

CANADA / JUDGMENT

S.O.G. v. A.L.G.

2024 BCSC 1757

COURT

Supreme Court of British Columbia

DECIDED

10 September 2024

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2024 BCSC 1757 S.O.G. v. A.L.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

S.O.G. v. A.L.G. ,

2024 BCSC 1757

Date: 20240910

Docket: E22944

Registry: Nelson

Between:

S.O.G. also known as S.O.G.

Claimant

And

A.L.G. also known as A.L.M.

Respondent

Before: The Honourable Madam Justice Lyster

in Chambers

Oral Reasons for Judgment

Counsel for the Claimant appearing by videoconference:

S.J. Bobb

Counsel for for Respondent appearing by videoconference:

D.M. Frechette

Place and Date of Trial/Hearing:

Nelson, B.C.

September 10, 2024

Place and Date of Judgment:

Nelson, B.C.

September 10, 2024

- [1] THE COURT: These are my oral reasons for decision in the applications that were before me today. Should a transcript be ordered for any reason, I will review it and edit it for clarity and readability and to include full case citations. The reasoning and results will not change.
- [2] There were two applications that were scheduled to be heard today. The first was an application by the respondent, A.L.G., primarily seeking retroactive and prospective child and spousal support. The second was by the claimant, S.O.G., in which he sought an order for sale of the former family home.
- [3] The latter application was adjourned generally by S.O.G. just after the lunch break and prior to submissions continuing. As explained by S.O.G.'s counsel, he had had the opportunity to discuss the matter with his client over the break and they had decided it would be better not to proceed with that application in light of the evidence before this court of A.L.G.'s intention and ability to buy him out of the former family home.
- [4] A.L.G. did not oppose that application being adjourned but she sought her costs thrown away.
- [5] I have considered the parties' submissions on that issue and I order that A.L.G. is entitled to her costs of the application filed by S.O.G. thrown away.
- [6] Given A.L.G.'s circumstances, in particular living in the former family home with the parties' daughter, Z., in Castlegar, a community with a notoriously low rental vacancy rate, that application had no reasonable prospect of success. If S.O.G. needed evidence of A.L.G.'s ability to obtain a mortgage to buy him out, it was provided as an exhibit to her third affidavit in this matter, which was filed August 28, 2024. In my view, that application ought to have been adjourned after receipt of that evidence.
- [7] I turn to the application on which I heard submissions.

Background

- [8] By way of brief background, the parties were married on March 17, 2013. They have one child, Z., who is nine years of age and who lives with her mother in the former family home in Castlegar.
- [9] The parties disagree on the date of separation, with A.L.G. saying that separation occurred in January 2022, and S.O.G. saying that it occurred in June 2022. I heard little in the way of evidence and submissions on that issue and I make no finding in respect of it, although it is clear that S.O.G. did move out of the former family home in January 2022, when he relocated to Moncton, New Brunswick.
- [10] A.L.G. is 44 years of age. S.O.G. is 41. They are both employed. A.L.G. works in Castlegar where she works for the Government of British Columbia. S.O.G. now works in Houston, Texas, as a computer cloud engineer. I will return to some further details of his employment history shortly.
- [11] The parties jointly own the former family home and I am told it has an appraised value of \$560,000, and has a mortgage of \$341,000 on it. The parties owned a second investment property which was sold, I believe, sometime last year. The funds from the proceeds of sale are held in trust.

Child Support

- [12] A.L.G. seeks child support retroactive to February 2022. Her calculations are found at paragraph 73 of her third affidavit where she sets out in detail the child support which she seeks since February 2022 through to the end of August 31, 2024. I will not read all of the details of those calculations in for the purposes of this decision, but she says the total retroactive child support payable to August 31, 2024, is \$14,078. She also seeks prospective child support.
- [13] For his part, S.O.G. agrees that prospective child support is properly payable and he does not disagree with an order being made for retroactive child support, provided that it goes back no further than January 1, 2024, which is when he moved to and began his current job in Houston, Texas.
- [14] S.O.G.'s employment income since 2020 is set out at paragraph 23 of A.L.G.'s second affidavit and, as set out there: in 2020 he earned \$112,250; in 2021, \$104,439; in 2022, \$99,871; and in 2023, \$124,502. According to the employment letter from his current employer, his starting salary for his current position was \$140,000 U.S., which equates to \$190,400 Canadian. That letter also indicates that S.O.G. is entitled to various benefits including a 401(k) matching contribution from his employer. Evidence on that issue was sparse before me and I am not considering it in terms of dealing with these interim orders.

