
CANADA / JUDGMENT

P.H.D. v. M.L.D.

2014 BCSC 1047

COURT

Supreme Court of British Columbia

DECIDED

11 June 2014

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2014 BCSC 1047 P.H.D. v. M.L.D.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.H.D. v. M.L.D.,

2014 BCSC 1047

Date: 20140611

Docket: 69872

Registry: Kelowna

Between:

P.H.D.

Claimant

And

M.L.D.

Respondent

Corrected Judgment: The text of the judgment was corrected
at paragraphs 18, 20 and 21 on September 8, 2014

Before: The Honourable Mr. Justice Rogers

Reasons for Judgment

Counsel for the Claimant:

W.T. Clarke

Counsel for the Respondent:

G.R. LeClair

Place and Date of Trial/Hearing:

Kelowna, B.C.

June 5, 2014

Place and Date of Judgment:

Kelowna, B.C.

June 11, 2014

Introduction

- [1] This matter concerns the parties' obligation to provide support for their 19-year-old daughter while she attends post-secondary education.

The Applications

- [2] The respondent seeks an order fixing the amount of support for their daughter at university and apportioning that support pro rata between the parties. She wishes to make the support payments directly to her daughter.
- [3] The claimant seeks a similar order, although the financial data on which he relies is somewhat different than the data the respondent employs. The claimant does not trust the respondent to make payments directly to their daughter - he seeks an order that the payments come to him and that he be responsible for disbursing them.
- [4] The parties' notices of application contained requests for various other items of relief, but as the hearing progressed, those additional items became either matters of consent or were acknowledged to be superfluous and were abandoned.

The Facts

- [5] The parties were married in July 1990. They have three children: D, born August 27, 1994; J, born December 28, 1998; and G, born June 22, 2002. They divorced in July 2007 and entered into a separation agreement in April 2008.
- [6] The respondent relocated from Kelowna to Calgary in or around the summer of 2012. The children remained in Kelowna and took up primary residence with the claimant.

- [7] In December 2012, the parties consented to an order varying the terms of their separation agreement. Among other things, the consent order provided that the respondent should pay basic child support of \$759 to the claimant for the three children. That figure was based upon the respondent's annual income of \$40,000 and child support tables for Alberta resident payors. The respondent has paid that support up to May 31, 2014.
- [8] The respondent's 2013 income was \$40,000. Her 2014 income will be \$41,796. The claimant's 2013 income was \$130,927. For the purposes of this application, the parties assumed that the claimant's 2014 income will be unchanged.
- [9] In September 2013, the eldest child, D, enrolled in her second year of post-secondary studies at Simon Fraser University. She moved to Burnaby, B.C., to attend school. The two younger children remained with the claimant.
- [10] D has provided two affidavits in this matter. Both address her education budget. One affidavit and budget was the product of prodding by the respondent, the other came about because the claimant asked for it. In one budget, D estimated that her per-school-month expenses, including tuition and books, were on the order of \$1,700. In the other budget, she estimated her annual expenses (i.e., including non-instructional summer months) were on the order of \$17,500, or \$1,450 per month.
- [11] D works during the summer and part-time while attending school. Her 2013 income was \$16,500. Included in that figure is the approximately \$600 per month she earns working part-time during the school year. D has not taken out any student loans.

The Parties' Positions

- [12] The parties agree that as of September 1, 2013, the respondent's obligation to pay basic child support to the claimant should be retroactively reduced to \$562. That variation reflects the fact that as of that date, only two children were primarily resident with the claimant. They also agree that as of January 1, 2014, the respondent's income was \$41,796 and that her obligation to pay basic child support should be retroactively varied as of that date to \$588 per month for two children and that the respondent's ongoing support obligation is \$588 per month commencing June 1, 2014.

Discussion

- [13] The main issue to be resolved in this case is the level of support the parties should provide to D while she attends university. After some discussion during the hearing, it became evident that the parties concur that the proper methodology to employ in coming to an answer to that question is the one set out in s. 3(2)(b) of the Guidelines.
- [14] I have reviewed D's education budgets. I have no doubt that the figures she cites for tuition, books, student fees, and the like are accurate. Likewise, I accept her estimates for her rent and auto-related expenses. I think that she has unfairly stinted herself with her estimates of

only \$120 for food and \$50 for entertainment per month. SFU is a university filled with interesting people and it offers exciting educational, social, and recreational opportunities. In my opinion, it is incumbent on the parties to provide D with enough money so that she can fully enjoy her university experience.

- [15] Further, as her studies progress, the demand on her time will increase. It would not be unreasonable, I think, for the parties to subsidize D so that she need not work quite so much as she has during the school year. This would free up more of her time for her school work.
- [16] For these reasons, I find that the parties should not expect D to earn more than \$300 per school month and that her total annual income should be deemed to be \$14,000. If she earns more than that sum, the excess will be a kind of cushion against unexpected expenses or may provide extras such as a trip with friends over spring break.
- [17] I find that a reasonable annual education budget for D is \$18,000. I have arrived at that figure by increasing - on a somewhat arbitrary basis, I will admit - D's food and entertainment expenses.
- [18] The deficit in D's education budget to be funded by the parties is \$4,000 per year. The parties should cover that deficit in the proportion that their incomes bear to each other. The claimant should pay 76 percent and the respondent should pay 24 percent of that figure. The claimant's obligation would, therefore, be \$253 per month and the respondent's obligation would be \$80 per month.
- [19] The parties have an RESP. Any withdrawals from the RESP for D's benefit shall be deemed to be payments by the parties in the foregoing proportions. That is to say, a hypothetical \$1,000 withdrawn from the RESP and paid to SFU for tuition shall be deemed to be a payment of \$690 by the claimant and \$310 by the respondent.
- [20] Given that the respondent has paid child support for three children up to May 31, 2014, and given that the claimant has provided D with considerable financial assistance since September 2013, I find that the fairest way to deal with the retroactive period is to declare that the parties have fully satisfied their respective support obligations retroactive to June 1, 2014. There will therefore be no need for the parties to make a penny-by-penny accounting of the support they have provided to D during her most recent two semesters.
- [21] The parties plainly do not trust one another to comply with the other's obligation to support D while she attends university. They would find comfort - and further applications might be avoided - by crafting the payment provisions of this order in a transparent fashion. To that end, I order that on the first of every month commencing June 1, 2014, the respondent pay \$80 and the claimant pay \$253 as support for D. The payments shall be made to D by email or Interac transfers to an account owned and specified by D. Each party shall at the same time email a copy of the transfer confirmation to the other party. Each party shall have standing to take steps to enforce payment of D's support owed by the other party.

[22] Having involved D as a deponent in this litigation, it seems to me that the parties owe her an explanation of how it has turned out. I direct that the parties deliver a copy of these reasons to D immediately upon their release.

Costs

[23] The parties have achieved divided success on their applications. They will bear their own costs.

"P.J. Rogers, J."

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Prepared on 30 October 2026 · Esheria