
CANADA / JUDGMENT

Williams v. Mapson

2015 BCSC 828

COURT

Supreme Court of British Columbia

DECIDED

15 May 2015

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2015 BCSC 828 Williams v. Mapson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Williams v. Mapson,

2015 BCSC 828

Date: 20150515

Docket: E010382

Registry: New Westminster

Between:

Brian Gerald Williams

Claimant

And

Wendy Rose Mapson

Respondent

Corrected Judgment: The text of the judgment was corrected at paragraph 27 on January 22, 2016

Before: The Honourable Mr. Justice Ball

Reasons for Judgment

Counsel for Claimant:

Brian Gerald Williams

(In person)

Counsel for Respondent:

J.B. Thompson

Place and Date of Hearing:

New Westminster, B.C.

December 10, 2014

Place and Date of Judgment:

New Westminster, B.C.

May 15, 2015

Introduction

[1] The claimant, Mr. Williams, brought this application principally to obtain orders for retroactive child support and retroactive special and extraordinary expenses which he alleges are owing by the respondent, Ms. Mapson. In the alternative he seeks a credit for these payments he alleges are owing against future child support payments for a younger child. The basis for his retroactive child support claim is his alleged overpayment of child support. A further order concerning the status of an adult child ceasing to be a child of the marriage has been resolved by consent.

Background

[2] The parties began cohabitating in 1991. They have never married. They separated in October 1999. There are three children of the relationship: S.A.M.M. born May 27, 1989, S.R.W. born October 15, 1993, and B.I.J.W. born April 6, 1998. S.A.M.M. is not concerned in the present application as she has ceased to be a child of the marriage.

[3] With respect to S.R.W. the parties have consented to a declaration that effective January 1, 2014 she is no longer a child of the marriage and I make that order.

[4] There have been two prior orders made in this case. The first was an order of Mr. Justice Warren dated April 2, 2001. Warren J. ordered that commencing February 1, 2001 and continuing each month thereafter Mr. Williams pay child support in the amount of \$138 per month taking into account a child support credit received from another spouse of Ms. Mapson.

[5] Warren J. further ordered:

The Plaintiff, Brian Gerald Williams and the Defendant, Wendy Rose Mapson, will share the Children's extraordinary expenses proportionately according to their respective incomes, with the Plaintiff, Brian Gerald Williams paying 57% of the extraordinary expenses and the Defendant, Wendy Rose Mapson, paying 43% of the extraordinary expenses.

- [6] Those percentages were based on the respective annual incomes of the parties found at the time for Mr. Williams to be \$74,392 and for Ms. Mapson to be \$55,154.
- [7] The second order was made by Madam Justice Neilson (as she then was) on May 10, 2005. Mr. Williams was ordered to pay to Ms. Mapson \$725 per month for support of the children commencing January 5, 2005 and continuing each month thereafter until June 2005 when his monthly payment became \$500 per month.
- [8] The parties were also ordered to exchange their T1 General Tax Return Summaries by May 30 of each year in which child support payable. This requirement was subject to a \$1,000 penalty for failing to provide disclosure. The order also provided for a final disposition of properties held by the parties.
- [9] Throughout the period the parties have been separated the youngest children have been subject to a shared parenting arrangement. According to the affidavits filed, each of the parties has paid significant sums over the years in support of their children. There is a significant issue as to whether the parties were aware of the totality of the payments made by the other party for the support of their children. In effect in these proceedings, Mr. Williams is claiming sums of money which he paid commencing in 2008 for the attendance by S.R.W. at a Sylvan Learning Centre (\$2,053) and for the tuition of S.R.W. at Douglas College over a four year period (\$9,820.80).
- [10] Neither of the sums claimed above is an item which would normally be included under the rubric of child support. Both of these items would be considered special or extraordinary expenses under s. 7 of the Federal Child Support Guidelines, SOR/97-175 [Guidelines].
- [11] Mr. Williams is also claiming reimbursement for child support. He asserts that for the years 2011 and 2012, based on calculations which he has made, he overpaid child support by \$6,108 in 2011 and by \$9,300 in 2012. In January 2014 Mr. Williams reduced his monthly support amount to \$250 and no child support payments at all were made in the months of February, March or April, 2014. In the month of May 2014 he made a payment of \$500.
- [12] Ms. Mapson asserts that it was agreed between the parties that S.R.W. should have a cell phone when she became 13 years old in 2007 for her personal safety and as a means to maintain contact with her parents. In 2010 it was agreed that B.I.J.W. should have a cell phone as well. Ms. Mapson deposes that Mr. Williams has made no contribution whatsoever to the cost of these cell phones. She estimates that she has spent between \$8,000 and \$10,000 on cell phone bills alone.
- [13] Essentially Ms. Mapson asserts that she has paid as much or more for special and extraordinary expenses for the children.
- [14] Ms. Mapson asserts that at no time during the years in question was she provided with any material relating to Mr. Williams' income or taxes and she had no idea of his income and she did not learn of the quantum of his income until January 4, 2014.

