
CANADA / JUDGMENT

Noort v. Noort

2018 BCSC 1240

COURT

Supreme Court of British Columbia

DECIDED

25 July 2018

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2018 BCSC 1240 Noort v. Noort

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Noort v. Noort,

2018 BCSC 1240

Date: 20180725

Docket: E2465

Registry: Chilliwack

Between:

Ernest Bradley Noort

Claimant

And

Gertrude Sarah Noort

Respondent

Before: The Honourable Mr. Justice A. Saunders

Reasons for Judgment

The Claimant, appearing in person:

E. Noort

The Respondent, appearing in person

G. Noort

Place and Date of Hearing:

Chilliwack, B.C.

May 3, 2018

Place and Date of Judgment:

Chilliwack, B.C.

July 25, 2018

- [1] The claimant, Mr. Noort, applies to terminate the child support order pronounced by Mr. Justice Harvey on July 24, 2014 in respect of their two younger children, both now adults: Danica, born April 11, 1991; and Colin, born November 15, 1993, both of whom are continuing their post-secondary education.
- [2] These parties were divorced in 2004 by way of a consent order pronounced by Mr. Justice Joyce. That order provided for child support to be paid by the claimant in accordance with the Guidelines, for the parties' three children; for the annual exchange of tax returns; and for annual adjustment of the amount of child support commensurate with changes in income.
- [3] In 2014 the claimant applied to terminate child support for all three children. The respondent, Ms. Noort, did not oppose that application in respect of the eldest child, but sought continued support for Danica and Colin, and retroactive increases in support by reason of substantial increases in Mr. Noort's income that had not been previously disclosed.
- [4] At the time those applications were heard before Harvey J. in May and June 2014, Danica was 23 years old, and Colin had just turned 20. She had enrolled at Douglas College following graduation from high school, and obtained a number of transferable credits towards her Bachelor's degree. In 2011 she enrolled part-time at the University of the Fraser Valley ("UFV"), and at the time of the application her part-time studies at UFV in fine arts were continuing. In his reasons for judgment, indexed at 2014 BCSC 1406, Harvey J. found:
- [64] Danica's part-time enrollment results, in large measure, because of underfunding. That underfunding is a direct result of the claimant's failure to meet his obligations under the 2004 order. It is not as a result of any lack of interest on Danica's part in obtaining a post-secondary academic credential.

Mr. Justice Harvey went on to find that Danica had continued to contribute to her own support through her part-time earnings, including paying for personal items such as clothing, personal entertainment, and car insurance.

- [5] Colin gave evidence of his intention to resume studies at UFV in September 2014. His career aspirations were found by Harvey J. to be reasonable, and his academic achievements indicated those aspirations were achievable.
- [6] Mr. Justice Harvey found that Danica and Colin were children of the marriage, and were entitled to continuing support from the claimant. Colin in particular was found to remain a child of the marriage "as he pursues, in a timely manner, his academic goals" (para. 77).
- [7] In considering the basis for the retroactivity claim, Harvey J. found the claimant's blameworthiness to be at the high end of the spectrum. As there had been periods when the claimant had continued to pay support even though each of the children was not then a "child of the marriage", and as the respondent had continued to receive support on behalf of the eldest child long after he had finished his education, Harvey J. calculated the appropriate support that ought to have been paid by the claimant commencing June 1, 2005, and then deducted 50%. Prospective child support was substantially increased for each of Danica and Colin.
- [8] Mr. Justice Harvey, in making these findings, relied upon the well-known comprehensive list of factors in *Farden v. Farden* (1993), 48 R.F.L. (3d) 60 (B.C.S.C.), as to whether an adult child undertaking post-secondary education remains a "child of the marriage", noting that no single one of these factor is determinative:
- (1) whether the child is in fact enrol[l]ed in a course of studies and whether it is a full-time or part-time course of studies;
 - (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
 - (4) the ability of the child to contribute to his own support through part-time employment;
 - (5) the age of the child;
 - (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
 - (7) what plans the parents made for the education of the children, particularly during cohabitation; and
 - (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.
- [9] On the present application, Mr. Noort relies on several factors that he says militate in favour of support being terminated.

- [10] First, it is submitted that the arrears he was ordered by Harvey J. to pay were to have gone to the support of the children during the continuation of their education. He argues that when those arrears are added to the amount of continuing support he has paid since 2014, he has paid enough to support the children over a period of time reasonably needed for them to achieve their educational goals. In this respect he relies upon para. 93 from the decision of Harvey J.
- [93] I have already reviewed the circumstances of Danica and Colin. Both will benefit from the payment of retroactive support so as to provide them with the financial base to pursue their studies on a full-time basis.
- [11] Mr. Noort's reliance on that passage of the decision is misplaced. Mr. Justice Harvey was not a limiting or restricting the respondent's use of the arrears; he was simply making a finding that arrears were justified because they would benefit the children. I accept Ms. Noort's explanation that in fact the arrears were substantially used to pay down debt that had been incurred over the years due to Mr. Noort's failure to pay child support in an appropriate amount.
- [12] Second, Mr. Noort says that he effectively has no relationship with either child. As neither takes the initiative to contact him, he says he feels that they have terminated their relationship. This submission, I find, is fully answered by the findings made by Harvey J. In particular, with respect to Danica's relationship with the claimant he wrote:
- [69] Finally, the fact that Danica is estranged from her father is not as a result of any unilateral action by Danica; rather, it is the not unexpected consequence of the claimant's apparent apathy towards his children during their younger years. Although there may be some truth to the claimant's assertions that he experienced alienation from the children as a result the respondent's actions, he was the parent and the one expected to take steps over the course of time to remediate any damage done. I find he did nothing in that regard.
- [13] Further, in assessing the claimant's blameworthiness in respect of the issue of retroactivity, Harvey J. stated:
- [91] I am left with the conclusion that the claimant happily ceased contact with the respondent and his children so as to avoid making the necessary adjustments to the support payable.
- [14] Mr. Noort does not point to any extraordinary steps taken by him since 2014 to rehabilitate his relationship with his children. To the extent the relationship has been damaged, the blame does not lie with the children. I give no weight to this factor.
- [15] Third, Mr. Noort says that he has been diagnosed with multiple sclerosis, and is facing the probability of his work capacity decreasing as his condition advances. However, he presents no evidence that his earning capacity is currently impaired.

