

CANADA / JUDGMENT

Sidhu v. Chima

2020 BCSC 768

COURT

Supreme Court of British Columbia

DECIDED

22 May 2020

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

2020 BCSC 768 Sidhu v. Chima

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sidhu v. Chima,

2020 BCSC 768

Date: 20200522

Docket: E131613

Registry: Vancouver

Between:

Mandip Kaur Sidhu also known as

Mandip Kaur Phagura

Claimant

And

Rajbinder Singh Chima

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Claimant:

U.K. Dhaliwal

Counsel for the Respondent:

R.R.S. Uppal

Place and Date of Hearing:

New Westminster, B.C.

December 19, 2019

and March 13, 2020

Place and Date of Judgment:

Vancouver, B.C.

May 22, 2020

Table of Contents

Introduction.. 3

Background Summary.. 3

Circumstances of the Children.. 7

Analysis.. 10

I. Law on Setting Aside a Child Support Agreement 10

II. Law Regarding Adult Children as "Children of the Marriage" 14

III. Child Support for Mason.. 19

Conclusion.. 20

Costs.. 20

Introduction

- [1] In a Notice of Application filed May 8, 2019, the claimant seeks child support in a specified amount commencing January 1, 2019 for two children, who the claimant submits remain children of the marriage. The claimant also seeks retroactive child support of \$1,522 per month from April 1, 2018 to December 1, 2019, one-half of s. 7 prospective special and extraordinary expenses and \$12,527.67 in retroactive s. 7 expenses.
- [2] The principal question to be decided is whether and when the two children of this couple remained "children of the marriage", both now being over the age of majority.
- [3] The eldest child, Hannah, was born February 6, 2000 and turned 19 years of age on February 6, 2019. Hannah has been attending the University of Victoria ("UVic") since early September 2018 and during that time, Ms. Sidhu has deposed Hannah has been living on campus in Victoria.

- [4] The younger child is Mason, born April 18, 2001. Mason has turned 19 years of age since the hearing of this application and completed Grade 12 in September 2018 in Delta, B.C.
- [5] There is a lengthy and hostile history to this matter, the parties having separated in 2003 and continue, in spite of many orders and agreements in the past, to be at odds over child support.

Background Summary

- [6] Having separated in 2003, the parties entered into a detailed Separation Agreement (the "Agreement") in June 2008. Regarding the children, the Agreement provided for joint custody and 50/50 parenting time for both children and child support payable by Mr. Chima based upon the incomes of both parties in an amount of \$200 per month which exceeded by \$92 the amount which would have been payable under the Child Support Guidelines, SOR/97-175. Mr. Chima also agreed to pay for all day care costs and "extra-curricular activity costs".
- [7] A photocopy of the Agreement was attached to affidavit #1 of Mr. Chima filed June 7, 2016. That Agreement consisted of 17 pages and purports to have been signed by both Mr. Chima and Ms. Sidhu and witnessed by their solicitors with Certificates of Independent Legal Advice attached.
- [8] In a divorce action commenced by Ms. Sidhu (then Ms. Chima) in 2008, the Agreement was attached to affidavits in support of the divorce and an order for divorce was granted on September 2, 2008. In para. 8 of her affidavit #1 in this action made August 28, 2013, Ms. Sidhu stated "the respondent agreed he would start paying me \$200 per month towards the children's expenses and that we would be divorced. To the best of my recollection we did not sign a written agreement about child support".
- [9] Also, the Statement of Claim - Family Law Proceeding issued by Ms. Sidhu in the divorce proceeding, specifically referenced the Agreement on page 2 which reflected the terms of the Agreement including a statement that Mr. Chima was paying \$200 per month for the support of the children.
- [10] Mr. Chima has deposed that he had paid his child support obligations included in the Agreement until May 2012, when a disagreement between the parties resulted in Mr. Chima ceasing payment of child support. Ms. Sidhu issued a Notice of Family Claim in this action on May 31, 2013, to which Mr. Chima failed to respond. As a result, Ms. Sidhu issued a Notice of Application in this action and obtained a final order from this Court on January 28, 2014.
- [11] The final order included several terms regarding parenting, including for Mr. Chima to pay child support of \$1,062 per month from May 1, 2012, 57% of s. 7 special and extraordinary expenses and to pay arrears of child support from January 1, 2004 to December 31, 2013, in the amount of \$113,852 on the condition that Mr. Chima provide financial statements, again, without mention of the Agreement.

