
CANADA / JUDGMENT

Sveinson v. Sveinson

2009 BCSC 1008

COURT

Supreme Court of British Columbia

DECIDED

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2009 BCSC 1008 Sveinson v. Sveinson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sveinson v. Sveinson,

2009 BCSC 1008

Date: 20090724

Docket: 12603

Registry: Cranbrook

Between:

Isobel Marie Sveinson

Plaintiff

And

Michael Marino Sveinson

Defendant

Before: The Honourable Mr. Justice Melnick

Reasons for Judgment

(In Chambers)

Counsel for Plaintiff:

G. N. Kent

Counsel for Defendant:

R. S. Miles

Place and Date of Hearing:

Cranbrook, B.C.

June 25, 2009

Place and Date of Judgment:

Cranbrook, B.C.

July 24, 2009

- [1] This is an application by Michael Marino Sveinson ("Mr. Sveinson") to cancel any further obligation he has to pay spousal support to his former wife, Isobel Marie Sveinson ("Ms. Sveinson"). In the alternative, he seeks orders reducing the amount of support and fixing a termination date for its payment. It is agreed that there has been a change in circumstances in that Ms. Sveinson is now in a marriage-like relationship. Mr. Sveinson adds that Ms. Sveinson will soon turn 65 and will be receiving an amount of pension and that he, like her, would like to soon retire. He is also in another relationship.
- [2] Ms. Sveinson applies to have Mr. Sveinson provide proof of his maintaining certain insurance coverage, to which he agreed in a consent order detailing their agreement with respect to spousal support and division of assets upon their separation. In addition, she wishes to be provided with details of any changes in a certain Retirement Transition Plan ("RTP"). Mr. Sveinson says he cannot do so for reasons beyond his control due to the policies of his employer. Thus, he argues, although he agreed to provide the insurance and the information Ms. Sveinson requests, he is unable to do so.

I. Background

- [3] The parties had been married for 23 years when they separated in October 2001. Ms. Sveinson was then 57, Mr. Sveinson 52. Ms. Sveinson will turn 65 in September. At that time, she will receive Old Age Security ("OAS") and Canada Pension Plan ("CPP") benefits of about \$900 a month in total. She will then likely be able to access over \$190,000 in retirement savings plan should she choose to do so.
- [4] Ms. Sveinson is in a marriage-like relationship with a Mr. Phil Vanderberg, 67, who works part-time as a contract pharmacist. They live part-time in Arizona and part-time in Cranbrook in the former matrimonial home. It is Mr. Sveinson's belief that they spend a lot more time in the United States between Arizona and Idaho than they do in Canada, notwithstanding the requirement that Ms. Sveinson live here at least six months to maintain health coverage. Ms. Sveinson denies this.

- [5] In any event, Mr. Vanderberg contributes to the finances of the relationship; although, not nearly to the extent believed by Mr. Sveinson. Like the issue of their residence, that matter is not capable of being definitively resolved on this application.
- [6] The parties have no dependent children at this point. Ms. Sveinson is largely dependent for income on the \$4,750 a month spousal support provided to her by Mr. Sveinson pursuant to the consent order referred to above, which was made by Master Groves on December 12, 2002, at a judicial case conference. That and, of course, her property, her investments, and the contributions of Mr. Vanderberg.
- [7] It is not disputed that, at the time of and since separation, Mr. Sveinson has earned a very good income (except, he maintains, this year due to the financial crisis taking its toll on his clients' investments and thus his income). Mr. Sveinson is a financial consultant with CIBC Wood Gundy. His earnings have been dramatically reduced, he maintains, from figures in the range of \$350,000 to \$450,000 a year, to what he projects will be something much less based on earnings of \$48,000 in the first five months of his employer's financial year (Ms. Sveinson has some doubt about that figure). Mr. Sveinson's counsel suggests he will earn only \$150,000 to \$200,000 this year.
- [8] As he is now 60 years old, Mr. Sveinson would like to retire. According to him, Ms. Sveinson has been retired since age 57 and he would appreciate the same privilege. In Mr. Sveinson's view, Ms. Sveinson could well have worked after their separation as she, too, was qualified as a financial consultant but she chose to remain retired. (Mr. Sveinson had worked as an assistant to Ms. Sveinson until shortly before their separation when she effectively turned her job over to a family member who needed employment. Much of her then employment income had been the result of income-splitting with Mr. Sveinson to reduce the overall family liability for tax). Ms. Sveinson maintains that she never had the confidence to advise clients on her own and, in any event, health problems prevented her from working. These problems certainly have not kept her off the golf course, suggests Mr. Sveinson, until the lead-up to this application.
- [9] One of the significant (for this application) provisions of the consent order dealt with the division between the parties of the future sale of Mr. Sveinson's book of business as a financial consultant with CIBC Wood Gundy upon his retirement or leaving that position:
- 8) The defendant shall promptly pay to the plaintiff one-quarter of whatever monies or benefits he may from time to time receive as a result of:
- (a) the sale, transfer or handing over of the defendant's book (that is the value, if any of supervising the investments in the various accounts which the defendant has under his supervision from time to time (the "defendant's Book")); or,
- (b) whatever monies or benefits he might receive from time to time upon or after retirement which is related to or in recognition of the defendant's Book; and,

that the defendant is a trustee of whatever monies are payable to the plaintiff under this clause and owes to the plaintiff all of the duties of a trustee to a trust beneficiary in respect of such monies.

