

CANADA / JUDGMENT

Ryan v. Ryan

2018 BCSC 1641

COURT

Supreme Court of British Columbia

DECIDED

24 September 2018

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

2018 BCSC 1641 Ryan v. Ryan IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ryan v. Ryan, 2018 BCSC 1641 Date: 20180924 Docket: E16129 Registry: Cranbrook Between: Susan Carolynn Ryan Claimant And Larry Michael Ryan Respondent Before: The Honourable Madam Justice Murray Reasons for Judgment Counsel for the Claimant: A. Brunet Counsel for the Respondent: D.F. Collins Place and Date of Hearing: Cranbrook, B.C. June 14 and 18, 2018 Place and Date of Judgment: Cranbrook, B.C. September 24, 2018

Introduction

- [1] The respondent husband seeks termination of spousal support or alternatively a reduction in spousal support and a termination date for same.
- [2] The claimant wife takes the position that the respondent has not shown a material change in circumstances justifying a variation of the support. Alternatively she argues that she is unable to work due to health problems so support should not be reduced or terminated.

Background

- [3] The parties began cohabiting in 1983, married in May 1996 and separated on or about October 29, 2005. The claimant was 46 at the time of separation and the respondent 49. They are now 59 and 62 respectively.
- [4] Upon separation the respondent voluntarily and without an agreement or court order, paid to the claimant spousal support of \$2,500 per month. He also paid all family debts including a loan on the car used by the claimant and the mortgage on the house in which the claimant resided following separation.
- [5] Interim spousal support obligations were formalised in a June 2006 interim consent order in which the respondent agreed to pay \$2,500 per month commencing June 1, 2006.
- [6] In late April 2008 a four day trial was held before Madam Justice Gill to determine spousal support and the division of property. On May 2, 2008, Gill J. awarded the claimant, inter alia, 60% of the proceeds of the matrimonial home which amounted to approximately \$141,000 and the 2006 vehicle that the respondent had paid off after the parties separated. She also

ordered the respondent to pay the claimant spousal support in the amount of \$2,000 per month based on a finding of income of \$85,000 for the respondent and an imputed income of \$20,000 for the claimant.

- [7] At trial the claimant testified that she was not working or upgrading her education and was only looking for work at businesses where she knew the owner.
- [8] In her ruling Gill J. said this about the claimant's ability to earn: In recent years she has earned small amounts of income for providing care to elderly persons, but her activities in that regard have been mostly voluntary. She has not worked since separation and she has made almost no efforts to obtain employment, although efforts have been recently made. It is accepted that Ms. Ryan has the ability to earn income. She has made inquiries about working at a restaurant or golf course. Her counsel submits that the Court should conclude that she can earn approximately \$20,000 per year. In my view, that is an appropriate figure and I so conclude. I would add that although the plaintiff testified about certain health problems, it is not argued that these problems preclude full-time employment nor does the evidence from medical practitioners contained in two reports suggest that such problems will impact on her ability to work. [Emphasis added.]
- [9] I have emphasised the portions above as they are germane to the application before me.
- [10] Also pertinent to this application is the fact that the judge apportioned the house 60% in the claimant's favour to assist her to become and remain economically independent.
- [11] In 2013 the claimant brought an application for increased spousal support (both retroactively and prospectively), post facto reapportionment of the house sale proceeds and an order that the respondent's obligation to pay spousal support continue after his death. Her application was based on allegations that the respondent had hidden from the court during the trial information about his income and assets as well as the claim that she was unable to become self-sufficient because among other things, she had been involved in a motor vehicle accident after trial, had to care for her elderly mother and had vaginal surgery in 2013.
- [12] In his ruling indexed as 2014 BCSC 115, Melnick J. found the allegations of dishonesty by the respondent to be unfounded and "demonstrably incorrect in some instances" (para. 19). He concluded that the claimant's application "may really amount to a very late attempt to appeal a decision with which she is now unhappy " (para. 20) and dismissed her application.
- [13] Of note, in the course of the 2014 application, the claimant had still not found employment but advised the court that she was hoping to do so "in the near future".
- [14] Of further note, at the time of the 2014 application the claimant had traded in the 2006 car that she was awarded by Gill J. for a brand new car, incurring debt. She is still paying for that vehicle and will be for some time.

- [15] The respondent has had his own share of health issues. At the time of the trial he was suffering from Hepatitis C, an illness that he has suffered with for 30 years. He has effectively cured it with experimental drugs but his liver and immune system have been permanently damaged. More recently he suffered a knee injury. Because of these health problems the respondent is finding it difficult physically to continue work in the field in the oil business. In addition, because of the downturn in the oil business, he is finding it challenging to consistently earn the income attributed to him at trial.
- [16] As a result of his declining health the respondent plans to retire in approximately three years when he turns 65 and wishes to be free of his obligation to support the claimant.
- [17] The claimant maintains that she is unable to work due to her ongoing and additional health issues. According to the claimant, she was involved in a car accident approximately six and half a years after separation that has left her with chronic neck pain and soft tissue damage. In addition, in 2016, eleven years after the separation, she reports that she was diagnosed with Lyme disease which causes her fatigue, malaise, pain and numbness. She has spent the last number of years travelling around seeking natural remedies. She claims to be unable to stand or sit for any length of time due to back and neck pain.
- [18] Despite those claims since January of this year she has been working as a nanny for her daughter's three children, all under the age of six. In exchange she lives expense free at her daughter's home and receives from her daughter financial assistance for dental bills. No explanation was provided regarding what the claimant is doing with the \$2,000 per month spousal support she receives from the respondent.

