
CANADA / JUDGMENT

Rayvals v. Rayvals

2008 BCSC 176

COURT

Supreme Court of British Columbia

DECIDED

15 February 2008

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

2008 BCSC 176 Rayvals v. Rayvals

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Rayvals v. Rayvals,

2008 BCSC 176

Date: 20080215

Docket: E005046

Registry: New Westminster

Between:

Valerie Helen Rayvals

Plaintiff

And

Stephen Carl Rayvals

Defendant

Before: The Honourable Madam Justice Loo

Reasons for Judgment

Counsel for the Plaintiff

T. P. Harding

Counsel for the Defendant

D. R. Greig

Date and Place of Trial/Hearing:

1 February 2008

New Westminster, B.C.

- [1] This application for review of spousal maintenance raises the issue of how much and for how long should a person pay his former spouse who is sick and unable to work.

A. Background

- [2] The parties began living together in late 1987, married in May 1990, and separated on January 17, 1998. The period of cohabitation is therefore closer to 10 years than 11 years as Ms. Rayvals contends. There are no children of the marriage. At the time of separation, Ms. Rayvals was 34 years old and Mr. Rayvals was 35 years old. Ms. Rayvals worked until early 1996, when fibromyalgia prevented her from returning to work. On September 14, 2000, she was awarded interim spousal maintenance of \$500 a month.
- [3] On February 18, 2002, Mr. Justice McKinnon ordered (2002 BCSC 128, 25 R.F.L. (5th) 399) that \$80,000 remaining from the sale of the matrimonial home be reapportioned eighty percent to Ms. Rayvals. Ms. Rayvals therefore received \$64,000. Mr. Justice McKinnon stated at ¶ 32:
- [32] Given the amount of re distribution in Mrs. Rayvals' favour, which should provide her with some ability to obtain reasonable accommodations, coupled with her own disability income, I find that spousal maintenance for an indefinite period in the sum of \$500 per month is appropriate. I am not prepared to make a lump sum award for maintenance as requested.
- [4] At the time, Ms. Rayvals was receiving a pension and disability income of \$1,330.63 a month. With \$500 a month in support, she received a total of approximately \$22,000 annually. Mr. Rayvals was found to earn approximately \$45,000 annually. Mr. Justice McKinnon also ordered that provided that Ms. Rayvals could obtain remunerative employment, Mr. Rayvals could apply to vary the duration and amount of support.
- [5] Mr. Rayvals appealed on the basis that the reapportionment was too high and support should be time limited or reviewable absent a material change. Ms. Rayvals cross-appealed on the basis that reapportionment and support were too low.
- [6] In December 2004, the Court of Appeal (2004 BCCA 630, 37 B.C.L.R. (4th) 374) dismissed the cross-appeal and varied the order so that the support order is subject to review on or after February 1, 2007, even if there is no change in circumstance.
- [7] Thackray J.A., writing for the majority, (Southin J.A. in dissent) stated:
- [27] I have read and considered the draft reasons of Madam Justice Southin. While I agree with her that Mr. Rayvals should probably not have to support his former spouse for the rest of her life, I cannot accept that it is for this Court, at this time, to set a time limit on his obligation.

- [35] I cannot accept Madam Justice Southin's conclusion that spousal maintenance is payable only "up to and including the 1st day of February, 2007." My research has not uncovered a case wherein this Court has varied an indefinite order to one that terminates on a specific date. In saying that, I am not suggesting that to do so is wrong, but I am not prepared, at this time, to come to such a conclusion.
- [36] In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, [1999] S.C.J. No. 14 (Q.L.), Madam Justice McLachlin, for the Court, said that based on the length of cohabitation, the hardship the marriage breakdown imposed, the palpable need and Mr. Bracklow's financial ability to pay, Mrs. Bracklow was entitled to support. She then said:
- [61] I leave the determination of the quantum of support to the trial judge, who is in a better position to address the facts of this case than our appellate tribunal. My only comment on the issue is to reiterate that all the relevant statutory factors, including the length of the marital relationship and the relative independence of the parties throughout that marital relationship, must be considered, together with the amount of support Mr. Bracklow has already paid to Mrs. Bracklow. I therefore do not exclude the possibility that no further support will be required, i.e., that Mr. Bracklow's contributions to date have discharged the just and appropriate quantum.

