

---

CANADA / JUDGMENT

## Purssell v. Purssell

2009 BCSC 1463

---

COURT

Supreme Court of British Columbia

DECIDED

28 October 2009

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

---

2009 BCSC 1463 Purssell v. Purssell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Purssell v. Purssell,

2009 BCSC 1463

Date: 20091028

Docket: E020152

Registry: New Westminster

Between:

Thomas David James Purssell

Plaintiff

And

Kirsten Purssell

Defendant

Before: The Honourable Mr. Justice Crawford

Reasons for Judgment

Counsel for the Plaintiff:

J. Dubas

Counsel for the Defendant:

J.J. Hittrich

Place and Date of Hearing:

New Westminster, B.C.

May 10, 2009

Place and Date of Judgment:

New Westminster, B.C.

### **October 28, 2009**

- [1] The parties have agreed to a summary trial in this matrimonial proceeding. The principal issues are the validity of the separation agreement made March 11, 2003, the obligations undertaken by Mr. Purssell at that time and whether they are ongoing, and his access to the two children of the marriage.
- [2] Matters have been complicated by Mr. Purssell's filing for bankruptcy in the spring of 2004. The divorce action began in September 2004. The pleadings were amended in March 2005 to raise the issue of the validity of the separation agreement.
- [3] The interest of the trustee in bankruptcy is that should the separation agreement be set aside, there might be some interest of the trustee in what is argued to be the half interest in family assets. If the separation agreement stands, the remaining issues are spousal support, child support, arrears thereof, and Mr. Purssell's access.
- [4] Counsel advised that the trustee in bankruptcy had been given notice of this hearing and had not appeared. Counsel also believed the trustee took no position before the Court.
- [5] Counsel advised the parties were without funds to take the matter any further and although on its face the matter was not suitable for a Rule 18A summary trial, i.e. trial on affidavit evidence, it had been agreed there would be no appeal from the Court's decision.
- [6] As well, Mr. Purssell conceded that Ms. Purssell have sole custody but he sought joint guardianship on the Joyce model.

### **Court History**

- [7] The matter did initially come before Master Keighley on November 23, 2004 when Mr. Purssell tried to vary and cancel his support obligations. The Master ruled against the application and awarded costs.
- [8] An attempt was made to bring the matter on before Bernard J. on December 21, 2007, but time only permitted the granting of a divorce and access provisions for Mr. Purssell, who, by then, was living on Salt Spring Island.

- [9] Some mention was made of the fact that the Provincial Court had made orders based on the separation agreement. However, the separation agreement had been filed in the Supreme Court and therefore, Mr. Purssell sought to argue the agreement was invalid, and if that was so, rule that the trustee in bankruptcy be allowed to pursue assets, if any, of the marriage relationship.

#### Evidence

- [10] A large volume of somewhat repetitive affidavit material was filed which I have summarized.

#### **Mr. Purssell - Affidavit No. 1, September 22, 2004**

- [11] The parties were married in March 1996. There are two children of the marriage, now age 9 and 10. Mr. Purssell was an auto mechanic, and when the children were born Ms. Purssell effectively became a stay-at-home mother. She did have some work experience in her mother's chocolate shop and doing some bookkeeping. Mr. Purssell acknowledged that he had acquired a new partner in the summer of 2003 and they had a child on September 10, 2004. They subsequently married and moved to Salt Spring Island. His initial complaints, even in 2004, were the lack of access to the two children of the marriage when he was then located in Chilliwack and Ms. Purssell was in White Rock.
- [12] At that time he said he had not considered or calculated the costs of his support obligations he had undertaken in the separation agreement.
- [13] As well, he had lost his employment and indeed had had six different employers by May 2004, when he went into bankruptcy.
- [14] He alleged the main family assets were the house and furnishings and that until the March agreement he had paid the mortgage and all the family bills. He also alleged that he had tried to renegotiate the separation agreement between November 2003 and May 2004, before he went into bankruptcy.
- [15] He alleged Ms. Purssell could work because she had previously operated the chocolate shop with her mother.
- [16] Mr. Purssell's financial disclosure of November 2004 showed that he had made \$39,393 in 2003 and was estimating his 2004 income at \$54,000. But by October 7, 2004, he was in arrears on his spousal and child support in the amount of \$22,127.

