
CANADA / JUDGMENT

Thompson v. Thompson

2006 BCSC 130

COURT

Supreme Court of British Columbia

DECIDED

26 January 2006

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2006 BCSC 130 Thompson v. Thompson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Thompson v. Thompson,

2006 BCSC 130

Date: 20060126

Docket: 29608

Registry: Prince George

Between:

Margaret Kathleen Thompson

also known as Margaret Thompson

Plaintiff

And

James Thomas Thompson

also known as Thomas James Thompson

Defendant

Before: The Honourable Mr. Justice Chamberlist

Reasons for Judgment

In Chambers

Counsel for the plaintiff:

S.K. Kristan

Counsel for the defendant:

D. Lindsay

Date and Place of Trial/Hearing:

November 7, 2005

Prince George, B.C.

Written submissions by the plaintiff:

November 21, 2005

Written submissions by the defendant:

November 25, 2005

INTRODUCTION

[1] In these proceedings the applicant defendant has returned his notice of motion, filed October 4, 2005, seeking the following relief:

1. The order for spousal maintenance set out in the order of Mr. Justice Parrett pronounced June 12, 2000 be reviewed and the defendant's obligation to pay spousal maintenance to the plaintiff be terminated retroactive to January 1, 2005;
2. Alternatively, that the spousal maintenance be reduced;
3. Costs.

[2] While the motion itself relies on ss. 9, 93 and 96 of the Family Relations Act and ss. 15.2 and 17 of the Divorce Act, I will deal with the application under the provisions of the Divorce Act given that there appears not to be any reference to the Family Relations Act or the Divorce Act in the order of Mr. Justice Parrett, but I will rely on the fact that the proceedings in which the order was made were in fact divorce proceedings under the Divorce Act.

BACKGROUND

[3] The parties were married on November 9, 1968 and separated on or about May 9, 1994. The applicant is presently 62 years of age and the plaintiff is 58 years of age.

[4] The marriage itself was a traditional marriage in that Mr. Thompson was the breadwinner and Ms. Thompson, for all intents and purposes, managed the family home and was primarily a stay-at-home mother with the three children of the marriage, all of whom are now self-sufficient.

- [5] Following the parties' separation I ordered interim spousal maintenance on January 16, 1995 in the amount of \$2,000.00 per month commencing January 31, 1995.
- [6] The issue of permanent spousal maintenance was dealt with by way of a report and recommendation made by Master Baker on February 16, 2000 (the "report"). The report was adopted and resulted in a consent order being made by Mr. Justice Parrett on June 12, 2000, requiring that the defendant pay spousal maintenance in the amount of \$2,500.00 per month commencing January 23, 1998 and monthly thereafter with the quantum to be reviewed at any time after January 1, 2005.
- [7] At the time of the report the defendant was a 50% shareholder in Quesnel Tire Service Limited, which provided the income for the family unit. At the time of the report Mr. Thompson's annual income was some \$76,500.00.
- [8] As at 1999, the plaintiff was 52 years of age and had completed grade 11 and only part of grade 12. With the exception of a brief course in computers she had had no formal training and no certificate for any particular skill. Master Baker found, in his report and recommendation, that the plaintiff's needs at the time were some \$2,895.00 but he also found that the plaintiff had the ability to earn \$1,600.00 per month.
- [9] At the time of the consent order made by Mr. Justice Parrett, Ms. Thompson was employed by Gillin Accounting Ltd. In Master Baker's report and recommendation, of February 16, 2000, he refers to the circumstances of the asset settlement commencing at para. 10:
- [10] With the assistance of counsel the parties were able to negotiate the division and settlement of family assets. By the terms of a consent order on March 10, 1998, the distribution was as follows.

[11] To the Petitioner:

the family home;

1988 Crown Victoria automobile;

chattels and contents of the family home;

two Bank of Montreal accounts;

64 of 200 issued shares in Dragon Lake Golf Course Limited ("the Golf Course");

shareholders loan due the respondent by the Golf Course.

[12] To the Respondent:

chattels and personal effects in his possession;

Royal Bank account;

A promissory note due from Ken Richards respecting the sale to Ken Richards of One Minute Muffler Limited;

The respondent's shares in Quesnel Tire Service Limited;

Shareholders loan due the respondent by Quesnel Tire Service Limited;

Registered retirement savings plans with Manulife.

