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CANADA / JUDGMENT

## Warner v. Warner

2007 BCSC 41

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COURT

Supreme Court of British Columbia

DECIDED

11 January 2007

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2007 BCSC 41 Warner v. Warner

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Warner v. Warner,

2007 BCSC 41

Date: 20070111

Docket: 010271

Registry: Kamloops

Between:

Jennifer-Anne Elise Warner

Plaintiff

And

Gordon Alan Warner

Defendant

Before: The Honourable Mr. Justice Blair

Reasons for Judgment

Counsel for the Plaintiff

M. Harrison

Gordon Alan Warner appeared on his own behalf

Date and Place of Trial/Hearing:

October 30 & November 3, 2006

Kamloops, B.C.

- [1] The defendant, Gordon Warner, applies by motion dated September 6, 2006 for an order that his son, Christopher John Leslie Warner ("Christopher"), born September 20, 1985 and now 21 years old, is no longer a child of the marriage, cancellation of his obligation to pay child support, that his obligation to pay child support from July 1, 2005 to December 31, 2005 be cancelled, and costs.
- [2] The plaintiff, Jennifer-Anne Elsie Warner, filed on October 26, 2006 a motion seeking to vary the order made by Mr. Justice Lamperson on April 25, 2002 and provide that Mr. Warner pay child support for Christopher pursuant to the Federal Child Support Guidelines (the "Guidelines"), that Mr. Warner contribute to Christopher's extracurricular, post-secondary tuition and special expenses in a specified amount, and costs.
- [3] The parties married June 9, 1984, separated in November 1993 and divorced by order dated November 14, 1995. In the years subsequent to separation, the acrimony between the parties rendered it difficult, if not impossible, for them to agree on any of the matters which typically arise when a marriage fails with particular difficulty in dealing with the questions of custody, support and access relating to their son. Their inability to resolve matters directly forced them to the court for solutions to their difficulties including an 11-day trial in 1995 and a 3-day trial in 1996.
- [4] In April 2002, Ms. Warner brought an application with respect to the custody, access, and child support for Christopher who was then 16 years old. In his judgment dated April 25, 2002, Mr. Justice Lamperson noted that in the spring of 1999 Christopher became angry with his mother with whom he had been living and moved to his father's household which comprised of his father, his new wife and their new child. Mr. Warner in 1999 obtained an interim joint custody order and an order that Ms. Warner pay child support in accord with the Guidelines.
- [5] In September 2001 a dispute arose between Christopher and his father and the youth returned to his mother's home leading to the application by Ms. Warner heard by Lamperson J. in April 2002. Mr. Justice Lamperson declined to change the existing interim joint custody order and described it as pointless to make a specified access order, stating at ¶5 that Christopher "does not want to see his father" adding that:

Although it is unlikely, the mother should encourage Christopher to see his father.

- [6] The April 25, 2002 order directed that Mr. Warner pay child support of \$475 a month commencing May 1, 2002 based on his Guideline income of \$58,389.54. The order further directed that the child support payments would be retroactive to when Mr. Warner received notice of Ms. Warner's application with the child support arrears being set at \$2,739.19 and to be repaid at \$50 a month commencing May 1, 2002 until repaid in full. Mr. Warner acknowledges his continuing obligation to pay the arrears as required at \$50 a month until

repaid, but seeks to have the child support of \$475 a month terminated.

- [7] As Mr. Warner initiated the parties' latest appearance in this court it is appropriate to deal first with his application. Mr. Warner acts for himself and although his motion perhaps lacks clarity as to the relief he seeks, there is no question that in seeking to cancel his child support obligations for Christopher he is doing so on the basis that he is seeking an order that his son is no longer a child of the marriage. Mr. Warner advanced his application accordingly and counsel for Ms. Warner responded in similar fashion.
- [8] In *Farden v. Farden* (1993), 48 R.F.L. (3d) 60, Master Joyce (as he then was), in determining whether the parties' child who was attending a post-secondary institution was still a child of the marriage set out at pp. 64-65 the following as factors for consideration in addressing the question:
- (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
  - (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
  - (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
  - (4) the ability of the child to contribute to his own support through part-time employment;
  - (5) the age of the child;
  - (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;
  - (7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;
  - (8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought.
- [9] Christopher deposed that he enrolled as a full-time student at Thompson Rivers University ("TRU") in September 2003 with a view to obtaining a degree in journalism and that he is presently enrolled full-time in that program, anticipating that he will graduate with a journalism degree in May 2008. He did not provide in his affidavit a list of the courses he is taking at TRU or his marks. He acknowledged missing one semester between May 2005 and January 2006 during which he worked both at a local call centre and a retail grocery outlet, earning a total of some \$17,000. He does not state what happened to the money he earned in that eight month period, but says that he has no savings. He presently works part-time as a graphic designer, earning approximately \$4,000 a year.