#### **Ms. Purssell - Affidavit No. 1, July 24, 2004**

- [17] Ms. Purssell said that after she had left high school she worked in her mother's chocolate store. When their first child arrived she said they agreed she would be a stay-at-home mom, and after mid-1998 her only work was part-time bookkeeping for her father.

- [18] Ms. Purssell said after the separation in September 2002, Mr. Purssell continued to bank his pay cheque to help pay the mortgage, housing expenses, car insurance, car payments, food, and miscellaneous expenses.
- [19] In December, on the basis of Mr. Purssell agreeing to babysit, Ms. Purssell began employment training but she said Mr. Purssell reneged on the babysitting and she gave up the training.
- [20] As to the separation agreement, Ms. Purssell said they initially made their own agreement whereby Mr. Purssell was to pay \$2,000 per month in support, but then she saw a lawyer who drafted a full agreement in February 2003.
- [21] She said on March 3, 2003, Mr. Purssell signed the agreement but did not have it witnessed. Subsequently, she said when they met and reviewed the agreement "clause by clause", Mr. Purssell changed the agreement. He changed the spousal support from \$1,300 to \$1,100 and increased child support from \$690 to \$700. Mr. Purssell changed the figures and initialled those changes on the agreement.
- [22] The agreement reflected their expectation that Ms. Purssell would return to work in September 2006, when the youngest child began Grade 1.
- [23] Ms. Purssell said the witnessed separation agreement was given to her on March 13, 2003, and on March 17, 2003 she signed the agreement in front of a witness.
- [24] The agreement further provided for Mr. Purssell to pay mortgage payments until the house was sold. The family home was sold on June 14, 2003. The agreement provided that the equity was first charged with repaying Ms. Purssell's parents. The net monies received were \$65,366.06. They owed Ms. Purssell's parents \$72,000 and paid that debt. There was no money left over for Mr. and Ms. Purssell.
- [25] There were other family debts of some \$30,000 which they agreed to share 50/50. Her parents lent her \$15,000 to pay her half. She said Mr. Purssell got a loan to pay his half, but then filed for bankruptcy in early 2004.
- [26] In terms of support, she noted that Mr. Purssell paid \$1,500 between July and November 2003.
- [27] In the fall of 2003, Ms. Purssell began an Early Childhood Education program, part-time at Langley College, and because she was out funds, she and the children moved in with her parents.
- [28] She noted their eldest child is a special needs child with speech disability, requiring speech therapy, and the younger child has a somewhat lesser problem. She alleged Mr. Purssell was a hard-working auto mechanic who could always get a job in the automobile industry.

[29] As to Mr. Purssell's allegations to access, she refuted those and said he simply failed to show up. She noted that between August 1 and October 24, 2004, he had not seen the children at any time. As well, she questioned Mr. Purssell's ability to deal with "high needs" children for an extended period.

[30] She put forward proposals for Mr. Purssell's access to the children.

#### **Mr. Purssell - Affidavit No. 2, November 10, 2004**

[31] Mr. Purssell said Ms. Purssell had always done "the books" and he had no awareness of their financial situation until after separation. He claimed he was not aware of the amount of family debt and blamed Ms. Purssell for the debt accrued. He said he had not reneged on the babysitting agreement, but had wanted to do it "at his place".

[32] As to the separation agreement, he says he was pressed into signing when Ms. Purssell appeared at his door after work and told him to sign it. He claimed Ms. Purssell dictated the note about obtaining independent legal advice that he had written, stating he did not want any legal advice. He also put into issue the debt owing to Ms. Purssell's parents.

[33] He said he was unaware of the children's special needs.

[34] He claimed that he had only missed six opportunities to see the children since September 2002 but then detailed more times than six where he claimed to have been denied access because of "the children's activities".

[35] He said it was apparent the move to White Rock had created a geographic hurdle and he had no notice of their schedule and activities.

#### **Ms. Purssell - Affidavit No. 2, November 18, 2004**

[36] Ms. Purssell said Mr. Purssell well knew the family finances and budget.

