
CANADA / JUDGMENT

Reilly v. Reilly

2010 BCSC 543

COURT

Supreme Court of British Columbia

DECIDED

22 April 2010

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

2010 BCSC 543 Reilly v. Reilly

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Reilly v. Reilly,

2010 BCSC 543

Date: 20100422

Docket: D074241

Registry: Vancouver

Between:

George Patrick Bonnyman Reilly

Plaintiff

And

Anne Theresa Reilly

Defendant

Before: The Honourable Mr. Justice Goepel

Reasons for Judgment

Counsel for the Plaintiff:

L.J. Hamilton

The Defendant, Anne Theresa Reilly:

Appearing on her own behalf

Place and Date of Hearing:

Vancouver, B.C.

March 30, 2010

Place and Date of Judgment:

Vancouver, B.C.

April 22, 2010

INTRODUCTION

- [1] The parties married in 1958 and separated in 1987. They were divorced in 1991. In 1994, Mr. Reilly was ordered to pay \$3,000 a month in spousal support.
- [2] Mr. Reilly retired from his law partnership on December 31, 1998. He then applied to vary spousal support. That application was dismissed at trial. On appeal, spousal support was reduced to \$2,000 per month.
- [3] Mr. and Mrs. Reilly are both 76 years old. He now applies for an order that spousal support be terminated effective December 2, 2009, being the date of his notice of motion.

BACKGROUND

- [4] The parties had a traditional marriage. Although Ms. Reilly had a Masters degree in Economics and French, her role throughout the marriage was that of homemaker, mother and wife. The parties raised six children together. Their youngest child is now 41 years old.
- [5] Mr. Reilly was a highly respected and successful solicitor. He was a partner in a major Vancouver law firm from 1968 until his retirement on December 31, 1998.
- [6] The parties separated in May 1987 and were divorced four years later. The issues of spousal support and asset division were the subject of a 13-day trial before Mr. Justice Scarth. He divided the assets equally between the parties. Each party received approximately \$500,000. In regard to spousal support he found that prior to trial Mr. Reilly's income was approximately \$200,000 per year, but by the time of trial and for the foreseeable future, his income would be approximately \$150,000 per year. He found that it was unrealistic to expect that Mrs. Reilly would find future employment. He ordered Mr. Reilly to pay spousal support of \$3,000 per month. He found that Mr. Reilly's income post-retirement was largely a matter of speculation and declined to order that maintenance would automatically cease upon his retirement. His reasons for judgment are found at (1994), 10 R.F.L. (4th) 6 (B.C.S.C).

- [7] At the time of the trial before Justice Scarth, Mr. Reilly was living in a common law relationship with Ms. Elsie Sands. Ms. Sands was also a lawyer. In October 1994, prior to the release of Justice Scarth's reasons, Mr. Reilly transferred to Ms. Sands his interest in four properties which were not family assets and his share of the sale of the proceeds of the prior matrimonial home.
- [8] Mr. Reilly and Ms. Sands married in 1996. Following his retirement from his law partnership, Mr. Reilly applied in February 1999 to terminate spousal support. Quijano J., in reasons reported at (1999), 50 R.F.L. (4th) 424 (B.C.S.C.), dismissed his application.
- [9] Quijano J. acknowledged that if the plaintiff had assets and income similar to those of the defendant as a result of having retired, then the fact of his retirement may be a significant change of circumstances sufficient to justify a variation of the previous order. She held that the onus was on Mr. Reilly to establish there had been a significant change in circumstances. She found his evidence with respect to his present financial circumstances to be incomprehensible and not believable. In that regard, she noted that significant assets had been transferred to Ms. Sands. She concluded on the whole of the evidence that Mr. Reilly had attempted to put his assets out of reach of his creditors, in particular, his ex-wife, by transferring them to his present wife. She was not persuaded on a balance of probabilities that there had been a significant change in Mr. Reilly's financial circumstances sufficient to justify a variation of the maintenance award.
- [10] Mr. Reilly appealed. The Court of Appeal, in reasons found at 2000 BCCA 130, allowed the appeal. The Court of Appeal noted that Mr. Reilly's income had fallen from \$200,000 a year to almost nil and found that there had been a change of circumstances that would justify reducing spousal support to \$2,000 a month effective July 1, 2000.
- [11] Subsequent to his retirement from his law practice, Mr. Reilly and Ms. Sands incorporated English Bay Realty Consulting Ltd. ("English Bay"), a business dealing with commercial leases. English Bay was successful in obtaining one major client, but its efforts to expand further were not successful. Between 2003 and 2005 English Bay paid Mr. Reilly \$144,250.
- [12] Subsequent to 2005, English Bay did not earn further income. Its retained earnings have been spent and its operations discontinued.
- [13] Between 1999 and 2002, Mr. Reilly received \$265,151 from his former law firm, being his share of the firm's capital account. Much of that money went to outstanding taxes and to pay down loans which had been secured by the capital account. Some of the balance was used to pay spousal support.
- [14] Since the divorce, Mr. Reilly's son Sean has given him gifts totalling some \$290,000. The last gift of \$262,000 was made in 2003. Half of those funds were placed into an investment account. Mr. Reilly has used that investment account to make his support payments. Of the \$131,000 that was originally placed into the account, approximately \$15,500 remains, and if it is depleted at \$2,000 per month it will be exhausted by August 2010.

- [15] Mr. Reilly separated from Ms. Sands in 2005. They entered into a separation agreement in May 2007 in which they divided their assets equally.
- [16] Mr. Reilly suffered a serious heart attack in November 2008. At present, his income is limited to monies received from pensions and a RIFF.
- [17] In 1994, Mrs. Reilly used the proceeds from the sale of the former matrimonial home to purchase her present residence for \$444,000. The premises contain a basement suite. Mrs. Reilly rented the suite until 2006. Because of an unfortunate incident with a tenant and her advancing age, she no longer feels comfortable renting the suite. In 2007, her son Sean paid \$80,000 to retire her mortgage.