- [15] An interim order was made in Provincial Court on October 27, 2022, pursuant to which S.O.G. is required to pay child support in the amount of \$741 per month, based on a Federal Child Support Guidelines [Guidelines] income of \$85,000 per year. He was ordered to pay that amount commencing July 1, 2022. S.O.G. did so and he continued to pay that amount, despite increases in his income, since that time until June 2024, when he started paying the equivalent of approximately \$1,477 per month in Canadian dollars.
- [16] I accept A.L.G.'s evidence that she has made several requests to S.O.G. to increase the amount of child support payable due to the increases in his income that he has experienced, but he did not do so until June of this year.
- [17] In my view, this is an appropriate case in which to order retroactive child support. Child support is the right of the child and Z. has not been receiving the benefit of child support commensurate with S.O.G.'s actual income.
- [18] I order retroactive child support in the amounts set out in paragraph 73 of A.L.G.'s third affidavit for a total of \$14,078 to August 31, 2024.
- [19] There is no dispute that S.O.G. is required to pay prospective child support, and I order that he do so based on his current Guidelines income of \$190,400 Canadian. Effective September 1, 2024, he is therefore required to pay child support in the amount of \$1,671 Canadian per month.

Spousal Support

- [20] A.L.G. also seeks retroactive and prospective spousal support. S.O.G.'s position in response is much the same as it was in respect of child support in terms of the period of retroactivity, that is, that it ought not to go back further than January 1, 2024.
- [21] There is a dispute between the parties about the amount of A.L.G.'s employment income, as well as whether rental income, which she receives from renting out a suite and a room in the former family home, should be taken into account in determining her income for the purposes of spousal support.
- [22] A.L.G. sets out her employment income since 2020 at paragraph 42 of her second affidavit as follows: 2020, \$49,045; 2021, \$47,686; 2022, \$53,399; and 2023, \$53,168. She estimates that her income for 2024 will be approximately \$73,987, and she explains that her base annual salary was \$64,805 to April 6, 2024, and then increased to \$66,749. She says that her current temporary assignment is based on an annual salary of \$83,071, and, according to paragraph 41 of her affidavit, that temporary assignment with the another part of the provincial government was originally scheduled to end on June 28, 2024, but was extended for a further three months. That would be until essentially the end of this month, September. I accept A.L.G.'s estimate of her 2024 income at \$73,987.

- [23] S.O.G. has not paid A.L.G. any spousal support since separation despite the growing disparity in their incomes. She sought spousal support in Provincial Court in October 2022, but the court's order did not address that issue. There is no dispute that A.L.G. is entitled to spousal support.
- [24] This is, of course, an application for an interim order, and the applicable principles were helpfully summarized in the recent decision of Justice Mayer in *Al-Jebaje v El-Jaroudi*, 2023 BCSC 1099 [Al-Jebaje] at para. 35, where Mayer J. stated that:
- [35] The principles applicable on an application for interim spousal support include:
- a) The applicant's needs and the respondent's ability to pay;
 - b) The interim support order should be sufficient to allow the applicant to continue living at their pre-separation standard of living;
 - c) The court is not to embark on an in-depth analysis of the parties' financial circumstances but seeks to impose rough justice until their financial circumstances are fully fleshed-out at trial;
 - d) Promoting self-sufficiency for the receiving spouse is not often less significant in an application for interim spousal support; and
 - e) Interim support is generally ordered within the ranges suggested by the Spousal Support Advisory Guidelines.
- [25] In support of those principles, Mayer J. referred to the oft-cited decision in *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12
- [26] At para. 42 of that same decision, the court referred to c. 9 of the Spousal Support Advisory Guidelines [SSAG], which provides a helpful overview of the factors which may be considered in determining where spousal support should fall within the applicable ranges. In that case, Mayer J. considered ss. 9.1 and 9.2 to be significant:
- Section 9.1: A strong compensatory claim is a factor that favours a support award at the higher end of the ranges for amount and duration; and.
- Section 9.2: When a recipient has limited income and/or earning capacity their needs may push an award to the higher end of the range for spousal support.
- [27] In *Al-Jebaje*, the spouse claiming support had a more limited income and a lesser earning capacity than A.L.G., but on the evidence before me I accept that A.L.G. has a strong compensatory claim based on her evidence about the history of the parties' relationship.
- [28] S.O.G. is originally from Nigeria. He came to Canada after having been deported from the United States. He made a refugee claim in Canada, which was unsuccessful. After their marriage, S.O.G. was able to obtain his permanent residency and ultimately his Canadian citizenship. I accept that it is likely, had the parties not married, that he would not have been

