
CANADA / JUDGMENT

Robb v. Robb

2021 BCSC 792

COURT

Supreme Court of British Columbia

DECIDED

28 April 2021

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

2021 BCSC 792 Robb v. Robb

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Robb v. Robb,

2021 BCSC 792

Date: 20210428

Docket: E25027

Registry: Fort St. John

Between:

Dee Ann Patricia Robb

Claimant

And

Shane William Robb

Respondent

Before: Master Elwood

(As Registrar)

Reasons for Decision

Counsel for the Claimant, appearing via teleconference:

D.C. Gallant

Counsel for the Respondent, appearing via teleconference:

N.R. Bauder

Place and Date of Hearing:

Fort St. John, B.C.

April 13, 2021

Place and Date of Judgment:

Fort St. John, B.C.

April 28, 2021

Table of Contents

INTRODUCTION.. 3

BACKGROUND.. 3

Settling a JCC Order 3

The JCC Order in this Case. 6

ANALYSIS. 10

CONCLUSION.. 12

INTRODUCTION

- [1] Dee Ann Patricia Robb applies by appointment to settle an order to which she and Shane William Robb consented at a judicial case conference on July 23, 2019.
- [2] At issue is whether a particular term of the draft order proposed by Ms. Robb accurately reflects the agreement of the parties during the JCC. The term proposed by Ms. Robb is consistent with the note of the orders in the Case Management Plan signed by counsel for both parties and me as the presiding master at the conclusion of the JCC. It is also consistent with the court clerk's summary, on the record, of the terms to which the parties had agreed. Mr. Robb argues that the clerk's summary and the Case Management Plan are wrong.
- [3] The parties agree, on the authority of Master Baker's decision in *Murray v. Neufeld*, 2014 BCSC 595, that a consent order reached at a JCC and endorsed at the conclusion of the JCC by the presiding judge or master is capable of settlement under Rule 15-1(12) of the Supreme Court Family Rules.
- [4] The parties disagree on the approach to settling a consent order reached at a JCC. Ms. Robb argues that the judicial officer settling the order should look no further than the Case Management Plan. If the draft order accurately reflects the note endorsed by the presider, she submits, it should be settled on those terms.

- [5] Mr. Robb, on the other hand, argues that the draft order must reflect the true agreement of the parties during the JCC, and a judicial officer asked to settle the order should be able to look behind the endorsed Case Management Plan to ensure it accurately reflects the terms of their consent.

BACKGROUND

Settling a JCC Order

- [6] In Murray, Master Baker found that an agreement reached at a JCC, recorded in the Case Management Plan and endorsed by the presiding judge or master is more than an a consent between the parties. The endorsement of the presider, he held, is a "judicial act", akin to signing reasons for judgment, and complete when the presider has signed:
- [11] I agree with Mr. Collins that the note of a consent on a JCC record by a Judge or Master, together with the endorsement by the Judge or Master is "a judicial act" and "complete when the judge has signed " the record.
- [7] Master Baker further held that an agreement reached at a JCC, recorded in the Case Management Plan and endorsed by the presiding judge or master is a court order that, like other court orders, is not open to "second thoughts" of the parties following the JCC:
- [13] Rule 7-1(15), governing the jurisdiction of the court at JCCs provides

The court may do one or more of the following at a judicial case conference:

- (b) make orders to which all the parties consent;

Those orders are made when the note and the judicial endorsement are made. To have matters resolved at a JCC only to have a party refuse or decline to endorse the order that records that resolution seems to specifically contradict the intent of Rule 1-3(1). This seems even more emphatically the case when, unlike other court proceedings, the JCC rule specifically requires the parties' personal attendance.

- [8] Accordingly, a JCC order is made and enforceable when the Case Management Plan is endorsed by the presiding judge or master.
- [9] However, the endorsed Case Management Plan is not itself an order of the court: *Harrison v. Harrison*, 2007 BCCA 120, at para. 38-41. To be a court order, the terms of the Case Management Plan must be drawn up in a proper form, approved by counsel or the parties as to form, and entered into the court registry. If necessary, the order may be settled by a registrar, who may refer it to the judge or master who presided at the JCC. It follows that the jurisdiction of the judge or master who presided at the JCC is not truly concluded until the order is entered.

