

CANADA / JUDGMENT

Vukelic v. Vukelic

2020 BCSC 1331

COURT

Supreme Court of British Columbia

DECIDED

9 September 2020

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

2020 BCSC 1331 Vukelic v. Vukelic

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Vukelic v. Vukelic,

2020 BCSC 1331

Date: 20200909

Docket: E51876

Registry: New Westminster

Between:

Srecko Joe Vukelic also known as Joe Vukelic

Claimant

And

Cindy Lee Vukelic also known as Cyndy Hill also known as

Cindy Lee Hill

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

In Chambers

Counsel for the Claimant:

P.W. Cote

Counsel for the Respondent:

P.M. Kenney, Q.C.

Counsel for the Family Maintenance

Enforcement Program:

T.M. Berger

Place and Dates of Hearing:

New Westminster, B.C.

July 3 and July 10, 2020

Place and Date of Judgment:

New Westminster, B.C.

September 9, 2020

- [1] These parties have returned to court following a trial in 2018 which resulted in a Final Order which turns out to not be very final. Although they are in agreement on many of the payments and obligations between them, both parties have provided the court with their calculations of payments ordered between the parties in the final order, child support arrears, line of credit payments, payments made to maintain a life insurance policy and several other items referred to later in these reasons.
- [2] Counsel for the Family Maintenance Enforcement Program ("FMEP") attended on the hearing and opposed an application by the claimant for stay of enforcement proceedings commenced by FMEP. The claimant submits he has overpaid his obligation for child support.
- [3] The total amount in dispute between the parties is not great. The claimant agrees the amount due to the respondent is \$9,679.15, whereas the respondent submits she is owed \$29,669.89 from the claimant. The difference amounts to \$19,990.74. It is foreseeable that the amount to be paid could be exceeded by the legal fees the parties have incurred since trial.
- [4] Reasons for Judgment from the trial are indexed at 2018 BCSC 1732.
- [5] In my reasons for judgment following the trial, a major issue was whether the two daughters of the marriage continued to be children as defined by the Family Law Act and if found not to be children, at which date did the obligation of the claimant to pay child support come to an end. I ordered the claimant pay the respondent \$9,884.45 in total child support arrears for both daughters. Regarding the oldest daughter, I found that she had not been a child of the marriage since attaining the age of majority and since separation of the parties. Regarding the youngest daughter, I found she was no longer a child of the marriage as of

October 11, 2018, the date of the Reasons for Judgment.

[6] I will deal with the remaining items in dispute.

Cost of a Life Insurance Policy

[7] The ManuLife policy was not in issue between the parties during trial.

[8] During the marriage the parties maintained a term life insurance policy with ManuLife on both their lives with the intention that the proceeds of insurance be paid to the surviving spouse for the benefit of their two daughters, specifically their education.

[9] Although the reasons for judgment did not make any order regarding responsibility for payment of premiums on the ManuLife policy, the parties consented in the Final Order the claimant pay the respondent one-half of the premiums which the respondent had paid since separation which amounted to "\$3,177.68 for his [i.e., the claimant's] share of ManuLife Insurance payments".

[10] Although the consent order covered the claimant's share of past premiums, it did not deal with ongoing or future premiums. The claimant has deposed in his affidavit of January 13, 2020, as follows:

18. I understood that the respondent would continue to pay the ManuLife premiums, and that the ManuLife Life Insurance policy ("the ManuLife policy") would be divided between us. The respondent and I agreed to splitting the Manulife policy in court at the trial before Justice Jenkins.

[11] The respondent denies any agreement was reached regarding future premiums. She deposed in her affidavit of February 11, 2020, as follows:

6. I disagree that we had a discussion before our trial judge in April 2018. . . that the policy would simply be split. It was always my intention that we retain the benefit for our children, given our modest estate, the length of time we had invested in these policies and our children's needs.

. . .

9. This is my recollection of events which occurred at the conclusion of the trial: after His Lordship left the courtroom, Mr. Vukelic, his partner Margaret Derksen, my counsel and the claimant's counsel were in the courtroom. I asked Mr. Vukelic to deal with the insurance policies because I had been paying the monthly premiums to that date for both of us. He rejected my proposal to "deal with" the policies so they could be split and our children named as beneficiaries. In prior discussions on these policies Mr. Vukelic insisted that Ms. Derksen be names as his beneficiary. I disagreed given our joint years of sustaining these policies for our children.

. . .

