

CANADA / JUDGMENT

Payer v. Payer

2011 BCSC 1455

COURT

Supreme Court of British Columbia

DECIDED

28 October 2011

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2011 BCSC 1455 Payer v. Payer IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Payer v. Payer, 2011 BCSC 1455 Date: 20111028 Docket: D33847 Registry: Kamloops Between: Deanna Alynn Payer Plaintiff And Gerhard Joseph Payer Defendant Before: The Honourable Mr. Justice Powers In Chambers Reasons for Judgment Deanna Alynn Payer appeared on her own behalf. Gerhard Joseph Payer appeared on his own behalf. Place and Date of Hearing: Kamloops, B.C. October 3, 2010 Place and Date of Judgment: Kamloops, B.C. October 28, 2011

- [1] Ms. Payer is seeking assistance from Mr. Payer to deal with university fees and special extraordinary expenses for two children. The children are, N.G. born May 17, 1993, which makes her 19 and N.L. born August 31, 1998, which makes her 13. N.G. has graduated from high school in June of 2011 and is registered in university at the UBC Okanagan Campus studying journalism. The university program is from September to April. The expenses are: Tuition fee \$5,011.60 Residence \$4,862.00 Books and Supplies \$1,700.00 Parking pass \$268.80 Miscellaneous for personal expenses \$400.00 Laundry (\$48.00 to \$64.00) \$64.00 Clothing \$400.00 Fuel \$640.00 Vehicle Maintenance \$200.00 Entertainment \$400.00 Meal plan (this may not be sufficient according to experience to this point in time) \$2,675.00 Total \$16,621.40
- [2] The child N.G. did receive assistance by way of student loans in the amount of \$12,621.00.
- [3] The child N.G. did seek work during the summer months of July and August, but was unable to obtain sufficient employment to make a realistic contribution towards her education and living expenses.
- [4] The original court order provided for a division of special or extraordinary expenses based on 27% by Ms. Payer and 73% by Mr. Payer. Ms. Payer seeks a 50/50 contribution and asks that Mr. Payer contribute \$8,000.00 to this year of university.
- [5] The original order made in these proceedings is August 23, 2005, by which the parties were divorced and Ms. Payer received custody of the two children. Mr. Payer had reasonable and generous access. Child support was fixed in the amount of \$854.00 per month. This was based on Mr. Payer's income of \$63,709.00 and Ms. Payer's income at \$24,000.00 per annum.

- [6] The parties were to exchange financial information, but simply failed to do so. It appears that Mr. Payer has always met his obligations pursuant to the order.
- [7] Ms. Payer's present income is \$19,901.00 and for the purposes of child support, Mr. Payer's income according to his tax returns is \$87,470.40. He does receive some rental income, by renting out a portion of his home.
- [8] The Guideline amount for two children based on an income of \$87,500.00 is \$1,283.00 per month. The parties agree that should commence as of October 1, 2011 and should be payable in equal instalments at the first and fifteenth of each month, in the same way the original order provided.
- [9] The real issue between the parties at this time is what amount Mr. Payer should contribute to the cost of N.G.'s education. The total costs are \$16,621.40, as itemized in para. 1. N.G. did receive a student loan of \$12,621.00 for a balance of \$4,000.40. Mr. Payer's position is that he should only contribute his proportionate share to the excess. Ms. Payer's position is that he should contribute 50% of the total amount.
- [10] The Federal Child Support Guidelines provide at s. 7:
7. (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation: ...
- (e) expenses for post-secondary education; ... (1.1) For the purposes of paragraphs (1)(d) and (f), the term "extraordinary expenses" means
- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or
- (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
- (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate, (ii) the nature and number of the educational programs and extracurricular activities, (iii) any special needs and talents of the child or children, (iv) the overall cost of the programs and activities, and
- (v) any other similar factor that the court considers relevant. Sharing of expense