Issues

- [19] The two issues to be resolved on this application are:
- (1) Whether the respondent has shown a material change in circumstances since the order for spousal support was made, justifying change; and if so
 - (2) Whether the amount of spousal support should be terminated or reduced and a termination date set. The Law
- [20] Section 17 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), provides, in relevant part, as follows: 17 (1) A court of competent jurisdiction may make an order varying, rescinding or suspending, prospectively or retroactively,
- (a) a support order or any provision thereof on application by either or both former spouses; . . . (4.1) Before the court makes a variation order in respect of a spousal support order, the court shall satisfy itself that a change in the condition, means, needs or other circumstances of either former spouse has occurred since the making of the spousal support order or the last variation order made in respect of that order, and, in making the variation order, the court shall take that change into consideration. . . .

- (7) A variation order varying a spousal support order should
- (a) recognize any economic advantages or disadvantages to the former spouses arising from the marriage or its breakdown;
 - (b) apportion between the former spouses any financial consequences arising from the care of any child of the marriage over and above any obligation for the support of any child of the marriage;
 - (c) relieve any economic hardship of the former spouses arising from the breakdown of the marriage; and
 - (d) in so far as practicable, promote the economic self-sufficiency of each former spouse within a reasonable period of time.
- [21] Whether the application to vary is considered under the Family Law Act, S.B.C. 2011 c. 25, or the Divorce Act, a party applying to vary a spousal support order must demonstrate a change in circumstances and the change must be material: *A.B.Z. v. A.L.F.A.*, 2014 BCSC 1453 at paras. 230-231. A material change is a change that, if known at the time, would likely have resulted in different terms.
- [22] An application to vary is not a de novo examination of all aspects of the case. The proper approach is to accept the order sought to be varied as having been appropriate, and the proper focus is on the change in circumstances, if proven, and how that change should affect the support obligations. See *L.M.P. v. L.S.*, 2011 SCC 64.
- [23] The test for material change is based not on what one party knew or reasonably foresaw but on what the parties actually contemplated and their actual circumstances at the time the order was entered into: *L.M.P.*, at paras. 33-42; *Dedes v. Dedes*, 2015 BCCA 194 at para. 25. Material Change of Circumstances
- [24] The claimant takes the position that the respondent has failed to show a material change in circumstances.
- [25] I am satisfied that the respondent has shown material change in the following ways:
- (1) He has been paying spousal support for 13 years;
 - (2) The claimant has done nothing to become financially self-sufficient;
 - (3) His health is declining; and
 - (4) He wants to retire in three years at the age of 65 primarily for health reasons.

Analysis

- [26] The respondent has been paying spousal support for 13 years despite periods of unemployment due to the crash in the oil industry, treatments for Hepatitis C and his knee injury.

- [27] During the marriage the claimant performed bookkeeping tasks for the respondent's company. She also worked as a care aide to elderly people. At trial the claimant conceded that despite her health difficulties she was capable of working full-time. Reports filed at trial on her behalf from two medical practitioners did not suggest that her health issues impacted her ability to work.
- [28] She was awarded 60% of the house proceeds to assist her on her path to self-sufficiency.
- [29] I accept that physical work in the field is becoming increasingly difficult for the respondent. I further accept that the challenges in the oil and gas industry are impacting his ability to earn. Having considered all of the circumstances I am satisfied that the respondent's plan to retire at 65 is reasonable.
- [30] The issue for me to decide is whether the respondent has an obligation to continue supporting the claimant past retirement.
- [31] Having considered all of the evidence, I am satisfied that the claimant has failed to take reasonable steps toward self-sufficiency. Although at trial she conceded that she was capable of earning \$20,000 per year, she took virtually no steps following that to find employment. Instead she found excuses why she was unable to do so. Contrary to her current claim that she is unable to work due to health difficulties, she is caring for her three young grandchildren which is no easy task.
- [32] Rather than working the claimant has spent the bulk of the past 13 years travelling around seeking treatment for her various health problems. It appears that she used the spousal support provided by the respondent plus "the generosity of the community" (her words) to pay for travel including hotels, treatments and private MRI's. She also bought herself a brand new car in 2014. These are all luxuries she could ill afford.
- [33] The respondent should not be obliged to subsidize the claimant's choices in dissipating her assets and incurring further debt. Accordingly I am satisfied that there should be an end date to spousal support.
- [34] As the respondent turns 65 in January, 2021, the last support payment shall be made December 1, 2020.
- [35] I am not satisfied that the amount of spousal support should be reduced. The financial information provided to me supports the income imputed to the respondent by Gill J.

Conclusion

- [36] The respondent's obligation to pay spousal support is terminated as of December 1, 2020.
- [37] Costs to the respondent. "The Honourable Madam Justice Murray"

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/18/16/2018BCSC1641.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/ryan-v-ryan-2018>

Prepared on 29 October 2026 · Esheria