
CANADA / JUDGMENT

Tetreault v. Tetreault

2013 BCSC 2585

COURT

Supreme Court of British Columbia

DECIDED

25 July 2013

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2013 BCSC 2585 Tetreault v. Tetreault

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Tetreault v. Tetreault,

2013 BCSC 2585

Date: 20130725

Docket: 08-4947

Registry: Victoria

Between:

Anne Catherine Tetreault

Claimant

And:

Daniel Michael Tetreault

Respondent

Before: The Honourable Mr. Justice G. R. J. Gaul

Oral Reasons for Judgment

(In Chambers)

Counsel for the Claimant:

N. Silzer

Appearing on his own behalf:

D.M. Tetreault

Place and Date of Hearing:

Victoria, B.C.

July 25, 2013

Place and Date of Judgment:

Victoria, B.C.

July 25, 2013

- [1] THE COURT: I understand both positions on this application. Here are my reasons. They may not be very elegant, but I think both sides need reasons right now, so I will give them to you.
- [2] In her application filed 17 June 2013, the claimant, Ms. Tetreault, seeks three things. First, that the child support provisions in the consent order pronounced by Madam Justice Griffin on 16 February 2011 be varied so that they coincide with Mr. Tetreault's current Guidelines income. Second, Ms. Tetreault seeks a variation to the proportional sharing of s. 7 expenses so that it reflects Mr. Tetreault's new Guidelines income. Finally, Ms. Tetreault asks that a figure be determined and set for the arrears in s. 7 expenses that she says have accrued as a result of the 2011 consent order.
- [3] The parties were married in March 2000. They have three children, aged 11, 10 and 7 respectively. In August of 2008, the parties separated.
- [4] On 9 November 2009, the parties obtained a final order of divorce that addressed all aspects of this family litigation, including custody of the children and child support. This final order was varied by the 2011 order of Madam Justice Griffin.
- [5] Ms. Tetreault is 44 years old. Mr. Tetreault is 41 years old. Pursuant to the divorce order, Ms. Tetreault has sole custody of the children. The parties share joint guardianship of the children.
- [6] Both parties are of very modest means. Ms. Tetreault works as a part-time receptionist in a chiropractor's office. According to her most recent financial statement, she earns approximately \$17,000 per year.
- [7] Mr. Tetreault at one time worked and earned a living as a kinesiologist. That ended when he lost that employment. He has made significant efforts to find work, but to no avail. He has now completed retraining and is about to embark upon a new career as a cardiology technician.

- [8] Mr. Tetreault has not yet taken the required exams to become a certified cardiac technician. Consequently he is still only an uncertified cardiac technician. That has had an impact on his ability to work and the number of hours he has been able to obtain. I accept that he was prepared to write his exams in April this year, but on account of difficulties he encountered with FMEP, he did not. I do not say that as a criticism of FMEP, but I understand why Mr. Tetreault was not anxious to spend the exam fees when the actions of FMEP could have prohibited or impeded his ability to write them. In the result, he has postponed writing the exams until September or later in the fall.
- [9] In the meantime, Mr. Tetreault has very recently found work in the area of physiology or kinesiology. He is to be commended for the efforts he has made to find work and to fulfill his child support obligations. However, he has fallen into arrears and it is now time to address them.
- [10] As I understand it, Mr. Tetreault does not dispute that his and Ms. Tetreault's respective Guidelines incomes should be reconsidered. His dispute is with the figures Ms. Tetreault says should be used.
- [11] Mr. Tetreault has just started a new job and is therefore on probation. Given his determination and qualifications, one would hope and expect that he will be able to maintain this work until he has transitioned to his new, more remunerative employment as a cardiac technologist.
- [12] In light of his current circumstances, Mr. Tetreault submits that his Guidelines income should be around \$28,000. He also maintains that Ms. Tetreault's Guidelines income should be around \$31,000 or \$32,000.
- [13] Realistically, Mr. Tetreault should be able to earn an income of about \$31,000. That takes into consideration his present employment status as well as what it should be in the not too distant future. In my opinion, his Guidelines income for the purpose of determining child support should be varied effective 1 August 2013 and that the income should be set at \$31,000.
- [14] In determining the second issue, the question of special expenses, I need to consider Ms. Tetreault's current Guidelines income so that the parties pay their proper share of these expenses.
- [15] In my respectful opinion, the suggested Guidelines income for Ms. Tetreault of \$16,957 is too low. During the course of the hearing of this application and as a result of questions I asked counsel for Ms. Tetreault, it became apparent that Ms. Tetreault earns a very modest supplemental income in addition to her employment income from the chiropractor. The situation does not surprise me. Ms. Tetreault has been working for the same person for five years. Given her family and childcare obligations, Ms. Tetreault has a very flexible work arrangement with her employer. She is fortunate in this regard. However, that flexibility has also allowed her to earn additional income and in my view that should be factored into the

calculation of her Guidelines income. For the purposes of determining her share of the children's s. 7 expenses, I find Ms. Tetreault's Guidelines income is \$19,000.

- [16] Mr. Tetreault submits that there should be no variation to the current court order and that the parties should continue to share the expense equally on a 50/50 basis. In my opinion, the difference between the parties' respective Guidelines incomes justifies a readjustment to amounts each pays for the children's s. 7 expenses.
- [17] Let me pause here. So that my order is clear, I will note that paragraph 1 of Ms. Tetreault's notice of application is granted and the consent order of 16 February 2011 is varied to reflect a new Guidelines income for Mr. Tetreault of \$31,000. As for paragraph 2 of the notice of application, that relief is granted as well. The February 2011 order is further varied to reflect Mr. Tetreault's Guidelines income as well as a Guidelines income for Ms. Tetreault of \$19,000. Effective 1 August 2013, the parties will share the costs of their children's s. 7 expenses in proportion to their respective Guidelines incomes.
- [18] Finally, with respect to the alleged arrears in s. 7 expenses Mr. Tetreault owes for the years 2011 and 2012, I think it is unrealistic and unfair for Ms. Tetreault to claim all of the expenses that she has listed. There was very little discussion or consideration of Mr. Tetreault's situation before the expenses were incurred. During these years, Mr. Tetreault was attempting to re-establish himself after losing his employment. While the child may very well need braces, I am not persuaded they were necessary or required at the time and I think it was unwise of Ms. Tetreault to proceed as she did with the expectation that Mr. Tetreault would pay 50 percent of the costs.
- [19] I also have concerns about some of the other expenses Ms. Tetreault is claiming. I recognize that children need to be active and activities cost money. Nevertheless, these expenses must be reasonable and incurred after considering the financial situations of both parents. In my view, the amounts claimed by Ms. Tetreault are excessive. Having private swimming lessons for the children is a wonderful idea, but in light of the parties' respective financial circumstances, I do not think it was financially wise or considerate of Mr. Tetreault's situation.
- [20] With respect to the outstanding 2011 s. 7 expenses, I find it would be fair in the circumstances of this case that Mr. Tetreault pay \$750. For the 2012 expenses, I find an appropriate amount for Mr. Tetreault to pay would be \$1,250.
- [21] In the result, and addressing paragraph 3 of the notice of application, I will order Mr. Tetreault's arrears in s. 7 expenses be set at \$2,000, effective 31 December 2012.

[Submissions of the Parties]

- [22] My order will consist of the terms I have articulated in these reasons. In my opinion, each side should bear their own costs.

"G.R.J. Gaul, J"

The Honourable Mr. Justice G. R. J. Gaul

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