- [15] A Registered Educational Savings Plan ("RESP") had been created and funded for the post-secondary education of S.R.W. This RESP was managed and in the name of Mr. Williams. Ms. Mapson had no information about how much was in that fund. No timely request was made of Ms. Mapson by Mr. Williams for any financial contribution to S.R.W.'s post-secondary school expenses. Ms. Mapson asserts that had Mr. Williams claimed the retroactive special and extraordinary expenses and retroactive overpayment of child support in a timely way, that is in the years the expenses were incurred and the alleged overpayments were made, she would have had access to maintained records and been able to bring forward a claim for the expenses which she claims are extraordinary expenses, including child care, elite level athletic, and cell phone expenses which were actually agreed to by Mr. Williams and which he made no contribution towards.
- [16] It is also noted that notwithstanding Mr. Williams' larger income many expenses for the children like school fees, school trips, and sports activities other than softball have been shared equally by the parties, rather than in proportion to their respective incomes. As Mr. Williams' income was larger, he received a benefit because the parties were paying equally for these expenses rather than in proportion to their incomes.

Analysis

- [17] The case of *D.B.S. v. S.R.G.*, 2006 SCC 37 is the leading case on the enforcement of retroactive child support obligations. At para. 60 of *D.B.S.*, Mr. Justice Bastarache makes it clear that "[n]o child support analysis should ever lose sight of the fact that support is the right of the child." Thus, the suggestion made by Mr. Williams that past overpayments of child support in respect of one child should become a credit or bank account for a second child is simply inappropriate and inconsistent with the rights of the second child.
- [18] At para. 68 of *D.B.S.*, Bastarache J. sets out the justification for retroactive child support orders:

The concern associated with retroactivity is that, from the perspective of the person on whom a retroactive obligation is imposed, the order is arbitrary and unfair: see R. Sullivan, Sullivan and Driedger on the Construction of Statutes (4th ed. 2002), at pp. 553-54. Yet a retroactive child support order, as considered in the present appeals, does not involve imposing an obligation on a payor parent that did not exist at the time for which support is being claimed

- [19] Bastarache J. set out four factors to be considered by the court in assessing whether a retroactive order is appropriate. These factors were outlined by Madam Justice Kirkpatrick in *McKenzie v. Perestrelo*, 2014 BCCA 161 at para. 106:

The four factors to be considered are:

- a) whether there is a reasonable excuse for why support was not sought earlier;
- b) the conduct of the payor parent;

- c) the circumstances of the child or recipient spouse; and
- d) any hardship occasioned by a retroactive award on the payor spouse.

