
CANADA / JUDGMENT

Renwick v. Renwick

2006 BCSC 1502

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 1502 Renwick v. Renwick

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Renwick v. Renwick,

2006 BCSC 1502

Date: 20061011

Docket: E051086

Registry: Vancouver

Between:

William Lynn Renwick

Plaintiff

And

Betty Joanne Renwick

Defendant

Before: The Honourable Mr. Justice Blair

Reasons for Judgment

Counsel for the Plaintiff

G. Lang

Counsel for the Defendant

K. Shirley-Paterson

Date and Place of Trial/Hearing:

August 23, 2006

Vancouver, B.C.

- [1] The plaintiff, William Lynn Renwick, seeks an order terminating spousal support for the defendant, Betty Joanne Renwick, and reducing child support payable for his son, Clay Jarrett Renwick. Ms. Renwick opposes the application and seeks direction of the court to ensure the payment of spousal and child support continues at the level found in the consent order made by this court on July 4, 2005 (the "2005 order").
- [2] The parties separated in 2002 after a 27-year marriage which produced four children, with only Clay, born April 23, 1989, remaining a child of the marriage. During the marriage Ms. Renwick managed the home. Mr. Renwick, now aged 62 years, utilized his engineering training in the computer field and developed a small soft-ware business (the "business") which provided the Renwick family with a comfortable lifestyle. Ms. Renwick, now aged 59 years, trained as a nurse but has not worked in that field for many years, although during the marriage she worked for the family business.
- [3] Following separation, the parties spent several years negotiating a separation agreement, the terms of which were included in the 2005 order. The agreement divided the parties' \$4 million in assets equally and provided that Mr. Renwick, with a Federal Child Support Guideline (the "Guidelines") annual income of \$305,000, would pay for Clay monthly child support of \$2,071, his skiing and football expenses to a maximum of \$3,000 a year, and his school tuition. It further provided that Mr. Renwick would pay spousal support to Ms. Renwick of \$5,750 a month, and that these payments would continue until the happening of certain conditions, including at paragraph 9(c) of the 2005 order:
- (c) the Plaintiff retires completely from gainful employment

It is that condition upon which Mr. Renwick relies in applying to terminate his obligation to pay spousal support retroactive to February 1, 2006. He also seeks a variation of the child support and s.7 expenses given the change in his income since the 2005 order.

- [4] Ms. Renwick asks that Mr. Renwick's application be dismissed and, if necessary, that this court impute income to Mr. Renwick. In the alternative, if the court concludes that the 2005 order should be varied, that the court direct that the Whistler property held jointly by the parties as tenants in common be sold and Mr. Renwick's share of the net sale proceeds be paid to Ms. Renwick as a lump sum payment of spousal and child support or placed in trust to secure payment of Mr. Renwick's spousal and child support obligations. In the further alternative, pending the results of this hearing, Ms. Renwick seeks a re-apportionment in her favour of Mr. Renwick's share of the net proceeds received from the sale of the Whistler property.

- [5] Mr. Renwick bases his application on what he deposes is the demise of the business which he founded in 1978 and which has over the years produced a substantial income. Although in the years leading to the 2005 order his income from the business averaged \$305,000 a year, Mr. Renwick says the business has fallen on hard times with interest waning in the soft-ware packages it created and which provided much of the business' income. On January 16, 2006, he gave notice to the business' five employees that their employment would terminate effective March 31, 2006.
- [6] Mr. Renwick deposed that he has received no remuneration from the business since January 2006 and has been forced to personally pay \$95,000 in severance to the business' employees, that sum composing a large part of the \$200,000 he has put into the business over the past year as sales diminished. In addition, Mr. Renwick states that the business is now without value so that in addition to the \$200,000 he has been required to put into the business to pay its obligations he has also lost the approximately \$300,000 value attributed to the business which he received as part of his half share of the parties' assets upon their settlement.
- [7] Mr. Renwick states that he intends to operate the business by himself and without taking any income for his efforts for a six-month period between April 1 and September 30, 2006 to try to recoup the business' losses after which he intends to retire completely from the work force. He has made some unsuccessful efforts to obtain other employment in the computer software field but believes his age of 62 years and his somewhat dated computer skills hinder his employability.
- [8] Ms. Renwick is highly sceptical of the evidence with respect to the business' financial difficulties, deposing that the business has been so important to Mr. Renwick over the years that she finds it unlikely that he would allow it to fail. She stated further that if the business is in difficulty then Mr. Renwick has allowed that situation to develop because he harbours resentment towards her and is therefore trying to terminate his obligation to pay her spousal support. Ms. Renwick further speculated that Mr. Renwick might still be doing business with some of the business' European clients or has plans to operate the business in some other fashion.
- [9] Although Ms. Renwick doubts Mr. Renwick's evidence with respect to the business' prospects, Mr. Renwick has provided full disclosure of the business' situation. He filed the documentation accumulated over the past years which reflect the diminished viability of the business including the loss of income, the termination of the business' employees and his injection of personal funds to satisfy the business' legal obligations. Mr. Renwick also denies any resentment towards Ms. Renwick or that he is conducting the business' operations offshore or in any other way.
- [10] Notwithstanding Ms. Renwick's concerns, I conclude from the material filed by Mr. Renwick and the evidence he provided under cross-examination prior to the hearing of the application that there is nothing nefarious in the difficulties encountered by the business which was a small operation involved in a highly competitive business whose soft-ware