[37] She said she believed Mr. Purssell's living costs were relatively minimal because he had said after the house was sold in mid-2004 he was paying \$100 per month to sleep on a couch at a friend's place, which meant in turn he did not have appropriate accommodations to take the children.

[38] She disputed Mr. Purssell's recitation of the events of March 13, 2003. She says she came by to pick up the agreement and Mr. Purssell had already signed it. She said she questioned if he had obtained legal advice and said that he then wrote the "independent legal advice" notation on the agreement. She said she did not pressure him, there was no yelling, and he was at his door perhaps some five minutes.

- [39] As to Mr. Pursell's denial of the children's special needs, Ms. Pursell noted she had given him the specialist's report and that Dr. Shaw had given him some of the informational papers but that he did not seem to understand or be interested. She noted his new family is housed in a two bedroom apartment and she questioned how their children could stay overnight with Mr. Pursell's new family.
- [40] These affidavits were before Master Keighley in November 2004. Mr. Pursell's application to cancel his support obligations was dismissed.
- [41] Mr. Pursell changed counsel and amended his pleadings to allege duress, undue influence, and unconscionable bargain, and further that the separation agreement was grossly unfair.

### **Mr. Pursell - Affidavit No. 3, April 2, 2005**

- [42] In his affidavit No. 3, dated April 2, 2005, Mr. Pursell said he was now making \$1,000 per week. He said he had borrowed \$30,000 from his mother over the past 18 months, and he had legal bills of \$9,000.
- [43] He detailed the pressure he felt Ms. Pursell had put on him to sign the separation agreement in March 2003, alleging that she had said he could not see the children unless he signed the agreement.
- [44] As to the sale of the family home, he said the family debt should have been paid first.
- [45] As well, he said his obligation to pay spousal support should stop.
- [46] As to the trust agreement, he noted he had not signed the document showing the debt owing to Ms. Pursell's parents.
- [47] He detailed the family history, the difficulties of living with Ms. Pursell and her parents, and said that such an arrangement was difficult and he did not understand the family dynamics.
- [48] He went back to the purchase of the matrimonial residence in the spring of 2001, in essence alleging Ms. Pursell's parents' contribution was a gift.
- [49] He complained that Ms. Pursell could work given her previous experience as a shop clerk and bookkeeper.
- [50] He noted he had now taken on the obligation of a second family and that his partner was on employment insurance and that when she returned to work they would require daycare for their child.
- [51] Reference was made to the bankruptcy trustee who appeared to be taking no active part in these proceedings.

- [52] Mr. Purssell complained the effect of the Family Maintenance Enforcement Program ("FMEP") garnishee, his rent and other necessities left him little to support his second family.
- [53] He was proposing to continue child support at \$722 a month but make no payment on spousal support or arrears as he simply couldn't pay. He said his wife quit work and her mother could babysit for free.

Mr. Purssell - Affidavit No. 4, September 11, 2007

- [54] The first 47 paragraphs repeat his previous affidavit.
- [55] At paragraph 48, he said that in June 2005 he decided to move to Salt Spring and live with his mother and obtain work as a construction worker. He did so from mid October to the end of December, making \$7,124.33, or a little over \$2,000 a month. In 2006, he said he made \$500 a week until May and then began apprenticeship as a carpenter which continued until August of 2006. He said his total 2006 income was \$19,724.54.
- [56] In 2007, he said he continued his apprenticeship as a carpenter until September 28, 2007 and that he could make approximately \$34,000 per annum.
- [57] He said he was living in his mother's house with his wife Danielle and son Cody and they had three bedrooms.
- [58] \$34,000 per annum equates to \$529 for Guideline support for his two children.
- [59] He noted the cost of visiting the children on the weekend by ferry was \$140.
- [60] He noted on August 26, 2007 the arrears of maintenance totalled \$65,169.38 against which, in 2006, he had paid \$5,685.49, and in 2007, \$2,800.
- [61] He said Ms. Purssell had obtained part-time employment and he wished to argue undue hardship.
- [62] Mr. Purssell's tax returns for 2003 show \$40,162; for 2004 \$47,793; for 2005 \$38,842.