able to remain in Canada to obtain his permanent residency and his citizenship, and to pursue his career as he has done. It is also likely that, given his history in the United States, he would not have been able to move there to work and earn the considerable income that he now earns had he not obtained his Canadian permanent residency and/or his Canadian citizenship. Further, A.L.G. was, on the evidence before me, the primary caregiver for Z. during the course of the parties' relationship and, in doing so, she enabled S.O.G. to progress in his career while they were together. I accept that S.O.G. has obtained substantial advantages from the marriage.

- [29] A.L.G. also has a strong needs-based claim, given that she has been the sole caregiver for Z. since the parties separated, and she has been solely responsible for the mortgage and other expenses associated with the former family home. According to A.L.G.'s evidence, S.O.G. lived rent-free in Moncton, New Brunswick, when he moved there in January 2022, and he has had only three visits with Z. since he moved out of the former family home at that time, which has left him essentially entirely free to pursue his career.
- [30] A.L.G. has established that she is entitled to a retroactive award. She sought spousal support in Provincial Court in October 2022, but the court did not deal with that aspect of her application.
- [31] *Maxim v. Maxim*, 2024 BCSC 641, is an example of retroactive spousal support being ordered on an interim basis. I conclude that the same should happen here back to January 2022.
- [32] I have considered the evidence and submissions regarding the rental income that A.L.G. has been receiving from renting a suite and a room in the former family home. I agree with her counsel's submission that that rental income is more appropriately left to deal with at the final resolution of this matter, whether that be by way of trial or settlement, when the parties' property is finally divided. I have, therefore, not included the rental income in determining the appropriate quantum of spousal support.
- [33] A.L.G.'s counsel provided DivorceMate calculations which were attached as exhibits to her second affidavit. They indicate a with-child spousal support range, based on the incomes that I have already set out, as follows: in 2022, a low of zero, a mid of zero, and a high of \$294; in 2023, a low of \$117, a mid of \$637, and a high of \$1,132; and in 2024, a low of \$1,356, a mid of \$2,030, and a high of \$2,720. She submits that spousal support should be at the high end of the range while S.O.G. submits that it should be at the mid-range.
- [34] Considering the parties' needs, ability to pay and other relevant circumstances, I find that S.O.G. should pay spousal support at the high range of the SSAG, that being an amount of \$294 per month in 2022; \$1,132 a month in 2023; and \$2,720 per month in 2024.

Special or Extraordinary Expenses

- [35] I turn to special or extraordinary expenses.

- [36] A.L.G. seeks an order that S.O.G. pay \$10,017.62 in outstanding special or extraordinary expenses. In support of that claim, she has provided a spreadsheet, but no receipts or further descriptions of the items sought have been provided. What I mean by that is, for example, there are claims for medical expenses, but no indication of what those medical expenses might have been, and there is a miscellaneous category. There is no supporting documentation beyond the spreadsheet that she provided.
- [37] For his part, S.O.G. accepts in his third affidavit that \$3,646.82 is owing. He further says that he has told her that before and provided her a breakdown of what he says is properly owing, but he also has not provided any supporting documentation for the court, nor does he explain why he has not paid the amount that he accepts is owing.
- [38] On an interim and without prejudice basis, I order S.O.G. to pay the \$3,646.82 which he accepts is owing for outstanding s. 7 expenses. On the evidentiary record before me, I am not able to make any determination of what further s. 7 expenses may be properly payable. A.L.G. is at liberty to reapply on this issue.

