

CANADA / JUDGMENT

Pullman v. Pullman

2001 BCSC 86

COURT

Supreme Court of British Columbia

DECIDED

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2001 BCSC 86 Docket:

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Registry: New Westminster

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

JUDY MICHIKO PULLMAN
PETITIONER

AND:

GREGORY ARTHUR PULLMAN
RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE MCKINNON

Counsel for the Petitioner: M. Dunnaway

Counsel for the Respondent: C. Linde

- [1] On November 16, 2000 I filed reasons for judgment in this matter but, as some issues were not fully argued, I gave "leave to apply on outstanding issues." These reasons relate to those outstanding issues.
- [2] At paragraph 69 of the reasons for judgment I directed that Mr. Pullman pay the plaintiff the sum of \$15,000. This related to a line of credit of \$46,709.70 which was repaid from the house sale proceeds. The trial judgment awarded Mrs. Pullman 70% of the net house sale proceeds.

- [3] Given those reasons I accept that of the \$46,709.70, \$16,709.70 was entirely Mr. Pullman's responsibility and therefore should be deducted from his 30% share. It seems to me I was in error when I said at paragraph 69, "In the result Mr. Pullman must pay to Mrs. Pullman the sum of \$15,000".
- [4] The \$30,000 found to be a family debt was paid out of the net sale proceeds of the family home. The balance of \$16,709.70 is entirely the responsibility of Mr. Pullman, yet it was also paid from these sale proceeds. Of the total line of credit debt of \$46,709.70, Mr. Pullman has responsibility for \$31,709.70 and Mrs. Pullman, \$15,000.
- [5] I was not provided with any current figures concerning the house sale proceeds and so can only invite the parties to make the appropriate calculations based upon these conclusions, after first dividing those proceeds into 70/30 portions. Whatever balance is available to each party consequent upon that division, the sum of \$31,709.70 should be deducted from Mr. Pullman's share and \$15,000 from Mrs. Pullman's. share.

SPOUSAL AND CHILD MAINTENANCE

- [6] In my judgment, I directed that spousal maintenance should be ordered for six months and that child maintenance should be in an amount appropriate to Mr. Pullman's line 150 income.
- [7] Insofar as child maintenance is concerned, I said in my judgment that I was not prepared to "impute" income to Mr. Pullman. My concern in this regard was with a request by the petitioner that I should "impute" to Mr. Pullman an income of \$98,000 since that was his income for 1997. My comments in the judgment were a rejection of that submission.
- [8] Mr. Pullman wants me to assess his income at a projected year 2000 amount in the approximate sum of \$30,000. He also wants me to impute income to Mrs. Pullman of \$15,000 representing what he says are sums she made at various home businesses. He then invited me to make the calculation appropriate to shared custody. I reject these submissions.
- [9] Mr. Pullman's income for maintenance purposes is set out as follows:

1996

\$70,000

1997

\$98,000

1998

\$57,000

1999

\$45,186

- [10] I am not prepared to factor in his projected year 2000 income as it has been earned in a climate of hostility with much time and effort being expended on court proceedings. Child maintenance is a reflection of the payor's income and the recipient is entitled to information appropriate to that determination. Mr. Pullman will be obliged to disclose his income in the years received and the appropriate maintenance amount(s) can then be calculated. However, presently there is evidence that market conditions are such that the high earnings of previous years are not likely to continue. In the result, I believe a three-year average of the incomes for 1997, 1998 and 1999 would be fair. Those result in an average income of \$66,728.67 and child maintenance of \$878.00.
- [11] I decline to impute any income to Mrs. Pullman. The evidence is that she has not earned much of anything and while I have indicated it is time she got back into the work force, until that happens I am unable to make the appropriate calculations based upon shared parenting.
- [12] Mrs. Pullman wants me to make a retroactive order for spousal maintenance. This is opposed as a "reconstruction" of events such as to upset a balance based upon court orders and understandings that both parties have acted upon in the past.
- [13] Although there is some surface appeal to this "reconstruction" theory it ignores historical reality. Mrs. Pullman has always claimed spousal support but has not always pursued her claim because of delays, leading to accommodations that provided her with short-term relief. Much of this related to court orders permitting encroachment of the matrimonial home sale funds that have at trial been re-apportioned on a 70/30 split.
- [14] On September 30, 1998 Master Joyce found that the Mr. Pullman's income for maintenance purposes was \$34,250 but said, "however, I believe it would be appropriate to review the maintenance issue in six months time." At that time he set child maintenance, including s. 7 benefits, at \$773.00. He also stated that, "he has no capacity to pay interim spousal support at this time." Other applications deferred this issue of spousal maintenance, providing only for interim "emergency relief".
- [15] The trial commenced in November of 1999, at which time it became apparent that it could not conclude in the time allotted. At paragraph 3 of my reasons pronounced on November 10, 1999 I made the following comments consequent upon learning that my trial schedule would not permit me to reach any speedy conclusion:

