

CANADA / JUDGMENT

Villeneuve v. Agnew

2024 BCSC 69

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Supreme Court of British Columbia

DECIDED

16 January 2024

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2024 BCSC 69 Villeneuve v. Agnew

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Villeneuve v. Agnew,

2024 BCSC 69

Date: 20240116

Docket: E52329

Registry: New Westminster

Between:

Sarah Villeneuve

Claimant

And

Jesse Agnew and Agnes Guss

Respondents

Before: The Honourable Mr. Justice Taylor

Reasons for Judgment

The Claimant, Appearing in Person:

S. Villeneuve

The Respondent Jesse Agnew, Appearing in Person:

J. Agnew

Counsel for the Respondent Agnes Guss:

E.C. Walker

C.R. Szafranski

Place and Dates of Trial:

New Westminster, B.C.

March 7-11, 2022

October 17-21, 2022

February 23, 24, 2023

Place and Date of Judgment:

New Westminster, B.C.

January 16, 2024

Background

- [1] The claimant Sarah Villeneuve and respondent Jesse Agnew moved in together and commenced a marriage-like relationship in November or December 2008. They separated in January 2016 (the "Separation Date"). Ms. Villeneuve was 42 years old at the commencement of the trial and Mr. Agnew was 47 years old.
- [2] There are two children of the marriage: Teyo and Drayson. Mr. Agnew also has another child, Kayen, from a prior marriage.
- [3] Ms. Villeneuve commenced this family claim on January 4, 2017. Mr. Agnew filed a response to family claim and a counterclaim both on March 1, 2017.
- [4] I delivered reasons for judgment on August 30, 2023. These reasons dealt principally with a claim by Ms. Villeneuve that she was entitled to an undivided half interest in the house and land at 733 Steinbrunner Road in Gibsons, British Columbia (the "Steinbrunner Property") owned by Mr. Agnew's mother, the respondent Agnes Guss.
- [5] In my reasons for judgment, I dismissed Ms. Villeneuve's claim concerning the Steinbrunner Property. I also asked the parties to make additional submissions relevant to the issues of asset and debt division and spousal support, which they have done.
- [6] Taking those submissions into account the following are my supplementary reasons with respect to the issues of asset and debt division and spousal support. The defined terms referenced in these reasons correspond to those set out in my original reasons for judgment.

Asset and Debt Division

- [7] As stated in my original reasons for judgment, my view is that an equal division of assets and debts is appropriate in this case. Section 81 of the Family Law Act, S.B.C. 2011, c. 25 [FLA] states that, subject to an agreement or order which provides otherwise, spouses have a presumptive entitlement to an equal interest in all family property, and are equally responsible for family debt. Section 87(b) of the FLA states that, absent an agreement, the value of family property or family debt is to be determined as of the date of the hearing before the Court regarding the division of property and debt. Section 87(a) provides that the value of family property must be based on its fair market value.
- [8] On the Separation Date, the parties had nominal assets and owned no real estate. Neither party made an excluded property claim (except as pertains to the Steinbrunner Property, which I have previously addressed). The parties had two vehicles, which they divided, and also divided the furniture. There was no reliable evidence concerning the value of these items as of the date of the hearing or the Separation Date, or applicable depreciation. In that light, it is fair in my view that each party retain the personal property they took with them on the Separation Date.
- [9] Mr. Agnew adduced evidence that, on or about the Separation Date, he had a balance in his chequing account at Royal Bank of \$1,289.46, a balance of \$187.10 in his Sunshine Coast Credit Union savings account, a balance of \$0.49 in his US Savings Account and shares valued at \$25.30. He had a balance owing on his RBC Mastercard of \$3,439 and a balance owing of \$4,000 on his Royal Bank Credit Line. I therefore calculate his net assets at the time as amounting to -\$5,936.54.
- [10] Mr. Agnew also had a balance of \$3,500.51 in his RRSP but that account was closed on or about January 19, 2016. Mr. Agnew alleged that he delivered Ms. Villeneuve \$1,750 in cash upon the closing of the RRSP account, although there was no documentary evidence of that and this is denied by Ms. Villeneuve.
- [11] As of the date of commencement of the trial, Mr. Agnew had a nominal bank balance and credit card and bank debt in the approximate amount of \$40,000.
- [12] As discussed in my original reasons for judgment, there was testimony from Mr. Agnew and Ms. Guss at trial concerning a debt allegedly owed by Mr. Agnew to Ms. Guss and his father. Mr. Agnew asserted that the debt is over \$47,000 but, as noted in my original reasons for judgment, there was no agreement or other reliable documentary evidence which clearly evidenced the existence or quantum of the debt to his mother or any real commercial terms applicable to that debt that might differentiate it from a gift (e.g. interest amount, repayment due date, security, etc.). Further, even if there were documentary evidence of a loan, it appears that the debt was originally incurred in 2007 relating to Mr. Agnew's purchase of a trailer from Ms. Guss and therefore predated the commencement of his relationship with Ms. Villeneuve. Ms. Villeneuve would therefore not be responsible in law for that debt (nor entitled to the original equity in the trailer).

