

CANADA / JUDGMENT

S.M.P. v. D.J.P.

2014 BCSC 2397

COURT

Supreme Court of British Columbia

DECIDED

18 December 2014

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2014 BCSC 2397 S.M.P. v. D.J.P. IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: S.M.P. v. D.J.P., 2014 BCSC 2397 Date: 20141218 Docket: 123202 Registry: Victoria Between: S.M.P. Claimant And D.J.P. Respondent Before: The Honourable Mr. Justice Schultes Reasons for Judgment (Ruling on Application to Settle Trial Order) Counsel for the Claimant: V. Hemminger Counsel for the Respondent: M.J. Walton Place and Date of Hearing: Victoria, B.C. December 10, 2014 Place and Date of Judgment: Victoria, B.C. December 18, 2014

- [1] This is an application by S.P., the claimant in this family law matter, to settle some of the terms of an order that I made following a trial. My reasons for judgment were given orally on April 25 of this year. They have not been transcribed.
- [2] While this sort of application would normally be more appropriate to be heard by a registrar, the trial and the ensuing proceedings have been lengthy and acrimonious, and I think there is a significant benefit to my hearing it so that a final order can be entered as soon as possible.
- [3] S.P.'s counsel has prepared a draft order, which is acceptable to counsel for D.P., the respondent, in all but three of its terms.
- [4] D.P.'s counsel also raised a concern about the income that I had attributed to him for child support purposes but, as I advised his counsel, submissions about the substance of my decision are not appropriate in a hearing like this, which is concerned only with ensuring that the entered order reflects the intentions of the Court.
- [5] The first issue can be resolved quite readily. After the trial there was a further application by S.P. for various orders, including for double costs. The draft order prepared by her counsel includes an award of costs in relation to that double costs hearing. However, I have reviewed my judgment on that application and it is clear that I expressly declined to award S.P. the costs of it. That decision was also given orally and my ruling denying costs of the hearing was made immediately following an order that S.P. would receive her costs for the entire action, except for an interim application in relation to which costs had already been awarded, so I can appreciate how such a misunderstanding could have arisen.

- [6] Accordingly, paragraph 15 of the draft order will be amended to delete the words "which include Costs for the Claimant's Costs Application following the trial in this matter".
- [7] The next issue has to do with the calculations and insertions into the draft order of the specific dollar value of the orders I made at trial dealing with the increased daycare and tuition costs of the parties' children.
- [8] My order at trial was that D.P. was to reimburse S.P. for 58% of her increased costs of those expenses for the 2013-14 school year. His obligation to reimburse her with respect to the increased daycare costs was made contingent on her providing documents confirming that her former daycare subsidy would definitely not be available.
- [9] Her counsel has calculated these amounts as being \$751.68 for May and the same amount for June, and has inserted these figures into the order at paragraph 10.
- [10] The draft order also contains a term, at paragraph 11, that obligates D.P. to pay 60% of the children's increased daycare and tuition expenses "for the 2013/2014 school year", by which I infer her counsel meant the school year except for May and June, which were already described and dealt with in paragraph 10. She has calculated the resulting amount owing by D.P. to be \$1,958.40.
- [11] During the hearing of this matter I confirmed with S.P.'s counsel that this term was intended to give effect to an interim order made in February 2013 that D.P. pay 60% of the children's special and extraordinary expenses.
- [12] However, in my reasons for judgment following the trial, I expressly declined to order D.P. to pay an additional amount pursuant to that interim order, beyond the \$360 per month payment that was also specified in it. I concluded that it was reasonable for D.P. to have understood the order as requiring him to pay only that specific amount.
- [13] In her submissions on the double costs application, S.P. provided confirmation of the loss of the daycare subsidy, as well as a spreadsheet of the amounts paid and owing to the children's school for their daycare and tuition for the entire school year, with the \$360 per month that D.P. has paid pursuant to the interim order subtracted from the totals. In D.P.'s submissions on the double costs application, his counsel performed his own calculations and concluded that a 58% share of the daycare costs since July 2013, less the \$360 per month he paid under the interim order, would result in him now owing \$1,829.16. If a 60% share is used, he would owe \$2,041.12.
- [14] It appears that my order has been misunderstood on this point as well. The 58% contribution to the increased costs of daycare and tuition was to apply from the point in the school year when the increased costs arose from the loss of the daycare subsidy, less the \$360 per month payments that D.P. had made under the interim order.

- [15] I find S.P.'s spreadsheet helpful and reliable, and I will apply the figures that it contains. It does not appear that the actual figures are in dispute in any event, only the calculations of S.P.'s counsel that are based on them.
- [16] The increased costs began in February of 2014 when, according to the documents provided by S.P., the daycare subsidy was no longer available. The total cost for the children was then \$1,296 per month until the end of the school year in June, for a total of \$6,480. D.P.'s 58% share of those costs would be \$3,758.40, from which should be subtracted his \$360 monthly payments during that period, which total \$1,800. That leaves a total of \$1,958.40 payable by him under this heading. Apparently by coincidence, that is the amount already provided for under paragraph 11, despite the differing approach taken to the calculations by S.P.'s counsel.
- [17] Accordingly, paragraph 10 of the draft order will be deleted. Paragraph 11 will be amended to replace "60%" with "58%".
- [18] Before being entered, the draft order must be re-numbered to reflect the deletion of the former paragraph 10.
- [19] S.P.'s counsel will draft the order in its final form, pursuant to these reasons.
- [20] I cannot say that either party has prevailed on this application. Nor can I find that either of them was at fault in requiring it to be made. Oral judgments have many advantages, the most important being timeliness, but they also carry the risk, especially when they are given by telephone as in this case, that some terms will be misheard or misunderstood. I think that is the root of the problem here. The parties will therefore each bear their own costs of this application. The Honourable Mr. Justice T.A. Schultes

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