MR. REIF: I saw, yeah, there was -- I believe 2002 was the year. I am just trying to find it. The income went down apparently starting in 2002, so perhaps appropriately either January 1st, 2002 or January 1st, 2003 for his income being --

- [26] THE COURT: Yes. January 1st, 2003.
- [27] MR. REIF: Okay.
- [28] MR. LAZAR: I take Your Lordship is saying then to recalculate what the child support would have been out of a \$35,000.00 income for those years --
- [29] THE COURT: Yes.
- [30] MR. LAZAR: -- going forward and continuing forward.
- [31] THE COURT: And continuing forward from now on, barring any other change -- barring change that would justify another application. All right, is there anything else on the money portion?
- [32] MR. REIF: The only -- the present child support obligation would be from February 1st forward. We have dealt with arrears to January.
- [33] THE COURT: That is true. Yes, it would be.
- [34] MR. REIF: I believe -- I have -- if Madam Registrar needs the terms of that order, it is in my submission.
- [35] THE COURT: Okay, you can submit to her the child support, access and guardianship. I am going to find on Mr. Reif's side for the guardianship. It will stay the same subject to the terms, but I understand that is by consent in any event.
- [36] MR. REIF: Yes, there are some terms that were agreed to, yes.
- [37] THE COURT: Yes, okay. Are there any terms you have not agreed to?
- [38] MR. LAZAR: No, the one we did not agree to, I have withdrawn.
- [39] THE COURT: Is there anything else?
- [40] MR. REIF: I believe that is it.
- [41] THE COURT: Okay. Well, I think it is a divided result it seems to me. There will be no order for costs. "E. Rice, J." The Honourable Mr. Justice E. Rice

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