[20] At para. 101 in D.B.S. Bastarache J. stated as follows:

Delay in seeking child support is not presumptively justifiable. At the same time, courts must be sensitive to the practical concerns associated with a child support application. They should not hesitate to find a reasonable excuse where the recipient parent harboured justifiable fears that the payor parent would react vindictively to the application to the detriment of the family. Equally, absent any such an anticipated reaction on the part of the payor parent, a reasonable excuse may exist where the recipient parent lacked the financial or emotional means to bring an application, or was given inadequate legal advice

- [21] In the case before me there is no evidence whatsoever from Mr. Williams providing any reason for the delay; it is completely unexplained. With respect to the conduct of the payor parent the submissions were that Ms. Mapson has been exemplary in how she has always looked after the financial needs of the children, in particular paying on her own without additional child support reflective of the increased salary of Mr. Williams for special and extraordinary expenses, such as the children's cellular telephones. With respect to the circumstances of the children, the girls have had loving parents with good jobs throughout their lives. They have been raised well and are doing well in school and in their sporting activities. There is no evidence in the material filed that a retroactive order at this time would assist either child and no evidence to suggest a particular benefit to either child on their own.
- [22] With respect to the question of hardship the financial statements of the parties were located at Tabs 6 and 7 in the Chambers binder. A review of Ms. Mapson's Form F8 provides clear evidence that she has little wealth. She lives in a rental home and drives a 13-year-old Honda Accord. Fortunately, she has, through steady work, earned a significant pension and she will also receive Canada Pension Plan benefits.
- [23] Mr. Williams on the other hand earns substantially more than Ms. Mapson. In 2013, for instance, his income was \$113,356 and her income was \$61,766.
- [24] An interesting feature of this case is that Ms. Mapson, as the intended payor parent, has told the Court that she did not pursue her own claim for special and extraordinary expenses because she had fear that Mr. Williams would react vindictively to the application to the detriment of the family if she were to make a claim. She asserts she had neither the financial resources nor the emotional strength to seek a review. It is only in answer to the claim for retroactive payments by Mr. Williams that she is now seeking a review. She submits that had his application been brought at an earlier time and date she would have had an opportunity to seek the intervention of the court and require more substantial child support.

- [25] The application by Mr. Williams with respect to retroactive child support and retroactive special and extraordinary expenses is dismissed based on his failure, which is described above, to meet the requirements of D.B.S. for retroactive awards.
- [26] I point out that it is extremely important that prior to any parent commencing payment of special and extraordinary expenses there is first consultation and an agreement between the parents as to whether the expense is a reasonable expense in the interests of the particular child and the activities the child has undertaken, including a plan of education.

Ongoing Child Support

- [27] I will now address the amount of child support payable for B.I.J.W. moving forward. This is based on the assumption that the shared parenting regime continues. In the current circumstances, given Mr. Williams' income in 2013, based on the Guidelines he would pay \$1,054 per month. Given Ms. Mapson's Line 150 annual income of \$61,766, she would pay \$631 per month in Guidelines child support. The difference is \$423 per month and that is the amount that Mr. Williams shall pay to Ms. Mapson on a monthly basis commencing January 1, 2014 and continuing on the first of each month thereafter pending further order of this court. Any sum paid by Mr. Williams to Ms. Mapson in 2015 for child support shall be credited to Mr. Williams. Any balance remaining due shall be paid forthwith by Mr. Williams to Ms. Mapson.

Conclusion

- [28] In the circumstances of this case, and having considered the submissions of both parties, the application of Mr. Williams for retroactive child support repayment and/or retroactive special and extraordinary expenses is dismissed. Further, it is ordered that effective January 1, 2015 Mr. Williams shall pay to Ms. Mapson child support for B.I.J.W. in the sum of \$423 per month and on the first of each month thereafter for so long as she remains a "child of the marriage". Otherwise the provisions of the order of Neilson J. pronounced May 10, 2005 will continue in full force and effect.
- [29] Ms. Mapson is entitled to her costs of this application as a matter of ordinary difficulty payable forthwith after assessment thereof.

"Ball J."

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