- [12] Mr. Chima has deposed that he never did receive notice of the Notice of Application which resulted in the orders referenced above and granted by Justice Koenigsberg. Presumably the Notice of Application was not served upon Mr. Chima as he had not filed a Response to the Notice of Family Claim. Correspondence from Ms. Sidhu's former solicitor in 2013 and attached to Ms. Sidhu's affidavit #1 advised Mr. Chima that the application would proceed in the event Mr. Chima did not respond. He did not respond.
- [13] Mr. Chima has also deposed that the Agreement was never brought to the attention of Justice Koenigsberg, which, having reviewed documents previously filed in this action, is accurate. Mr. Chima also referred to affidavit #1 of Ms. Sidhu sworn August 28, 2013 that "apart from the divorce order, there are no other orders and no written agreements" between the parties. That statement by Ms. Sidhu, having reviewed affidavit #1, was not accurate. The Agreement clearly provided for Mr. Chima to pay child support and for s. 7 expenses in amounts which varied significantly from the amount of child support arrears found by Justice Koenigsberg.
- [14] The order of Justice Koenigsberg referred to an imputed income for Mr. Chima of \$70,000.
- [15] At the time of the order granted by Justice Koenigsberg, Hannah was residing with Ms. Sidhu, and Mason was residing with Mr. Chima.
- [16] Mr. Chima has also deposed that he became aware of the order of Justice Koenigsberg in February 2014, and attempted to negotiate terms to set aside that order without success.
- [17] In May 2016, the parties entered into another agreement to set aside the order of Justice Koenigsberg which resulted in the order which is currently in force between the parties, being a consent order of June 10, 2016 made by Justice Holmes, now Associate Chief Justice Holmes (the "June 10, 2016 Order"). That order provided, inter alia:
1. The order of Madam Justice Koenigsberg pronounced January 28, 2014 shall be and the same is hereby vacated in its entirety; BY CONSENT
 2. The Respondent shall pay to the Claimant the sum of \$30,000, payable from the proceeds of a refinancing of the Respondent's home located at [] Main Street, in the City of Delta and the Claimant agrees that for the purposes of facilitating the refinancing, the Claimant shall remove the Judgment/Court Order she has registered against the Property on the usual undertakings, ensuring that the payment of the \$30,000 will be made directly to the Claimant from the proceeds of the refinancing of the Respondent's Property; BY CONSENT
 3. The payment of the \$30,000 from the Respondent to the Claimant will be a complete, full, and final resolution of the Respondent's obligations for past and prospective child support, and part 7 obligations with respect to the Children, save and except as set out in the following paragraph; BY CONSENT

