

CANADA / JUDGMENT

Sahota v. Sahota

2021 BCSC 470

COURT

Supreme Court of British Columbia

DECIDED

4 February 2021

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2021 BCSC 470 Sahota v. Sahota

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sahota v. Sahota,

2021 BCSC 470

Date: 20210204

Docket: E58630

Registry: New Westminster

Between:

Dalbir Kaur Sahota also known as Dalbir Kaur Sandhar

Claimant

And

Jagdeep Singh Sahota

Respondent

Before: The Honourable Mr. Justice Giaschi

Oral Ruling Re Application for Interim Child Support

In Chambers

Counsel for the Claimant:

B. Sandhu

Counsel for the Respondent:

M. Shergill

Place and Date of Hearing:

New Westminster, B.C.

February 3-4, 2021

Place and Date of Ruling:

New Westminster, B.C.

February 4, 2021

- [1] THE COURT: I shall render my reasons now. I reserve the right to amend these reasons for grammar and clarity, but the result in not change.
- [2] The parties were married on January 16, 1999 and separated on September 10, 2019. There are two children of the marriage: Sukhneil, born February 13, 2000, and Manria, born April 3, 2004.
- [3] By notice of application filed July 17, 2021, the claimant applied for orders of interim child support and interim spousal support. The application was heard by Justice Shergill on October 15, 2020. Although it is apparent that there was insufficient time to hear the application in its entirety, Justice Shergill ordered, on an interim and without-prejudice basis, that the respondent was to pay child support for the two children in the amount of \$824 per month commencing October 1, 2019. This order was based on an annual income of the respondent in the amount of \$53,000. The payments so ordered were to continue "until the parties attend court for a full hearing" of the application or until further order of the court. Justice Shergill further ordered that the respondent pay retroactive child support of \$9,888 by November 15, 2020. The request for spousal support was adjourned generally.
- [4] The notice of application filed July 17, 2020, is now before me for a full hearing in relation to interim child support. The application for spousal support remains adjourned generally.
- [5] The claimant submits that child support should be paid by the respondent in respect of both children of the marriage in the amount of \$1,049 per month based on an annual income of \$106,946. The respondent submits: first, that no child support should be payable in respect of Sukhneil as he reached the age of majority on February 13, 2019; and, second, that given the respective incomes and financial positions of the parties, no support whatsoever should be payable, or it should payable on the basis of an income of \$50,000.
- [6] I will address first whether child support should be payable in respect of Sukhneil, and then the amount, if any, of child support.

Is Child Support Payable in Respect of Sukhneil?

- [7] Part 7 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] and s. 15.1 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) [DA] deal with support obligations.
- [8] Section 147(1) of the FLA states that "[e]ach parent and guardian of a child has a duty to provide support for the child, subject to the exceptions in ss. 147(1)(a) and (b)".
- [9] Section 15.1 of the DA provides that a court may order a spouse to pay child support and that in doing so, it shall apply the Federal Child Support Guidelines, SOR/97-175 [Guidelines].
- [10] Section 146 of the FLA defines "child" to include "a person who is 19 years of age or older and unable because of illness, disability, or another reason to obtain the necessities of life or withdraw from the charge of his or her parents or guardians". Section 2 of the DA similarly defines a "child of the marriage" to include a child that the over the age of majority but who remains under the charge of the parents due to illness, disability, or other causes.
- [11] The factors to consider in determining whether a child who has reached the age of majority but who attends post-secondary school, remains a child of the marriage and entitled to support, are summarized in *Lee v. Chung*, 2014 BCSC 1157, at para. 163. These so-called Farden factors are:
1. Whether the course of studies is part time or full time;
 2. Whether or not the child has applied for, or is eligible for, student loans or other financial assistance;
 3. Whether the career plans of the child are reasonable and appropriate;
 4. The ability of the child to contribute to his/her own support through part-time employment;
 5. The age of the child;
 6. The child's past academic performance and whether the child is demonstrating success in the chosen course of studies;
 7. What plans the parents made for the education of their children, particularly where those plans were made during co-habitation;
 8. In the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.
- [12] At para. 164 of *Lee*, Justice Adair noted:
- [164] The parent asserting that a child over 19 is a child of the marriage has the burden of proof. However, that parent need not lead evidence on each of the Farden factors in order to discharge the burden of proof (*Darlington*, at para. 15). A child once found to be no longer a child of the marriage may regain that status. Mere attendance at an educational institution may not be sufficient to qualify an individual as a "child of the marriage." The post-secondary education has to be legitimate and realistic.

- [13] The evidence before me establishes that Sukhneil reached the age of majority on February 13, 2019. At that time, he was enrolled at Simon Fraser University and has remained a student there since the fall of 2018. Regrettably, it is not entirely clear whether he is a full-time student or a part-time student. The claimant says that he is full time, but his transcripts indicate that he has, for all but one semester, taken only three courses per semester. Nevertheless, he has been progressing reasonably well with his studies and has reached a number of milestones. He may not be an A student, but he is progressing reasonably well.
- [14] I accept the evidence of the claimant that the parties planned for Sukhneil to attend post-secondary school during the time they cohabited. This evidence is supported by the fact that the respondent paid part of Sukhneil's tuition using his credit card in February 2019.
- [15] I do not accept that Sukhneil unilaterally terminated a relationship with the respondent. The respondent's own affidavit suggests that there is a continuing relationship between the two.
- [16] Thus, I am satisfied that Sukhneil remains a child of the marriage for support purposes. However, I note that there is no evidence before me that Sukhneil has applied for any student loans, scholarships, bursaries, or other financial assistance, and except for a short duration, he does not appear to have worked during the school year or during the summer vacation. I appreciate that due to COVID-19, there were limited jobs for students this past year, but there was COVID-19 relief available for students, and there is no evidence as to whether he applied for or obtained any such relief. Pursuant to s. 3.2 of the Guidelines, these are matters that I will consider in assessing the amount of support to be payable in respect of Sukhneil. I am, however, satisfied that he is a child of the marriage and entitled to support.