- [13] Mr. Agnew also admitted in his submissions that, with respect to any debt allegedly owed to his father, it is impossible to tell by looking at the bank account what was "borrowed" money and what was Mr. Agnew cashing cheques for his father. Therefore, in my view there was insufficient evidence to justify a finding that Ms. Villeneuve should be responsible for a specific portion of any debt allegedly owed by Ms. Agnew to his parents.
- [14] Ms. Villeneuve adduced evidence that as of January 15, 2016, her bank balance was \$417.42. There was no evidence that she had any other assets or debts. As of the date of the trial, Ms. Villeneuve had investment and savings in excess of \$40,000 and nominal debt.
- [15] At trial Ms. Villeneuve sought a 50% division of the RRSP in the amount of \$1,750.25, a 50% division of Canada Savings Bonds in the amount of \$1,400 and a 50% share of Mr. Agnew's 2015 tax refund (after netting out her own refund) in the amount of \$1,064.21. The total amount of her claim is therefore \$4,214.46. Ms. Villeneuve also noted that the washer and drier purchased with her parents' money (valued at approximately \$1,000 on purchase) and certain furniture items remained at the Steinbrunnner Property, although the depreciated value of these assets was not in evidence.
- [16] In my view, taking into account the credit card and line of credit debt retained by Mr. Agnew after the Separation Date, the value of Ms. Villeneuve's claims to a share of his assets must be offset by the debt retained by Mr. Agnew, leaving a net equity of only a few hundred dollars. The assets and debts accumulated by the parties after the Separation Date are not attributable to the relationship and therefore are excluded from the analysis. Given the absence of a full and clear documentary record with respect to the assets and debts held by the parties at the Separation Date, and the passage of many years since that time, the fair result under the circumstances is for each party to retain the value of the assets and debts they held as at the Separation Date. I therefore make no order with respect to a further reallocation.

Spousal Support

- [17] The parties have a shared parenting arrangement with their two boys. Mr. Agnew has been paying child support and s. 7 expenses to Ms. Villeneuve since 2017, pursuant to a Provincial Court order, but has paid no spousal support.
- [18] At trial Ms. Villeneuve sought retroactive and prospective spousal support from Mr. Agnew in addition to the ongoing child support being paid.
- [19] The spousal support provisions are found in the FLA at ss. 160-165. Section 161 sets out the objectives of spousal support:
- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;

- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[20] In determining the entitlement to spousal support I must consider the three models of spousal support described in *Bracklow v. Bracklow*, [1999] 1 S.C.R. 420: compensatory, contractual, and non-compensatory.

[21] The contractual model is not engaged in this case but the other two models are. I will address the compensatory and non-compensatory models in turn.