4. In accordance with s. 7(1)(e) of the Federal Child Support Guidelines, the Claimant and the Respondent agree to pay 50% each, of their proportionate share of the Children's post-secondary school education expense, with the amount to be determined and agreed upon as and when said expenses arise; BY CONSENT
-
6. The Claimant and Respondent will execute a Mutual Release acknowledging the full and final settlement of all issues in the within action; BY CONSENT
- [18] At the time of the Consent Order of Justice Holmes, Hannah had been residing exclusively with Ms. Sidhu and Mason had been residing with Mr. Chima since September 2013.
- [19] Mr. Chima added in para. 25 of his affidavit #1 made June 6, 2016 that "the claimant is responsible financially for Hannah and I am financially responsible for Mason". Mason moved from his father's residence in April 2018 and he has continued to reside with his mother since that time.
- [20] Mr. Chima has deposed in an affidavit in support of the Order of Justice Holmes that his income was \$52,727 per year as a bus driver.
- [21] Mr. Chima re-financed his home to be able to make the payment of \$30,000 and the payment was made.
- [22] Mr. Chima filed a further affidavit #2 in support of the present application. Regarding how the payment of \$30,000 referenced in the Order of Justice Holmes and stated to be in satisfaction of "the respondent's obligations for past and prospective child support, and part 7 obligations with respect to the children", was calculated. Mr. Chima has deposed at para. 44:
44. When I agreed to pay the lump sum of \$30,000, this number was agreed to by me, on the following basis:
- a) Based on my paying \$200 per month child support for the Children from June 2012 to May 2016 of \$9,600 (\$200 x 48 months);
 - b) \$10,400 for future child support obligations based on shared custody of the Children by the Claimant and I for a further four years and four months;
 - c) \$10,000 for any future section 7 expenses due to the differences in the incomes of the Claimant and I.
- [23] Also regarding the \$30,000 payment made by Mr. Chima as ordered by Justice Holmes on June 10, 2016, Ms. Sidhu, has deposed, in her affidavit made May 8, 2019 as follows:
4. The Respondent did pay such monies to me, however, the monies paid represented outstanding child support due by the Respondent to me.

- [24] The above statement by Ms. Sidhu conflicts with the wording of the June 10, 2016 Order stating the \$30,000 payment was in satisfaction of "the Respondent's obligations for past and prospective child support, and part 7 obligations with respect to the Children".
- [25] Since the June 10, 2016 Order, the parties are in agreement that Mr. Chima has made four payments to Ms. Sidhu for the children amounting to \$3,530 since Mason moved back with his mother in late March or early April of 2018 in spite of the terms of the June 10, 2016 Order.

Circumstances of the Children

- [26] Hannah commenced studies at UVic in September 2018, and as of the date of the hearing of this application, continued as a student in residence at UVic.
- [27] On October 18, 2018, counsel for Mr. Chima received an email from counsel for Ms. Sidhu seeking to review child support and s. 7 expenses as both children by then were residing with Ms. Sidhu on a full-time basis, although Ms. Sidhu deposed Hannah was residing in a UVic residence in Victoria. Ms. Sidhu was seeking payment of 50% of the expenses for Hannah attending and residing at UVic which Mr. Chima has deposed was the first notice he received from Ms. Sidhu saying Hannah was attending UVic. He also sought details of the costs associated with Hannah's attendance at UVic. The response also inquired as to why Ms. Sidhu was seeking child support and s. 7 expenses in light of the June 10, 2016 Order in addition to post-secondary education expenses for which Mr. Chima had agreed to pay in the June 10, 2016 Order.
- [28] Mr. Chima has deposed that he does not have a continuing relationship with Hannah; the last time he saw her being when she called him from Victoria in September 2018 in a very stressed state and he travelled to Victoria to have dinner with her and to talk. There have been no communications since that time.
- [29] The reason or reasons for the breakdown of the relationship between Mr. Chima and Hannah are not clear on the evidence.
- [30] Mr. Chima further deposed in para. 41 of his affidavit #2 that he was shocked upon learning Hannah was enrolled at UVic and living on campus. In her affidavit #2 made May 8, 2019, Ms. Sidhu listed expenses for Hannah amounting to \$22,724.16. In addition to tuition, bookstore invoices, and residence fees, the total included cell phone expenses, groceries, ferry costs, clothing, hair design and other expenses. In the affidavit of Lisa Hucal dated December 6, 2019, receipts for some of the expenses claimed for Hannah were listed but amounted to only \$3,440.45 of the total of \$22,724.16. Prior consent or consultation regarding the expenditures were not sought by Ms. Sidhu.
- [31] Regarding Mason, Ms. Sidhu's affidavit #2 listed expenses of \$4,574. Mason had graduated from high school in 2018 and turned 19 years of age in April 2020. His expenses, for which Ms. Sidhu seeks reimbursement, include a computer, cell phone accounts, music

downloading costs, eye glasses, clothing, hair cuts, braces, graduation tickets and more. Receipts amounting to only \$2,110.15 of the total expenses claimed for Mason of \$4,574 have been provided by Ms. Sidhu, however, prior consent or consultation was not sought of Mr. Chima.