Remaining Issues

- [39] Lastly, I will turn to the other remaining issues, which can be dealt with relatively briefly.
- [40] A.L.G. sought an order that S.O.G. pay support and expenses owing to her in Canadian dollars via money transfer through an entity called Wise. She says that that is necessary to avoid delays in her actually obtaining the money sent and to ensure that the proper amount of Canadian funds are received.
- [41] S.O.G. did not offer any submissions in opposition to this order sought other than to say that in his view the expenses of using Wise or some other entity should be split.
- [42] I order S.O.G. to make all payments payable to A.L.G. via Wise or another mutually agreeable money transfer provider in Canadian dollars, and he is to bear the costs of doing so.
- [43] In her notice of application, A.L.G. sought a number of conduct orders. I am advised that those were agreed to at a recent judicial case conference and so they need not be dealt with by me.
- [44] As discussed in the course of submissions, the parties consent to an order requiring them to exchange income tax returns and notices of assessment annually by June 1 of each year.
- [45] A.L.G. sought an order that S.O.G. provide copies of documents related to his legal status in the United States. As I understand it, these are particularly relevant to parenting issues which are not presently before me, but which are at issue in this case more generally. In response, S.O.G.'s counsel advised that S.O.G. is in the United States on a work permit and that that could be provided.
- [46] I order S.O.G. to provide a copy of his work permit and any other documents that relate to his legal status in the United States within 30 days of today's date.

- [47] I have not heard from the parties on costs of this application but, in my view, A.L.G. has been successful and she is entitled to her costs of this application.
- [48] Is there anything further, counsel?
- [49] CNSL D. FRECHETTE: Justice, just on spousal support. Is your order also that ongoing spousal support will be paid in the amount of \$2,720 commencing September 1.
- [50] THE COURT: Yes, that was my intent but I think --
- [51] CNSL D. FRECHETTE: Okay.
- [52] THE COURT: -- I did not actually say that. Thank you, Mr. Frechette.
- [53] CNSL S. BOBB: What was I going to say? In terms of the payment of the retroactive support, I am obviously -- I do not know if there would be any deadline for that or if it is just stated in the order. But my suggestion would be to -- out of the \$90,000 that is being held in trust, that it could be paid out of what could be S.O.G.'s interest in those funds and offset because I highly doubt he has the money to do that but I could be wrong --
- [54] THE COURT: Okay.
- [55] CNSL S. BOBB: -- but I am certainly seeking an order or at least by consent if that could happen.
- [56] THE COURT: Okay, thank you, Mr. Bobb. Mr. Frechette?
- [57] CNSL D. FRECHETTE: It is something I would need to get instructions on. We are making a claim for lump sum spousal support at trial. So we are not necessarily conceding that Mr. -- you know, if lump sum support is paid, perhaps all of the funds in trust would end up being paid to A.L.G. We are not necessarily conceding that S.O.G. would be ultimately entitled to a share of those funds in trust if lump sum support is awarded at trial. So that is something I need to get instructions on. My suggestion would be just to leave the payment terms for retroactive -- for the retroactive amounts ordered just to be silent on that for now and my friend and I can have some discussions about that, and if necessary we can -- you know, we should be able to reach some agreement but if there is no specific date for part of -- you know, for payment then I think it probably would be preferable than having an order that the funds be paid out of his share of the money in trust.
- [58] THE COURT: Mr. Bobb?
- [59] CNSL S. BOBB: Yes, that sounds satisfactory. I --
- [60] CNSL D. FRECHETTE: As I said, my client might -- may agree that, I do not --
- [61] CNSL S. BOBB: Yes. Yes.
- [62] CNSL D. FRECHETTE: -- I do not know for sure. It is something I need to talk to her about.

[63] THE COURT: The order will be, as it was in any event, silent with respect to the date by which the retroactive amounts must be paid. I will further order that the parties are at liberty to seek to appear before me with respect to the issue of the date by which the retroactive amounts must be paid and whether the retroactive amounts may be paid out of the funds held in trust, should you be unable to agree on that issue.

[64] CNSL D. FRECHETTE: All right.

[65] CNSL S. BOBB: Okay.

[66] THE COURT: Anything further, counsel?

[67] CNSL S. BOBB: Nothing further from myself.

[68] CNSL D. FRECHETTE: Nothing further.

[69] THE COURT: Thank you very much.

[70] CNSL S. BOBB: Thank you.

[71] CNSL D. FRECHETTE: Thank you.

"L.M. Lyster J."

LYSTER J.

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