
CANADA / JUDGMENT

Ruemper v. Jones

2017 BCSC 1495

COURT

Supreme Court of British Columbia

DECIDED

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2017 BCSC 1495 Ruemper v. Jones

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Ruemper v. Jones,

2017 BCSC 1495

Date: 20170824

Docket: 52934

Registry: Kamloops

Between:

Morgan Edward Ruemper

Claimant

And

Tracy Karen Jones

Respondent

Before: The Honourable Madam Justice Hyslop

Reasons for Judgment

Morgan Edward Ruemper appeared on his own behalf.

Tracy Karen Jones appeared on her own behalf.

Place and Date of Hearing:

Kamloops, B.C.

June 26, 2017

Place and Date of Judgment:

Kamloops, B.C.

August 24, 2017

INTRODUCTION

- [1] This is an application of the claimant, Morgan Edward Ruemper, who seeks to vary an Order granted June 29, 2016 (the "Order"). The Order was granted, by consent, at a Judicial Case Conference ("JCC"). The Order stated that Mr. Ruemper and Ms. Jones would remain guardians of their children, Brooklyn Rose Ruemper, born July 15, 2011 and Logan Robert Ruemper, born October 9, 2013 (the "Children").
- [2] In the Order, Mr. Ruemper and Ms. Jones share parenting responsibilities and the decision-making for Brooklyn and Logan.
- [3] The Order anticipates each parent having the Children equal time, alternating weeks, with exchange of the Children to take place Monday or Tuesday of each week.
- [4] In the Order, Christmas Day and Christmas Eve are alternated year-to-year.
- [5] Child and spousal support are ordered. In particular, Mr. Ruemper is to pay child support in the amount of \$519.00 each month, starting June 1, 2016, plus a payment towards the arrears of child support. The incomes of the parties are not declared in the Order.

ORDERS AFTER THE ORDER OF JUNE 29, 2016

- [6] At another JCC held October 5, 2016, the parties consented to an Order setting out a process to adjust child support each year, as well as a review of spousal support, which is to take place July 1, 2018.
- [7] On February 6, 2017, Mr. Ruemper made an application to change the parenting schedule from alternate weeks to alternating four days on and four days off in accordance with Mr. Ruemper's then work schedule. In addition, he sought to reduce child support and deal with the Children's sporting activities. No formal Order was prepared and filed. However, the Court Summary Sheet states the following Orders were made by Mr. Justice Abrioux:
 - 1. This application is adjourned for 3 months, and it is not to be brought back before the court before May 15th, 2017.
 - 2. The parties are to attend forthwith to the Family Justice Center to pursue appropriate mediation, and to attend as directed by the court.
 - 3. Morgan Ruemper is to file supplementary materials which will deal with the issues that have been raised in court today, February 6th, 2017.

4. Morgan Ruemper is to serve any materials on Tracy Jones at least ten days before the hearing of the application.
- [8] This application has some similarity to the application before Abrioux J. in that Mr. Ruemper seeks to change the parenting arrangement to coincide with his work schedule.
- [9] Mr. Ruemper's application is as follows:
 1. Pursuant to Term 2[a] of the order made on June 29 /2016 to be varied as follows

The children shall spend approximately equal time with each party, on a four day on/ four day off basis, matching Morgan Ruemper's work schedule, Starting June 27th 2017 at 2.pm the children will be picked up at daycare and school and be returned to Tracy on Saturday the 1st of July, 2017 at Tracy's home by 1:00 P.M and continuing on this schedule with daycare and school being the preferred exchange location with the exception of Holidays as listed below.

