

CANADA / JUDGMENT

Weckermann v. Weckermann

2006 BCSC 1537

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 1537 Weckermann v. Weckermann IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Weckermann v. Weckermann, 2006 BCSC 1537 Date: 20061020 Docket: E0171 Registry:

Powell River Between: RITA JEANNINE WECKERMANN PLAINTIFF And RICHARD MICHAEL

WECKERMANN DEFENDANT Before: The Honourable Mr. Justice Bernard Reasons for Judgment

Counsel for the Plaintiff Ian Fleming Counsel for the Defendant S.K. McCausland Date and Place

of Trial/Hearing: January 20, 2006 and October 6, 2006 Powell River, B.C. A. Introduction

- [1] The parties were in a "traditional" marriage for 23 years, during which Mrs. Weckermann bore and raised three children. Mr. Weckermann was virtually the sole income-earner for the family. In August 2000 the parties separated. A Consent Order dated August 19, 2002, settled the corollary relief sought in the divorce action. The Order obliged Mr. Weckermann to, inter alia, pay \$26,000 to Mrs. Weckermann, assume liability for a joint line of credit at the Bank of Montreal (\$19,929.00), and pay \$250 per month in spousal support for three years (expiring Sept. 1, 2005).
- [2] In November 2002, Mr. Weckermann declared bankruptcy. In the result, his liability for the \$26,000 debt to Mrs. Weckermann and for the Bank of Montreal line of credit was extinguished.
- [3] The consequence to Mrs. Weckermann was twofold: (1) she received a delayed payment of only \$22,054 from the Trustee in Bankruptcy upon the sale of the matrimonial home, rather than the \$26,000 ordered; and (2) she became liable for the joint line of credit debt to the Bank of Montreal in the amount of \$15,731.30.
- [4] On July 30, 2004, Mrs. Weckermann applied to increase spousal support on the basis of material changes in circumstances since the August 19, 2002 Order. The motion was heard on January 16, 2006 and October 6, 2006. Mrs. Weckermann seeks \$1000 per month for a further three years. B. Evidentiary Synopsis
- [5] Since the August 19, 2002 Order Mrs. Weckermann has struggled financially. She has health problems that prevent her from employment as a cook, a vocation for which she incurred student loans for training after the divorce. She presently works as a clerk in her new partner's tile and stone business, earning approximately \$20,000 annually. In the past 3-½

years she has accumulated debts of approximately \$16,000 in student loans and \$13,628 on her Visa card. She is responsible for the Bank of Montreal line-of-credit debt which now stands at approximately \$21,350. She says that she used the \$22,054 proceeds from the sale of the matrimonial home to pay debts to friends and lawyers, to purchase an old car, to pay for dental work, and to buy clothes for herself and her children. She says that she cannot get out from under her debt-load - one partially created by Mr. Weckermann's bankruptcy - without further spousal support.

- [6] At the time of the Consent Order Mr. Weckermann's income was declared to be \$48,000. He works as an electrician and, when fully employed, he can earn up to approximately \$61,000 per year. However, Mr. Weckermann says he is plagued by health problems that include diabetes, failing kidneys, heart problems, and bad knees. As a result, he has been unable to work full-time and his income has been reduced to approximately \$45,000 annually. He says the prospects of his income increasing in the future are poor. He is 48 years of age and foresees only being able to work for 5-to-7 more years due to his poor health. He lives in a trailer with his common-law spouse whom he supports. He has no assets to speak of and calculates his annual expenses as exceeding his yearly income. He owes \$6,300 in credit card debt.
- [7] The foregoing evidence is not in dispute, and I accept it as the essential factual underpinnings of the application. C. The Applicant's Position
- [8] Mrs. Weckermann alleges the following as material changes in circumstances in support of an extension of an increase in spousal support:
- (1) Mr. Weckermann's failure to pay the \$26,000 in a timely manner, which meant she had to borrow money;
 - (2) The monies eventually received from the Trustee in Bankruptcy fell short by \$4000;
 - (3) Mr. Weckermann's declaration of bankruptcy exposed her to a \$15,731 debt (which has grown to \$21,000 because of her inability to make payments), a debt that he was to assume under the terms of the Consent Order;
 - (4) Mr. Weckermann's bankruptcy and the consequences to her in relation to the line of credit caused her to incur legal fees; and
 - (5) Mrs. Weckermann, despite her best efforts, has been unable to achieve economic self-sufficiency within the 3- year period of \$250 per month spousal support payments.
- [9] Mrs. Weckermann submits that spousal support payments of \$1000 per month, for three years, will permit her to pay her debts and become economically self-sufficient. D. The Respondent's Position
- [10] Mr. Weckermann says that he had no choice but to declare bankruptcy in the fall of 2002. He did not do so to subvert the Order.