- [32] The Court was advised that Mason has been admitted to Kwantlen Polytechnic University ("KPU") commencing September 2020. There are no particulars of costs in evidence before the Court and Mr. Chima was not consulted in advance of Mason's application to KPU.
- [33] It is noted that since the Order of Justice Holmes in June 2016, Mason has moved into his mother's home as of late March or early April 2018. Ms. Sidhu claims child support for two children from that date. Mr. Chima has deposed, and it is not disputed, that he has paid \$3,550 to Ms. Sidhu since Mason moved into his mother's home, in addition to the \$30,000 payment made pursuant to the Order of June 10, 2016.
- [34] Ms. Sidhu sought 50% of the total expenses for the two children, a 50% portion amounting to \$12,527.67.
- [35] In addition, Ms. Sidhu seeks \$1,522 per month child support and retroactive child support of \$1,522 per month from April 2018 based upon an income imputed by her to Mr. Chima of \$100,000 per annum. Ms. Sidhu has deposed that Mr. Chima earns \$1,000 per month from performing stand-up comedy at comedy clubs. Mr. Chima admits he performs some stand-up comedy but that he does so as an amateur and is not paid for his performances.
- [36] Mr. Chima has filed a Financial Statement in his affidavit #3 dated May 6, 2019, in which he swore to employment income plus net rental income from a tenant in his home of \$4,514 for a total income of \$66,577.24.
- [37] Mr. Chima does have a continuing relationship with Mason who he sees regularly. Since graduating from high school, he has not been attending post-secondary education. There is no evidence of Mason having worked during the past year since moving into his mother's home.
- [38] There is no evidence before the Court as to the financial circumstances of Hannah, whether she has sought student loans, scholarships or bursaries, and no evidence regarding her goals or whether she is progressing successfully in her studies. Ms. Sidhu has deposed in her affidavit #2 dated October 10, 2019 that Hannah had obtained part-time employment at minimum wage but did not depose as to where she was working, the amount earned, whether Hannah worked part-time during the school year and the nature of the work.
- [39] Regarding the issue of whether Hannah remains a "child of the marriage", Mr. Chima submits Hannah is not a full-time student at UVic in that during the fall and winter sessions of 2018 and 2019 respectively, she did not meet the definition of "full-time student" according to the terminology issued by the UVic Registrar's Office which requires a "full-time student" to be "taking 12 or more units in the Winter Session (September to April) or 6 or more credits in the Summer Session (May to August)" (Mr. Chima's affidavit #4, December 6, 2019).

Transcripts attached to the affidavit of Lisa Hucal indicated Hannah had been taking courses worth 9 units in the Winter session after dropping courses.

Analysis

I. Law on Setting Aside a Child Support Agreement

[40] With her application, Ms. Sidhu is effectively seeking to vary or set aside the terms of the Order of June 10, 2016. As the order was simply a consent adoption of the agreement reached by the parties in May 2016, this application to vary is best considered under s. 148 of the Family Law Act, S.B.C. 2011, c. 25 [FLA].

[41] Section 148 of the FLA states:

Agreements respecting child support

148 (1) An agreement respecting child support is binding only if the agreement is made

(a) after separation, or

(b) when the parties are about to separate, for the purpose of being effective on separation.

(2) A written agreement respecting child support that is filed in the court is enforceable under this Act and the Family Maintenance Enforcement Act as if it were an order of the court.

(3) On application by a party, the court may set aside or replace with an order made under this Division all or part of an agreement respecting child support if the court would make a different order on consideration of the matters set out in section 150 [determining child support].