2. Tracy Jones shall have Brooklyn Ruemper's Birthday on July 15 on odd Calendar years
 - a. Morgan Ruemper shall have Brooklyn Ruemper's Birthday on July 15 on even Calendar years
3. Tracy Jones shall have Logan Ruemper's Birthday on October 09 on even Calendar years.
 - a. Morgan Ruemper shall have Logan Ruemper's Birthday on October 09 on odd calendar years.
4. Tracy Jones shall have two weeks of uninterrupted vacation time with the children, Brooklyn Ruemper, and Logan Ruemper, between January 1 to July 31st, on odd calendar years. With 45 days scheduling notice to Morgan Ruemper.
 - a. Tracy Jones shall have two weeks of uninterrupted vacation time with the children, Brooklyn Ruemper and Logan Ruemper, between August 1st to December 31st on even calendar years. With 45 days scheduling notice to Morgan Ruemper.
 - b. Morgan Ruemper shall have two weeks of uninterrupted vacation time with the children, Brooklyn Ruemper, and Logan Ruemper, between January 1st to July 31 st on even calendar years. With 45 days scheduling notice to Tracy Jones.
 - c. Morgan Ruemper shall have two weeks of uninterrupted vacation time with the children Brooklyn Ruemper and Logan Ruemper between August 1 st to December 31 st on odd Calendar years. With 45 days scheduling notice to Tracy Jones.
5. Morgan Ruemper shall have the kids, Brooklyn Ruemper and Logan Ruemper on L Halloween October 31st on odd calendar years.
 - a. Tracy Jones shall have the kids, Brooklyn Ruemper and Logan Ruemper on Halloween October 31 st on even calendar years.
6. Morgan Ruemper shall have the kids Brooklyn Ruemper and Logan Ruemper on Easter Sunday, on even calendar years.

- a. Tracy Jones shall have the kids Brooklyn Ruemper, and Logan Ruemper on Easter Sunday on odd calendar years.
7. Each party shall provide a full form F-8 to the other party with a full copy of their T1 income tax return, complete with all the attachments no later than April 30 in each year commencing with April 30 2018.
8. Pursuant to Term 6 of the order Made in the supreme court on October 09/2016 the respondent is required to show proof she made her best efforts to relieve Morgan Ruemper of any further liability from the Toyota Corolla.
9. Morgan Ruemper and Tracy Jones will share special expenses for the children up to \$600 annually per child per year including but not limited to swim lessons, Sparks for Brooklyn, and any other activities that the parties agree on.
10. Costs
11. Such relief as the court deems reasonable.

RESPONDENT'S POSITION

- [10] The respondent's position is that the present parenting arrangement works well for the Children and there is no need for a change. Further, Mr. Ruemper's work schedule is not a sufficient change of circumstances to change the Order.
- [11] Ms. Jones seeks, despite not filing an application, to limit Mr. Ruemper taking her back to court so often, as she is required to work and she loses pay when attending court.

Loan for the Toyota Corolla

- [12] During the hearing of this application, I pointed out to Mr. Ruemper that Ms. Jones met the obligation Order contained in Master McDiarmid's Order of October 5, 2016, which states as underlined:

THIS COURT ORDERS BY CONSENT AS FINAL ORDERS that:

1. Each party shall provide the other with a full copy of their T1 income tax return, complete with all attachments as soon as they have filed the same, or in any event, no later than April 30 in each year, commencing with April 30, 2017.
2. Each party shall provide the other with copies of their notices of assessment or reassessment as soon as they [have] received same, and in any event, no later than June 15 of each year commencing with June 15, 2017.
3. Each party will immediately notify the other in the event of any material change in their financial circumstances or employment.

4. The parties will review and adjust as appropriate the child support payable after receipt of the above information and in any event, no later than July 1 of each year commencing with July 1, 2017.
6. On or before December 31, 2016, the respondent shall advise the claimant whether she can take over and secure a release of the claimant from any further liability under the Toyota Corolla car loan.
7. Notwithstanding the previous order, the respondent shall exert best efforts to take over the Toyota Corolla car loan and secure a release of the claimant as soon as possible.

[Emphasis added.]

- [13] Ms. Jones made attempts to secure a loan for its payment. However, the bank from which she sought the loan turned her down because her present employment is on-call as a teacher's assistant and is not a long-term contract. Ms. Jones is seeking a permanent position with School District No. 73. Ms. Jones will have been employed by School District No. 73 two years in November 2017.
- [14] I told Mr. Ruemper at the hearing of his application that Ms. Jones had met the requirements pursuant to paragraph 6 of the Order of October 5, 2016. He accepted this. As a result, nothing further needs to be said relating to this loan.

Parenting Arrangements

Paragraphs 1, 4 a, b and c of the Application

- [15] Mr. Ruemper seeks to change the parenting arrangements. He must meet the requirements of s. 47 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] which reads:

Changing, suspending or terminating orders respecting parenting arrangements

47 On application, a court may change, suspend or terminate an order respecting parenting arrangements if satisfied that, since the making of the order, there has been a change in the needs or circumstances of the child, including because of a change in the circumstances of another person.