- [16] Fourth, Mr. Noort says that Danica has taken too long to obtain her degree; Harvey J. noted at para. 23 of his decision that at her then-current rate of progress Danica would not complete her degree for another three or four years, i.e. until the spring of 2017 or the spring of 2018, but Danica still has not graduated. However, Danica explains the reasons for her education taking longer than planned in her affidavit filed in response to this application. Her academic advisor at UFV suggested to her in 2016 that she would have a more versatile skill set and be more employable if she declared an extended minor in graphic design, in addition to the major in visual arts that she had already been pursuing. Accordingly, she began taking additional graphic design courses in 2016, and because of the extra courses required to obtain her minor she will be graduating a year later than originally planned, in May 2019 (so long as the courses she needs are available in the coming academic year); Danica will then have completed a Bachelor of Fine Arts degree. Danica has been able to attend university full-time since 2014 due to the financial support afforded by the increased amount of child support ordered by Harvey J. I accept her evidence that without that support she would have needed to revert to attending part-time.
- [17] I find no material change in circumstances with to Danica. She continues to have a reasonable, viable plan for a graduating with a degree that should enable her to obtain employment and become financially independent. She has continued to pursue her studies at diligently. I find no basis for terminating her support.
- [18] Finally, Mr. Noort says that Colin's financial circumstances, and delays in him completing his post-secondary education due to a change in his course of studies, all militate in favour of support being terminated.
- [19] In September 2014 Colin enrolled in a full-time studies towards a kinesiology degree at UFV. His plan at that time was to work toward a Master's in Physical Therapy from the University of British Columbia. As his first year progressed at UFV and he began to investigate his potential future education paths in more detail, he began to have second thoughts; space in the UBC Master's program was limited, and he considered that careers in massage therapy or personal training would offer limited opportunity for career advancement and income growth. He therefore decided, after consulting with an academic advisor, to investigate career paths related to engineering, and in the following academic year took prerequisite courses in math and sciences to position himself to apply to the UBC or BCIT engineering programs. Ultimately he chose BCIT over UBC, as attending the former meant that he could continue to live at home.
- [20] Unfortunately his UFV marks were not available in time to meet the BCIT engineering program's cut-off date for enrollment in the fall of 2016. He did enroll full-time at BCIT in September 2016, taking introductory courses in math, mechanical engineering, liberal arts and communication. At the same time, however, a job-share opportunity came up with his part-time employer, the City of Coquitlam. He was able to work full-time with the City, as his job of monitoring utility systems gave him the flexibility to continue studying while in the workplace.

- [21] Colin left the job-share in September 2017 and enrolled full-time with the Mechanical Engineering program at BCIT. As stated in his March 21, 2018 affidavit, he expects to complete his engineering diploma in the spring of 2019, and then would wish to continue studying toward a Bachelor's degree for a further two years, with the aim graduating with an engineering degree in the spring of 2021.
- [22] Colin has continued to be able to work part-time, earning approximately \$600 every two weeks. That income goes to pay for his textbooks and school supplies; car insurance, maintenance and gas; meals one at school; cell-phone; and clothing. His affidavit discloses that he since 2016 he has spent approximately \$6,000 in repairs and maintenance to keep his car, a 2005 model, on the road, and that he had paid approximately \$10,000 for necessary dental implant surgery. He anticipates tuition expenses of \$6,270.36 to complete his diploma, and a further \$14,235.68 in tuition over two years to complete his Bachelor's degree.
- [23] Colin's tax returns and notices of assessment in evidence disclose that in the years 2014-2016 he earned a total of more than \$109,000 in employment income. His earnings for the first eight months of 2017, when his job sharing employment continued, it is not disclosed but presumably it would have been at or near the same level as his 2016 earnings. He states in his affidavit:
30. I was also aware that I might need to fund the last 2 years of my Bachelor's Degree myself, and I wanted to save up for this.
- [24] Other than this, neither Colin nor Ms. Noort provide any accounting of the income earned by Colin since 2014 or his expenses. The current amount of his savings, and any interest earned is unknown.
- [25] As I have stated, no single one of the factors outlined in the Farden decision is determinative of whether an adult child pursuing post-secondary education remains a child of the marriage. In Colin's case, the extraordinary amount of his employment income earned while simultaneously being enrolled on a full-time basis makes this factor - his ability to provide for his own support - predominant. Given his considerable earnings, I cannot find that he reasonably remains in need of financial support from his parents. Ms. Noort says that without receiving child support she will be unable to pay Colin's tuition, but she presents no evidence that he is unable to bear that expense himself.

Conclusion

- [26] In accordance with these findings, support for Colin Noort is terminated effective April 25, 2018.

[27] On his Guideline income of \$156,002, Mr. Noort's monthly child support obligation is reduced to \$1,367, retroactive to and including the payment made May 1, 2018. His support of Danica will continue at that level until graduation from her Bachelor's degree program, or until further order of this court. Any excess amounts paid by Mr. Noort since May 1 are to be returned to him forthwith.

[28] Success on this application has been mixed. Each party will bear their own costs.

"A. Saunders J."

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