[42] In *T.K. v. A.K.*, 2014 BCSC 1241, Mr. Justice Betton considered whether or not a court should interfere in and vary agreements reached between the parties for child support. Justice Betton referred to the leading case of *D.B.S v. S.R.G.*, 2006 SCC 37, stating:

[68] The Court of Appeal [in *Goulding v. Keck*, 2014 ABCA 138] reviewed the law coming from D.B.S. and stated that where there is an agreement between the parties, the principles in D.B.S. must be seen through "that lens" (at para. 25). The court summarized the law relating retroactive child support to an agreement between the parties:

[26] The law encourages parents to resolve their own affairs outside of litigation. This is often achieved by an agreement to an amount of reasonable support for their children (DBS at para 76). Of course, such agreements always remain subject to the jurisdiction of the court to uphold the best interests of the child and ensure adequate payment of support (*Doe v. Alberta*, 2007 ABCA 50, 404 AR 153, leave denied, [2007] SCCA No 211 at paras 25-26). Assuming that the agreed terms meet this threshold and enforcement is not otherwise unconscionable, the court has an obligation to respect the parties' agreement (DBS at para 78; *LL v. GB*, 2008 ABQB 536, 455 AR 248 at paras 107-108, *aff'd* 2009 ABCA 356, 469 AR 33).

- [27] Where parents have set out their respective child support obligations by contract, that agreement is also, by definition, evidence of the mutual intentions and expectations of each party. When those intentions and expectations are adequate in accordance with the law, the court has no grounds to interfere or alter the parties' arrangement.
- [43] In *Young v. Young*, 2013 BCSC 1574, Justice Barrow referred to s. 148 and then stated:
- [13] Although the materials are not entirely clear, I take Mr. Young's application to be an application under s. 148 of the Family Law Act. I am, therefore, at liberty to set aside or replace portions of the agreement dealing with child support if, based on the present circumstances, I would make a different order than that set out in the agreement. Whether the court would make a different order is to be decided on the basis of the Child Support Guidelines, which are incorporated into the Family Law Act by reference in s. 148 to s. 150
- [44] Less deference is owed to an agreement respecting child support than an agreement respecting spousal support, however the agreement is relevant as an indication of the parties' intentions. As summarized by Justice Hyslop in *Worsfold v. Worsfold*, 2018 BCSC 45:
- [34] The court may set aside an agreement if the child support provisions are not in accordance with the Guidelines and make orders pursuant to ss. 148(3) and 150(1) of the FLA
- [35] In adjusting child support pursuant to a separation agreement, it does not require the applicant to provide a material change of circumstances as there is no previous court order determining child support: *Kopp v. Kopp*, 2012 BCCA 140 at paras. 16, 39 and 41; *Fung-Sunter v. Fabian*, 1999 BCCA 346 at paras. 6, 27 and 28; and *E.M. v. M.S.*, 2016 BCPC 242 at para. 27. *E.M.* was dealing with parenting arrangements.
- [36] What I am required to do is make an order pursuant to ss. 149 and 150 of the FLA.
- [37] In *Kopp*, the Appeal Court found that deference to a separation agreement for child support and spousal support is different as:
- [37] courts have a separate responsibility to children to ensure their interests are upheld. Thus, the appropriate weight to be accorded an agreement for child support will be less than that accorded to an agreement for spousal support.
- [38] That is not to say that the separation agreement was not relevant to the chambers judge's consideration of the issues before her. In my view, she considered those terms as the reflection of the parties' intentions at every stage of her analysis, giving the agreement appropriate weight in the context of those issues. While I do not agree with all of her conclusions, in my opinion she did not err by not giving appropriate consideration and weight to the separation agreement as a whole.
- [45] The agreement in this case was set out in the Order of June 10, 2016 and as for child support, by the payment of \$30,000, particulars of which were deposed to in Mr. Chima's affidavit #2 of May 16, 2019 at para. 44 (quoted above).

[46] Although I am of the view that this application to vary is best considered under s. 148, it is relevant that the agreement was adopted in a consent order. As such, I also refer to s. 150(2) of the FLA, which provides:

Determining child support

150 (1) If a court makes an order respecting child support, the amount of child support must be determined in accordance with the child support guidelines.

- (2) Despite subsection (1), a court may order child support in an amount different from that required by the child support guidelines if
 - (a) the parties consent under section 219 [persons may consent to order being made] or have an agreement respecting child support, and
 - (b) the court is satisfied that reasonable arrangements have been made for the support of the child.

[Emphasis added.]