- [16] Section 47 has been interpreted in *Williams v. Williams*, 2016 BCCA 87:

- [30] While this provision differs from s. 17(5) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), and does not use the language of a "material change", this Court has interpreted the equivalent provision in s. 20 of the Family Relations Act, R.S.B.C. 1996, C. 128, which also did not use "material change" language, as requiring a material change in circumstances. This Court held that the two-step test from the Supreme Court of Canada's decision in *Gordon v. Goertz*, [1996] 2 S.C.R. 27 applies despite the differences in the statutory language between s. 17(5) of the Divorce Act and s. 20 of the FRA: *Boychuck v. Singleton*, 2008 BCCA 355 at para. 14; *M. v. M.*, 2012 BCCA 324 at paras. 27-29.

- [31] Although this Court has yet to consider s. 47 of the FLA, the Supreme Court has consistently interpreted this provision as requiring a material change in circumstances: see for example, *Gilmour v. Herrick*, 2013 BCSC 1591 at para. 13; *Bradley v. Bradley*, 2015 BCSC 1587 at paras. 21-23; and, *J.D.C. v. K.L.M.F.C.*, 2014 BCSC 2182 at paras. 261-262. Given the reasoning of this Court in *Boychuck and M. v. M.*, and the similarities between s. 47 of the FLA and s. 20 of the FRA, I conclude that a material change in circumstances is required under s. 47 of the FLA.
- [34] Absent a material change in the needs or circumstances of the child, the inquiry can go no further. It is only after this threshold is met that the judge on the new application can embark on a fresh inquiry into the best interest of the children.
- [17] The change of circumstances that Mr. Ruemper relies on is that his employer, Scamp Transport Ltd. ("Scamp"), requires him to work 12 hours for four days and then he is off for four days. He wishes to have his parenting time of his Children to coincide with his work schedule.
- [18] Mr. Ruemper started work with Scamp on April 4, 2016, and has continuously worked for them since that date. In a letter dated February 1, 2017, Scamp sets out the work schedules that Mr. Ruemper has worked since he started to work for them:

Morgan's shifts have evolved as follows:

- * 05/23/2016 to 06/07/2016: Training (various start times, depending on the trainer's schedule)
- * 06/08/2016 to 10/05/16: 4on/4off, 12 hour shifts beginning at 8:00AM
- * 10/06/2016 to 01/29/2017: Friday through Monday, 12 hour shifts beginning at 8:00AM
- * Effective 01/30/2017: 4on/4off, 12 hour shifts beginning at 2:00PM

- [19] The common fact is that Mr. Ruemper's shifts are all 12 hours each shift. At the time the Order was made, and to which he consented to, Mr. Ruemper was working 12-hour shifts starting at 8 a.m. for four days and would be off for four days. He agreed to the parenting arrangement knowing he would work 12-hour shifts for four days and then would be off four days.
- [20] He now works 12-hour shifts starting at 2 p.m. This shift is capable of giving Mr. Ruemper more time with the Children. It is apparent from Mr. Ruemper's Affidavit that his wife, Jenn Ruemper, is involved in the parenting of the Children. His complaint as to his work schedule affecting his relationship with the Children is as follows:

On January 30, 2017, I started a new shift at my employer Scamp Transport LTD. The shift is scheduled from 2PM to 4AM. with a 4 on 4 off rotation. This work schedule makes it impossible for me to contribute to the upbringing of my 2 children Brooklyn Ruemper, age 5, and Logan Ruemper, age 3 During my work days. Because the work schedule and the children's custody agreement do not mesh I have had very inconsistent contact with my two children, and this has adversely affected the children's behaviours. The two children sometimes go up to 9 or even 12

days without seeing their father now. Daycare is not available for my work schedule, and I am being forced to rely on my wife Jennifer Ruemper to take them to daycare and back, this is affecting the amount of time she can work and has caused a lot of scheduling conflicts.

- [21] Described above by Mr. Ruemper are the responsibilities of a working parent. Ms. Jones also has similar responsibilities. She has full-time employment, except when school is out, which is reflected in her 2016 income tax return as a result of filling in for another employee. Ms. Jones does not live with a partner. She cannot be expected to change the parenting arrangement every time Mr. Ruemper's work schedule changes. Mr. Ruemper is likely to experience work schedule changes in the future.
- [22] Mr. Ruemper claims that Brooklyn's behaviour negatively changed since he has been on night shift. Ms. Jones experiences no such difficulties and states the Children are doing well.
- [23] Mr. Ruemper has not proved there is a change of circumstances sufficient to change the parenting arrangement that occurred since the granting of the Order. Further, he has not proved it is in the best interests of the Children that the present schedule set out in the Order be changed.
- [24] I dismiss the claimant's application to vary paragraph 1 of the Order.