I have no idea how these matters are going to ultimately be resolved. I have formed no conclusions about anything and, of course, I have not even completely heard the evidence of one witness and I have not heard the respondent at all. So, I am not in any position to make any interim conclusions about anything. What I am doing today is to try and accommodate the needs of the petitioner and the children for an interim period without the necessity or without the need to have much dialogue between the two and to try and do this in a manner that would be expeditious and in the best way possible, done without prejudice to the ultimate rights that might be affected.

- [16] I then made an interim order that \$1,460 be paid forthwith to Mrs. Pullman from trust funds and thereafter the sum of \$2,500 to be paid to her each month. I then said at paragraph 5: "that is without prejudice to the parties to subsequently establish whether that amount was appropriate to an ultimate accounting or not, but on an interim basis that is the order I will make."
- [17] It is apparent from all of that discussion that spousal maintenance was clearly an issue for Mrs. Pullman but it was never resolved. Some judges and the Master considered it at various times but decided that the evidence at the time then either did not justify any payment or was insufficient to reach any conclusions, particularly with the trial pending.
- [18] Mrs. Pullman's complaint now is that she ought not to have to consider her monthly "draws" of \$2,500 as simply draws against the principal when she has always claimed the right and need to spousal maintenance.
- [19] The evidence is clear that she was always in need. The issue seems to be whether Mr. Pullman could afford to pay any spousal maintenance. Given my findings at trial, I would have made a spousal maintenance order as part of the interim orders had I possessed the information gleaned at trial.
- [20] I found at trial that Mrs. Pullman needed spousal maintenance for a period of six months following conclusion of the trial. It seems to me evident that if she required this kind of assistance for six months following trial, she obviously ought to have had some spousal maintenance prior to the conclusion of the trial.
- [21] I have balanced the comments of various judicial persons involved in this matter with Mrs. Pullman's vigorous pursuit of her claims of maintenance. In the result, I fix the amount of spousal maintenance at \$1,200 per month, retroactive to November 1, 1999. Therefore, this amount will be paid up to (and including) November 1, 2000. Thereafter, Mrs. Pullman is entitled to maintenance at the same amount commencing December 1, 2000 payable up to and including May 1, 2001, when all spousal maintenance will cease.

VISA

- [22] In my judgment of November 16, I directed that "the amount charged by Ms. Pullman after separation, be calculated and debited against the sums due her". The issue is whether the total amount of \$6,200 should be charged to Mrs. Pullman. The principle sum borrowed was \$4,500 with the rest charged as interest. Ms. Pullman maintains that Mr. Pullman's failure to pay the amount due when billed created the interest factor and thus she ought not to be responsible for it.
- [23] There is some merit in this complaint but not a great deal. Mr. Pullman was not able to pay because of pressing financial matters, though I accept that he probably felt no incentive to discharge what he considered an unwarranted debt. In the result I fix the interest for which Ms. Pullman is responsible at \$1,000. Thus she is responsible for a total of \$5,500.

THE VEHICLES

[24] This issue was resolved during the course of the hearing.

[25] Judgment accordingly with leave to argue costs, although I strongly recommend the parties resolve this aspect and avoid another expensive application.

"R.A. McKinnon, J."

The Honourable Mr. Justice R.A. McKinnon

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