13. I spoke to Nathan on July 19, 2018 and said that I did not intend to maintain the ManuLife policy (given that the claimant refused to name the children as beneficiaries) although I did continue to maintain the premiums until March 2019 to give the claimant time to make alternate arrangements. . . .
14. I do have life insurance benefits through my employment with the City of Surrey and have named the children as beneficiaries of that policy.
- [12] The respondent ceased making payments on the ManuLife policy in April 2019.
- [13] The claimant became engaged in discussions with his financial advisor about a new life insurance policy and became aware that the respondent had stopped paying premiums on the ManuLife policy and that policy had lapsed. He then purchased a new life insurance policy, which was a whole life policy, which was costing him \$318.00 per year or \$2,862.00 "for the nine years that were left on the ManuLife policy. I would not have to pay this amount had the respondent continued to pay the ManuLife premiums".
- [14] As a result, the claimant now claims a set-off as against other money due to the respondent in an amount of \$2,862.00, i.e., the additional cost of his new policy over and above his share of the premiums which had been paid to ManuLife. Under his new policy, the beneficiary was his new partner, Ms. Derksen, not the children. The new policy was a whole life policy and not a term policy and by the very nature of a whole life policy, which is an investment, the premiums would be considerably more than under a term policy.
- [15] The claimant is not entitled to compensation from the respondent due to the claimant purchasing a new whole life policy which was his choice. The reason for maintaining the ManuLife term policy had been to provide some security to the children of the marriage. The claimant purchased the new whole life policy so that he could name his new partner as the beneficiary. The respondent had intended to retain the ManuLife policy insuring the lives of both parties but only if the children were able to benefit from any proceeds that could have been paid out in the future. The policy lapsed upon the respondent ceasing payment of premiums. Finally, there was no residual value in the ManuLife policy due to it being a term policy and no agreement was reached at the conclusion of the trial as deposed to by the claimant.

Line of Credit

- [16] The parties maintained a line of credit during their relationship. After separation, the respondent continued to make interest payments on the line of credit after the trial on December 2019 in an amount of \$2,005.02. One payment was withdrawn from the claimant's bank account in an amount of \$284.29. The respondent is entitled to a credit from the claimant for one-half of the net amount of interest payments made by her after deducting the sum of \$284.29, i.e., $(\$2,005.02 - \$284.29 = \$1,720.72 / 2 = \$860.36)$.

- [17] The claimant is insisting that the respondent caused the claimant to be discharged from the joint line of credit upon the claimant paying what he considers to be his obligation to the respondent after consideration of all outstanding items equalize their financial obligations, i.e., \$9,679.15.
- [18] The respondent is not in a position to obtain a discharge of the claimant on the line of credit upon the claimant paying to her or to her account the sum which the claimant believes he owes the respondent after an accounting of all claims as between the parties. Only the bank or credit union is able to discharge the claimant.
- [19] Assuming the parties intend to pay off the balance of the line of credit as of the date of payment in equal shares, the respondent submits that she will only be able to pay her one-half once the claimant has made a final equalization payment to her following the accounting between the parties. Only at that point would the parties be able to obtain a discharge of obligations under the joint line of credit.

FMEP Arrears

- [20] The amount owing as of June 29, 2020, according to FMEP records attached to the affidavit of Shelley Hood filed June 30, 2020, is \$14,454.90. FMEP advises that it is currently holding the sum of \$952.28 which is to be applied to the balance due.
- [21] The claimant submits that a payment he made in an amount of \$22,000 from his share of the proceeds of sale of the former family residence should have been credited to arrears of child support. In reply, the respondent submits the \$22,000 payment was made following an order of Master Caldwell made October 26, 2017. That order stated, in para. 4:
4. BY CONSENT: From the claimant's share of the net sale proceeds, on an interim and without prejudice basis, the sum of \$22,000 shall be paid to the respondent. Both parties are at liberty to apply to the court for a further adjustment and an accounting of the division of family property and family debt.
- [22] Applying the \$22,000 payment to the accounting of family property and debt as ordered by Master Caldwell as opposed to applying the same to FMEP debt results in the claimant being responsible for the interest and fees charged by FMEP.
- [23] The claimant did make payments for support on account of the youngest daughter in an amount of \$666 per month for five months or \$3,300 from the date of trial to the date of judgment. As I found the youngest daughter was no longer a child of the marriage as of the time of trial, the claimant is entitled to a credit in the amount of \$3,300.
- [24] After applying the credit of \$3,300 and the \$952.28 held by FMEP, which leaves a balance due for child support being administered by FMEP as of June 30, 2020 of \$10,202.62.

Rental Income and Expenses

- [25] In the Reasons for Judgment following the trial, the claimant was credited with one-half of the rental income earned by the respondent post-separation. Expenses incurred by the respondent which can be attributed to the rental, amount to \$1,038.99.
- [26] Particulars of the expenses incurred by the respondent on account of the rental are attached to the respondent's affidavit of February 11, 2020 and the respondent is entitled to be credited with that amount in the accounting between the parties.

Costs Previously Owing

- [27] Other items, including costs of \$1,238.80 remain owing by the claimant to the respondent since 2016.
- [28] I believe all other items of accounting between the parties which are not in dispute are detailed in Exhibit "B" to the affidavit of the respondent of February 11, 2020 and the chart set out in the claimant's written submissions at para. 26.
- [29] Based upon my review of the two accountings referred to above, the respondent is entitled to an equalization payment of \$19,520.68.

Costs

- [30] The respondent is entitled to costs of this application on the scale of average difficulty as set out in the Supreme Court Family Rules.

"Jenkins J."

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/20/13/2020BCSC1331.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/vukelic-v-vukelic-2020>

Prepared on 25 October 2026 · Esheria