- [10] The duty of a registrar settling a court order following an application or a trial is to ensure that the draft accurately reflects the court's reasons for judgment: *Will Millar Associates Co v. William* (1995), 44 C.P.C. (3d) 398, at p. 399.
- [11] In my view, the duty of a registrar settling an order made at a JCC is to ensure that it accurately reflects the terms to which the parties consented. The starting place must be the endorsed Case Management Plan, which, in most cases, will be the most reliable guide to what the parties agreed. However, the jurisdiction of the settling officer cannot be limited to simply comparing the draft order against the Case Management Plan. The Case Management Plan, which by its nature is summary in nature, may not fully capture the terms of the parties' consent. Also, mistakes happen, and sometimes those mistakes may be overlooked by counsel and the presider when they sign the Case Management Plan.
- [12] However, drawing up a court order following a JCC is not an invitation to re-negotiate the Case Management Plan. An appointment to settle the terms of an order is not an occasion to revisit the discussion at the JCC. As Master Baker said in *Murray*, the objectives of the JCC program would be undermined if, having reached a resolution at the JCC, the parties could resile from their consent and seek different terms.
- [13] For these reasons, a judicial officer asked to settle a JCC order may, in my opinion, look to the transcript of the JCC to ensure that the Case Management Plan accurately reflects the terms of the parties' consent, but must do so cautiously, mindful not to undermine the integrity of the JCC process.
- [14] Court orders should be drawn up promptly following the JCC. Where there is disagreement on the terms of the order, an appointment should be taken out to settle the order as soon as mutually convenient. In this case, substantial time has elapsed since the JCC. This may be due to the availability of counsel and registrar appointments during the COVID pandemic. But spouses should not be left in need or uncertainty while the parties debate the terms of a formal order.

The JCC Order in this Case

- [15] The term of the draft order at issue is:
2. BY CONSENT, Shane Robb will pay \$5000 per month to Dee Robb until the date of conduct of sale of the former family home after which time such payments will be \$4000 per month;
- [16] As stated, the proposed term tracks the language in the endorsed Case Management Plan. The parties agree that the word "conduct" in the Case Management Plan and the draft order is an error. The order should say "until the date of the closing of the sale of the former family home". Otherwise, Ms. Robb submits, the draft should be settled on these terms.

- [17] Mr. Robb argues that he did not consent to these terms. He says he agreed to pay interim payments to cover family debts, but only until the former family home sold (which it has). After the home sold, he argues, the agreement was the payments would stop and his only obligation would be to pay child support of \$2,000 per month. He says he did not consent to an on-going payment of \$4,000 per month.
- [18] Some background taken from the transcript of the JCC is necessary to understand the nature of the disagreement over this term of the order.
- [19] Mr. and Ms. Robb were married for 10 years. They had one child together, Rhett, who was born in 2008. The family lived in a home in Grande Prairie, Alberta. The home had a mortgage registered against title.
- [20] During the marriage, Mr. Robb incorporated a company called SaskBoy Fabrication Ltd., through which he did consulting work. SaskBoy generated revenues that benefitted the family. The company used a line of credit with Servus Credit Union secured against the family home. In or about 2014, the business ran into some difficulties, fell behind on the line of credit payments and accumulated further debt.
- [21] The parties separated in December 2017. They made several attempts to reconcile until November 2018. Following the final separation, they were involved in Provincial Court proceedings that resulted in orders concerning their son.
- [22] Ms. Robb commenced this family law case in Supreme Court on May 31, 2019, seeking a divorce, parenting arrangements, child support, spousal support and property division.
- [23] At the time of the JCC, the former family home in Grande Prairie was subject to a condition purchase and sale agreement, set to close on September 30, 2019. At some point, tenants who had been paying rent left the property, putting Ms. Robb under some financial strain. Going into the JCC, the parties shared a common concern that their creditors not foreclose on the family home before it sold.
- [24] On June 26, 2019, Mr. Justice Tindale made the following order by consent at a hearing of an application by Ms. Robb:

THIS COURT ORDERS on a without prejudice, Interim, Interim [sic] basis that:

1. BY CONSENT, Shane William Robb will pay or will cause Saskboy Fabrication Ltd. to pay all payments due and owing by Saskboy Fabrication Ltd. to the Servus Credit Union as they come due and owing;
2. BY CONSENT, Shane William Robb will pay to Dee Ann Robb child support in the amount of \$2000 per month without prejudice as to quantum;
3. BY CONSENT, In addition to the foregoing payments, Shane William Robb will deposit into the Joint account held by himself and Dee Ann Robb the sum of \$2000 per month without prejudice as to attribution as to family property, family debt, and spousal support; and

4. BY CONSENT, the balance of the Claimant's application filed June 20, 2019 is adjourned generally pending the Judicial Case Conference.