Compensatory Support

[22] In *Chutter v. Chutter*, 2008 BCCA 507, the Court described the purpose and rationale underlying the compensatory grounds for spousal support:

[50] Compensatory support is intended to provide redress to the recipient spouse for economic disadvantage arising from the marriage or the conferral of an economic advantage upon the other spouse. The compensatory support principles are rooted in the "independent" model of marriage, in which each spouse is seen to retain economic autonomy in the union, and is entitled to receive compensation for losses caused by the marriage or breakup of the marriage which would not have been suffered otherwise (*Bracklow*, at paras. 24, 41). The compensatory basis for relief recognizes that sacrifices made by a recipient spouse in assuming primary childcare and household responsibilities often result in a lower earning potential and fewer future prospects of financial success (*Moge*, at 861-863; *Bracklow*, at para. 39). In *Moge*, the Supreme Court of Canada observed, at 867-868:

The most significant economic consequence of marriage or marriage breakdown, however, usually arises from the birth of children. This generally requires that the wife cut back on her paid labour force participation in order to care for the children, an arrangement which jeopardizes her ability to ensure her own income security and independent economic well-being. In such situations, spousal support may be a way to compensate such economic disadvantage.

[51] In addition to acknowledging economic disadvantages suffered by a spouse as a consequence of the marriage or its breakdown, compensatory spousal support may also address economic advantages enjoyed by the other partner as a result of the recipient spouse's efforts. As noted in *Moge* at 864, the doctrine of equitable sharing of the economic consequences of marriage and marriage breakdown underlying compensatory support "seeks to recognize and account for both the economic disadvantages incurred by the spouse who makes such sacrifices and the economic advantages conferred upon the other spouse" (emphasis added).

[52] The Court in Moge discussed the relevance of the parties' standards of living in the context of compensatory support at 870:

Although the doctrine of spousal support which focuses on equitable sharing does not guarantee to either party the standard of living enjoyed during the marriage, this standard is far from irrelevant to support entitlement. As marriage should be regarded as a joint endeavour, the longer the relationship endures, the closer the economic union, the greater will be the presumptive claim to equal standards of living upon its dissolution.

[23] Ms. Villeneuve claims entitlement to compensatory support on the basis of economic disadvantages she has incurred arising from the marriage and corollary advantages flowing to Mr. Agnew. She asserts that, prior to entering into the relationship, she had been studying and training as an electrical apprentice, with the goal of becoming a journeyman electrician with the potential of making \$40/hour. The parties had children in 2010 and Ms. Villeneuve stayed home with them until they were toddlers, with the result that she abandoned her plans of becoming an electrician. Ms. Villeneuve asserts that while she was taking care of the young children, Mr. Agnew was able to continue and build his career, skills, seniority and pension entitlements as a facilities maintenance technician with the Sunshine Coast Regional District, where he continues to work.

[24] When the children were toddlers, Ms. Villeneuve went back to school to retrain as an education assistant, which she believed would better align her work hours with the schedule of the children and also give her time off in the summer to spend with the children. Ms. Villeneuve commenced employment as an education assistant with School District 46 (Sunshine Coast) in 2017, and remains employed there. She asserts that this job pays her \$30/hour, limited to six hours per day. She also asserts that she has to rely on Employment Insurance during the 8-10 week school holidays.

[25] In 2022, Mr. Agnew had gross income of \$77,380 and Ms. Villeneuve had gross income of \$48,905.

[26] Ms. Villeneuve states that she is now studying at university to become a teacher, but expects she has two years left of courses at a cost of \$20,000 to complete that course. She expects that a teacher's salary will nearly double her present income and put her income on par with Mr. Agnew's.

[27] Mr. Agnew takes issue with Ms. Villeneuve's assertion that she sacrificed any ability to earn income during the course of their relationship, noting that Ms. Villeneuve's choice to re-orient her career toward teaching was her own voluntary choice and that he fully supported her decision to study and gain a certification while she was home caring for the kids. He also asserts that she makes more money in her current job than she has ever made in any job in the past.

