
CANADA / JUDGMENT

Stevenson v. Stevenson

2009 BCSC 857

COURT

Supreme Court of British Columbia

DECIDED

29 June 2009

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2009 BCSC 857 Stevenson v. Stevenson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Stevenson v. Stevenson,

2009 BCSC 857

Date: 20090629

Docket: E040024

Registry: Vancouver

Between:

Gail Diane Stevenson

Plaintiff

And

David George Stevenson

Defendant

Before: The Honourable Madam Justice Morrison

Reasons for Judgment

Counsel for the Plaintiff:

John Fiddes

Counsel for the Defendant:

Renata C. Hejka

Place and Date of Hearing:

Vancouver, B.C.

March 9, May 25 and June 2, 2009

Place and Date of Judgment:

Vancouver, B.C.

June 29, 2009

- [1] The defendant, David George Stevenson, has made an application pursuant to Rule 18A of the Rules of Court for a number of orders. The issue most in contention is his application to terminate spousal support. The plaintiff, Gail Diane Stevenson, seeks a final order for spousal support.
- [2] These parties were married August 11, 1979 and separated June 3, 2000. A divorce was granted April 22, 2005.
- [3] There are five children of the marriage: Amy, born May 18, 1982, now 26; she is independent with a child of her own; Matthew, born May 19, 1985, now 23 and independent; Sam, born December 16, 1986, now 22, also independent; Jesse, born April 7, 1990, now 19, attending the University of Victoria; and Aaron, born April 5, 1992, now 17, still attending high school and living in the home of his father, the defendant.
- [4] The defendant's notice of motion seeks primary residence of Aaron, child support for Aaron and Jesse, termination of spousal support, an order unfreezing the defendant's RRSP and a declaration that those funds belong to the defendant; that the RESP be placed in joint names and require both parents' signature and consent for any funds to be withdrawn; that joint funds be released to pay a MSP (Medical Services Plan) debt of \$3,867.40, and any leftover funds be divided equally; that no further child support be payable by the defendant after January 2006; an order for joint custody and joint guardianship incorporating the Joyce principles with regard to Aaron and Jesse; that all other claims of the defendant be dismissed as if heard on the merits.
- [5] This matter first came before me on March 9, 2009 for a two day hearing. The plaintiff, Ms. Stevenson, representing herself at the time, made an application for an adjournment. It was her 20th application for an adjournment throughout the history of these proceedings between the parties.

- [6] Ms. Stevenson produced a very short note from a doctor which simply said that she was not fit to carry on with the case. An identical note had been produced in December 2008 when the matter was before Madam Justice Russell. Russell J. had adjourned the matter to be heard peremptorily on the March 9 date. It was also a term of the order of Russell J. that Ms. Stevenson reveal details of her settlements with ICBC concerning some motor vehicle accidents where she had claims.
- [7] The adjournment on March 9th was granted on the conditions that I remain seized, that there be a suspension of any child maintenance orders, and costs of the day be awarded to Mr. Stevenson. Both parties were to supply all income tax returns and notices of assessment to one another for the years 2004 to 2007 within 30 days, plus all information of income from all sources for the year 2008.
- [8] Ms. Stevenson was unavailable for a date until the end of May. She advised the court that she was committed to a trip to Florida, where she would assist someone with some real estate. Ms. Stevenson was advised to have full information with regard to her income and expenses on the Florida trip with her on the new date that was set for May 25, 2009.
- [9] On May 25, Mr. John Fiddes appeared for the first time as counsel for Ms. Stevenson, and as he had just been retained, the matter was adjourned to June 2, with costs of the day to Mr. Stevenson.
- [10] The parties have now been able to resolve some matters by consent. They have agreed there will be a final order of joint custody and joint guardianship of Aaron Daniel Stevenson, born April 5, 1992, incorporating the Joyce principles with regard to guardianship. They also agree there will be an order that Mr. Stevenson will claim the child tax credit with regard to Aaron. The parties further agree there will be an order that the RESP be placed in their joint names with a requirement that both parties must consent in writing to any withdrawal of funds from the RESP. I confirm those orders.
- [11] On June 2 an order was made that costs of the day for the adjourned applications of March 9 and May 25, 2009 would be set at \$500 for each day, payable by Ms. Stevenson to Mr. Stevenson.
- [12] The order of Russell J. on December 8, 2008 included a provision that Ms. Stevenson was to produce certain medical records with regard to her medical condition, plus particulars and documentation pertaining to her receipt of an inheritance during the year 2008; she was also to produce all information and documentation which she had previously agreed to produce or had been ordered to produce pursuant to an earlier order of the court on September 22, 2008.
- [13] Previously, there had been an order by Master Donaldson on December 10, 2004 that Mr. Stevenson pay to the plaintiff \$500 child maintenance for Sam and Aaron, and \$250 for spousal support. Based on an imputed income of \$20,000 for Ms. Stevenson, she was to pay \$200 a month for child support to Mr. Stevenson.