Ms. Purssell - Affidavit No. 3, October 5, 2007

- [63] The children were then aged 9 and 7.
- [64] She denied ever obstructing Mr. Purssell's access to the children. She reiterated various arguments, namely that Mr. Purssell had assets at the break-up of the marriage: his tools, a pick-up truck, a Grand Am, an RRSP and personal belongings. He did not explain how he had run into debt.
- [65] With respect to Mr. Purssell's allegation about the chocolate business, she said the business closed in debt and without profit.

- [66] With respect to the house bought on Vedder Road in June 1995, the price paid was \$127,000. That was financed by her parents getting a line of credit. She said the Purssells rented the home as they were then working in Surrey and Vancouver. When the first child arrived, they rented the Vedder Road property and lived with her parents in White Rock.
- [67] She said she had kept in contact with her paternal grandparents.
- [68] She said Mr. Purssell did not understand her family dynamics which she describes as being clear and positive and outspoken at times.
- [69] With respect to the Heather Street property, it was bought in August of 2000 for \$140,000 before the Vedder Road property sold. Her parents provided the bridge financing. The Vedder Road property sold in October 2000 for \$92,500, a substantial loss compared to the previous purchase price.
- [70] Her parents received in total \$85,673.54 and advanced \$30,000 for the down payment on the Heather Street property. The advance of \$30,000 and the loss on the Vedder Road property of \$41,326.46 gave a net debt owing to her parents of \$71,326.46.
- [71] In June of 2003 when the Heather Street property sold for \$184,000 that netted \$173,062.87. After the mortgage was paid the net monies were \$65,366.06 which were paid to her parents. Ms. Purssell said Mr. Purssell agreed her parents were to be repaid and he signed over the sale cheque to Ms. Purssell's parents.
- [72] Ms. Purssell said she had obtained her qualification as a pre-school teacher.
- [73] With respect to access by Mr. Purssell, she said he had visited two times per annum and made the occasional telephone call after the move to Salt Spring in August of 2005.
- [74] She noted she had enrolled in FMEP and she was not paid any support in August of 2003 (Mr. Purssell's cheques came back NSF) and then \$500 for September of 2003.
- [75] She repeated previous evidence that they would share the family debt of \$30,000.
- [76] She completed her diploma in early childhood education in June 2007 and began working at a daycare in December 2006.
- [77] She said that both children were "high maintenance" especially Trevor with his speech delay therapy, vision therapy and play therapy needs which she said Mr. Purssell did not recognize.
- [78] She said that her mother had retired to help babysit the children before and after school.
- [79] She noted Mr. Purssell combined visits to the children with visits to his other relatives in the lower mainland. She had no objection to access visits from Mr. Purssell as long as she was given adequate notice and that Mr. Purssell took into account the children's regular scheduled activities. She said he was free to visit on notice more than once a month.

- [80] She said she was paying her parents for daycare, room and board.
- [81] She said Mr. Purssell was up to date in his child support payments due to a garnishee of his tax refunds but had paid no spousal support since the house was sold.
- [82] She noted Mr. Purssell was a fully licensed auto mechanic and could make much more money as such and therefore argued that his work as a carpenter was "underemployment".
- [83] In her estimation proper calculation of Mr. Purssell's income was \$2,849.60 per month or \$34,195.20.
- [84] Ms. Purssell said she was still working part-time and seeking full-time employment.

**Mr. Purssell's child support Affidavit and an unnumbered Affidavit sworn December 18, 2007**

- [85] He complained access was difficult as Ms. Purssell wouldn't allow the children to go with him to Salt Spring. When he visited the children in White Rock they were often busy with their own activities and he sat and watched.
- [86] He agreed he kept assets on separation but with respect to the Grand Am he said she couldn't make the payments so she gave it to him and it was repossessed.
- [87] He said he was still working through his carpenter's apprenticeship.
- [88] As to the house monies, he said he didn't want to sign the trust declaration because he understood the monies were a gift.
- [89] He alleged the plaintiff was self-supporting and he should not have to pay spousal support for her when she was underemployed.
- [90] He questioned why there should be a payment for daycare if Ms. Purssell's mother was providing the daycare and if Ms. Purssell was working part-time what need was there for full daycare?
- [91] With respect to his access, he said two ferry trips, gas and food cost him \$250.
- [92] With respect to the allegation he could obtain more income as an auto mechanic, he believed as a carpenter he could and would make more money.