- [28] In my view, Ms. Villeneuve has a valid claim for compensatory support although the strength of the claim is moderate but not high. The marriage-like relationship between the parties was just over 7 years, which is medium-length. Ms. Villeneuve did assume primary child-care responsibilities for a 5-year period during the marriage, when she was out of the work force, which clearly came at a cost with respect to her career prospects. That said, I am not convinced from her testimony at trial that she considered her transition from training as an electrician to training as a teacher to have been forced upon her or a true "sacrifice". While it is true that she considered the hours relating to teaching to be more favourable with respect to her responsibilities as a parent, the evidence also appeared to be that she considered this work to be more interesting and a more viable career path for her personally, and she was supported by Mr. Agnew in pursuing this new path.
- [29] Further, Ms. Villeneuve did have the advantage during the relationship of being able to retrain for her new chosen career while simultaneously caring for the children; she was not, for example, forced to commence retraining after the Separation Date. Ms. Villeneuve re-entered the work force as a teaching assistant in 2017, which was not an overly long hiatus from the work force post-Separation Date, and she has continued to work in that role since that time. Ms. Villeneuve indicated in her submissions that, when she completes her teaching courses in two years, she expects that she will be eligible to work in a job with a comparable income to Mr. Agnew's. Ms. Villeneuve is still young and has a long career ahead of her.
- [30] Thus I conclude that Ms. Villeneuve is entitled to compensatory support, but that this entitlement is moderate and not high.

Non-Compensatory Support

- [31] Needs-based support is "grounded in the "social obligation model" of marriage, in which marriage is seen as an interdependent union." Upon marriage dissolution, it falls on the former partner to meet the needs of a disadvantaged spouse, rather than the state: Chutter at para. 54. The Court in Chutter at para. 54 stated that "[w]here compensatory principles do not apply, [means and] need alone may be sufficient to ground a claim for spousal support". The court in Chutter explained the concept of "need" at para. 55:

The concept of "needs" in the context of non-compensatory spousal support goes beyond basic necessities of life and varies according to the circumstances of the parties. As stated by Finch J.A. (as he then was) in *Myers v. Myers* (1995), 1995 CanLII 2274 (BC CA), 17 R.F.L. (4th) 298, 65 B.C.A.C. 226, at para. 10:

"Need" or "needs" are not absolute quantities. They may vary according to the circumstances of the parties and the family unit as a whole. "Need" does not end when the spouse seeking support achieves a subsistence level of income or any level of income above subsistence. "Needs" is a flexible concept and is one of several considerations which a trial judge must take into account in deciding whether any order for spousal support is warranted.

- [32] Ms. Villeneuve asserts that, post Separation Date, she and her children have lived periodically at the poverty line. She states that after the Separation Date she applied for subsidized housing but stopped receiving BC housing assistance after the third year of separation. She states that, during the last eight years, she has relied on the food bank multiple times and she is concerned about the rising cost of food, clothes and gas. I note in passing that these assertions were not supported by much in the way of evidence, and were somewhat vague in terms of the applicable timeline.
- [33] Ms. Villeneuve also asserts that her expenses are greater than Mr. Agnew's because she pays \$1400 a month for rent while he pays rent of \$971, which is less than a market rental rate due to the fact that his rental accommodation is owned by his mother. She also notes that he is living in a house-sized rental accommodation with a yard and basement for the kids to play in while she is living in a small apartment.
- [34] Ms. Villeneuve expressed concerns about the possibility of her landlord considering an eviction and, if that occurs, being required to pay an even higher rent elsewhere. Further, she emphasized that, despite receiving three bursaries, she expects to have to spend about \$20,000 to complete her university training to become a teacher.
- [35] Mr. Agnew takes issue with Ms. Villeneuve's assertions concerning her financial condition, adducing bank statements demonstrating that by June 24, 2019 she had accumulated savings of \$22,714.69 and, by April 12, 2021, she had almost \$50,000 in accumulated savings and a debt load of only \$1,767.96.
- [36] At the same time, Mr. Agnew argues that he has suffered financial strains relating to the cost of this litigation and also a mild traumatic brain injury suffered at work. He notes that, as of May, 2021, he had \$4,107.13 in his bank accounts and a debt load of \$37,933.68. He also points to the debts allegedly owed to his parents.
- [37] Mr. Agnew emphasizes that parenting time and related expenses have been equally split between the parties and that Ms. Villeneuve has not had to assume a disproportionate share of the parenting duties since the separation.
- [38] In my view, given the differential in income and living circumstances between the parties, Ms. Villeneuve is entitled to some non-compensatory support, particular as it pertained to the 2-3 years after the Separation Date when Ms. Villeneuve had to move from the family home on the Steinbrunner Property to a smaller apartment, when she did not yet have secure employment, and when her income level was particularly low. However, this entitlement has diminished with time as Ms. Villeneuve has had steady employment and an increasing income since 2017.

