
CANADA / JUDGMENT

Steele v. Steele

2009 BCSC 1483

COURT

Supreme Court of British Columbia

DECIDED

30 October 2009

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2009 BCSC 1483 Steele v. Steele

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Steele v. Steele,

2009 BCSC 1483

Date: 20091030

Docket: E032696

Registry: New Westminster

Between:

Elaine Steele

Plaintiff

And

Kenneth Brian Steele

Defendant

Before: Master Taylor

Reasons for Judgment

Counsel for Plaintiff:

C.A. Clark

Counsel for Defendant:

G.M. Green

Place and Date of Hearing:

New Westminster, B.C.

October 9, 2009

Place and Date of Judgment:

Vancouver

Vancouver, B.C.

October 30, 2009

- [1] This application for interim spousal support pursuant to the Family Relations Act, R.S.B.C. 1996, c. 128, by the 73 year old plaintiff is opposed by the 69 year old defendant.
- [2] It is common ground between the parties that they went through a marriage ceremony on January 3, 1970 in Washington State. However, while the plaintiff had received her decree nisi from her previous marriage prior to the marriage ceremony, she had not yet been granted her decree absolute. As a result they were never legally married. The defendant maintains that the plaintiff has no entitlement to spousal maintenance as the parties have been living separate and apart since November, 1990. Accordingly, says the defendant, the plaintiff's application is out of time as it is past the one-year limitation period for applications of this nature under the Family Relations Act.
- [3] The plaintiff maintains that the parties separated on March 27, 2009.

Facts Not in Dispute

- [4] The plaintiff commenced this action on May 4, 2009 by writ and statement of claim.
- [5] Until March 27, 2009, the parties resided on 5.8 acres of land in Aldergrove, B.C. This property was purchased in 1979 in part with proceeds from the sale of a home that the plaintiff formerly owned in Richmond and which she obtained as the settlement in her divorce proceedings from her previous husband. The Aldergrove property is in joint names. Both parties are in agreement that the property is to be sold.
- [6] The defendant is currently in occupation of the Aldergrove property while the plaintiff resides in an apartment in White Rock with financial assistance from her daughter and son-in-law.
- [7] The plaintiff has not worked outside the home since the early 1970's. Throughout their relationship she has been financially dependent on the defendant.
- [8] The parties shared a line of credit and a joint bank account up until March 27, 2009 when the plaintiff moved from the residence.

- [9] The parties attended family functions at the residence of the plaintiff's daughter, however, the defendant maintains that they did not do this as a couple, but rather to visit with his step-grandchildren.
- [10] From the 2006, 2007 and 2008 T1 income tax returns of the defendant attached to his Form 89 Financial Statement in these proceedings, it is evident that the defendant listed himself as "married" on those forms. As a result of claiming to be married, the defendant was able to elect to split his pension income with the plaintiff in 2008 and thus reduce the amount of income tax payable by him.
- [11] The plaintiff's most recent income tax return shows her income at \$6,594.60 while the defendant's income is \$72,220.24.

The Applicable Law

- [12] Spouse is defined in s. 1 of the Section 1 of the Family Relations Act as follows:

"spouse" means a person who

- (b) except for Parts 5 and 6, lived with another person in a marriage-like relationship for a period at least 2 years if the application under this Act is made within one year after they ceased to live together and, for the purposes of the Act, the marriage-like relationship may be between persons of the same gender.
- [13] The date on which the parties ceased to live in a marriage-like relationship, rather than the date on which the parties cease to live under the same roof, is the date from which the one-year limitation date starts to run. It is the marriage-like relationship that gives rise to the statutory right of support : Markin v. Gysel, [2004] B.C.J. No. 560, 2004 BCSC 364. Per Joyce, J.
- [14] The making of voluntary payments in the nature of spousal support may act as an estoppel against the paying party seeking to rely on the limitation period contained in the Family Relations Act: W.A.S. v. D.W.T. [2003] B.C.J. 1302, 2003 BCSC 865, 40 R.F.L. (5th) 389.

Conflicts in the Evidence

- [15] According to the defendant, the parties have resided in separate bedrooms continuously from November, 1990 until the plaintiff moved from the shared home in March, 2009. There is evidence from the defendant that there has been no sexual relations between the parties since November, 1990.
- [16] On the other hand, the plaintiff maintains that she and the defendant shared a bedroom and a bed until approximately 1999 when the plaintiff started to sleep in the guest room. She also maintains that they had "an intimate relationship, including intercourse, up until approximately that time as well".

