

CANADA / JUDGMENT

## Raschpichler v. Raschpichler

2023 BCSC 1505

COURT

Supreme Court of British Columbia

DECIDED

22 August 2023

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2023 BCSC 1505 Raschpichler v. Raschpichler

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Raschpichler v. Raschpichler,

2023 BCSC 1505

Date: 20230822

Docket: E50139

Registry: New Westminster

Between:

Milena Silva Raschpichler

Claimant

And

Jochen Raschpichler also known as Dick Raschpichler

Respondent

Before: The Honourable Mr. Justice Milman

Oral Reasons for Judgment

Counsel for the Claimant:

K.E. McNeilly

Counsel for the Respondent:

R. McQueen

Place and Date of Hearing:

Abbotsford, B.C.

August 17, 2023

Place and Date of Judgment:

Abbotsford, B.C.

### **August 22, 2023**

- [1] This is an application by the respondent in this family law action, Mr. Raschpichler, seeking to cancel or, alternatively significantly reduce his obligation to pay spousal support to his former spouse, the claimant, Ms. Raschpichler, in light of what he says is a material change in circumstances, namely, his recent retirement. He says that since his retirement he now earns substantially less than she does and if the requested change is not made, he will have to draw on his capital rather than his income in order to continue making the requisite monthly payments.
- [2] Ms. Raschpichler opposes the application on the basis that, according to her, Mr. Raschpichler has been consistently underpaying spousal support since the parties' separation and has been less than entirely forthright in his financial disclosure throughout this litigation. She says his current financial circumstances are such that he can afford to continue paying spousal support, that he is capable of continuing to work, despite his retirement, and that he owns significant assets that put him in a far superior financial position compared to her. On the other hand, she says she remains heavily in debt as a result of the circumstances of the marriage and its breakdown, all of which justifies maintaining Mr. Raschpichler's current spousal support obligation on an indefinite basis.
- [3] By way of background, Mr. Raschpichler is now 66, Ms. Raschpichler, 62. The parties were married in 1982 and separated in 2007. They were formally divorced by order of this court in 2013. When the relationship began, both parties were in their early 20s. They remained together for approximately 26 years. They have three children, all of whom are now adults.
- [4] During the marriage, Ms. Raschpichler took on a traditional role and raised the children. She was working outside the home early in the relationship, but only until she became pregnant in 1983, about seven months after the wedding. She later worked as a librarian in the 1990s, initially part-time, but later on a full-time basis when she was promoted into a managerial position. In 2002, she completed a two-year diploma programme in Library and Information Technology from the University of Fraser Valley. She has been working ever since, earning an income of between \$11 and \$22 per hour. She says she now has trouble working on her feet and can do so only for 35 hours per week, due to her physical constraints.

- [5] Mr. Raschpichler spent most of his career working in the forest industry, eventually advancing into a managerial position. He was the family's primary income earner while the parties were together. Because of the heavy demands on his time, Ms. Raschpichler was left to raise the children alone for much of their childhood.
- [6] The parties separated in 2007. Ms. Raschpichler was then 48 and Mr. Raschpichler, 51. They entered into a homemade form of separation agreement without the benefit of legal advice. It called for Mr. Raschpichler to pay Ms. Raschpichler \$250 per month for child support and \$250 per month for spousal support. At that level, the support he actually paid was the equivalent of between a half and a third of what it would have been had the matter gone to court.
- [7] In any event, Mr. Raschpichler continued to pay the amounts called for under the separation agreement until their oldest son reached the age of majority in 2014. Mr. Raschpichler then continued to pay \$500 per month, now entirely as spousal support, until early 2016, when he notified her that he had, in his view, by then paid her enough in spousal support and would no longer continue doing so.
- [8] Ms. Raschpichler responded by commencing this action in early 2016. The claim settled early on at the judicial case conference, which took place on March 8, 2016. They agreed to an order (the "JCC order") that included a provision for Mr. Raschpichler to pay ongoing spousal support to Ms. Raschpichler in the amount of \$1,500 per month, based on an income of \$82,500. That obligation has remained in place ever since and it is that provision of the JCC order that Mr. Raschpichler now seeks to vary.
- [9] On the day prior to the JCC, March 7, 2016, Mr. Raschpichler delivered to Ms. Raschpichler a F8 Financial Statement dated March 7, 2016. Contrary to the requirements of the Supreme Court Family Rules, it was unsworn and had no attachments. Ms. Raschpichler is particularly critical of his description of the pensions listed in that F8. There are two pensions listed, with the value of both stated to be undetermined. Ms. Raschpichler says that the F8 is also misleading because one of the two listed pensions was actually comprised of two separate ones. The three pensions turned out to have substantial value, but only one of them came to be divided between the parties.
- [10] Another asset of value that was subject to division was the former family home. Mr. Raschpichler advanced Ms. Raschpichler \$75,000 toward her share of the equity in the former family home so that she could purchase a home of her own in Abbotsford. She subsequently agreed to receive a further \$30,000 in final satisfaction of her claim to a half interest in the property, but it is unclear if she received fair value in that regard because Mr. Raschpichler later sold the property himself but has not disclosed what he received for it or what was owed under the mortgage at the time.