[emphasis added by Thackray J.A.]

- [37] As with Madam Justice Southin, I have emphasized the above-noted sentence. I do not want to be seen as undervaluing that observation, but I find it difficult to elevate it to any more than that. I do not see it as a change in the law. I am of the opinion that Madam Justice McLachlin was simply pointing out that in referring the matter back to the trial judge she was not ruling out any result. That is, she was indicating that while Mrs. Bracklow had been "eligible for support", her eligibility might have expired due to fulfilment of the obligation.

B. The Present Circumstances

- [8] Mr. Rayvals is now 44 years old. He remarried about three years ago. He and his new wife have two children: a son born in January 2004 and a daughter born in September 2005. Mr. Rayvals' wife does not work outside of the home. According to Mr. Rayvals, his wife cannot work. Before the children were born, she earned just \$12,000 annually. Their only significant asset is a two bedroom condominium that was a gift to his wife from her mother in 1999. Mr. Rayvals values the condominium at \$280,000.
- [9] Mr. Rayvals presently earns approximately \$60,000 annually. According to his Financial Statement, his annual income in 2004 and 2006 was approximately \$59,000. In 2005 he was unemployed for a time and earned approximately \$39,000. He lists his assets as a vehicle and RRSPs totalling \$27,000. He has not listed the condominium, but if one-half the value of the condominium were attributed to him (I do not mean to be taken as stating that he is entitled to that value given the length of his marriage and the fact that it was a gift to his wife) it would bring his assets to \$167,800. He has over \$9,000 in credit card debt.

- [10] Ms. Rayvals' total annual income since 2004 has been approximately \$24,000, comprising of \$6,000 in spousal support, pension and disability income of over \$16,000, about half of which is indexed, GST refunds, and interest. She appears to have approximately \$48,000 remaining from her \$64,000 share of the family assets. In September 2007, after Mr. Rayvals brought this application, she purchased a Toyota Rav 4 for \$11,500. She has no debt. However, her health has deteriorated. She had a left hip replacement and will need to have her right hip replaced. She is in constant pain.
- [11] Mr. Rayvals believes that his former spouse has been in a "spousal relationship" with Mike MacLean for several years.
- [12] Ms. Rayvals says that she and Mr. MacLean were in a "romantic relationship" from about 1999 to 2002. Since 2002, she has lived in his house. She initially paid him \$200 a month for rent, including utilities and internet access. She stopped paying rent in 2004. She says that she has a separate bedroom, but she and Mr. MacLean shop together, buy their groceries together, cook and eat together. Her food expenses are listed at \$400 a month, including food for Mr. MacLean. Her present monthly expenses for housing include \$50 for house repairs and maintenance, and \$115 for a storage locker. While Ms. Rayvals has not outright denied that she is in a spousal relationship with Mr. MacLean, it appears that they are more than just friends.
- [13] Ms. Rayvals says that she intends to apply for subsidized housing, but there is no indication that she has ever applied before. She also claims that she planned to buy a house with Norine and Dave Warfield, who planned to invest in real estate in order to "help" her out. However, that proposal recently fell through when Ms. Warfield was laid off work.

C. The Argument

- [14] Much of Ms. Rayvals' evidence, which includes correspondence from her lawyer, relates to the animosity that Ms. Rayvals says exists between the parties. Ms. Rayvals asserts that Mr. Rayvals continues to intimidate and harass her and her dog. Mr. Rayvals claims that he does not know what Ms. Rayvals is talking about because he has not spoken to her since 2000.
- [15] The court did not and should not have considered the conduct of the parties in dividing the assets and determining support. Section 17 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) provides:
17. (6) In making a variation order, the court shall not take into consideration any conduct that under this Act could not have been considered in making the order in respect of which the variation order is sought.
- [16] To continue to focus on the conduct of the parties unnecessarily complicates matters and increases the costs of this litigation.

