
CANADA / JUDGMENT

P.J.M. v. S.B.M.

2016 BCSC 1798

COURT

Supreme Court of British Columbia

DECIDED

29 September 2016

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2016 BCSC 1798 P.J.M. v. S.B.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

P.J.M. v. S.B.M.,

2016 BCSC 1798

Date: 20160929

Docket: E141273

Registry: Vancouver

Between:

P.J.M.

Claimant

And

S.B.M.

Respondent

Before: The Honourable Mr. Justice Funt

Reasons for Judgment

Counsel for the Claimant:

J.G. Cuenca

Respondent Appearing on his Own Behalf:

S.B.M.

Place and Date of Trial:

Vancouver, B.C.

September 19-22, 2016

Place and Date of Judgment:

Vancouver, B.C.

September 29, 2016

I. introduction

- [1] This matter involves a divorce. The parties agree that a divorce should be granted.
- [2] The parties have two children, ages 12 and almost 11. Each child is in good health.
- [3] The parties have agreed on custody, guardianship, access (parenting time), child support, and other matters relating to the children. A draft order reflecting the agreements by the parties on such matters has been marked as Exhibit B for identification in these proceedings. The relevant paragraphs are 3 to 27 and 29.
- [4] The parties also agree that the claimant can purchase the respondent's interest in the matrimonial home for its fair market value. The claimant has a May 13, 2016 appraisal showing a fair market value of \$510,000 and the respondent has an April 21, 2016 appraisal showing a \$525,000 fair market value. The parties agree that the average of the two appraisals of \$517,500 should be used as the fair market value.
- [5] The claimant wishes to deduct from the amount required to purchase the respondent's interest in the home various amounts. These are set forth in Exhibit A for identification. In addition, there would be a further deduction of \$2,886 reflecting the net past child support the respondent owes the claimant (calculated under paragraphs 21 and 22 of Exhibit B).
- [6] The parties have also reached agreement on various other matters (pension division, the sale of a trailer) and these are reflected in the draft order, Exhibit B.
- [7] As noted, the parties also agree that they should be divorced. Upon hearing the testimony of the claimant, the Court is satisfied that the parties should be divorced. Accordingly, I will order the division with the divorce to take effect on the 31st day after today's date.
- [8] The outstanding issues are:
 - (a) The respondent's claim for spousal support;
 - (b) The respondent's claim for occupational rent;
 - (c) The deductions shown in Exhibit A to the amount the claimant is required to pay to the respondent for his half interest in the home;
 - (d) The value of a van; and

(e) Costs.

II. general background

- [9] The parties were married in Anguilla in 2001. They had initially met several years earlier when the claimant was working in the Caribbean. The claimant was born and raised in our province.
- [10] In 2002, the respondent immigrated to Canada and the parties lived as a married couple. The claimant sponsored the respondent's immigration.
- [11] In 2003, the parties bought the family home. Their first child was born in 2004. The parties separated in November 2013 upon the respondent's move to Alberta.
- [12] Other than for maternity leave, the claimant has worked full-time as a product manager for a local technology company located in Richmond, B.C. She makes approximately \$70,000 per year.
- [13] The claimant has a high school education and the benefit of a nine-month business course.
- [14] The respondent does not have a high school education that is recognized in our province. He has worked various jobs, including restaurants and warehouses, with approximately three years with Home Depot. In 2015, he reported approximately \$39,500 in employment income.
- [15] The respondent has made several attempts to obtain high school equivalency. With his work schedule (often graveyard work) and his wish that either the claimant or the respondent have care of the children, the respondent feels that he has been thwarted in his attempts to obtain a B.C. recognized high school equivalency. The respondent also testified as to his difficulties of adjusting to the Canadian culture.
- [16] The claimant has been supportive of the respondent in his desire to improve his education, including tutoring him at home and during work breaks at her place of employment.

A. Spousal Support

[17] In the case at bar, I have considered compensatory and non-compensatory support.

a) Compensatory Support

[18] Our Court of Appeal in *Chutter v. Chutter*, 2008 BCCA 507 stated:

- [50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse...

[19] The respondent has not established he was disadvantaged economically or that there was an economic advantage conferred on the claimant. During the marriage, each were employed and worked hard to financially support each other and their children. The respondent did not sacrifice educational opportunities to his detriment or to the benefit of the claimant. Over the 12 years of marriage, the respondent has had the opportunity to obtain his Grade 12 equivalency and the claimant has been supportive of the respondent.

b) Non-Compensatory Support

[20] In Chutter, the Court stated:

[54] Where compensatory principles do not apply, need alone may be sufficient to ground a claim for spousal support (Bracklow, at para. 43). Non-compensatory support is grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union. It embraces the idea that upon dissolution of a marriage, the primary burden of meeting the needs of the disadvantaged spouse falls on his or her former partner, rather than the state (Bracklow, at para. 23). Non-compensatory support aims to narrow the gap between the needs and means of the spouses upon marital breakdown, and as such, it is often referred to as the "means and needs" approach to spousal support.

[55] The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226 (B.C. C.A.), at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

[56] The Ontario Court of Appeal in *Allaire v. Allaire* (2003), 170 O.A.C. 72, 35 R.F.L. (5th) 256 (Ont. C.A.), held that self-sufficiency, a spousal support objective primarily related to non-compensatory support (Bracklow, at paras. 41-42), was a relative concept informed by the standard of living previously enjoyed by the parties:

[21] self-sufficiency is not a free-standing concept. It must be seen in the context of the standard of living previously enjoyed by the parties. Where, as here, the economic consequences of the marital relationship were to permanently reduce Ms. Allaire's income, it is inappropriate to consider Ms. Allaire's annual income of \$68,000 as "sufficient" without considering whether Mr. Allaire can financially assist her to live a lifestyle closer to what they shared as a couple.