[25] Unfortunately, neither party had drawn up the order of Mr. Justice Tindale at the time of the JCC. The clerk's notes of the application indicated that an interim, without prejudice order had been made, but did not say what the order was. This would cause some confusion at the JCC.

[26] The JCC came on before me on July 23, 2019. Both parties were represented by counsel. As is often the case, the JCC ranged over a number of topics. One of those topics was the payments being made by Mr. Robb. Ms. Robb's counsel said, as part of her introductory remarks:

MR. BAUDER: . . . Mr. Robb is paying \$2,000 a month in support, pursuant to a Provincial Court order, and I should say there is very active litigation in Provincial Court regarding Rhett, so he is not at present, from our perspective, an issue in the Supreme Court proceeding.

THE COURT: Oh, I see.

MR. BAUDER: Mr. Robb at the last proceeding in Provincial Court, had agreed through counsel to pay \$3,000 into a joint account, in addition to the 2,000, and that was to float some of these debts. Ms. Robb no longer has an income; she says that she thinks that she --

[27] With hindsight, it appears Ms. Robb's counsel was referring to the order by Mr. Justice Tindale, not a Provincial Court order. Ms. Robb's counsel went on and said this about the second component of the payments by Mr. Robb:

MS. KATERBERG: So Ms. Rhett -- sorry, Ms. Robb says that if -- if there was an agreement today that Mr. Robb would pay 3,500, she can make things work until that house sale closes, as I said that's conditional on sale of another property . . .

[28] Mr. Robb's counsel also addressed these payments in his opening remarks, making it clear his client did not regard the second component as interim spousal support:

MR. BAUDER: With respect to the spousal support, Mr. Robb makes it very clear that he feels that Ms. Robb has the capacity to earn a significant income, and in fact has with her employment history. She's been a financial consultant for a number of years . . .

. . .

MR. BAUDER: -- [] but in the meantime he has already agreed to ensure that the family debt does not go into arrears, there is no foreclosure actions, there is no collection agents coming by, and he's agreed to service whatever he needs to, to make that happen until the house sells, which is only two months away. So we are not willing to consent to an order.

[29] Some confusion then ensued regarding the amounts Mr. Robb was paying. Mr. Robb said he was paying \$1,650 in child support and \$2,350 per month for "other bills". After some back and forth, his counsel clarified that Mr. Robb was paying \$2,000 per month for child support and \$2,000 per month for "family expenses" pursuant to a consent order.

[30] After some further dialogue, the following exchange, of key importance to the current debate over the terms of the order, occurred:

MR. BAUDER: So Mr. Robb agrees to increase the -- the bill portion of the money -- if we can call it that -- that he gives to Ms. Robb to account for the missing rent for August and September only.

THE COURT: Can you -- and can you quantify that?

MR. BAUDER: Yes, \$3,000.

THE COURT: Increase it to \$3,000.

MR. BAUDER: From \$2,000.

THE COURT: So the total payment would now be 4,000?

MR. BAUDER: No, it would --

MS. KATERBERG: Five.

MR. BAUDER: -- \$5,000, because we're ---- we -- there is that 2,000 for --

THE COURT: Oh, right.

MR. BAUDER: --- the child support.

THE COURT: Two thousand dollars for Rhett, and \$3,000 for family expenses and debts?

MR. BAUDER: That's right.

THE COURT: Okay.

MR. BAUDER: Yes, Your Honour.

THE COURT: So that would be 5,000 total?

MR. BAUDER: That's right, for August and September only.

MS. KATERBERG: And then down to the 2?

THE COURT: Or such other -- or such other date as the house sells.

SHANE ROBB: Yes.

