
CANADA / JUDGMENT

Nadim v. Hakim

2018 BCSC 1999

COURT

Supreme Court of British Columbia

DECIDED

14 November 2018

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2018 BCSC 1999 Nadim v. Hakim

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nadim v. Hakim,

2018 BCSC 1999

Date: 20181114

Docket: E162835

Registry: Vancouver

Between:

Nahamand Nadim

Claimant

And

Abdulrahman Hakim

Respondent

Before: The Honourable Mr. Justice Myers

Corrected Reasons: These reasons were corrected at
para. 54 on November 16, 2018.

Reasons for Judgment

Appearing in person:

Nahamand Nadim

Counsel for the Respondent:

Alex J. Boland

Place and Dates of Trial:

Vancouver, B.C.

October 16 and 17, 2018

Place and Date of Judgment:

Vancouver, B.C.

November 14, 2018

- [1] This is a family case in which the only issues are support and the enforcement of what the claimant, Ms. Nadim, says is a religious contract.
- [2] Ms. Nadim is 61 years old and is unable to work because of her health. Mr. Hakim is or will be turning 63. He works as a taxi driver.
- [3] The parties separated in 2016 after a twenty-year marriage.

Facts

- [4] Ms. Nadim represented herself at the trial; she did have counsel through part of the litigation. I will say at the outset that Ms. Nadim's evidence was rambling and nearly incomprehensible. In spite of my repeated cautions, it was mixed with submissions, hearsay and unfounded accusations. She continually interrupted the evidence of Mr. Hakim and the few witnesses he called, attempting to contradict them. Once again, this was in spite of repeated cautions.
- [5] The parties, who met in Canada, were both school teachers in Iraq and came to Canada as refugees in the early 1990s. The claimant came directly to Vancouver, while the respondent spent some time in Edmonton before moving to Vancouver.
- [6] The parties were married on May 20, 1995. They participated in a religious marriage ceremony in 1994. I will return to this later.
- [7] Ms. Nadim worked as a hairdresser until approximately 2011, when she became disabled, and started receiving disability payment. She remains unable to work and continues to receive social assistance.

- [8] After arriving in Canada, Mr. Hakim first worked as a construction worker, then as a delivery driver and later as a cook at a pizza restaurant, Dallas Pizza. Mr. Hakim's work there was full time until the parties went to Iraq for a visit some time between 2009 to 2011. When they returned, Mr. Hakim's hours were reduced to four hours per shift, four days a week. His paystubs show that he worked approximately 30 hours in every two-week pay period. His work at Dallas was confirmed by the restaurant's owner, Mr. Habibi.
- [9] Mr. Hakim began working as a taxi driver for Blacktop in 2013, initially part time when he was also working for Dallas Pizza. In June 2017, he stopped working at the restaurant and began working full time as a taxi driver. I return to his income later.
- [10] When she gave her evidence, Ms. Nadim said that Mr. Hakim had been given a loan or gift from Mr. Habibi. However, Mr. Habibi denied that, as did Mr. Hakim. There is no basis for me to find that a loan or gift was made. Further, I do not see it as being relevant.
- [11] Ms. Nadim also alleged that Mr. Hakim took money from their account when they were still together. There was no evidence of that and, in any event, it is irrelevant since it occurred well before separation
- [12] Ms. Nadim's suspicions of Mr. Hakim led her, in 2013, to hire a detective to follow him because she was suspicious of his activities in the evenings. The detective learned that he was working as a taxi driver, which Mr. Hakim said he had told Ms. Nadim. Ms. Nadim, not working at the time, paid for the detective through, she said, a loan from a friend.
- [13] At some time during their relationship, Ms. Nadim surreptitiously recorded a telephone call of Mr. Hakim with a friend by hiding a recording device under the bed. She said she was suspicious that Mr. Hakim was hiding money from her. Only one side of the telephone call was recorded. Ms. Nadim sought to adduce an unofficial translation of the recording from Kurdish. During a break, another unofficial translation was made by another friend with which Mr. Hakim agreed. The translation initially submitted said that Mr. Hakim "sent 20,000"; that was not in the agreed second translation, which was also noted by the translator to have incomprehensible or inaudible gaps.
- [14] The recording contravened s. 193 of the Criminal Code, however that does not automatically exclude the recording. Baird J. set out the considerations in *Surrett v. Butkiewicz*, 2018 BCSC 1380:
- [15] On the second issue, I agree completely with the sentiments expressed by this court in *Seddon v. Seddon*, [1994] B.C.J. No. 1729 (S.C.), that the surreptitious recording of household conversations is an odious practice that should be discouraged. It is not the case, however, that such conversations are automatically excluded. If the content of the recording is relevant to an issue in the proceeding, the identity of the speaker is known, the recording is trustworthy, and its probative value outweighs its prejudicial effect, the evidence should be received: see, amongst other authorities, *B.(A.D.) v. B.(E.)*, [1997] B.C.J. No. 227 (S.C.) at paragraph 12, and *Mathews v. Mathews*, 2007 BCSC 1825, at paragraph 43.

