
CANADA / JUDGMENT

Steede-Mechler v. Mechler

2010 BCSC 720

COURT

Supreme Court of British Columbia

DECIDED

27 April 2010

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2010 BCSC 720 Steede-Mechler v. Mechler

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Steede-Mechler v. Mechler

2010 BCSC 720

Date: 20100427

Docket: E073673

Registry: Vancouver

Between:

Theadora Steede-Mechler, also known as

Teddie Steede-Mechler

Plaintiff

And:

Wilfred Mechler

Defendant

Before: The Honourable Madam Justice Kloegman

Oral Reasons for Judgment

In Chambers

Counsel for Plaintiff:

J. M. Richter

Counsel for Defendant:

S. L. Booth

Place of Trial/Hearing:

Vancouver, B.C.

April 27, 2010

Place and Date of Judgment:

Vancouver, B.C.

April 27, 2010

- [1] THE COURT: December 8, 2008, these parties entered into a consent order that settled the property and financial issues between them.
- [2] With respect to spousal support, the parties agreed in clause 17 that the spousal support payable pursuant to the order would be reviewable on any material change of circumstances of the parties and, unless otherwise agreed or ordered, on any change of either parties' income such that the difference between their respective total incomes set out on their T1 general income tax returns exceeds 20 percent of the difference between their incomes at the date of the parties' last agreement or order.
- [3] Unfortunately, on January 11, 2010, the defendant suffered a stroke, causing him to go on short-term disability and incur certain medical expenses.
- [4] About two weeks after his stroke the defendant brought this application to vary the consent order. He seeks a reduction of spousal support from \$1,000 per month to a range between \$275 and \$375 per month and a contingent order that if he goes on long-term disability, that the spousal support be terminated altogether.
- [5] The plaintiff submits that the defendant's application is premature. The defendant's medical condition is uncertain, as is his future earning ability. Only three months have passed since his stroke, and his medical advisors are encouraged by his progress.
- [6] On my review of the material before me, I agree with the plaintiff that the defendant's application is premature for a number of reasons:
1. The medical evidence of the defendant's actual condition at present and in the future is very unclear. There is an indication of much improvement, but his family doctor's prognosis for the long term is guarded.
 2. The amount of the defendant's earnings for 2010 is unknown. At present he is on short-term disability, which amounts to \$61,500 per annum. If he goes on long-term disability I am told this will be reduced to \$43,000 per annum, but if he returns to work during the year he may earn more or the same as his base salary of \$61,000.

3. The defendant's long-term earning capacity is unknown. It is too soon to determine whether his income in future years will likely be impacted by this stroke or not. Even if the defendant does end up on long-term disability for the foreseeable future, the terms and conditions of that long-term disability policy is unknown at this time.
4. The defendant is living with a new spouse who contributes to the household expenses, but her financial status has not been fully disclosed or tested by the plaintiff.
- [7] It is important to remember that a material change of circumstances, which will trigger a variation under s. 17 of the Divorce Act or a review of spousal support under clause 17 of this consent order, must be of a continuing nature. At this point in time, the duration of the impact of the defendant's stroke is unclear.
- [8] I had considered ordering a review but deferring it to December 2010; however, upon further consideration, I think that would be prejudging the continuing nature of the proposed material change in circumstance.
- [9] Therefore, I have decided to adjourn the defendant's application but not dismiss it. It will be adjourned to a date not to precede December 1, 2010. I am satisfied that the extra income earned by the defendant in 2009 will meet his current needs and that the \$1,000 per month spousal support payments to the plaintiff should continue in the interim.
- [10] Now, to be clear, in December 2010 the defendant has liberty to reset the hearing of this motion to seek a review under the consent order, which review would include a consideration of whether there should be a retroactive reduction in spousal support.
- [11] The plaintiff, of course, is at liberty to argue there should be no review, or alternatively no reduction, retroactive or otherwise, in spousal support. So those would be the conditions under which the review would take place.
- [12] The only thing that leaves is costs, and I am going to order, unless there is a submission about something I am not aware of, that costs should be in the cause and dealt with at the time of the review, if it takes place, in December.
- [13] MR. RICHTER: My Lady, the only other issue I can think of is the support stopped February 1. Could there be a direction or an order that the back support be payable forthwith or within a week or some provision like that, an ongoing support be provided for -
- [14] THE COURT: Well, I have said that the \$1,000 per month should continue. I was not aware that it has not been paid since February, so, yes, the outstanding arrears of support should be paid within seven days of the order and should continue as per the original consent order.

"Kloegman J."

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