The Children's Birthday and Holiday Time

- [25] The eldest child, Brooklyn, is age 6. She has completed kindergarten. Logan is age 3 and will be 4 in October. Mr. Ruemper asks that he have two-weeks of uninterrupted holiday time with the Children between January 1 to July 31 in each year in even numbered years, and that Ms. Jones is to have two weeks of uninterrupted holiday time with the Children between August 1 and December 31 of each year in odd numbered years. The proposed schedule then alternates each year thereafter between odd and even years.
- [26] Ms. Jones responds by stating:
- Holiday scheduling is something that can be worked out in mediation at Family Justice as ordered. The claimant and I have been working out holidays with the kids within our current rotation. For example, Easter weekend of 2017, he asked if the kids could come back to his house a day early so they could also celebrate Easter with the kids and I said yes.
- [27] I am not prepared to permit Mr. Ruemper taking the Children out of school for holidays over such a large swathe of time.
- [28] However, I will order that Mr. Ruemper will give Ms. Jones 120 days' notice each year of the two-week holiday period of uninterrupted time he wants with the Children to be exercised during the summer school vacation; that is, the months of July, August, or spring school vacation if spring school vacation is for a period of two weeks. After receiving Mr. Ruemper's notice, Ms. Jones will give Mr. Ruemper 30 days' notice each year of the two-week period of uninterrupted time she wants with the Children in July, August or spring vacation, assuming

it is for a period of two weeks.

- [29] If either party does not give the required notice to the other party of his or her time, the party who receives the notice can assume that the other party, in the year the notice is to be given, does not want to have two weeks of uninterrupted time with the Children. This does affect the other parent's opportunity to have their two weeks of uninterrupted time.
- [30] As to the Children's birthdays, Halloween and Easter Sunday, the parties are to work this out. If they cannot agree, then they must attend the Family Justice Centre for mediation.

Capping Special and Extraordinary Expenses to \$600.00 per year

- [31] Special and extraordinary expenses are defined in the Federal Child Support Guidelines [Guidelines] as follows:

Special or extraordinary expenses

7 (1) In a child support order the court may, on either spouse's request, provide for an amount to cover all or any portion of the following expenses, which expenses may be estimated, taking into account the necessity of the expense in relation to the child's best interests and the reasonableness of the expense in relation to the means of the spouses and those of the child and to the family's spending pattern prior to the separation:

- (a) child care expenses incurred as a result of the custodial parent's employment, illness, disability or education or training for employment;
- (b) that portion of the medical and dental insurance premiums attributable to the child;
- (c) health-related expenses that exceed insurance reimbursement by at least \$100 annually, including orthodontic treatment, professional counselling provided by a psychologist, social worker, psychiatrist or any other person, physiotherapy, occupational therapy, speech therapy and prescription drugs, hearing aids, glasses and contact lenses;
- (d) extraordinary expenses for primary or secondary school education or for any other educational programs that meet the child's particular needs;
- (e) expenses for post-secondary education; and
- (f) extraordinary expenses for extracurricular activities

Definition of "extraordinary expenses"

(1.1) For the purposes of paragraphs (1)(d) and (f), the term extraordinary expenses means

- (a) expenses that exceed those that the spouse requesting an amount for the extraordinary expenses can reasonably cover, taking into account that spouse's income and the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate; or