- [11] Mr. Weckermann says that shortly after the Order he tried to borrow \$26,000 in order to pay Mrs. Weckermann but, due to his precarious financial circumstances, the bank would not loan him the money. He submits that the bankruptcy extinguished the \$26,000 debt, and when Mrs. Weckermann received \$22,054 from the sale of the house she ought to have paid off the line of credit debt (which was \$15,731 at the time); instead, she spent it in other ways.
- [12] Mr. Weckermann paid the spousal support as required by the Order. He says that he is in poor health and in poor financial circumstances, and that he cannot afford any further spousal support. E. Analysis and Findings
- [13] It is indisputable that Mr. Weckermann's bankruptcy materially changed Mrs. Weckermann's financial circumstances in a manner not contemplated at the time of the Consent Order. The most significant impact of the bankruptcy was the shifting of liability for the Bank of Montreal debt from Mr. Weckermann to Mrs. Weckermann, contrary to the intent of the Consent Order. The Order released her from responsibility for that debt in the context of what must be presumed to have been a fair and equitable resolution of the issues of division of family assets/debts and the quantum of spousal support.
- [14] Mr. Weckermann is in relatively poor economic circumstances and his future prospects for financial improvement are not favourable. However, Mrs. Weckermann is now solely responsible for a large debt that was not intended to be hers under the terms of the Consent Order, and she does not have the present means to repay that debt.
- [15] The economic disadvantage to Mrs. Weckermann from the breakdown of the marriage was implicitly recognized in the Consent Order and was intended to be addressed by it. The declaration of bankruptcy very shortly after the date of the Consent Order resulted in shifting the line of credit debt to Mrs. Weckermann. There were no relevant intervening events between the Consent Order and the declaration of bankruptcy. Mr. Weckermann's financial circumstances did not change in the intervening period. The resolution of the spousal support claim, in terms of amount and duration, was reached within the context of the resolution of the division of family assets and debts which had Mrs. Weckermann receiving \$26,000 and being relieved of responsibility for the line-of-credit debt. The \$4000 shortfall and assumption of the line-of-credit debt has contributed to Mrs. Weckermann's persisting economic disadvantage.
- [16] The limited financial means of Mr. Weckermann are salient; however, he is in considerably more favourable financial circumstances than is Mrs. Weckermann, both in terms of income and debt-load.
- [17] In the circumstances, I am satisfied that Mr. Weckermann ought to pay spousal support to Mrs. Weckermann in the amount of \$300 per month for three years. The spousal support is to assist Mrs. Weckermann in servicing her debt-load, and it is specifically intended to help her repay the Bank of Montreal line-of-credit debt. It is intended to ameliorate the economic disadvantage which she has continued to suffer since the breakdown of the marriage. However, if Mrs. Weckermann fails to service the line-of-credit debt with payments of not

less than \$450 per month, or, if the debt should be extinguished by any means other than repayment by Mrs. Weckermann, then Mr. Weckermann may apply to review this Order.

- [18] The defendant shall be at liberty to apply to review this Order if the plaintiff fails to make this minimum payment for two consecutive months. To assist Mr. Weckermann in this regard, Mrs. Weckermann must provide to Mr. Weckermann, at the end of each month, a copy of bank statements showing the outstanding balance of the line-of-credit debt and the payments made by Mrs. Weckermann. F. Disposition
- [19] The plaintiff's application is allowed, in part.
- [20] The defendant shall pay spousal support to the plaintiff in the amount of \$300 per month, payable on the first day of each month commencing November 1, 2006, and ending October 1, 2009.
- [21] The plaintiff shall provide to the defendant by the end of each month in which she receives spousal support, a copy of the Bank of Montreal line-of-credit account statement which shows the debt repayment and the outstanding balance.
- [22] The defendant shall be at liberty to apply to review the spousal support order if the Bank of Montreal line-of-credit debt is extinguished by any means other than repayment by the plaintiff, or if the plaintiff fails to provide bank statements monthly showing the outstanding balance and payments made, or if the plaintiff fails to make two or more consecutive minimum \$450 monthly payments.
- [23] Given the divided success in this matter, the parties shall bear their own costs of this application. "L. Bernard, J." The Honourable Mr. Justice L. Bernard

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