Amount and Duration of Spousal Support

- [39] Having found an entitlement to spousal support on the part of Ms. Villeneuve I must now determine the amount and duration of support. In *Small v. Small*, 2020 BCSC 707, Horsman J. (as she then was), set out the appropriate analysis:
- [265] Once entitlement to support is established, which is conceded by the respondent in the present case, the issue becomes the appropriate amount and duration of support. The Spousal Support Advisory Guidelines [SSAG] have been endorsed in British Columbia as a useful tool in determining the quantum of support: *Chutter v. Chutter*, 2008 BCCA 507 at para. 100. Quantum refers to both the amount and the duration of spousal support.
- [266] Support in the present case is calculated pursuant to the shared custody, "with child support" formula set out in the SSAG. The SSAG calculation will provide a range for amount and duration of spousal support, which is only the first step in the spousal support analysis. It must then be determined, based on factual considerations specific to the case, where within the range to situate support.
- [267] Chapter 9 of the SSAG provides additional guidance on determining where, within the range, support should be located. The following is a non-exhaustive list of factors which may be considered:
- strength of any compensatory claim;
 - recipient's needs;
 - age, number, needs, and standard of living of children (if any);
 - needs and ability to pay of payor;
 - work incentives for the payor;
 - property division and debts; and
 - self-sufficiency incentives.
- [40] Based upon the respective incomes of the parties, the Spousal Support Advisory Guidelines [SSAG] (using the calculation with DivorceMate software) indicate the following ranges for support following the Separation Date:

Year

SSAG Low

SSAG Mid

SSAG High

2016

437

671

917

2017

0

162

416

2018

0

253

536

2019

0

0

278

2020

0

135

512

2021

0

0

224

2022

0

0

257

2023

0

0

234

[41] The SSAG also indicate a minimum duration of 3.6 years and a maximum duration of 12 years from the date of separation with indefinite (unspecified) duration, subject to variation and review.

[42] The SSAG are not binding, although they do provide a "useful tool" for determining amount and duration of spousal support: *Yemchuk v. Yemchuk*, 2005 BCCA 46, para. 64. The court in *McEachern*, noted as follows (at para. 64):

As has been stated by this Court on prior occasions, the Advisory Guidelines are simply guidelines; they are not law. The formulas need not be slavishly adhered to by judges, who must always have regard to the particular facts before them. Those facts may disclose valid reasons why the Advisory Guidelines are not of particular assistance in a given case, or why an award may justifiably be greater or less than that set out in the applicable formula.

[43] As I have concluded above, Ms. Villeneuve has an entitlement to support that I would assess as being of moderate strength. Taking into account the factors referenced in *Small* with respect to where support should be located within the range, my view is that her claim is particularly strong as it pertains to the first three years following the Separation Date (2016-2018) when the disparity between her living conditions and those of Mr. Agnew were most pronounced and her career prospects were uncertain. However, since that time, Ms. Villeneuve has had steady employment, increasing year-to-year income, improved career prospects and has demonstrated an ability to save more money than Mr. Agnew.

[44] Taking the foregoing into account, in my view the fair result is to award Ms. Villeneuve support at the high end of the range for the years 2016-2018 and then support at the mid range thereafter. This reflects both the moderate (and not high) strength of her compensatory claim and the declining strength of her non-compensatory claim over time. I also note that this results in an apportionment of Net Disposable Income over the full 8-year period, taking into account child support payments, that is very close to 50/50, which seems fair under the circumstances.

[45] Applying this formula over the eight years dating back to 2016 results in a cumulative award of \$24,048 payable from Mr. Agnew to Ms. Villeneuve for the 2016-2023 period inclusive.