MR. BAUDER: Yes.

...

MR. BAUDER: Okay. And then It -- and then it'll go back to -- revert to the order as it is. Is that --

MS. KATERBERG: As we think it is.

[31] The discussion then turned to other issues, including family debt and a car lease. As the JCC drew to a conclusion, I asked the court clerk to read back what she had by way of notes of the orders that had been agreed on:

THE COURT: Okay. So is there anything else, or should we have Madam Registrar read back what we've done?

MR. BAUDER: I didn't have anything.

THE COURT: Okay. Can you read what we have?

THE CLERK: I can read, but I do need to listen back to a few things.

THE COURT: Well, maybe we can help you if you ---

THE CLERK: Perfect. I have, [as read in]:

[]

Mr. Robb to pay \$5,000 a month to Mrs. Robb until the conduct of the sale of the house, and after that conduct of the sale, Mr. Robb's monthly payment to Mrs. Robb will revert back to 4,000. From the net sale proceeds

[32] I then said this:

THE COURT: Okay. So I mean those aren't precise words, if one or the other of you wishes to draft a formal order, and submit it for entry, I think that might be a good idea.

MS. KATERBERG: I will.

MR. BAUDER: Okay. Ms. -- my friend will.

THE COURT: Yes, if you are volunteering to do that, then we won't fuss over the precise language of this, I think we have the ideas down.

[33] At the conclusion of the JCC, the court clerk printed a copy of the Case Management Plan, and counsel and I signed the document. Neither Mr. Robb nor his counsel raised any objection to the term of the order now at issue.

ANALYSIS

[34] In my view, the transcript of the proceedings at the JCC supports the draft form of order proposed by Ms. Robb.

[35] Although there was some confusion over the source of the underlying obligation, Ms. Robb clearly asked for an increase from \$2,000 to \$3,500 in the amount of the non-child support, or "family expenses", portion of the payments. Mr. Robb clearly consented to an increase to \$3,000, but only until the house sold.

- [36] There is no clear evidence Mr. Robb made his consent to this increase conditional on the payments ending altogether once the house sold. More importantly, there is no evidence Ms. Robb agreed to eliminate payments once the house sold. Rather, she agreed the payments would revert back to \$2,000.
- [37] It is important to appreciate the parties had agreed to disagree on the attribution of the non-child support payments pursuant to the order of Mr. Justice Tindale, as between family property, family debt and spousal support. Mr. Robb may have seen these payments as temporary debt servicing to keep the creditors at bay until the house sold. But there is no evidence Ms. Robb agreed the original \$2,000 "family expenses" portion of the payments was only for debt servicing or that it was temporary. Ms. Robb said she required an increase in the amount until the house sold; but she did not say the payments could end when the sale closed. She could have seen the original and continuing payments as a form of interim spousal support, albeit without prejudice to Mr. Robb's right to argue against her entitlement to spousal support.
- [38] A reasonable interpretation of the JCC proceedings is that the parties agreed they would revert to the terms of Mr. Justice Tindale's order once the house sold. Under this interpretation, it was not necessary for Mr. Robb to consent to an on-going payment of \$4,000 at the JCC because he had already consented to that total amount before Mr. Justice Tindale. Under Mr. Robb's interpretation, on the other hand, it would be necessary for Ms. Robb to consent to a variation of the order by Mr. Justice Tindale to eliminate the \$2,000 "family expenses" payment and leave only the \$2,000 child support payment. I find no clear evidence Ms. Robb expressed her consent to that change.
- [39] In my view, there is no clear error in the Case Management Plan. Mr. Robb's interpretation of the order would require re-visiting the resolution reached at the JCC, which is exactly what Master Baker warned against in Murray.
- [40] In short, the transcript provides support for the Case Management Plan note that Mr. Robb would pay a total of \$5,000 per month until the house sold, and \$4,000 thereafter, as endorsed by both parties at the conclusion of the JCC.

CONCLUSION

- [41] With a change in the words "conduct of sale" to "closing of the sale", the order made at the JCC on July 23, 2019, is settled on the terms proposed by Ms. Robb.

"Master Elwood"

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/21/07/2021BCSC0792.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/robb-v-robb-2021>

Prepared on 29 October 2026 · Esheria