- [11] In 2020, at age 65, Mr. Raschpichler was terminated involuntarily from his employment. His income that year was \$156,000 - but some of that amount reflects the sizeable severance package he received that year. His income in 2019 was \$97,895. Had Mr. Raschpichler been required to pay spousal support based on that income, his monthly payment to Ms. Raschpichler would have been at least \$2,000 at the low end of the range, rather than the \$1,500 that the parties had agreed to in the JCC order.
- [12] Since then, it appears that Mr. Raschpichler's income has decreased substantially. An unfiled T1 tax return declares his income in 2022 to have been \$46,000. His most recent F8 declared his current income to be \$24,000.
- [13] In September 2022, Mr. Raschpichler received an inheritance from his deceased father's estate, in the amount of \$235,000. In May 2023, he received an additional \$60,000 from the same source. He owns equity in his new home that is said to be worth \$875,000, subject to a \$62,000 mortgage charging it. He has remarried and his current wife had an income of \$77,000 in 2019. Her income is said to be \$46,000 currently.
- [14] In December 2021, Mr. Raschpichler unilaterally reduced his spousal support payments to Ms. Raschpichler by half, and has since been paying her only \$750 per month, contrary to the JCC order. Ms. Raschpichler did not agree to this. Pursuant to the JCC order, Mr. Raschpichler owes Ms. Raschpichler spousal support arrears of \$17,000.
- [15] That is the factual background. I turn now to the law.
- [16] To justify revisiting the JCC order, Mr. Raschpichler must first show that there has been a material change in circumstances. I accept that his retirement meets that test, but that is only the beginning, not the end of the inquiry. Next, I must determine what change, if any, is appropriate: see *L.M.P. v. L.S.*, 2011 SCC 64.
- [17] The objectives of spousal support are set out in s. 15.2 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), as follows:
- (a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;
  - (b) apportion between the spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
  - (c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
  - (d) in so far as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