**Mr. Purssell - Affidavit No. 7, December 21, 2007**

- [93] Mr. Purssell noted Ms. Purssell's tax returns showed that during the time the defendant went to school for her pre-school diploma that she had not incurred any daycare costs.
- [94] With respect to the separation agreement he averred he didn't know the spousal and child support terms of the agreement (though I note he had initialled and changed them). In any event he had tried to make payments.

[95] He took the position that the only person interested in his assets, if any, was the trustee in bankruptcy and he was only wishing to proceed to court on the support applications.

**Ms. Purssell - Affidavit No. 5, December 22, 2008**

[96] Ms. Purssell noted the divorce had been granted by Bernard J. December 21, 2007. An access order had been made by consent. There had been a direction that the trustee in bankruptcy be served with the motion proceedings.

[97] Ms. Purssell said Mr. Purssell hadn't supplied his 2006 tax return but had provided his 2007 tax return with the line 50 income being \$39,027.

[98] FMEP reported Mr. Purssell's arrears totalled \$70,232 and they were no longer enforcing spousal support.

[99] Ms. Purssell complained no payment had been made towards special costs for the children.

[100] In 2004 she said play and speech therapy totalled \$3,062. In 2005 vision therapy totalled \$2,000.

[101] With respect to daycare, Ms. Purssell said she paid her mother \$250 a month for daycare.

[102] She said annual medical and dental costs after insurance totalled approximately \$300 per year.

[103] She sought payments for children's activities including guiding and scouting, dance and softball, but she said she would "accept \$200 a month".

[104] On \$39,027, Guideline support for the children was \$596 a month.

[105] With respect to the Trustee in Bankruptcy, they indicated they would take no part in the court hearing.

[106] With respect to access, she noted that Mr. Purssell and the children took day trips on December 30, 2007, on January 13 and on May 17, 2008, and that Mr. Purssell had not visited the children since. There had been little in the way of telephone communication and no recognition of birthdays or Christmas. She wanted passport applications to be signed and an order made that she could travel outside Canada without approval or consent of the father.

[107] I set out the income information disclosed by the parties:

YEAR

MR. PURSSELL

MS. PURSSELL

2002

\$45,326

2003

\$40,162

2004

\$47,743

\$287

2005

\$38,535

\$5,124

2006

\$19,724

\$6,673

2007

\$39,000

\$15,629

2008

\$39,531

\$32,213

2009

\$5,878

(to Feb. 13)

Full-time

Discussion on the Separation Agreement

[108] I am satisfied the separation agreement of 2003 is valid.

[109] As recognized in *Hartshorne v. Hartshorne*, 2004 SCC 22, the Family Relations Act explicitly recognizes marriage agreements to be a mechanism to govern division of property and dissolution of marriage. This is an agreement made at the time of separation. The Supreme Court of Canada indicated the courts should be slow to intervene where the parties have settled their affairs. The issue is whether the agreement was substantially fair at the time of the application for reapportionment.