- [15] The first point to note is that the transfer of funds during the marriage is not relevant. Apart from that, the translation is not official, there are inaudible gaps in what was said by Mr. Hakim, and the other side of the telephone conversation was not recorded. I therefore am not prepared to admit the recording or its transcription.
- [16] The circumstances of the separation in June 2016 are in dispute but not relevant. Both parties agree that Mr. Hakim left without any household goods.
- [17] Turning to the current circumstances of the parties, the Ms. Nadim is living in a two-bedroom basement suite with a private kitchen and bathroom. She says this is the only residence she could find that would accommodate her dog. She pays approximately \$1,000 per month in rent.
- [18] Ms. Nadim did not provide any evidence of her current savings. She did get \$3,000 from the division of the RRSPs.
- [19] Mr. Hakim lives in shared accommodations. He has a bedroom only large enough for his bed. He shares a bathroom and kitchen with three other men. He pays \$500 per month in rent, which includes the cost of internet.
- [20] Mr. Hakim has \$6,200 in post-separation savings, in addition \$3,000 in his RRSP, which is the amount he maintained after the RRSPs were equally divided. He is able to save money because his expenses are low, due to nature of his accommodations. He estimates his yearly expenses at \$14,556, and as discussed below has income of approximately \$20,000. If he were to spend the same on rent as does the claimant it would amount to an additional \$6,000 per year, and effectively wipe out his ability to save.

I. Assets

- [21] The parties have already equally divided their RRSPs in accordance with an agreement reached at a JCC.
- [22] The only other asset at the time of separation was a 1997 Infinity. Through her former counsel, it was agreed that Ms. Nadim would keep the vehicle and pay Mr. Hakim \$500. The vehicle was transferred to her. She has not paid the \$500 and has donated the vehicle to the Kidney Foundation.
- [23] After separation, Mr. Hakim purchased a Hyundai but that is not a family asset and he need not account for it.
- [24] As I said above, it is not in dispute that Ms. Nadim kept all of the household effects at separation.
- [25] There are therefore no assets to divide.