Background

- [14] Ms. Stevenson has worked and added to her education throughout the marriage, in addition to having five children. She has been involved in the sale of securities and insurance, and had taken the six month real estate course, although not the final examination to qualify for her real estate licence. She has been a saleswoman, and has taken other courses with regard to business. International students have boarded at her home from time to time, for \$750 a month each. Due to injuries from accidents, she has also been on disability payments; she has also been on income assistance.
- [15] Her income tax returns reveal the following total income figures: 2002 - \$7,559; 2003 - \$14,622 (RRSP appears to have been cashed in for part or all of that figure); 2004 - \$13,265, of which employment insurance was \$4,300; 2005 - \$12,467; 2006 - \$21,280; 2007 - \$12,271; 2008 - \$6,505.
- [16] At the present time, Ms. Stevenson maintains that she is unable to work because of illness and problems that have arisen from her motor vehicle accidents. She shows no income for 2009. Her financial statement of February 29, 2008 shows social assistance of \$7,877, and spousal support of \$3,000. Her debts total \$76,406, of which \$30,556 includes a debt to Revenue Canada, student loans and Visa indebtedness.
- [17] Mr. Stevenson is a youth and family counsellor in Burnaby. He works for the St. Leonard's Youth and Family Services, an employment he began on August 3, 2004. Prior to that, he was working as a counsellor, but in March 2000 he suffered a back injury; in September 2002 he had to have back surgery. That interrupted his employment and earnings for a period of time. At the present time, he is also a school board trustee in the West Vancouver School District, and has been for about 15 years; in addition, he does part-time teaching at Douglas College.
- [18] Mr. Stevenson's income tax returns show the following total income figures: 2001 - \$50,144; 2002 - \$68,994; 2003 - \$47,016; 2004 - \$24,955; 2005 - \$94,503 (that included a one-time Workers' Compensation payment of \$42,811); 2006 - \$56,726; 2007 - \$67,154.
- [19] For 2008, Mr. Stevenson has income from his three sources of employment: St. Leonard's - \$44,310, West Vancouver School District - \$12,419, and Douglas College - \$19,021, for a total of \$75,750.
- [20] The parties previously sold their matrimonial home for \$254,053. At that time, Ms. Stevenson was working for Chartwell Financial Services; the parties agreed the sale funds would be invested with Chartwell. That gave a commission to Ms. Stevenson, which added to their family income. The funds invested with Chartwell were in Ms. Stevenson's name.

- [21] Later, at the request of Mr. Stevenson, Ms. Stevenson transferred \$170,000 from those sale proceeds with Chartwell into their joint names. Of that amount, it would appear that Ms. Stevenson received \$109,000 and Mr. Stevenson approximately \$60,000. There is now \$5,500 left in trust of the house sale funds.
- [22] Mr. Stevenson maintains that there is \$84,000 missing from the proceeds of the sale of the home. Ms. Stevenson deposes that those monies went to living expenses throughout those years.
- [23] Mr. Stevenson has an RRSP which is presently frozen, worth approximately \$21,000. There is also in joint names \$4,392 under the name of Quadrus Investment. Mr. Stevenson proposes that a joint family debt with MSP of \$3,867.40 be paid from the Quadrus Investment fund and the balance be divided equally between the parties.
- [24] On the contentious issue of spousal maintenance, Mr. Stevenson contends his former wife is well able to support herself; also that she has received amounts of capital from settlements with ICBC and funds from her father's estate that would allow her to make payments of child maintenance for Aaron and Jesse. Ms. Stevenson submits that she has no income and no means to pay child support, and she requires spousal support under the spousal support guidelines.
- [25] Unfortunately, Ms. Stevenson has shown a marked reluctance to produce documents, not just those requested by the defendant, but those ordered by the court. There is still no detailed rundown of where the \$84,000 went from the sale proceeds of the home. There is no documentation whatsoever with regard to a settlement that she received from her father's estate. According to the plaintiff, she agreed to a settlement with her father's second wife to receive \$30,000 in lieu of not contesting her father's will. Mr. Stevenson believes the amount was \$38,000, but is unable to confirm this with no documentation. The court is in the same quandary.
- [26] Nor is there any documentation on funds that Ms. Stevenson has received from any settlements with ICBC with regard to her several accidents. Finally, she was ordered to provide details of her income and expenses from her recent trip to Florida, and again, no documents or details have been produced.
- [27] It appears Ms. Stevenson does not declare any income she receives from having foreign students board at her home over the years. There is thus no way to document accurately that income.
- [28] The plaintiff would certainly appear to have the intelligence and abilities to earn a suitable living for herself. She received her mutual fund licence and insurance licence sometime in 1998. She has a history of being industrious, working from time to time as she was also raising five children.