What are the incomes of the parties to be used for support calculations?

- [17] The claimant's F8 financial statement dated March 7, 2020, indicates that her Guidelines income is \$45,600, composed of T4 income of \$28,800 and rental income of \$16,800. This is the amount to be used in the support calculations for the claimant's income.
- [18] I note parenthetically that the claimant has not provided all of the information required in her F8. The only tax documents she has provided are a 2018 tax summary and notices of assessment for the years 2016, 2017 and 2018. She has not provided full tax returns for the years 2016 to 2018 or for 2019. Her full tax returns should be included in her F8.
- [19] The respondent filed an F8 financial statement dated March 9, 2020. At the commencement of this hearing, he also filed an updated F8 financial statement dated February 2, 2021. His updated financial statement states that he has a Guidelines income of \$56,615 composed of \$50,000 T4 income and \$9,600 rental income for the Whalley property. However, his 2019 tax return shows he had a line 150 income, of \$105,615 comprised of \$50,000 in T4 income, \$46,000 in dividend income, and \$9,615 in rental income.

- [20] Section 16 of the Guidelines provides that income is to be determined using the total income heading in the T1 general tax form. Pursuant to s. 17 of the Guidelines, the court may have regard to the spouse's income over the last three years if it would be unfair to use the amount from the most recent T1 general form.
- [21] Thus, pursuant to the Guidelines the respondent's income for support is \$105,615, unless I determine that it would be unfair to use that amount, in which case I may consider his income over the past three years. The respondent's total income for the past three years is recorded in his T1 general forms or his tax assessments as: \$53,457 in 2017; \$106,946 in 2018; and \$105,615 in 2019. The average of these is \$88,672.
- [22] The respondent submits that it would be unfair to use his line 150 income from 2019. In particular, the respondent's main source of income is from his company, Jack Freight & Disposal Services. The respondent says that the business has been suffering, particularly recently due to COVID-19. The evidence before me bears this out. The financial statements for the company show a steady decline in gross revenue from \$946,000 in 2016; to \$647,000 in 2019, and a steady decline in net income from \$147,813 in 2016 to a loss of \$2,313 in 2019. The figures for 2020 are not before me, but some of the bank statements for the company are. Specifically, bank statements have been provided for all but three months; July 1, September 1 and October 1, 2020. The statements provided indicate that there have been total deposits into the company of approximately \$268,930. This is suggestive of a further and significant decline in revenues in 2020. Extrapolating from the statements provided, the annual gross revenue could be approximately \$360,000, roughly half of what it was in 2019.
- [23] Further, the financial statements for Jack Freight indicate that the company is having financial difficulties. The retained earnings have dramatically decreased, and although this appears to be because of a dividend, it was a dividend that was used to repay a shareholder loan which had been taken out to build the family home of the parties in 2018. The cash position of the company has also declined from \$160,415 in 2016 to zero dollars in 2019.
- [24] Finally, the respondent deposes to having borrowed COVID-19 relief funds and to having borrowed from family members to make ends meet. I accept his evidence of this.
- [25] Accordingly, in my view it would be unfair to use the line 150 income from the respondent's most recent T1 tax return. However, I am also not satisfied that the respondent's income for support should be \$53,000. There are two properties, the Larson Road property, and the apartment, that have been used to earn income in the past, and they should be used to earn income in the future.
- [26] Having regards to the respondent's T1 returns for the last three years, I consider that an appropriate income for the respondent for support purposes is \$70,000.

What shall the support payments be?

- [27] Given the incomes of \$45,600 for the claimant and \$70,000 for the respondent, the support payments according to the Guideline should be \$543 per child per month or \$1,086 per month in total.
- [28] However, in respect of Sukhneil, he ought to be able to contribute something towards his own support, especially considering that he takes only three courses per semester and given the financial difficulties the family is experiencing. Section 3(2) of the Guidelines provides that where the child is the age of majority or over, the amount of child support is either:
- (a) the amount determined by applying these Guidelines as if the child were under the age of majority; or
 - (b) if the court considers that approach to be inappropriate, the amount that it considers appropriate, having regard to the condition, means, needs and other circumstances of the child and the financial ability of each spouse to contribute to the support of the child.
- [29] Given that Sukhneil has the ability to contribute to his own support, and that the financial ability of the respondent to contribute is significantly lessened due to the financial circumstances of his company, I find that in the circumstances the amount of support payable in respect of Sukhneil should be one-half of the guideline amount, or \$270 per month.
- [30] Therefore, the respondent is to pay \$813 (\$270 + \$543) per month in child support commencing October 1, 2019. The arrears set out in the order of Justice Shergill are to be recalculated using these amounts.

(SUBMISSIONS ON COSTS)

- [31] THE COURT: I agree the success is mixed on this application, and the costs of this motion shall be costs in the cause.

"Giaschi, J."

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