- [17] From the defendant's affidavit is the following quote: "While the plaintiff and I continued to share the kitchen after November, 1990 and to help ourselves to each other's food and kitchen supplies, the plaintiff and I shared a meal cooked by her no more often than once per week until March, 2009 when the plaintiff left the home and shared a meal cooked by me no more often than twice per month over the same span of time".
- [18] In contrast, the plaintiff says the following: "The defendant says, among other things, that he shared a meal cooked by me no more than once per week and that he often ate out. It is true that he often ate out, but not because we were roommates. Rather, I cooked dinner most nights, and many nights, the defendant refused to eat what I had cooked. He would wait until the meal was cooked and then would walk out. After about three nights of this in a row, I would get tired of throwing away leftovers and would not cook. The defendant would then get angry and start slamming things around the kitchen, because I had not cooked. I would then make sure to cook again the next night. I was especially careful to cook on the nights in which we had been arguing because I did not want to upset the defendant any further. It does not make sense, but it was how the defendant approached meal times".
- [19] Regarding laundry, dry cleaning and illness, the defendant says: "From November, 1990 until March, 2009 except on rare occasions the plaintiff did her own laundry and sent out her own dry cleaning and I did my own laundry and sent out my own dry cleaning. On four occasions since 1990 I have undergone surgery in a hospital. On none of those occasions has the plaintiff driven or accompanied me to or from the hospital for surgery or cared for me at home after my return from the hospital. Since November, 1990 the plaintiff has not cared for me when I have been ill".
- [20] In response to the defendant's position, the plaintiff takes the following position: "In November, 2009 [sic] I was getting fed up with vacuuming around the defendant's stuff. He refused to hang up his clothes in his bedroom or to pick up his stuff, including large boxes of WorkSafe files, in his television area. He left mounds of paper on the kitchen table and got angry if I touched it. I got so sick of this that I stopped cleaning these areas. I cleaned the rest of the house, including the kitchen (other than the table with his papers), and I did the defendant's laundry, although he did send his 100% cotton shirts out to be dry cleaned because 100% cotton clothing shrinks".
- [21] The plaintiff goes on to give her account of dealing with the defendant's illnesses: "I did not drive the defendant home from the hospital because I am a nervous driver (I only obtained my driver's licence in 1989 at age 45). Instead, the defendant and I arranged for other people to pick him up from the hospital. For example, my son Rod picked him up when he had his knee operation in December 2006. It is untrue to say that I never cared for the defendant when he was sick or after he had his operations. I do not remember him having four operations".
- [22] The above-quoted paragraphs from each of the parties' affidavits show the conflict between the respective affidavits and the positions taken by each.

- [23] How then is one to determine which position is the correct one without having the opportunity to assess the credibility and demeanour of each of them? In particular, whom do I believe?
- [24] What is most apparent is that while living together in whatever arrangement best suited the parties, the defendant was the only 'breadwinner' in the household and continued to provide for the plaintiff until she decided to leave the residence. That evidence, if nothing else is, in my view sufficient on an interim application for spousal maintenance to create an estoppel against the defendant from taking the position that the plaintiff is out of time with her application. However, there is also the evidence of the defendant and his income tax returns, which provide sufficient evidence on this interim application to suggest that the defendant deemed himself "married" and therefore still viewed the plaintiff as his spouse in 2008.
- [25] The Spousal Support Advisory Guidelines ("SSAG") provide a range of \$1801 to \$2401 with a mid-range of \$2101 based on the incomes of the parties as set out above.
- [26] Accordingly, I order the defendant to pay spousal support to the plaintiff on an interim, without prejudice basis, in the amount of \$2000 per month until further order of the court or agreement between the parties. The order shall commence on the 1st day of October, 2009.
- [27] The plaintiff also seeks an order returning certain items to her, including a 2005 Toyota Matrix motor vehicle and a computer. There is not sufficient evidence before me to determine the merits of this application. Accordingly, I adjourn this application to the trial.
- [28] The plaintiff also seeks an order that she may remove items set out in a lengthy schedule appended to her notice of motion. During argument, I indicated to the parties that the court would not engage in a battle of the "pots and pans". The parties then entered into a consent order that the plaintiff's son would attend the residence and videotape the contents so that the plaintiff could then view the videotape and make a list of what she wants from the residence established on what was in the house at the time the videotape was made. On the basis of this consent order, I take it the parties will be able to agree on who gets what from the residence prior to it being listed for sale, which I believe to be imminent.
- [29] The plaintiff shall have her costs of this application.

"Master Grant Taylor"

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