- [18] A former spouse's entitlement to spousal support is to be determined having regard to the condition, means, needs and other circumstances of each spouse. Relevant factors include the length of time the spouses cohabited and the functions performed by each spouse during the cohabitation.
- [19] It has been held that in a traditional relationship, where one spouse subordinates a career for the sake of the family, the economic consequences of the marriage to that spouse can be prejudicial: *Moge v. Moge*, [1992] 3 S.C.R. 813, 1992 CanLII 25; *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 1999 CanLII 715; *Myers v. Myers* (1995), 17 R.F.L. (4th) 298 (B.C.C.A.), 1995 CanLII 2274; *Rogers v. Rogers*, 1999 BCCA 238.
- [20] Even if Mr. Raschpichler's retirement was involuntary, in assessing his support obligations, the court must consider whether he can continue to earn income: *Szczerbaniwicz v. Szczerbaniwicz*, 2010 BCSC 421.
- [21] I accept that Ms. Raschpichler has made out a strong case for entitlement to spousal support, both on compensatory and non-compensatory grounds, and that her case for spousal support continues to be a strong one, given the ongoing disparity between the relative means and needs of the parties today.
- [22] Mr. Raschpichler argues that his recent inheritance is irrelevant because it would be excluded property if the parties' assets were being divided today. In my view, that submission misses the point.
- [23] It has been held that in determining the amount of support payable, the court must consider the assets that the payor has acquired since the parties divided their assets: *Leskun v. Leskun*, 2006 SCC 25, *Hathaway v. Hathaway*, 2015 BCSC 1485.
- [24] In *Wallberg v. Wallberg* (1994), 8 R.F.L. (4th) 372 (B.C.C.A.), the court held that a payor may properly be required to pay support from capital where the payee's living standard falls significantly below his own. A similar result followed in *Bullock v. Bullock*, 2007 BCSC 318, *affd* 2008 BCCA 162. In *Boston v. Boston*, 2001 SCC 43, the Court held that a payor can be required in appropriate circumstances to pay spousal support from pension earnings, even where the pension had previously been divided, if doing so is seen to be necessary to achieve the objectives of spousal support.
- [25] Here, I am satisfied that if the JCC order remains in effect, then there would be, at most, only limited double dipping into Mr. Raschpichler's pension earnings. I say this because the pensions from which he is benefitting today were only partially but not entirely divided. Even if there were significant double dipping, the Court held in *Boston* that it is not always possible to avoid double dipping, particularly where, as here, the rationale for ongoing spousal support persists. In this case, I am satisfied that Ms. Raschpichler continues to suffer from the effects of persistent underpayment of spousal support historically.

- [26] Ms. Raschpichler currently earns \$47,000, not including the spousal support that she receives from Mr. Raschpichler. She owes \$45,000 in unpaid tax. She owns a home worth \$400,000 but it is subject to a \$225,000 mortgage. She has cash and investment assets worth approximately \$33,000 and she has a half share in the one pension that was divided, which I am told will pay her close to \$500 per month when she turns 65 (she is now 62).
- [27] As a result of her financial struggles over the years, she has had to carry an ongoing burden of credit card debt. She has increased the size of her mortgage over the years, at the same time that Mr. Raschpichler has been able to pay his own mortgage down, and indeed has been able to acquire additional real property. Ms. Raschpichler has also had to borrow from Mr. Raschpichler to make ends meet. Mr. Raschpichler has caused those debts to be repaid by reducing the spousal support payments he was otherwise required to make to her.
- [28] Mr. Raschpichler argues that all of this is the result of Ms. Raschpichler's poor choices, including her decision not to advance her education further than she did. In addition, he says that she freely consented to the agreements and orders that led to the support regime that the parties have followed, and to the property division that she now claims to have been unfair. Although Mr. Raschpichler's income rose considerably after the JCC order was made, Ms. Raschpichler never applied to the court to seek to vary the spousal support payable accordingly.
- [29] I agree with Mr. Raschpichler that Ms. Raschpichler appears to have made some improvident decisions in this litigation and otherwise, but that is not really the issue. What is important is the present effect of the parties' historical dealings on the relative means and needs of each of them currently. In any event, I accept her submission that at least some of the basis for the agreements that were reached and orders that were made, or not made, flowed from incomplete or inaccurate disclosure by Mr. Raschpichler of his actual financial circumstances.
- [30] In view of these considerations, I have concluded that the application should be refused. It follows that Mr. Raschpichler must pay Ms. Raschpichler the \$17,000 in arrears that he owes her, and prospectively, that he must resume paying her \$1,500 per month in spousal support, as required by the JCC order. To reduce the burden on Mr. Raschpichler, the arrears will be payable over a period of two years.
- [31] As the successful party, Ms. Raschpichler is entitled to her costs of this application.
- [32] That concludes my decision.

"Milman J."

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