- [29] There is medical evidence before the court that Ms. Stevenson now has medical problems. Whether those medical problems began before the parties were divorced or after could be questioned. She lost a child in 1998, and since the separation, she has been found to be entitled to disability insurance by Great-West Life, and also entitled to Employment Insurance.
- [30] In October 2007, someone writing anonymously "To Whom It May Concern", contacted the cooperative housing society where the plaintiff lived, to indicate that Ms. Stevenson was refusing to allow two of her children to live there with her, and she was subsequently evicted from this low rent housing complex. The defendant denies that he was the author of the letter.
- [31] Earlier, on May 25, 2007, an anonymous typewritten letter was sent to the Canada Pension Plan Disability Benefits section, "To Whom It May Concern", and that letter stated, in part:
- I am aware that the above named individual has applied or is in the process of applying for CPP Disability Benefits. It is important that adjudicators of this file have the following information.
- The purpose of providing this information is to ensure that all facts and circumstances are taken into consideration as it is believed that the applicant will not be completely forthcoming, and to ensure that should the applicant be found to be entitled to CPP disability benefits, all payments to her children go directly to the children who are of the age of majority and are full-time students... No payments for the children should be made to the applicant.
- It is extremely possible that the applicant will attempt to receive personally, disability payments for her minor children by stating that they are living with her and under her care and control. This is not true; Should any of the funds payable with regard to her minor or adult children be paid to the applicant, the children will not receive any benefit from these funds. The applicant has stolen from two of the children's bank accounts in the past and has a history of using funds available to her for them, for her personal benefit rather than for the children's benefit.
- The applicant, Gail Stevenson, owes the federal government thousands of dollars in overpayments of Child Tax Benefits which she wrongly claimed for a period of time .
- [32] The lengthy letter then goes on to set out in detail very similar material which the defendant has set out in his several affidavits. The lengthy letter to the Canada Pension Plan is frankly astounding in its vitriol. It sets out facts and details that could be known only to either one of the parties.
- [33] A further letter, also To Whom It May Concern, was sent to the same Canada Pension Plan Disability Benefits program, dated January 3, 2008, purporting to give "an update with regard to the appeal of Gail Diane Stevenson", after she had been denied her initial application for CPP disability benefits. It is equally harsh and detailed, and again shows knowledge that only the plaintiff or the defendant could have.

- [34] The plaintiff deposes that in November 2008, her former landlord showed her a letter typewritten and unsigned that said, in part, "To all creditors of Gail Stevenson please take note she has just received an inheritance, an ICBC settlement, should you wish to take legal action against her."
- [35] In that same month, November 2008, Ms. Stevenson was advised by income assistance authorities that they had received an anonymous email advising that she had received an ICBC settlement and that she had RRSPs. She had to provide her banking records as a result.
- [36] Mr. Stevenson denies that he was ever the author of any of these letters or communications. In any event, Ms. Stevenson was not successful in obtaining CPP disability benefits. Her present financial picture indicates she is in need. She has debts and few assets, owns no home, has no job and has had health problems.
- [37] These parties are clearly bright and well educated. However, they evidence a dislike and distrust of one another to an unhealthy degree. Ms. Stevenson accuses her former husband of being aggressive and controlling; he accuses her of faking her illnesses and expecting to be supported without ever having to work.
- [38] The plaintiff, born January 25, 1956, is now 53 years of age. From her past history, it would appear she has considerable skills in dealing with people and in sales. It is important that she establish herself permanently in the workplace. She has an obligation to become self-sufficient. She might want to remind herself that success on one's own is the best revenge.
- [39] Mr. Stevenson has been a good provider throughout not only his married life but also post-separation. He is dedicated to making sure the children are looked after and that they have an opportunity for higher education. He has three jobs, and feels it is not fair that he should have to support his former wife nine years after their separation. But it must be noted that at the time the parties separated, the children were 8, 10, 14, 15 and 18.

Conclusion

- [40] Given the facts before me, I cannot accede to the husband's request to terminate spousal support. For guidelines purposes, the husband's grossed up income is \$78,741. With one child age 17, and one older than 18, Mr. Stevenson will pay spousal maintenance commencing June 1, 2009 and thereafter on the first day of each and every month.
- [41] In consulting the spousal support guidelines, there appeared to be conflicting amounts. I have arrived at the monthly figure of \$2,159 for spousal maintenance. There is liberty to apply if that figure is inaccurate, and the parties are unable to agree on the correct amount.
- [42] There will be a review of spousal maintenance 18 months from the date of this order, at the instance of either party.

- [43] Ms. Stevenson will pay child maintenance to Mr. Stevenson for Aaron and Jesse, based on her income from her spousal maintenance, pursuant to the child support guidelines, commencing June 1, 2009, and thereafter on the first day of each and every month.
- [44] There will be an order that the RRSP of Mr. Stevenson is his sole property, in view of the distribution of other family assets and family debts. The debt to MSP of \$3,867.40 is a joint family debt, and will be paid from the Quadrus investment funds of \$4,392.91. The balance of the Quadrus funds after payment to MSP will be divided equally between the parties.
- [45] There will be an order that the defendant is no longer liable for child support payments to the plaintiff as of January 2006.
- [46] There will also be an order that all other claims of the defendant are dismissed as if heard on the merits.
- [47] Each party will pay their own costs.

"Morrison J."

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Prepared on 26 October 2026 · Esheria