- (2) The guiding principle in determining the amount of an expense referred to in subsection (1) is that the expense is shared by the spouses in proportion to their respective incomes after deducting from the expense, the contribution, if any, from the child. Subsidies, tax deductions, etc.
- (3) Subject to subsection (4), in determining the amount of an expense referred to in subsection (1), the court must take into account any subsidies, benefits or income tax deductions or credits relating to the expense, and any eligibility to claim a subsidy, benefit or income tax deduction or credit relating to the expense.
- [11] Clearly, these are extraordinary expenses and Mr. Payer is required to contribute to those expenses. He argues that he was never consulted about N.G.'s plans for education and particularly that she could have pursued her education in Kamloops rather than Kelowna. If that had been done, she could have resided with her mother and many of her expenses would have been eliminated. Mr. Payer also argues that the basic support which he is paying pursuant to the Guidelines should also be a factor in determining his contribution towards N.G.'s extraordinary expenses. In other words, he is already making some contribution towards her basic expenses.
- [12] Based on Ms. Payer's income at \$19,901.00 and Mr. Payer's income of \$87,470.00, Ms. Payer has approximately 18.534% of the total income and Mr. Payer therefore has approximately 81.466% of the total income. For ease of calculation, I will simply use 19% and 81% as their respective shares of the total income between them.
- [13] Mr. Payer is obviously much better off financially than Ms. Payer. His income is approximately \$87,470.00 after deduction for employment expenses.
- [14] His expenses from his property and financial statement are the approximate following amounts: Housing (including \$1,470.00 mortgage) \$1,970.33 Utilities \$360.00 Household \$550.00 Vehicle (including \$180.00 loan payment) \$580.00 Health expenses \$530.00 Personal (including \$150.00 entertainment) \$300.00 Child support \$1,283.00 Total per month: \$5,573.33 Total per annum (\$5,573.33 per month x 12) \$66,879.96 Plus payroll deductions: \$340.00/month x 12 = 4,080.00 \$4,080.00 Subtotal: \$70,959.96 Income taxes for 2010 \$14,000.00 TOTAL: \$84,959.96
- [15] His income exceeds his expenses even without consideration of the rental income he receives from his home.
- [16] He owns his own home with a value of approximately \$452,000.00 and a mortgage of \$279,000.00. He has GICs of \$100,000.00 and a share account of approximately \$100,000.00. His unsecured debts are approximately \$15,000.00.

- [17] Ms. Payer has an income of \$19,901.00. Her expenses are as follows: Housing (including \$1,520.74 mortgage) \$1,986.86 Utilities \$634.56 Household expenses \$625.00 Vehicles (including car payment of \$355.37) \$933.70 Other \$85.00 Medical \$35.00 Personal (including entertainment of \$25.00) \$256.74 Child expenses \$250.00 Unsecured debts (including \$200.00 Visa payment for University fees for child) \$427.00 Total per month: \$5,233.86 Total per annum (\$5,233.86 x 12) \$62,806.32
- [18] Ms. Payer owns her own home which is valued at approximately \$328,000.00 but she has a mortgage of \$351,000.00 on that home. Clearly, she is in difficult financial circumstances.
- [19] In determining the amount that Mr. Payer should contribute to these extraordinary expenses, I must consider their proportionate incomes after deducting the contributions, if any from the child. In this case, the child cannot rely entirely on her parents for her educational costs. She will be required to rely on whatever income she may earn herself and what student loans may be available to her. However, I agree with Ms. Payer that if Mr. Payer is able to contribute towards N.G.'s educational expenses, N.G. should not be required to maximize the student loans available to her. In this case it is reasonable to expect N.G. to take student loans or work to cover at least one-half of her educational expenses. This would leave approximately \$8,000.00 in expenses to be contributed to by the parents. Mr. Payer's 81% of that would be approximately \$6,480.00 per year. However, I have to keep in mind that he is already paying the basic Guideline amount, which includes a portion of costs for accommodation and meals and other basic expenses for N.G. I find it is appropriate for Mr. Payer to pay \$450.00 per month towards N.G.'s extraordinary expenses for her education. This should commence as of September 1, 2010, and be payable again in equal amounts on the first and fifteenth of each month as the basic support is paid.
- [20] Ms. Payer has been substantially successful and should have her costs. "R.E. Powers J." POWERS J.

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