- [13] The parties agreed to divide their Canada Pension Plan credit equally and the petitioner assumed the respondent's obligation to Mr. James Mitton respecting the purchase of his interest in the Golf Course.
- [14] The parties retained the services of a chartered accountant to value the corporate assets (ie. the Golf Course and Quesnel Tire Service Limited) as at the 31st of May 1995, which values were established as follows: the respondent's shareholdings in the company were fixed at \$398,000 net of tax; and the respondent's shareholding in the Golf Course was valued at \$59,000 net of tax. To equalize the distribution of assets, the respondent was required to and in fact did pay the petitioner \$107,500.
- [10] In March 2004, Mr. Thompson, together with his 50% shareholder, sold their 100% interest in Quesnel Tire Service Limited and Mr. Thompson received net sale proceeds of approximately \$619,500.00. He utilized his net sale proceeds -
1. \$380,000.00 to investments;
 2. \$45,000.00 to an RRSP in his name; and
 3. \$45,000.00 to an RRSP in his current wife's name.

The balance of the net proceeds were utilized to pay current debts and in particular the balance outstanding on a loan he had taken out to finance the property division which was accomplished in 2000.

- [11] Mr. Thompson's taxable income for 2004 represented his income with Quesnel Tire and capital gains related to the sale of his shares in Quesnel Tire. His last day of employment with Quesnel Tire was January 31, 2005. He has not had any employment income since February 2005. Since February 2005 his sole source of income has been his Canada Pension Plan benefits and his interest income as a result of his investments. He currently receives Canada Pension Plan benefits in the amount of \$481.19 per month. His property and financial statement, filed July 7, 2005, attaches to it his 2003 and 2004 Income Tax returns. His net income for 2004 (line 150) shows an income of \$76,776.00, while his 2003 total income (line 150) was \$107,376.00.
- [12] He redeemed some \$53,000.00 in RRSP's to pay his 2004 income tax.

- [13] At the present time, according to his property and financial statement, his total assets are some \$486,868.89, made up of a 1/3 interest in property valued at \$14,700.00; a 1999 GMC pickup valued at \$13,000.00; and financial assets totalling some \$459,168.00. It appears that his only debt is some \$14,700.00 which he attributes to debt owing on his 1/3 interest in the property referred to above. Therefore, at the present time his income is his Canada Pension Plan benefit in the amount of some \$481.19 plus the interest he earns from his investments.
- [14] Mr. Thompson has lived in a commonlaw relationship since on or about 1997 and lives in a house owned by his commonlaw spouse in Quesnel. His commonlaw spouse is a billing clerk and Mr. Thompson and his commonlaw spouse maintain separate finances. He pays her \$500.00 per month to cover his portion of the basic housing expenses and they both contribute to food and other living expenses equally.
- [15] Mr. Thompson has not paid any spousal maintenance to the plaintiff since January 1, 2005, due to his retirement and what he describes as a minimal income since that time. In or about April 2005, Mr. Thompson was contacted by FMEP advising that he had arrears of spousal maintenance and that they would be commencing enforcement proceedings. As a result, this application has been made by Mr. Thompson.
- [16] Mr. Thompson's interest income arising from his investments are approximately \$732.00 per month, making a total monthly income of (\$481.19 + \$732.00) \$1,213.19, or annual income of \$14,558.28.
- [17] Ms. Thompson is currently aged 58 and will be 59 on August 23, 2006. She continued her employment with Gillin Accounting Ltd. until December 6, 2004. She was also employed by the Dragon Lake Golf Course in which she is a substantial shareholder. She too has been in a lengthy commonlaw relationship and her commonlaw spouse continues to reside with her in her residence.
- [18] As indicated, Ms. Thompson left the employment of Gillin Accounting Ltd. on December 6, 2004. The only reason given for the termination of that employment is found in her affidavit filed September 14, 2005, where she said "the work atmosphere became stressful and office politics made my position dissatisfactory". She indicates that her present income consists only of her hours worked combined with her commonlaw spouse's hours. She states that she anticipates the total income she will be receiving for the year 2005 to be \$10,000.00. At para. 8 of the same affidavit she referred to the hours that she receives from her commonlaw spouse as being his contribution to the household. She states that "such a contribution also assists to increase my Canada Pension Plan Benefits when I become eligible to receive them". She, like Mr. Thompson, advises that she and her commonlaw husband maintain separate finances.