- [17] Mr. Rayvals argues that he has paid for support for 10 years and that the time has come when support should come to an end. In January 2007, he offered to pay Ms. Rayvals \$500 a month for the first 6 months of 2007 and \$375 for the remaining 6 months, then \$250 for the first 6 months of 2008, and \$125 for the remaining 6 months. Thereafter he would no longer be obligated to pay support. His offer was rejected.
- [18] Ms. Rayvals argues that the support should continue indefinitely. She argues that Mr. Rayvals should permanently contribute to her needs.
- [19] The parties agree that under the applicable formula using the Spousal Support Advisory Guidelines: A Draft Proposal (the "Guidelines"), Mr. Rayvals would pay support ranging from \$577 to \$769 a month for 5.5 to 11 years from the date of separation. However Ms. Rayvals contends that the Guidelines are just that and should not be followed.
- [20] Both parties rely on s. 17 of the Divorce Act.

D. Analysis

- [21] In *Beninger v. Beninger*, 2007 BCCA 619, the initial order for spousal support was made following trial in February 2003, prior to the publication of the Guidelines in January 2005. A variation application was made in 2006. Prowse J.A. for the Court of Appeal stated:
- [51] In determining the appropriate level of spousal support on an initial application, this Court has said that the Spousal Support Advisory Guidelines: A Draft Proposal (Ottawa, Dept. of Justice: 2005) (the "SSAG") should be used as a guide in determining both the quantum and duration of support, assuming that entitlement has first been established. (See, for example, *Yemchuk v. Yemchuk*, 2005 BCCA 406, 16 R.F.L. (6th) 430; *Redpath v. Redpath*, 2006 BCCA 338, 33 R.F.L. (6th) 91; *Tedham v. Tedham*, 2005 BCCA 502, 47 B.C.L.R. (4th) 254; and *McEachern v. McEachern*, 2006 BCCA 508, 62 B.C.L.R. 185.) A question which arises in this appeal is what use, if any, a court may make of the SSAG on a variation application.
- [52] This question is answered, to some extent, by the authors of the SSAG who indicate in their proposal that the SSAG should be approached with considerable caution on variation applications. They state that the SSAG were not designed to address some of the more complex issues which can arise on variation proceedings, including the impact of remarriage, second families and retirement. In some cases, entitlement may also have become an issue since the initial order was made. In certain circumstances, however, the SSAG can be used on a variation application, albeit with care.
- [53] In my view, however, the more significant complications referred to by the authors of the SSAG arising on a variation application are not a barrier to using the SSAG as a tool in determining either the quantum or duration of spousal support in this case.
- [22] In *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, following the decision of the Supreme Court of Canada, Madam Justice D. Smith, ordered spousal support of \$400 a month for 5 years. The parties cohabited for 7 years. Mr. Bracklow earned \$45,000 on separation, their two children

were independent, and there were few family assets to divide. Ms. Bracklow's financial circumstances had worsened: she lived on a disability income and in subsidised housing. She could not afford a car or a pet, had no savings, and had to borrow money to meet any emergency expenditures. Mr. Bracklow on the other hand had his income increase to \$71,000, remarried, his new wife was able to work, and they had purchased their home.