[21] In the case at bar, in 2015, the respondent earned approximately \$39,500 from employment. In 2016, he has received employment insurance and has a job which he describes as part-time but with full-time hours. In cross-examination, he readily admitted that he could achieve a \$40,000 level of annual income in the near future. His past employment history shows that he does seem to find work easily.

[22] The respondent has not established that the marriage permanently reduced his income or that his standard of living has been significantly affected.

[23] In an August 30, 2016 affidavit, the respondent swore:

I am asking the court to have the home put up for sale, where I can get my 50% of the equity so I can care for my children.

There is no need for a trial in my opinion, if the claimant can afford to pay me my interest in the family home, agreed not to seek any spousal support, 50% of her pension, all I am seeking is my interest in the family home. [Verbatim]

[24] The respondent's recent change in his position does not redound to his credit.

B. Occupational Rent

[25] The respondent argues that he is entitled to occupational rent based on the fact that the claimant remained in the home after he left the family home in November 2013 and moved to Alberta.

[26] The respondent testified that he had hoped to find work in the oilfields, which would allow him to return to Vancouver one week per month. He was not successful in this respect. He did return in February 2014 for a few days and for at least one night in March 2014.

[27] In July 2014, the respondent returned to the family home. Several days later he had an argument with the claimant's mother. The claimant made an application for exclusive occupation of the home, among other relief. Master Caldwell granted the claimant exclusive occupation on an interim basis and then Master McDiarmid on a permanent basis.

[28] In *L.M.R. v. J.F.R.*, 2010 BCSC 363, Justice Willcock (then sitting in this Court) stated:

[32] An allowance for occupation rent is not mandatory, even where there is a claim for expenses associated with occupation. It is an equitable remedy. In *Dacyshyn v. Semeniuk*, 2007 BCSC 71, the Court recognized the general rule described in *Bernard* but refused to allow a claim for occupation rent, despite a claim for expenses, on the ground that the remedy is an equitable one and is not available to a party who comes to court with unclean hands or where it is not necessary to address inequity.

[My emphasis]

- [29] An occupational rent award is made to address inequity. Here, there is no inequity. The respondent voluntarily left the family home and moved to Alberta. I accept the claimant's evidence that the respondent's move to Alberta was made with little or no discussion with the claimant. Until July 2014, he was free to return to the family home and did so (as he did in February and March 2014). As noted, the respondent's plan was to return one week each month.
- [30] The July 2014 Order granting the claimant exclusive occupation resulted from the Court being satisfied that the respondent's behaviour justified such Orders in the circumstances before the Court.
- [31] The respondent also does not come with "clean hands". From November 2013 to July 2015, the respondent did not pay child support. I agree with the rule set forth by Justice McGee in *Malik v. Malik*, 2015 ONSC 2218:
- [157] A non-occupying spouse ought never receive occupational rent for a period in which he or she has deliberately avoided the payment of child support.

C. Deductions from the amount for the respondent's half-interest

- [32] Exhibit A for identification sets forth the amount the claimant argues should be deducted from the amount she is required to pay for the respondent's half-interest in the home. I will add that, based on the evidence, an equal division is fair and is certainly not "significantly unfair": *Family Law Act*, S.B.C. 2011, c.25 [FLA] s. 95; *Remmem v. Remmem*, 2014 BCSC 1552 at para. 44.
- [33] Based on a \$517,500 fair market value for the home (\$258,750 for a half-interest), the claimant submits that the amount after the Exhibit A deductions should be \$71,451.15. The largest deduction relates to the outstanding mortgage of \$263,303 (one-half of which is \$131,161.50).
- [34] The respondent agrees that the deductions set forth in Exhibit A are appropriate, except for three amounts related to the parties' line of credit. The three amounts are:

Less LOC Withdrawals

\$9,610.00

Less LOC Transfers out of LOC

\$3,919.00

Less Interest paid on LOC by Claimant

\$1,345.08

- [35] The respondent does not dispute the three amounts are correct. In particular, he agrees that the \$9,610 in withdrawals and the \$3,919 in transfers were made by him. He argues that he used these funds for expenditures such as rental deposits, rent, and living expenses in Alberta.
- [36] The respondent's expenditures do not constitute "family debt", in that they were not made "for the purpose of maintaining family property": FLA s. 86. The expenditures should be borne by the respondent and are properly deductible.
- [37] The third amount, \$1,345.08, is the interest related to the line of credit paid by the claimant. Some of the interest would have related to the outstanding balance of the line of credit as of the date of separation, \$2,878 (half of which is \$1,439). I will make a \$200 adjustment to reflect an estimate of the claimant's share of the interest. Accordingly, the deduction will be \$1,145.08.
- [38] In sum, subject to the further deduction of \$2,886 reflecting the net child support, the claimant is required to pay the respondent \$71,651.15. With the further deduction of \$2,886.00, the required payment is \$68,765.15.

D. 2005 Dodge Caravan

- [39] There was some evidence as to the current value of the parties' high-mileage 2005 Dodge Caravan based on internet searches. Since separation, the vehicle has been used by the claimant to travel to and from work and for family purposes. I would estimate \$1,500 as its fair market value as of the date of trial: FLA s. 87. The claimant will pay the respondent \$750 for his half-interest. The final result is that the claimant must pay the respondent \$69,515.15 (\$68,765.15 + \$750).

E. Costs

- [40] The claimant was largely successful and I find her to be the successful party. In accordance with Rule 16-1(7) of the Supreme Court Family Rules, B.C. Reg. 169/2009, the claimant is awarded her costs at Scale B.

"Funt J."

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Prepared on 28 October 2026 · Esheria