products no longer attract a customer base. Its operations appear to be no longer viable and Mr. Renwick, at 62 years of age, is no longer prepared or financially able to inject into the business the requisite funds to possibly make it productive again.

- [11] Ms. Renwick submits that Mr. Renwick must have been aware of the business' financial difficulties when the 2005 order was filed and that therefore there has been no change of circumstances which she contends are required in order for Mr. Renwick to seek the variation of child and spousal support. Mr. Renwick denies having such knowledge.
- [12] I accept that the demise of the business and Mr. Renwick's retirement from gainful employment amounts to a change of circumstance.
- [13] Ms. Renwick submits that the application is premature as Mr. Renwick continues to work with the business. However, Mr. Renwick deposes he has not taken an income from the business since January 2006 when he stopped paying spousal support, although he has continued paying his child support obligations for Clay. The parties, in paragraph 9(c) of the 2005 order, agreed that Mr. Renwick would pay spousal support in the amount of \$5,750 a month until he "retired completely from gainful employment".
- [14] Ms. Renwick contends that Mr. Renwick's circumstances fail to establish that Mr. Renwick has retired completely as he operates the business to try to recoup its losses and that there is some possibility the business might survive and continue to involve Mr. Renwick. However, I do not consider that paragraph 9(c) ought to be interpreted without including the last three words, "from gainful employment". Since January 2006 Mr. Renwick's involvement with the business cannot be construed as involving gainful employment, in the sense that the work he performs has been lucrative or remunerative. There is no evidence that he has gained anything from his 2006 involvement which might be construed as lucrative or remunerative. In fact, the evidence supports his position that he is working without pay and has had to inject his own capital into the business.
- [15] Ms. Renwick submits that when she consented to the terms of the 2005 order she anticipated that Mr. Renwick would continue to work for another 10 years, which would have meant that he would have been aged 70 or more before he retired. Mr. Renwick submits that he never planned to work for another 10 years. The 2005 order is silent both as to a minimum term for Mr. Renwick to pay spousal or when he might first take advantage of paragraph 9(c) to terminate spousal support payments. The parties negotiated for several years before agreeing to the terms of the 2005 order and both were assisted by counsel and accountants in concluding the settlement terms. The terms of the 2005 order appear to have been drafted in part to respond to the situation which has occurred, specifically Mr. Renwick's retiring from his employment with the business. The 2005 order also addresses Mr. Renwick's future employment, stating at paragraph 10:
10. The spousal support shall be reviewable in the event that the Plaintiff retires from his current position but takes other gainful employment.