- [23] In *Wise v. Wise*, 2006 BCSC 945, 56 B.C.L.R. (4th) 186, the parties cohabited for 7.5 years during which the wife's disease rendered her unemployable. There were no children of the marriage. There were no family assets to divide. The husband's income was set at \$69,000. While it is not entirely clear, the wife appears to have been around 44 years of age at the time of the separation, and the husband around 41 years of age. At the time of the application, they were 51 and 48 respectively. The husband had remarried and his new wife, although unemployed, was expected to find work and earn in the range of \$50,000. Ms. Wise's income from CPP and GST refunds was only \$13,057. With \$1,000 a month spousal support, her income was approximately \$25,000. Her annual expenses were approximately \$31,000. The "without child" formula provided a range of support between \$420 and \$559 a month for 3.5 to 7 years. Madam Justice MacKenzie found the Guidelines calculation did not appropriately account for the plaintiff's disability and unemployability. Taking into account the interim support of \$1,000 a month already paid for 3.5 years, she awarded spousal support of \$800 a month for 4 years.
- [24] The Guidelines "without child" formula provides for indefinite support (a) if the marriage is 20 years or longer, or (b) if the marriage has lasted 5 years or longer, the years of marriage and the age of the recipient at separation, added together total 65 or more. However, this was not a long term marriage and Ms. Rayvals does not meet the rule of 65.
- [25] Illness and disability may be a limited exception to the Guidelines; the authors of the Guidelines recognize that there may be cases where the formula produces inappropriate results. However, I do not find the circumstances of this case to be exceptional such that there should be an illness or disability exception to the Guidelines.
- [26] Example 5.9 in the Guidelines is similar to the circumstances of the Rayvals. The authors state that the example does not necessarily fall within the illness and disability exception. The formula can be used either by restructuring or by extending the duration of support to the high end, in an amount at the low end of the range. The authors go on to state how the result by using the formula is consistent with the result in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420, 181 D.L.R. (4th) 522.
- [27] It is unfortunate that Ms. Rayvals is disabled and unable to work, but neither the case law nor the social obligation model of marriage, goes so far as to say that a spouse in circumstances such as this, is an insurer of a former spouse and is required to indemnify in whole or in part a former spouse for his or her needs for as long as he or she is in need.

- [28] By s. 17(7) of the Divorce Act, a variation order should recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown, and relieve any economic hardship of the former spouses arising from the breakdown of the marriage. It is a two way street involving both former spouses.
- [29] Ms. Rayvals has been disadvantaged from the breakdown of the marriage because she is no longer advantaged to the extent she was during the marriage by Mr. Rayvals income. However, Mr. Rayvals has been disadvantaged by the marriage breakdown because he has had to pay \$500 a month for spousal support since 2000. He wants to be able to move on in his new life. Mr. Rayvals' income has increased by some \$15,000 since separation, but his obligations have also increased because of his remarriage and two infant children.
- [30] Ms. Rayvals relies on *Richardson v. Richardson*, 2001 BCSC 1258, 21 R.F.L. (5th) 393, for the proposition that her obligation is not to become self-sufficient but to make reasonable efforts to become self-sufficient. In that case, the parties were married for 28 years and had four children. The wife had a grade 8 education, low average intelligence, and despite trying, could only earn a modest income. However, Mr. Rayvals does not argue that Ms. Rayvals must make reasonable efforts to become self-sufficient. He concedes that she is unemployable by reason of her disability.
- [31] Ms. Rayvals also relies on *Jensen v. Jensen*, 2004 BCCA 29, 22 B.C.L.R. (4th) 225, where a support order was ordered reviewed when a recipient spouse had not achieved self-sufficiency. I do not find the case of much assistance, as it was decided without the benefit of the Guidelines, and there was a review ordered in this case. This is the review.

E. Conclusion

- [32] Ms. Rayvals should have adequate notice in order to organize her financial affairs. Mr. Rayvals had paid somewhat less than the Guidelines amount, but Ms. Rayvals received a greater share of the family assets.
- [33] Considering all of the factors I have outlined, there will be an order that Mr. Rayvals will continue to pay spousal support of \$500 a month up to and including June 2009 when it will terminate.
- [34] If the parties cannot agree on costs, they may speak to the matter.

"Loo 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/08/01/2008BCSC0176.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/rayvals-v-rayvals-2008>

Prepared on 29 October 2026 · Esheria