II. Support

- [26] Ms. Nadim's only source of income is disability benefits of \$1,148 per month. That is not to be considered income for the purposes of support: C. Rogerson and R. Thompson, "Spousal Support Advisory Guidelines" (July 2008) Department of Justice Canada, s. 6.2.
- [27] As I said earlier, Mr. Hakim is working as a taxi driver. He gave evidence as to how he is paid:
- He pays a flat-rate daily "lease payment" to the owner of the cab he is driving. This lease has historically ranged from \$105 (on weekend shifts only) to \$120 (on weekday shifts) and is now \$115 each shift.
 - He must fill up the tank of the taxi cab before leaving his shift. He estimates that he spends approximately \$25 per shift on gas, and has provided a series of receipts showing same.
 - He retains the balance of any fares collected.
- [28] Most fares are paid by credit card or debit, in which case the funds are received by the cab owner, who remits the funds to the driver, less the lease payment. Mr. Hakim said that some cab owners will pay him by electronic transfer, while others will pay him in cash. He accepts cash from owners only when he trusts them not to cheat him.
- [29] The respondent said that the lease payment varied over time, and was recorded on his trip sheet. He estimated he paid approximately \$25 per shift on gas.
- [30] Another taxi driver, Mr. Turgut, gave similar evidence to that of Mr. Hakim.
- [31] Mr. Hakim did not declare or pay tax on any of his taxi earnings between 2013 and 2016. He said this was because Ms. Nadim's disability payments would be reduced if he worked more than a limited amount per month.
- [32] For 2017, he reported a portion of his taxi income on his tax return. He said that he earned \$4,500, which was just an estimate. He began to record his income either a result of this litigation, or the separation; it is not clear which.
- [33] Mr. Hakim adduced daily trip sheets from December 2016 through August 2018 (excepting April and May 2017). These are logs of each day's activities, and include start time, finish time, start location, end location, and cash or credit card payment received.
- [34] Dallas Pizza issued T-4 slips for his work there.
- [35] Mr. Hakim also receives \$1,444 per year from CPP.
- [36] Taking into account all of Mr. Hakim's admitted and documented earnings, and his claimed expenses for running the cab, his post-separation income is:

Year

Dallas Pizza

Taxi

CPP

Total

2017

\$3,432

\$15,767.69

\$1,444.13

\$20,643.82

2018 (est.)

0

\$19,125.60

\$1,444.13

\$20,569.73

[37] The question then becomes whether income should be attributed to Mr. Hakim on the basis that either he has actually earned more than he claims or has the potential to earn more. Undeclared income in family litigation is always a difficult issue and arises far too frequently.

[38] In considering this question, I looked at the daily trip logs. Mr. Hakim is working 20 days per month for full days. I do not see a basis to attribute further attribute income. Moreover, any attribution of further income would be de minimis.

[39] I agree with Mr. Hakim that there is no entitlement to compensatory support. Both parties worked throughout most of the marriage and contributed equally to the household expenses. There were no children that Ms. Nadim stayed home with.

[40] Mr. Hakim does not contest that Ms. Nadim is unable to work and therefore may have a claim for non-compensatory support. However, he argues that no support ought to be awarded because both parties income is below the threshold floor of the Spousal Support Advisory Guidelines.

[41] Section 11.2 of the SSAG sets out that someone with less than \$20,000 income should not pay, generally, pay support:

There should generally not be any amount of spousal support payable until the payor's gross income exceeds \$20,000 per year. A minimum wage or poverty line income would be too low for a floor, providing too little incentive for the payor to continue working, given prevailing tax rates. A review of the case law suggests that judges almost never order spousal support where payors

make less than \$20,000, or even slightly more. According to child support database information, where dependent children are involved, if the payor's income is below \$20,000 gross annually, spousal support is only ordered or agreed upon in less than 2 percent of cases and the percentages for incomes of \$20,000 to \$29,000 are only about 2.5 percent.

Below this floor, there will be occasional cases where there will be entitlement to spousal support. There is also a need for flexibility for incomes just above the floor, to avoid any "cliff effect" and to accommodate ability to pay concerns. These are discussed below. [Emphasis in original.]

[42] For incomes between \$20,000 and \$30,000, s. 11.4 provides that the full table amounts should not be ordered. It states, in part:

The "floor" for the use of the formulas is a gross payor income of \$20,000 per year. Below that floor, spousal support orders are rare and thus exceptional. For payor incomes between \$20,000 and \$30,000, there is no presumption against support, but it may be necessary to depart from the lower end of the formula ranges, in light of ability to pay considerations.