[47] The import of s. 150(2) is that, prior to making the consent order of June 10, 2016, Madam Justice Holmes must have been satisfied that it made "reasonable arrangements" for the support of the children.

[48] So should the June 10, 2016 Order be varied or set aside under s. 148 of the FLA to allow for an order that Mr. Chima pay child support in addition to his obligations under the Agreement to pay 50% of the post-secondary education expense for the children?

[49] Based upon the evidence before me, and with reference to the Guidelines, I am not convinced I would make an order different than that provided for in the agreement and adopted in the June 10, 2016 Order (per s. 148 and as set out in Worsfold); as such the higher material change in circumstance test is similarly not met. There is no evidence which could justify varying or amending the June 10, 2016 Order, save for the change related to Mason having changed his residence from that of his father to that of his mother since the end of March 2018.

[50] The June 10, 2016 Order considered arrears of child support to the date of the order from 2012 based upon the agreed amount of child support Mr. Chima was obligated to pay. The consent order also included a payment for future child support for up to four and one-half years and for the post-secondary education of the children. The consent order was achieved with the parties having the benefit of independent legal advice and the wisdom of Justice Holmes who would have had an opportunity on the evidence supporting the order to see that the order was in the best interests of the children.

- [51] The payment of \$30,000 included in the June 10, 2016 Order included \$10,000 for future s. 7 special and extraordinary expenses for both children but excluded the costs of post-secondary education for both children. Accordingly, the application by Ms. Sidhu for payment of s. 7 expenses is dismissed.
- [52] I conclude that the June 10, 2016 Order should not be varied or amended in any way save for child support for Mason referred to below.

II. Law Regarding Adult Children as "Children of the Marriage"

- [53] Having found the Order of June 10, 2016 should not be varied and dismissing the applications of Ms. Sidhu, whether or not Hannah remained a "child of the marriage" after commencing studies at UVic becomes redundant.
- [54] Respecting Hannah, if I am incorrect on the issue of the validity of the Order of June 10, 2016, did Hannah remain a "child of the marriage" once she began to attend UVic?
- [55] The often quoted decision of then Master Joyce in *Farden v. Farden*, [1993] B.C.W.L.D. 1707, 1993 CanLII 2570 (SC), provides guidance on factors to consider on whether a child of the age of majority remains a "child of the marriage" and those factors are found at page 4 of *Farden*:
- 1) Whether the child is in fact enrolled in a course of studies and whether it is a full-time course of studies;
 - 2) Whether or not the child has applied for or is eligible for student loans or other financial assistance;
 - 3) The career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
 - 4) The ability of the child to contribute to his own support through part-time employment;
 - 5) The age of the child
 - 6) The child's past academic performance, 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 cohabitation;
 - 8) At least 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.
- [56] Regarding factor # 8 above, Master Joyce quoted from *Law v. Law*, (1986), 2 R.F.L. (3d) 458:

. . . I am of the view that where, as here, a mature child unilaterally terminates a relationship with one of the parents without any apparent reason, that is a factor to be considered by the trial judge in determining whether it would be "fit and just" to provide maintenance for that child. . . .

[57] This factor was discussed in *Shaw v. Arndt*, 2016 BCCA 78, in which the Court of Appeal adopted the following statement of the law:

[29] The Court in *A.C. v. M.Z.* also referred to a paper written by Mr. Justice David Corbett entitled *Child Support for Estranged Adult Children* in 2010, who reached the following conclusions:

- (a) Contrary to certain recent literature, there has not been "growing judicial recognition" that the quality of the relationship should have a bearing on child support.
- (b) Courts have been willing to impose a few specific responsibilities on adult support recipients, and may properly do so, but not conditions that include maintaining a social relationship with a parent.
- (c) The statutory basis for taking the quality of the child-parent relationship into account is dubious.
- (d) There is appellant authority permitting the court to place some weight on the parent-child relationship, but that authority is more ambiguous than trial and motions court decisions suggest.
- (e) On the current state of the law, there seems to be a discretion to take this factor into account, though few courts do, and fewer have found it a significant factor in a support decision.
- (f) The better view is that if conduct is ever relevant, it should only be in truly egregious cases of misconduct by a child against a parent. [At para. 172; emphasis added.]