- [110] Here I am satisfied, given the circumstances at the time of separation, adequate arrangements were made. The agreement reflects the lack of family assets and the need to take care of the children in the longer term and to provide for spousal support in the short term, i.e., until the children began school.
- [111] When compared to the factors listed in s. 65(1) of the Family Relations Act, the agreement was fair. The events that occurred subsequently in large part in my view were in the control of Mr. Purssell and it was not the agreement itself that was inequitable. Rather, Mr. Purssell's personal matters, including employment, debt and a new relationship, were matters he might not have anticipated. In this case the distribution of assets was not unfair at the time of the agreement and I decline to alter the agreement made by the parties.
- [112] There is no evidence before me of duress or misrepresentation as it would be defined in law. Mr. Purssell initialled the changes in the support provisions and can hardly say he did not know what responsibilities he was undertaking. At the time he was employed and making over \$30,000 per annum. It is patent that he then started to have difficulty retaining his employment and quickly ran up substantial debt resulting in his bankruptcy in 2004. As well, he entered into a new relationship and he started a new family, all of which contributed to his financial demise.
- [113] He complains the spousal support provisions were onerous. They were substantial but he was placing the care of his two small children with his spouse who was not then working and the agreement was he would pay spousal support until the youngest child was one year at school. It is also evident that Ms. Purssell's family provided substantial support to Ms. Purssell and the children in terms of accommodation and financial aid, given the children's special needs.
- [114] The parents provided the funds for the Purssells' housing, and were almost completely repaid on the sale of the matrimonial home. While the "trust" document was not signed, it does evidence a legal debt, and the separation agreement providing for payment of Ms. Purssell's parents is signed by Mr. Purssell.
- [115] The law is clear that a new relationship and starting a new family does not waive a parent's existing family commitments: *Earle v. Earle*, [1999] B.C.J. No. 303 (B.C.S.C.) (Q.L).
- [116] In sum, the separation agreement is valid.

## Child Maintenance

- [117] Mr. Purssell's evidence shows he has made approximately \$39,000 the past two years and will be making more money this coming year if his 2009 pay slips are accurate. I will set his 2009 obligation on the basis of \$40,000 income and his Guideline monthly child support then is \$610.

- [118] He will be required to provide his tax return forthwith after filing with the tax department each year to Ms. Purssell and that will set his Guideline obligation as of the first of June each year, beginning 1 June 2010.
- [119] Should Mr. Purssell change employment he is to forthwith provide particulars to Ms. Purssell.
- [120] Section 7 special expenses are sought. Given the parties' modest income I find those expenditures are not special and there is no obligation to pay.
- [121] Mr. Purssell is to forthwith sign all necessary documentation to provide passports for the children. Ms. Purssell is at liberty to travel outside of Canada and the jurisdiction of this Court with the children without the approval or consent of Mr. Purssell.
- [122] As to arrears, Mr. Hittrich, counsel for the defendant, advised the Court the FMEP record was incorrect and by his calculation the current arrears were \$56,800. The calculation, I take it, is based on the separation agreement calling for a review of Ms. Purssell's time-limited spousal support, and accepts termination as of September 2007. I do not have any record of disagreement from Mr. Purssell. In addition, I will delete interest of \$11,000, but not the government's fees of \$2,400. I order Mr. Purssell pay \$150 monthly on the net arrears, which in round terms I set at \$45,800 as of 1 June 2009.
- [123] As to access, I am concerned that Mr. Purssell led no evidence as to the status of his relationship with the children. Amanda is now 11 and Trevor now 9.
- [124] Mr. Hittrich suggested the parties arrange access between themselves, while Mr. Dubas, counsel for the plaintiff, sought specified access for his client. The parties have been able to make their own access arrangements to date. I order that Mr. Purssell have reasonable access, to be arranged by the parties.
- [125] For the guidance of the parties I would suggest the following: that between now and Christmas, Mr. Purssell visit the children in White Rock at least once a month to resume his relationship with the children. Over the Christmas holidays he may have the children for three days at his residence on Salt Spring.
- [126] I am assuming Mr. Purssell has accommodation such that he can provide a separate bedroom for the children when they are in his house, and should the Christmas visit go well, then Mr. Purssell have a weekend every other month with the children on Salt Spring. If that goes well, then I would anticipate one or two weeks in the summer of 2010 would be appropriate but that is subject to access going well. The children are now at an age where they will have some voice in the visits. Mr. Purssell is to be provided a copy of the children's regular monthly calendar so that he is kept up to date as to the children's education and activities. I understand Ms. Purssell has had no objection to telephone contact but that should be set up on a regular basis so that the children will know when to expect a call from their father.

## Costs

[127] Ms. Purssell is entitled to her costs at Scale "B".

"Crawford, J."

---

## Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

**ORIGINAL SOURCE**      <https://www.bccourts.ca/jdb-txt/SC/09/14/2009BCSC1463.htm>

**CASE PAGE**              <https://chat.esheria.ai/case-law/canada/purssell-v-purssell-2009>

Prepared on 25 October 2026 · Esheria