- [19] In her property and financial statement filed September 14, 2005, she discloses assets as follows - her present home valued at \$109,600.00; her vehicle valued at \$5,000.00; and her investments valued at \$160,673.00. She also lists her 32% interest in the Dragon Lake Golf Course Ltd. which she acquired as part of the property division.
- [20] As such, her total assets are some \$275,000.00 plus the interest in the Golf Course. She discloses no debts.

ISSUES

- [21] The sole issue involved in this application is the determination of whether or not the defendant should be required to encroach on his capital in order to pay ongoing spousal support to the plaintiff.
- [22] The background information previously set forth can be further summarized, as follows -
- a) The current income of Ms. Thompson as set out in her sworn financial statement is \$11,680.00 per year. She voluntarily ceased her regular employment in December 2004. In 2004 her income tax return discloses employment income in excess of \$24,000.00. There is no evidence to suggest she is unable to seek other employment similar to that which she enjoyed with her previous employer for many years.
 - b) The defendant's current income from Canada Pension Plan benefits are some \$5,772.00 plus his investment income.
 - c) The plaintiff also has potential investment income, but she has not provided any evidence with respect to the value of her shares in the Golf Course.
 - d) The asset positions of the two parties take into account that there was an equal division of assets between them early in these matrimonial proceedings. In coming to that division, Mr. Thompson acquired his most significant asset, being his shares in Quesnel Tire and which he has now sold and appears to be the sole basis for his investment income.
 - e) There is no evidence that Ms. Thompson has wasted or otherwise acted imprudently with respect to the assets she received as a result of the property division and her not providing a value of her 32% interest in the Dragon Lake Golf Course has made any analysis of her financial position impossible.

ANALYSIS

- [23] There is no doubt that this marriage was a long and traditional marriage.
- [24] Section 15.2(6) of the Divorce Act recognizes that there are four equally important objectives of a spousal support order; the three relevant ones to this application being:
- a) recognize any economic advantages or disadvantages to the spouses arising from the marriage or its breakdown;

...

- c) relieve any economic hardship of the spouses arising from the breakdown of the marriage; and
- d) insofar as practicable, promote the economic self-sufficiency of each spouse within a reasonable period of time.

[25] Under s. 15.2(4) of the Divorce Act the court is obligated to also consider the condition, means, needs and other circumstances of each spouse including:

- a) the length of time the spouses cohabited;
- b) the functions performed by each spouse during cohabitation; and
- c) any order, agreement or arrangement relating to the support of either spouse.

[26] In the circumstances of this case, Ms. Thompson recognizes and acknowledges that Mr. Thompson has had a change in circumstances regarding his employment and recognizes that the amount of support at the present level as ordered by Justice Parrett may not be appropriate.

[27] Ms. Thompson submits notwithstanding that, that although Mr. Thompson has retired, he still has an obligation to utilize his investment monies to render an income to the best of his abilities. I suspect that what is being suggested is that the obtaining of an annuity would be more appropriate than simply receiving investment income.

[28] I was faced with a similar issue in *Prendergast v. Prendergast*, 2004 BCSC 1213, 2004 CarswellBC 2076. In that decision I referred to the recent decision of *Leskun v. Leskun*, 2004 BCCA 422, where Southin J.A., speaking for the court in response to an alleged error made by the trial judge, said this at paras. 41 to 43:

[41] I next address the second alleged error, that is that the learned judge erred in concluding that the husband was required to use capital to pay ongoing spousal support.

[42] There is no such proposition of law.

[43] Capital is part of "means" and the Divorce Act requires the means of each party to be addressed.

[29] In this case therefore I am obliged to consider the means of the parties. I do not find the property and financial statements to be helpful in this regard.