In my view, this summary provides a useful description of the current law concerning the estrangement of adult children from their parents.

[58] Not all of the eight factors or circumstances listed by Master Joyce must be in evidence in order to establish that a child is a "child of the marriage". (See, *Darlington v. Darlington*, 1997 CanLII 3893, 32 R.F.L. (4th) 406 (BCCA)). The onus of proof of establishing a child as a "child of the marriage" is on the applicant for child support (*Rebenchuk v. Rebenchuk*, 2007 MBCA 22). Per *Ratnam v. Priyanthan*, 2017 BCCA 343:

[24] Although the burden of establishing that an adult child attending post-secondary education is a child of the marriage is on the recipient-parent, these are not a "set of iron-clad requirements" and it is not necessary for that parent to adduce evidence on all of these points: *Shaw v. Arndt*, 2016 BCCA 78 at para. 25.

- [59] In the case before me, it is also important to keep in mind any orders or agreements currently in place and respecting the children. That is to say, these parties agreed in the Order of Justice Holmes that they will "agree to pay 50% each, of their proportionate share of the Children's post-secondary school education expense, with the amount to be determined and agreed upon as and when said expenses arise".
- [60] No agreement has been reached in this case as to the amount of expenditures for Hannah's post-secondary expenses. Indeed, Mr. Chima has deposed that he was not aware of plans for Hannah to attend UVic. Ms. Sidhu has not deposed otherwise, save that Hannah had purportedly told her father of her ambition to attend law school. Hannah has not provided an affidavit to that effect.
- [61] Turning to the Farden factors and analyzing the evidence before me, I find that Ms. Sidhu has not met the burden, on a balance of probabilities that Hannah was a "child of the marriage" after she achieved the age of 19 years, nor since. The evidence can be summarized as follows.

Enrolled in a Course of Studies

- [62] Hannah enrolled in courses during the 2018-2019 sessions which would qualify as "full time", however, it is apparent that she did not continue through those courses during the year as she dropped some courses and ended up with a total of nine credits as opposed to the targeted 12 credits. During part of those terms she was not enrolled in full-time studies. As a result, this factor can be considered as neutral or inconclusive.

Student Loans or other Financial Assistance

- [63] There is no evidence Hannah has applied for student loans and/or financial assistance through bursaries or scholarships.

Reasonable Career Plan

- [64] Although Hannah, according to her mother, may have stated a goal of attending law school in the future, the statement could not be considered to be a firm plan. As Hannah was just commencing her post-secondary education at the time of her alleged statement to her father, there was no measurement of academic achievement at the time which would indicate a reasonable likelihood she would succeed in attending a faculty of law. Such an assessment could only be made as a child has shown progress and success in his or her undergraduate years.

Part-time Employment

- [65] Ms. Sidhu deposed that Hannah had a part-time, minimum wage job for the summer, however there was no evidence of what she may be earning or whether she continued to work part-time during the school year. The evidence here is thin, she has worked part-time and so this factor can be considered in favour of Hannah being deemed a "child of the

marriage". Mr. Chima has deposed that he was told by Hannah on his trip to Victoria in 2018 that she was working at a jewelry store and that she was residing with her grandparents while residing in Victoria.

Age of the Child

[66] Hannah was 18 years old when she enrolled at UVic and is currently 20 years old, years in which one is most likely to pursue post-secondary education.

Academic Performance

[67] Hannah's academic performance has not been demonstrating success, only that she has been able to complete some of her courses with reasonably good marks. She has been making progress and she is still young, however, her success is limited.

Parent's Plans for Education of their Children

[68] There is no evidence of a Registered Education Savings Plan having been established by the parties nor is there evidence of financial plans for post-secondary education. The costs for Hannah to attend UVic, especially since she has been living on campus while her mother lives in Delta, B.C., when taken together with her other expenses including tuition, supplies, etc., are very substantial and would cause a very substantial financial burden for Mr. Chima who is earning less than \$70,000 per annum. He had agreed in the Order of June 2016 to pay 50% of the costs to be agreed upon so it can safely be said Mr. Chima was anticipating contributing to the costs, but was entitled to be able to assess the reasonableness of the expenses, an opportunity which was not provided to him.