[46] The next question is whether it is appropriate to make this award on a retroactive basis. Mr. Justice Groberman of the Court of Appeal in *Reis v. Bucholtz*, 2010 BCCA 115 at paras. 66-68 (cited more recently in *Willms v. Willms*, 2020 BCCA 51 at para. 30), explained that in determining whether an award of spousal support should be made retroactive, the court should consider the four factors set out in *D.B.S. v. S.R.G.*, [2006] 2 S.C.R. 231, namely:

1. Reasonable Excuse for Why Support Was Not Sought Earlier;
2. Conduct of the Payor Parent;
3. Circumstances of the Child;
4. Hardship Occasioned by a Retroactive Award.

- [47] In my view, taking into account the four D.B.S. factors, a retroactive award is appropriate in this case. Ms. Villeneuve filed her Notice of Family Claim in which she sought spousal support in January, 2017 only a year after the Separation Date. Mr. Agnew has therefore been on notice since that time. Ms. Villeneuve did not fully explain why she did not seek interim spousal support but she did explain that economic circumstances were very difficult for her after the separation in 2016, as she had to leave the family home and had very little income. She was also self-represented for considerable periods of time since the Separation Date.
- [48] Conduct has not been a significant issue. Although Mr. Agnew has not paid spousal support to date, Ms. Villeneuve has not applied for it and Mr. Agnew has been paying child support regularly without issue since 2017. Mr. Agnew did not dispute at trial that he would likely have to pay spousal support and merely disputed the quantum.
- [49] There may be some hardship to Mr. Agnew occasioned by a retroactive award in light of his current debt load. However, in my view any potential hardship can be addressed by making the retroactive award payable over time.
- [50] The next question to be addressed is the date from which the retroactive support ought to have been awarded.
- [51] In *Reis* at paras. 77 to 79, the Court of Appeal explained how this issue should be addressed:
- [77] The remaining issue is the date from which retroactive support ought to have been awarded. In D.B.S., the date that was favoured was the date at which "effective notice" was given. Such "effective notice" was said, at para. 121, to include any "any indication by the recipient parent that child support should be paid, or if it already is, that the current amount of child support needs to be re-negotiated". In the case before us, it is clear that effective notice that Ms. Reis wished to enforce her legal rights to spousal support was given no later than March 2005. The Court acknowledged, at para. 124, that circumstances might also justify granting a retroactive award to the date when the duty to pay first arose, even in the absence of effective notice.
- [78] While the Court cautioned that undue delays in actually proceeding with litigation might affect retroactivity, it also recognized that blameworthy conduct is a factor to be considered: where a payor parent has taken steps to hide his or her true financial situation, or has actively dissuaded the recipient parent from exercising his or her legal options, retroactive support may be ordered even where formal legal action was delayed.

- [79] The Supreme Court in D.B.S. also indicated that, in general, retroactive support should not reach back more than 3 years prior to the date of formal legal notice that support is being claimed. Again, however, blameworthy conduct can constitute a reason to reach further back: D.B.S. at para. 124; de Rooy v. Bergstrom, 2010 BCCA 5, [2010] B.C.J. No. 8 at para. 55.
- [52] In this case, formal legal notice (which was effective notice) was given on September 11, 2017 in the Notice of Family Claim. Making spousal support payable retroactively to the Separation Date at the beginning of 2016 is therefore well within the three-year reach-back period identified by the Supreme Court of Canada in D.B.S.
- [53] Accordingly I award Ms. Villeneuve spousal support on a retroactive basis, which covers the eight years of spousal support obligations owed by Mr. Agnew (in the amount of \$24,048) from 2016-2023 inclusive. Mr. Agnew shall pay the spousal support commencing on February 1, 2024 by making a payment of \$668, and thereafter the same amount of payment on the first of each month for 35 additional months. At current income levels, Mr. Agnew's prospective support obligations for 2024 at the mid range are at \$0. Ms. Agnew shall therefore not be obliged to make additional spousal support payments over and above the monthly retroactive payments.
- [54] Either party shall have the right to seek a variation or review of this order commencing January 1, 2025.
- [55] The parties have leave to speak to the issue of costs.
- "M. Taylor J."

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Prepared on 27 October 2026 · Esheria