- [10] Christopher deposed that he obtained a \$4,000 loan for school in 2005, but gives no indication whether he is eligible for any further loans, bursaries, scholarships or other financial support. Although Christopher is taking a degree in journalism, he gives no indication of his career plans or how he anticipates using the skills he is presently learning.
- [11] There is no material before the court relating to Christopher's past academic performance and whether he is demonstrating success in the chosen course of studies. Christopher did not include information about his marks in his affidavit, nor has he provided his father any information with respect to his courses or his marks. There is no evidence that the parents made any plans during cohabitation for Christopher's education nor do they appear to have discussed their son's academic future since separation which occurred when Christopher was just eight years old.
- [12] Christopher is 21 years old and is a mature adult, more than two years past the age of majority. After departing his father's home in September 2001 he had no contact with his father until January 2004 when his paternal grandfather died and he attended the funeral at Mr. Warner's request. Mr. Warner deposed that his son terminated further contact soon after the funeral and it was not until the spring of 2005 when Christopher talked to him about a student loan. Since then, there has been no contact between father and son nor, to his father's clear concern, has there been any contact between Christopher and his paternal grandmother.
- [13] Christopher deposes that his mother supports him and that he requires further financial assistance from his father while attending TRU. In his financial statement sworn October 12, 2006 Christopher estimates his annual expenses at approximately \$22,000 a year, some of which on their face appear excessive. Christopher did not disclose how he spent the \$17,000 he earned in 2005, but he has no savings and presently is only able to work part-time because of his course load. Nor has he stated whether he is eligible for further student loans or other financial aid.
- [14] In his affidavit sworn October 12, 2006 Christopher does not deny that he has terminated his relationship with his father, nor does he offer any explanation for his behaviour towards his father. He is no longer a child, but is several years into adulthood and has reached an age where he can make his own decisions about his life including his relationship with his father. Christopher has not been forthcoming about his academic program, including the courses he is taking, his marks and his academic standing.
- [15] In spite of the reservations which I have expressed, I am satisfied that Christopher remains a child of the marriage as he is unable to withdraw completely from his parents' charge or to fully obtain for himself the necessities of life. However, I am satisfied that Christopher can support himself to some extent between part-time employment during the TRU semesters, full-time employment when he is not attending TRU, student loans, and more reasonable expenses. Christopher is an adult and as such he should not view his father as a wallet for his needs.

- [16] I do not find the table amounts set out in the Guidelines appropriate in the circumstances, particularly with my findings that Christopher is able in part to fund his education and the other necessities of life. I conclude that I have to consider the means of the parties when determining the support payable by Mr. Warner. Ms. Warner formerly worked for a telephone company, but took a financial payout when the company closed its Kamloops operation. She deposes that her 2005 income was \$22,800 and her expenses were \$49,000. She provides Christopher with a home and some meals.
- [17] Mr. Warner works as a railway conductor and earns approximately \$65,000 to \$70,000 a year, although I understand that he is presently on compensation and recovering from an injury. He is the sole wage earner in his family which includes his wife whom he married in 1999 and they have two children born in 2000 and 2002. He is financially able to support Christopher to some extent.
- [18] In considering Christopher's own financial abilities, Ms. Warner's limited capacity to support her son and Mr. Warner's earnings and financial obligations, I order that Mr. Warner pay support in the amount of \$350 a month commencing December 1, 2006 and terminating on May 1, 2008 when Christopher graduates or earlier upon Christopher discontinuing full-time attendance at TRU or other post-secondary institution. The payments will be paid by Mr. Warner directly to Christopher and their continuation will require Christopher to send his father by registered mail or courier on or before February 25, 2007 the following information:
1. Written confirmation from TRU that he was enrolled full-time at TRU in the 2006 fall semester and is enrolled full-time at TRU for the 2007 winter semester;
  2. Copies of his marks in all his courses in the 2006 fall semester;
  3. A list of the courses he is presently enrolled in for the 2007 winter semester.
- [19] Should this material not be provided by Christopher before February 25, 2007, Mr. Warner can bring on an application to terminate the \$350 a month support payments. Further, Christopher will deliver to his father copies of his marks and confirmation of his attendance at TRU for the semesters he attends through to May 2008.
- [20] Mr. Warner sought cancellation of his child support obligation from July 1, 2005 to December 31, 2005, a period of six months when Christopher was working full-time. I order that the child support payments payable to Ms. Warner be terminated for that six month period. Mr. Warner's child support obligation of \$475 a month payable to Ms. Warner ought to have recommenced on January 1, 2006 and been payable through to and including the payment due November 1, 2006.
- [21] I leave it to the parties to ascertain the arrears owing, if any.

[22] The conclusion I have reached with respect to Mr. Warner's application leaves me no alternative but to dismiss Ms. Warner's application for the relief found in her motion dated October 26, 2006.

[23] I decline to exacerbate the acrimony between the parties by making an order as to costs, other than stating that each will bear their own costs.

"R.M. Blair, J."

The Honourable Mr. Justice R.M. Blair

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Prepared on 29 October 2026 · Esheria