

CANADA / JUDGMENT

Vega v. Langille

2012 BCSC 1400

COURT

Supreme Court of British Columbia

DECIDED

28 August 2012

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2012 BCSC 1400 Vega v. Langille IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Vega v. Langille, 2012 BCSC 1400 Date: 20120828 Docket: E030883 Registry: Vancouver Between: Vivian Abellana Vega Plaintiff And: Randal Wade Langille Respondent Before: The Honourable Mr. Justice Savage Oral Reasons for Judgment In Chambers Counsel for Plaintiff: M.L. Gendreau Counsel appearing as Amicus Curiae: P.J. Reimer For the Respondent: No appearance Place and Date of Trial/Hearing: Vancouver, B.C. August 28, 2012 Place and Date of Judgment: Vancouver, B.C. August 28, 2012

- [1] THE COURT: This is an application pursuant to the Interjurisdictional Support Orders Act, S.B.C. 2002, c. 1-12.05, to vary an order of Mr. Justice Holmes of this court dated January 16, 2004. At that time, following a summary trial, this court set child support obligations at \$618.18 per month. The arrears under that order now total in excess of \$59,000; only \$5,901.29 cents were paid under that order.
- [2] The application as noted by the respondent appears to rely on material that was before Justice Holmes of this Court prior to making the order that is sought to be varied. Further, it appears, in my opinion, from this material, that the respondent is intentionally under-employed.
- [3] I base that observation on the fact that the respondent voluntarily left well-paying employment in British Columbia in 2004 to reside in New Brunswick, first taking employment in a much lower paying position and then, after layoff, to collect unemployment insurance, and finally social assistance in a small New Brunswick town of only about 5,000 people.
- [4] For example, the applicant says in his own material, and I quote: In any event, after my EI ran out and I was still unable to obtain employment sufficient to meet my child support and spousal support obligations, I felt that I had no other recourse but to apply for social assistance. [Emphasis added.]
- [5] In other words the applicant seemed to have found it preferable to rely on social assistance rather than obtain gainful employment.

- [6] Moreover, although the applicant raises as a factor other consent support obligations to provide support, in my opinion those, and the manner in which those consent obligations arose, gives rise to suspicion as to whether or not they were intentionally invoked in order to affect the outcome of the proceeding before Mr. Justice Holmes.
- [7] Finally, I note that there is no evidence before the court that the applicant ever paid any of those obligations he now asserts, as a reason for gaining relief in this proceeding. The applicant's materials give rise to more questions than they answer.
- [8] In my opinion this matter is governed by the principles set out by our Court of Appeal in the leading case of *Van Gool v. Van Gool*, (1998) 166 D.L.R.(4th) 528. Madam Justice Martinson in a decision referenced as *R.D.O. v. C.J.O.*, 2003 BCSC 804, at para. 32 says the following: ... the undue hardship section of the Guidelines is designed to provide relief to parents who have made every effort to meet their child support obligations, but who, for reasons of undue hardship, have been unable to do so. Parliament could not have intended to provide relief to parents who have wilfully ignored their child support obligations. Providing relief in those circumstances would be not only contrary to the principle underlying the enactment of the Guidelines and the objectives of the Guidelines, but contrary to public policy.
- [9] As I said, I am persuaded that the respondent is intentionally under-employed and that there would be no undue hardship to continue the obligations as set out in the order of Justice Holmes.
- [10] In my opinion, the applicant here has not led cogent evidence to establish why the table amount would cause undue hardship, nor in my opinion has the applicant met the test for the cancellation of support arrears as contained in s. 96 of the Family Relations Act.
- [11] In the circumstances, the application is dismissed. "The Honourable Mr. Justice Savage"

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