- (b) where paragraph (a) is not applicable, expenses that the court considers are extraordinary taking into account
 - (i) the amount of the expense in relation to the income of the spouse requesting the amount, including the amount that the spouse would receive under the applicable table or, where the court has determined that the table amount is inappropriate, the amount that the court has otherwise determined is appropriate,
 - (ii) the nature and number of the educational programs and extracurricular activities,
 - (iii) any special needs and talents of the child or children,
 - (iv) the overall cost of the programs and activities, and
 - (v) any other similar factor that the court considers relevant.
- [32] The Court cannot cap these expenses to a specific amount. Special and extraordinary expenses are dependent upon the necessity of the expense as it relates to the child, the child's best interest, the reasonableness of the expense as it relates to the child, and the reasonableness of the expense as it relates to the financial resources of the parents.
- [33] There is no evidence before me as to any special or extraordinary expenses of the Children, other than daycare. There is no evidence before me as to how the Children's daycare is paid, except Mr. Ruemper swears in his Financial Statement that his daycare expenses are \$225.00 each month; Ms. Jones swears in her Financial Statement that her childcare expenses are \$170.00 per month. Mr. Ruemper relies on family for the care of the Children from time-to-time.
- [34] Mr. Ruemper makes reference to the Children's swimming lessons. There is no evidence before me that these lessons are extraordinary as defined in s. 7 of the Guidelines and determined by case law.
- [35] Mr. Ruemper's claim to cap special and extraordinary expenses at \$600.00 per year is dismissed.

Number 7 of the Application

Each party shall provide a full form F-8 to the other party with a full copy of their T1 income tax return, complete with all the attachments no later than April 30, in each year commencing with April 30 2018.

- [36] In the Order of October 5, 2016, the parties are required to adjust their child support each year. These Orders are set out in para. 12 above.
- [37] The above Order requires the parties to adjust their child support each year, starting in 2017. The parties are required to exchange their T-1 income tax returns, complete with attachments no later than April 30 in each year, commencing April 30, 2017. By June 15, 2017 the parties are to exchange their assessment notices. They are then required to adjust child

support payable starting July 1 of each year, commencing July 1, 2017. The income tax returns and assessment notices that the parties are to exchange on the dates described in the Order are for their returns and assessment notices for the year 2016.

- [38] Child support is based on the table amount in the Guidelines.
- [39] In 2016, Mr. Ruemper's Line 150 income was \$140,283.58 (rounded \$140,000.00). This income consists of employment income of \$92,566.22 and dividend income of \$47,717.28. This was from a company owned by Mr. Ruemper that is no longer operating.
- [40] His employment income consists of \$47,000.00 from MR Contracting Ltd. (this is his company) and \$45,556.22 from Scamp.
- [41] Ms. Jones' Line 150 income for 2016 was \$41,000.00. Of this amount, \$31,574.94 was employment income from School District No. 73, Universal Child Care Benefit \$1,920.00; employment insurance \$5,604.00; spousal support \$1,666.00; and Workers' Compensation benefit of \$236.00.
- [42] Mr. Ruemper and Ms. Jones share the care of the Children about 50/50. Using the set-off amount in s. 9(c) of the Guidelines, Mr. Ruemper should pay Ms. Jones for the support of the Children \$1,355.00 each month (\$1,982.00 table amount for an income of \$140,000.00, less \$627.00 for an income of \$41,000.00). This calculation does not take into consideration Mr. Ruemper's court ordered obligation to pay spousal support.
- [43] As a result of these proceedings, the parties have exchanged their income tax returns in accordance with the October 5, 2016 Order. Mr. Ruemper has not specifically asked that child support be adjusted, nor has Ms. Jones. The parties may have already adjusted the amount of child support.
- [44] The parties are to come back before me within 30 days of the date of these Reasons for Judgment and advise me whether they have already adjusted child support payments starting July 1, 2017.

Further Application Regarding Parenting Time

- [45] Pursuant to s. 221 of the FLA, Mr. Ruemper must not file any further applications relating to the shared parenting arrangements of the Children without the consent of the Court. This Order will stay in place for a period of one year, expiring August 15, 2018.

Further Documents Sent to Me by Mr. Ruemper

- [46] When I asked the parties to provide Financial Statements to me, Mr. Ruemper set up documents tab 1-10. These documents were not before me when the application before me was argued. I will not consider them except for those that relate to the Consumer Proposal pursuant to s. 66.14(b) of the Bankruptcy and Insolvency Act, R.S.C., 1985, c. B-3. The Consumer Proposal requires Mr. Ruemper to pay to his unsecured creditors \$21,000.00 by paying a minimum monthly installment of \$350.00 over a period of 60 consecutive months. I

note this payment is referred to in his Financial Statement as well as he disclosed the details of this Consumer Proposal in the Financial Statement.

COSTS

[47] Ms. Jones has been mainly successful in this application. I order that Mr. Ruemper pay Ms. Jones lump sum costs of \$800.00 forthwith, which shall include costs, tax and disbursements.

"H.C. Hyslop J."

HYSLOP J.

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