[30] What I do find helpful however is the late James G. McLeod's comment on my decision in *Prendergast*, found at 7 R.F.L. (6) 330, where Professor McLeod stated:

... There is limited scope to the Supreme Court of Canada's "caution" against double dipping or double accounting in *Boston v. Boston*, 2001 CarswellOnt 2432/2433, 17 R.F.L. (5th) 4 (S.C.C.). A payor's best chance of varying support after retirement usually will depend on convincing a court

that his or her reduced post-retirement income amounts to a material change in circumstances. Even then, many courts appear unwilling to reduce support to reflect the full extent of a payor's drop in income if doing so would leave a pay[ee] with insufficient funds, especially if the payor has a new partner who contributes to household expenses.

[31] In this case, I am satisfied that there has been a material change in circumstances as a result of Mr. Thompson's disposing of his interest in Quesnel Tire.

[32] Later in his comments on Prendergast, Professor McLeod stated:

A court should not reduce support simply because a payor's income has reduced upon retirement. Rather, the court should consider the totality of the parties' circumstances at the time to decide whether a variation is appropriate having regard to the statutory support objectives and, if so, the extent of such variation. . . .

[33] Further in his commentary on Prendergast, Professor McLeod agreed that the same objections to double dipping apply where a defendant seeks support from any previously equalized property. He stated:

. . . The essence of double dipping is that it is unfair to force a person to share the same asset twice - - once in the property accounting and again in assessing his or her ability to pay support. As a corollary, forcing double dipping means that one person has to share his or her equalized assets while the other does not, meaning that the first person "paid" for his or equalized assets through the property accounting but does not get to keep what he or she "purchased".

In the following para. he continued:

That being said, the courts have acknowledged that despite the patent unfairness of double dipping, a court may order support from equalized assets if the payee has not overcome the disadvantage arising from the relationship or needs additional support to maintain himself or herself. . . .

[34] Applying these considerations to the case at bar I must say that I am in considerable agreement with the passages I have quoted from Professor McLeod's comments on my decision in Prendergast. However, I am being asked, in this case, to continue support payments, either at the same level or at a reduced level, on a comparison of the parties' needs and means, which essentially amounts to comparing apples and oranges.

[35] Ms. Thompson has not attempted to demonstrate the current value of her interest in the Golf Course. Mr. Thompson has converted investments into assets which are either capable of producing investment income or an annuity, while Ms. Thompson has not only left her gainful employment, and not sought other employment, but also has either refused or neglected to provide a valuation of her interest in the Golf Course.

[36] Mr. Thompson's position with respect to his change in circumstances has been known to Ms. Thompson since February 2005 when he advised Ms. Thompson that he had no further employment income and that his spousal maintenance would need to terminate. As a result

of that advice, Ms. Thompson registered with the Family Maintenance Enforcement Program, following which Mr. Thompson was contacted by FMEP and, as a result, retained counsel to bring on this application. I adjourned the application for counsel to make written submissions. No steps were taken by Ms. Thompson to provide me with any evidence of the value of her interest in the Golf Course.

[37] These circumstances lead me to believe that I should not simply adjourn the application to require further evidence from Ms. Thompson regarding the value of her bag of apples, because I am of the view that she ought to have known that this would be an important issue in my determinations. I will not order encroachment on capital without having a full and complete picture of the financial circumstances and means of each of the parties, notwithstanding that this was a traditional marriage and one where Ms. Thompson was adversely affected by the marriage and its break down.

[38] I have therefore determined that my order should be as follows -

- 1) The order for spousal maintenance set out in the order of Mr. Justice Parrett, pronounced June 12, 2000, is varied to provide that the defendant pay spousal maintenance to the plaintiff, retroactive to January 1, 2005, in the amount of \$1.00 per month, and that all arrears under the June 12, 2000 order, other than the \$1.00 per month, are cancelled.
- 2) That the plaintiff is at liberty to apply for a variation of the \$1.00 per month spousal support ordered hereunder without demonstrating a material change in circumstances provided that she provides, on such application, a valuation of her 32% interest in the Golf Course, subject to any position taken by the defendant with respect to such valuation.
- 3) Any such further variation arising out of the additional evidence will only be prospective from the date of this order.
- 4) The defendant shall have his costs of the application on Scale 3.

"E.G. Chamberlist, J."

The Honourable Mr. Justice E.G. Chamberlist

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/06/01/2006bcsc0130.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/thompson-v-thompson-2006>

Prepared on 29 October 2026 · Esheria