First is the situation involving payor incomes below the floor of \$20,000. In general, the formulas for amount and duration will not operate where the payor spouse's gross income is less than \$20,000 per year, as it will be rare that there will be sufficient ability to pay. There may, however, be exceptional cases where spousal support might be paid, e.g. where the payor spouse is living with parents or otherwise has significantly reduced living expenses, or where both spouses are retired and on low incomes after a long marriage. Formulas may be less helpful in determining amounts in such cases. [Emphasis in original]

[43] In *Heywood v. Heywood*, 2013 ONSC 58, Leach J. dealt with a situation similar to the one at bar. She noted:

95 The uncontradicted evidence before me also indicates that, notwithstanding Mr. Heywood's efforts and his relatively modest living expenses, and the absence of other currently economic alternatives, he is struggling just to maintain his own existence without depletion of the limited remaining assets on which he is depending to sustain him through retirement.

96 In such circumstances, it seems to me that there is not only a very real risk, but a definite probability, that imposition of an additional continued spousal support obligation will reduce Mr. Heywood's net disposable income to a point imposing unacceptable hardship, and provide far too little incentive for him to continue his work with Canadian Tire. Any order compelling him to pay spousal support from such income would be destined for failure, and in the meantime simply create a situation where both parties would be left with net disposable income levels in the range of social assistance.

[44] In *D.(I.) v. D.(D.)*, 2013 BCSC 45, Joyce J. applied the floor, but provided for support of \$1.00 per year because he wanted to recognise entitlement. He noted that:

[70] Likewise, need alone on the part of the recipient is not a sufficient basis for overcoming the general effect of the \$20,000.00 floor. If it were, then I daresay there would be no floor at all.

In Heywood, Leach J. terminated support entirely.

[45] While not a reason not to order support, I note that any minimal amount of support that could be ordered would be clawed-back from Ms. Nadim's disability benefit. However, a consideration in applying the floor is the possibility that to do otherwise may force the payor spouse to cease work. As stated in s. 11.4 of the Guidelines:

For spouses with low incomes, we must be particularly concerned about work incentives, welfare rates and net disposable incomes. There may be compelling arguments for low-income payors to pay child support at very low income levels, but the same arguments cannot be made for support for adult spouses.

[46] It is also of note in this case that the Guidelines are from 2008, and there has obviously been inflation since then. The suggested floor of \$20,000 may therefore be viewed as a conservative figure.

[47] I conclude that no support ought to be ordered in this case. Providing for a nominal amount of \$1.00 does not serve any utility and just keeps the parties partially enmeshed.

III. The religious document

[48] Ms. Nadim introduced a certificate from the B.C. Muslim Association certifying that the parties are legally husband and wife, and that "The bridal money (Mahr) agreed upon between the two was 1000 % mith'raqi".

[49] Mr. Hakim said that as part of a religious ceremony, he agreed to a "marriage portion of 1000 % mith'raqi", which he said is a measurement of gold roughly equally to a kilogram. He thought the 1000 % mith'raqi would be worth approximately \$50,000.

[45] Mr. Hakim testified that when he agreed to the marriage portion, he understood it to be a religious ceremony and not legally binding. He did not have legal advice. He said that he did not have 1000% mith'raqi or \$50,000 at the time of the religious ceremony nor does he have it today.

[50] Religious contracts may be enforced if they meet the requirements of a marriage contract: Delvarani v. Delvarani, 2012 BCSC 162 and Mohammadi v. Mohammadi, 2016 BCSC 1873.

[51] In the case at bar, if a full document was signed, it was not adduced. There is no evidence as to what "bridal money" means or under what terms it is payable. Other than the assumptions or guesses of the parties, there is no evidence as to the value of 1000 % mith'raqi, either at the time any agreement was made or now. If it is meant to be a payment made upon divorce, it would appear to be something that has no relationship to the financial obligations of the parties under B.C. law. As was held in both Delvarani and Mogammadi for similar reasons, I conclude there is no enforceable obligation.

IV. Conclusion

[52] The action is dismissed.

[53] I will not make an order for costs given there is no prospect of Ms. Nadim being able to pay it. I do not think Mr. Hakim argues otherwise.

[54] I express my appreciation to Mr. Hakim's counsel, Mr. Boland, who worked initially on legal aid and then gratis, for his helpful conduct of the trial including a final written argument. The only way the case was comprehensible was through his efforts and he acted with total fairness to Ms. Nadim.

"E.M. MYERS, J."

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