PARTIES' PRESENT FINANCIAL CONDITION

- [18] Mr. Reilly purchased a townhouse in September 2009 for \$655,000. He also owns a revenue property in Langley which he purchased in 2007 for approximately \$420,000. He has approximately \$275,000 in various investment accounts. There is a mortgage on the Langley property on which he owes approximately \$232,000. His net assets are approximately \$1,114,000.
- [19] Mr. Reilly's income for 2009 was approximately \$36,000. The source of income was Canadian Pension, Canadian Old Age Security, an annuity from the United Kingdom, interest on investment accounts and approximately \$12,000 in net rental revenue from the Langley property. He estimates his expenses, exclusive of spousal support, to be approximately \$42,000 per year. He expects that rising interest rates will likely reduce his 2010 net rental income.
- [20] Mrs. Reilly's property is worth between \$1.1 million and \$1.175 million. It is mortgage free. Her financial statement indicates that her total assets are worth \$1,288,181 to \$1,363,181. She has no debt. Mrs. Reilly has an income of approximately \$25,000. Her income comes from pensions, a United Kingdom annuity and RIFF income. She indicates her annual expenses are approximately \$42,000 per year.

POSITION OF THE PARTIES

- [21] Mr. Reilly submits there has been a material change in circumstances since the Court of Appeal decision in 2000. He is no longer capable of earning additional income. He submits that his age, health, declining income, lack of ability to earn future income and present need to draw on capital assets and savings in order to meet his living and spousal support obligations together constitute a material and significant change in circumstances. He submits that since their divorce Mrs. Reilly's financial picture has improved and their assets and income generating capacity is now equal. He submits that Mrs. Reilly has the onus of using her capital assets to produce income and that he does not have the means to afford continued spousal support without depleting his savings and eroding his own financial security.

- [22] Mrs. Reilly submits that the continuation of spousal support should take into account not only the income but the needs of the parties. She notes that the trial judge expressly refused to order that spousal support end at retirement. She notes that the plaintiff has comparatively more liquid assets and can well afford to continue to pay support. She submits that the support ordered by the trial judge included compensatory support to recognize Mrs. Reilly's role in the marriage as a homemaker and mother to the parties' six children.
- [23] Mrs. Reilly submits that her income does not meet her expenses. She believes that if spousal support ends she will be unable to continue to live in her home. She is reluctant to borrow against her assets and fears that if she does so she would at some point become impoverished.

DISCUSSION

- [24] The conditions, needs, means and other circumstances of both parties have changed significantly in the last 10 years so as to warrant a review of spousal support. Mr. Reilly's age, health, and declining income require him to draw on capital assets and savings in order to meet his spousal support obligations. By contrast, Mrs. Reilly's financial picture has greatly improved since the 2000 order. She continues to live in the same residence with no associated mortgage. Her residence has significantly risen in value.
- [25] At this point in time, both parties are in similar financial positions. Their asset bases are comparable. They have similar expenses. The only significant difference is that Mr. Reilly earns some income from his assets, while Mrs. Reilly does not.
- [26] Since his retirement, Mr. Reilly has paid Mrs. Reilly almost \$300,000 in support. He was only able to make such payments because of the assistance he received from Sean. Indeed, Sean's assistance to both parents has been essential in allowing them to continue to maintain their present standards of living.
- [27] Mrs. Reilly wishes to preserve the status quo. Neither Mr. Justice Scarth nor Madam Justice Quijano ordered that Mrs. Reilly would receive support for life. Mr. Justice Scarth clearly recognized that matters would have to be reviewed after Mr. Reilly's retirement. Madam Justice Quijano refused Mrs. Reilly's request that the support order charge Mr. Reilly's estate.
- [28] While I appreciate Mrs. Reilly's desire to maintain the status quo, that is not a fair or proper result. Mr. Reilly's estate should not be depleted while Mrs. Reilly's continues to grow. If Mrs. Reilly wishes to remain in her home, she has options by which she can generate income. These include rental of the basement suite, a reverse mortgage and possible deferral of her property taxes. Alternatively, she could sell her home and invest the proceeds.
- [29] A review of the authorities indicates that retirement and changes in financial means can and do lead to revisions in support payments. They do so because the circumstances of the parties have changed. In *Cramer v. Cramer*, 2000 BCCA 272, 75 B.C.L.R. (3d) 125, the parties

separated after a 30-year traditional marriage. The assets were divided equally. Spousal support was ordered at \$3,520 per month. Ten years later the husband's health had forced him to retire and left him with a modest pension. The court terminated spousal support. It held that it was time for the wife to look to her own assets to support herself. The court noted that her options included a reverse mortgage or selling the house and investing the proceeds.

[30] In all the circumstances of this case, I find that the time has come to terminate spousal support. Mrs. Reilly will need some limited time to determine how she wishes to organize her affairs to generate the necessary income to replace that lost by the termination of spousal support. To that end, I note that Mr. Reilly is paying support from the monies that Sean provided to him. Given all of the circumstances, I order that spousal support shall continue until the July 1, 2010 payment and terminate thereafter.

[31] Mr. Reilly has succeeded on this application, albeit spousal support is terminated several months later than he sought. Given all of the circumstances and the history of this relationship, there will be no order for costs.

"R.B.T. Goepel J."

The Honourable Mr. Justice Richard B.T. Goepel

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/10/05/2010BCSC0543.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/reilly-v-reilly-2010>

Prepared on 29 October 2026 · Esheria