II. Discussion

- [10] One cannot simply look at the disparity in the parties' incomes, argued counsel for Mr. Sveinson. What is important is that with her relationship with Mr. Vanderberg and her assets and investments, Ms. Sveinson can maintain a comfortable lifestyle without the need of spousal support from Mr. Sveinson. Counsel for Ms. Sveinson disagrees, arguing that, if one were to compare their present incomes using the Spousal Support Advisory Guidelines ("SSAG"), Mr. Sveinson has been paying half of that mandated by the SSAG since separation and all she asks is that he continue to pay the \$4,750 a month until he actually does retire, at which time support can be revisited in light of what their respective incomes will be as a result of the division between them of Mr. Sveinson's book of business pursuant to the provisions of the RTP. Say what you will about the SSAG, replied Mr. Miles for Mr. Sveinson, they do not apply on a variation application (see: *Yemchuck v. Yemchuck*, 2005 BCCA 406; and *Tedham v. Tedham*, 2005 BCCA 502) except as a useful tool to assess the quantum and duration of spousal support. Mr. Kent for Ms. Sveinson countered that with the suggestion that the SSAG are relevant if a cautious approach is used on a case-by-case basis (see: *Beninger v. Beninger*, 2007 BCCA 619; *J.M. v. L.D.M.*, 2008 BCSC 1235; and *Bockhold v. Bockhold*, 2009 BCSC 130).
- [11] In reality, Ms. Sveinson does not argue for the application of the SSAG, but rather simply uses them to illustrate that, had they been applied when the consent order was made, Mr. Sveinson would have been paying a lot more than he is now. She only asks for a continuation of the support he has been paying her.
- [12] I accept that when they divided their assets, they were divided roughly equally with a slight advantage going to Ms. Sveinson. I also accept that one of the assets she received, the family home, has increased substantially in value since separation. On the other hand, Mr. Sveinson's income (until this year at least) has been markedly higher than the combined incomes of Ms. Sveinson and Mr. Vanderberg, which has enabled him to rebuild his financial life. At the present time, Mr. Sveinson and Ms. Sveinson are on an approximately equal footing with respect to their assets (when the contributions of their marriage partners are considered).
- [13] A review of the whole of the consent order reveals what I conclude is a comprehensive plan to provide for the future of both of the parties through to and including the time of their retirements. That is because both parties, having worked in the business of financial consulting, would undoubtedly have been well aware that what was to principally provide for Mr. Sveinson in his retirement (and Ms. Sveinson in hers at the time of his retirement) was the proceeds of the sale of his book of business as dictated by the terms of the RTP. The deal they struck in that regard was that she would get one-quarter of it and he would get

three-quarters of it. Because of that division, presumably other assets were distributed the way they were and maintenance was paid in the amount it was.

- [14] This is not a case where it is necessary, or appropriate, to apply compensatory principles. Ms. Sveinson, since shortly after the separation, has been living with Mr. Vanderberg in a comfortable retired (semi-retired in Mr. Vanderberg's case) lifestyle. She has no disadvantage for which she requires compensation. On the other hand, neither can it be said that Mr. Sveinson has now fulfilled all his commitment to support her just because she is turning 65, and will have some modest government pension income.
- [15] The consent order did not say that support would end when she turned 65. That said, it also did not contemplate that she would be living in a permanent marriage-like relationship with a person who contributes in a substantial way to their family pool of income.
- [16] Given the changes that have occurred in both their lives since their separation and, at the same time, honouring the plan and direction of the consent order that represents the deal the parties made, I conclude that Mr. Sveinson should continue to pay \$4,750 a month spousal support until October 2009, when it will be reduced by the amount of OAS and CPP Ms. Sveinson is then entitled to receive (approximately \$900 a month). She must apply for these benefits and if she declines to do so, Mr. Sveinson may still deduct from the spousal support the amount she would otherwise have been eligible to receive.
- [17] I accept that Mr. Sveinson is unable to provide the insurance coverage he agreed, by the consent order, to provide. That provision is frustrated for reasons beyond his control. Further, I accept that he is, for policy reasons of his employer, not able to provide Ms. Sveinson with a current copy of the RTP. That being the case, Ms. Sveinson has no way of knowing if its provisions differ in any substantial way from the copy she was provided at the time the parties entered into their consent order. That is, will anything affect what she will obtain as part of her 25% of the proceeds of sale of Mr. Sveinson's book of business? But, as far as that goes, Mr. Sveinson will not know exactly what he will get either, until it is sold. Further, he says he wishes to retire, but does not say when. Undoubtedly, the value of his book will depend on the state of the economy and the number of clients he has and the value of their investments at the time he retires. In these circumstances, it is only reasonable for Mr. Sveinson to continue to pay spousal support in the amount I have noted above until he does retire, his book of business is sold, and the 25% of its value paid to Ms. Sveinson. At that time, his obligation to continue to pay spousal support will cease, subject to it being open to Ms. Sveinson to apply to have him continue to pay support in some amount if she can then demonstrate that she is in a position of financial disadvantage that could not have been reasonably foreseen when she entered into the deal with Mr. Sveinson that is reflected in the consent order. As her circumstances presently exist, it is difficult to imagine such disadvantage but that may well depend on the ultimate value to her of her share of the sale proceeds of the book. Of course, Mr. Sveinson may not take any step that would have the effect of devaluing the ultimate value of the book as clearly it was contemplated in the consent order as being the basis for providing capital for both the

parties' retirements.

III. Conclusion

[18] Mr. Sveinson's application is allowed to the extent that the spousal support of \$4,750 he is currently paying will be reduced by approximately \$900 a month effective October 2009, and his obligation to pay spousal support will cease (subject to what I have noted above) effective the date when he pays to Ms. Sveinson the 25% of the value of his book of business upon its sale or other disposition.

[19] Ms. Sveinson's application is dismissed.

[20] Counsel for the parties may address the question of costs at a time to be arranged or in writing, if that is more convenient.

Melnick J.

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