Relationship between the Payor and the Child

[69] Previously in these reasons, I have described the lack of a relationship between Hannah and her father. Mr. Chima appears not to appreciate why his relationship with Hannah has generally been non-existent in recent years. There is no evidence before the Court other than that of Mr. Chima which points to the lack of any continuing relationship. Given the comments in Shaw, I give this factor no weight- this is not one of those "truly egregious cases of misconduct by a child against a parent" (para. 29).

Conclusion

[70] Considering all of the above factors, Hannah has not been a child of the marriage since turning 19 years of age. The onus was on Ms. Sidhu to establish that Hannah remains a child of the marriage and, given the inconclusive state of the evidence, she has not met that burden.

- [71] However, Mr. Chima had agreed to pay 50% of education costs for his children "with the amount to be determined and agreed upon as and when said expenses arise". In the future, when expenses arise and are agreed upon, Mr. Chima is contractually bound to pay 50% of the expenses. Although the word "reasonable" was not used as an adjective in the order, it would assist Mr. Chima in re-establishing a relationship with Hannah that he agree to pay 50% of reasonable expenses.
- [72] Regarding the claim by Ms. Sidhu for s. 7 special and extraordinary expenses incurred for Hannah, any expenses incurred after she turned 19 years of age were incurred while she was no longer a "child of the marriage".

III. Child Support for Mason

- [73] Regarding Mason, at the time of the Order of June 10, 2016, he was residing with his father. Mason moved to his mother's home in late March 2018 and has resided with her ever since. Mason has recently turned 19 years of age, i.e., as of April 2020.
- [74] Mr. Chima acknowledges that Mason moving in with his mother was not anticipated at the time of the June 16, 2016 Order and that Mason's change of residency constitutes a material change which permits a review of child support (I note that a review is similarly justified under the lower s. 148 test).
- [75] Child support was payable by Mr. Chima for the period since Mason changed his residence based upon the Federal Child Support Guidelines. Based upon Mr. Chima's income of \$66,000, which amounts to \$626 per month which would amount to \$15,024 between April 1, 2018 and March 31, 2020.
- [76] Mr. Chima has also deposed that he provided for future child support in the lump sum payment of \$30,000 which he made in compliance with the June 10, 2016 Order in an amount of \$10,400. Also, Mr. Chima has deposed of having voluntarily paid \$3,550 to Ms. Sidhu as support for Mason since March 2018 which is to be set off against child support for Mason since March 2018.
- [77] The net amount which is therefore owed for child support for Mason, after deduction of the \$3,550 previously advanced, is \$11,474 (\$15,024 less \$3,550). There will be a judgment for arrears in that amount.
- [78] There is no evidence Mason has been working and he has been accepted at KPU commencing full-time schooling in September 2020. The June 10, 2016 Order will apply to any expenses agreed upon relating to the post-secondary education of Mason.

Conclusion

- [79] In conclusion, I answer the relevant questions as follows:
- i. Should prospective child support be awarded?

No. I decline to vary the June 10, 2016 Order and make no award for prospective child support.

ii. Should retroactive child support be awarded?

I decline to vary the June 10, 2016 Order except as it pertains to child support payable for the period of time Mason was living with Ms. Sidhu prior to his 19th birthday.

iii. Should 50% of the retroactive or prospective special expenses be awarded?

No, as above, the June 10, 2016 Order/agreement covered special expenses and there is no basis to vary that order.

Costs

[80] Mr. Chima has been substantially successful in this application and is entitled to costs based upon the case being of ordinary difficulty under Appendix B of the Supreme Court Family Rules, B.C. Reg. 169/2009.

"Jenkins J."

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/20/07/2020BCSC0768.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/sidhu-v-chima-2020>

Prepared on 26 October 2026 · Esheria