- [16] The terms of the 2005 order left each party with assets valued then at approximately \$2 million. Mr. Renwick's asset base appears to have diminished somewhat because of the business' demise. The parties each possessed some \$600,000 in retirement savings, a half interest in a home at Whistler worth a total of perhaps \$900,000, with Ms. Renwick owning in clear title the family home, then worth about \$700,000 to \$800,000 and presumably worth considerably more given its location in Vancouver's west side. The parties faced the future after the 2005 order evenly balanced financially.
- [17] I conclude that Mr. Renwick has retired completely from gainful employment and has been so retired since January 2006. That conclusion leads to a finding that his obligation to pay spousal support terminated as of March 1, 2006, being the first date support was due after he brought this variation application, although I understand he had earlier advised Ms. Renwick of his intention to terminate his support payments to her.
- [18] My conclusion to terminate Mr. Renwick's obligation to pay spousal support payments is predicated upon the evidence that his continuing involvement with the business will not provide him with any remuneration, other than repayment of the funds he has advanced to cover some of the business' financial obligations. Should Mr. Renwick receive income from the business during the winding up process or if he resumes gainful employment with the business or with any other entity either on a full or part-time basis his obligation to pay spousal support to Ms. Renwick might well resume. Although the last line of paragraph 9 of the 2005 order states that on the happening of certain events such as Mr. Renwick's retirement spousal support shall terminate absolutely, I do not interpret that provision as precluding the resumption of Mr. Renwick's obligation to pay spousal support if he should return to gainful employment, particularly when paragraph 10 of the 2005 order is considered.
- [19] I direct that Mr. Renwick advise Ms. Renwick within 14 days of commencing gainful employment, including the terms of his remuneration package, and the name and address of his employer. Mr Renwick will provide Ms. Renwick with copies of his income tax returns, notices of assessment and notices of reassessment within 30 days of their filing or receipt for any taxation year in which he receives employment income.
- [20] Mr. Renwick also seeks to vary the child support he is paying for Clay and I consider that obligation as considerably different in concept from that of spousal support which I dealt with pursuant to the agreement reached between the parties. This court retains a *parens patrie* role with respect to Clay, an infant child of the marriage and I conclude that I have the jurisdiction to vary the child support payable by Mr. Renwick. The question is whether I should exercise that jurisdiction.

- [21] Clay is 17 years old, enrolled in grade 12 at a Vancouver private school, and resides with his mother. Like his three older siblings, Clay has enjoyed a comfortable lifestyle as would be expected given Mr. Renwick's income and the assets the parties accumulated during their marriage. Skiing, football, travel, membership in a private club, the use of the family's Whistler ski lodge and time share at an Okanagan resort, and a private school education have all been available to Clay and his siblings.
- [22] In the 2005 order, Mr. Renwick consented to paying child support of \$2,071 a month based on a Guideline income which Mr. Renwick agreed was \$305,000 a year. Mr. Renwick further agreed that child support would continue until Clay turned 19 years of age or ceased to reside with his mother. Mr. Renwick also agreed to pay \$3,000 annually for Clay's skiing and football expenses, medical and dental expenses, and his school tuition.
- [23] Mr. Renwick suggested that Clay's expenses could be paid out of the \$127,000 trust established by the parties and presently held for Clay. The other three children have already received their shares of the trust upon attaining the age of 19 years and I see no reason why Clay's share of the trust should be diminished by using it to pay what is in fact Mr. Renwick's obligation to his youngest child.
- [24] Under the terms of the 2005 order, Mr. Renwick assumed an obligation to provide child support until Clay reaches 19 years of age on April 23, 2008, some 19 months from the filing of this judgment, and agreed that the child support obligation found in the 2005 order would be paid from his estate if he died. Mr. Renwick has ample assets to pay his continuing obligation to support Clay. I decline to vary the child support payable by Mr. Renwick pursuant to the 2005 order.
- [25] I leave it to counsel to determine the arrears payable for both spousal and child support. The arrears are payable within 30 days of the filing of this judgment. If counsel has difficulty in calculating the arrears, they have liberty to apply for further direction.
- [26] As a result of my decision, I find it unnecessary to deal with Ms. Renwick's submission with respect to the sale of the parties Whistler property, but do note that the parties dealt extensively with the use, maintenance and sale of the property within the 2005 order.
- [27] In summary, I conclude that Mr. Renwick's obligation to pay spousal support ended as of March 1, 2006 pursuant to the terms of the 2005 order and that his obligation to pay child support for Clay will continue on the same terms as that found in the 2005 order.
- [28] I find success has been divided in this application and conclude that the parties should bear their own costs, unless counsel feel it necessary to address the issue of costs in which case they have 30 days to make the necessary arrangements to speak to costs.

"R.M. Blair, J."

The Honourable Mr. Justice R.M. Blair

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