

CANADA / JUDGMENT

Williams v. Williams

2015 BCSC 112

COURT

Supreme Court of British Columbia

DECIDED

27 January 2015

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2015 BCSC 112 Williams v. Williams IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Williams v. Williams, 2015 BCSC 112 Date: 20150127 Docket: E45700 Registry: New Westminster Between: Heather Lynn Williams Claimant And Jeffrey Frederick Williams Respondent Before: Master Caldwell In Chambers Reasons for Judgment Counsel for the Claimant: A.M. Lessing Counsel for the Respondent: D.E. Burns Place and Date of Hearing: New Westminster, B.C. October 24, 2014 Place and Date of Judgment: New Westminster, B.C. January 27, 2015

- [1] This is an application for spousal and child support; the portion of the original application requesting a valuation of the family business is being dealt with by counsel by consent and was not argued before me.
- [2] The only real issue to be determined is that of the proper income to be attributed to Mr. Williams for the purpose of calculating support.
- [3] The parties, following a year and a half of cohabitation, married in 1993; the claimant was 18 at the time. Mr. Williams graduated from high school; Mrs. Williams did not.
- [4] Following marriage they had four children:
- Kyle, born November 1995;
 - Natalie, born December 1997;
 - Deanna, born August 2000; and,
 - Ryan, born June 2002.
- [5] The parties separated in January 2014.
- [6] The three older children now live with Mr. Williams and Ryan lives with both parties on a shared parenting schedule.
- [7] During the early period of cohabitation the parties sold Amway products and Mr. Williams discovered that he had a knack for sales.

- [8] The material indicates that this was a form of traditional marriage which saw Mr. Williams working hard as the financial engine of the family and Mrs. Williams shouldering the lion's share of the intra-family duties involving the home and the children. It is agreed that once finances allowed, Mrs. Williams was assisted in this regard by a variety of domestic assistants, nannies, private teachers and the like.
- [9] Following marriage, Mr. Williams became a sales representative for a sales training company; while there he wrote, developed and began teaching his own sales course during the mid-1990s.
- [10] The terrorist attacks of 9/11 and the economic difficulties which followed were not kind to Mr. Williams' business but he continued in sales at Hallmark Ford and operated his business from home.
- [11] Following a period of growth, the economic downturn of 2008 again caused problems for Mr. Williams and by early 2009 he found himself in debt in the amount of \$160,000.
- [12] Mr. Williams persevered. In 2009 the gross sales were \$2.4 million and they grew rapidly: 2010 \$3.8 million 2011 \$10.2 million 2012 \$20.3 million 2013 \$40 million 2014 (est) \$52 million
- [13] By late 2011 Mr. Williams had created a Family Trust to assist with the company and its profits. It appears from the submissions of counsel that the Trust controls the company and determines how the finances of the company should be arranged and how compensation should be paid. For all practical purposes Mr. Williams controls and/or determines the decisions and strategies of the Trust.
- [14] In 2011 Mr. Williams took approximately \$320,000 in salary and dividends from the company; Mrs. Williams was shown as receiving approximately \$185,000 for that year. In 2012 Mr. Williams took approximately \$378,000; Mrs. Williams \$33,000. In 2013 Mr. Williams shows salary and dividend income of \$1.8 million; Mrs. Williams is shown as receiving \$1.6 million for that year but due to the separation and concerns about tax consequences she has not acknowledged such payment.
- [15] Counsel for Mr. Williams indicates that these incomes for 2013 are not income in the true sense but rather represent accounting entries involving shareholders loans and dividend payments made to cover expenses incurred and debts accumulated over the previous three years. He submits that Mr. Williams' actual income is as represented on his Form 8 Financial Statement, that being \$476,000. He argues that in spite of the fact that the estimated gross sales of the company will increase by \$12 million over 2013 figures, the company needs to hold onto more of the available money for capital expenditures and as security against future risks. Details of Mr. Williams' concerns can be found at paras. 55 - 57 of his affidavit #2.
- [16] Based upon these figures, counsel for Mr. Williams suggests that support below the Guidelines would be appropriate and suggests a global figure of about \$10,000 per month; in this regard he has provided a proposed budget for Mrs. Williams totalling \$9,754.69 per

month. The material seems to indicate that since separation Mr. Williams has paid Mrs. Williams monthly expenses of about \$14,500, including mortgage, utilities, horse expenses, child support and vehicle expenses, in addition to which he pays her an allowance of \$3500 per month. On his current Form 8 his budget for charitable donations and horse care totals over \$8200 per month; the parties' charitable donations for 2013, divided equally, totalled more than \$500,000.

- [17] Counsel for Mrs. Williams submits that the 2013 income, which totalled \$3.4 million, is actually representative of what should be used to calculate both child and spousal support; he says that this is particularly so given that the gross sales for 2014 are expected to be up by \$12 million, being more than 20%. He says that a compromise would be to set Mr. Williams' income at \$1.8 million which was his declared income for 2013. The lowest figure proposed by him is \$1 million per year; that figure comes from para. 93 of Mrs. Williams' affidavit wherein she swears that Mr. Williams told her that he was going to "accumulate" at least \$1 million per year from the companies.
- [18] Both counsel addressed the issue of the applicability of both the Child Support Guidelines and the Spousal Support Advisory Guidelines in cases such as this where income exceeds \$350,000 and shared parenting regimes are in place. Argument was also presented regarding the issue of retained earnings and their place in dealing with assessment of Guidelines income. The authorities submitted by the parties, and which I reviewed, included: *Fargey v. Fargey*, 2013 BCSC 331 (review of child support and retroactivity after final order of divorce); *D.L.D. v. R.C.C.*, 2013 BCSC 590 (interim spousal and child support following on and off cohabitation of seven years followed by marriage of one month); *Roche v. Chen*, 2012 BCSC 1290 (interim child support involving relationship of no co-habitation); *S.R.M. v. I.A.M.*, 2002 BCSC 1453 (spousal and child support following 20 day trial and involving an 11 year marriage); *Contino v. Leonelli-Contino*, 2005 SCC 63 (considerations for calculation of child support in shared parenting situations); *Chutter v. Chutter*, 2008 BCCA 507 (appeal of trial decision involving long marriage with husband earning \$214,000 and wife earning \$83,000); *Loesch v. Walji*, 2008 BCCA 214 (appeal of interim spousal order of \$50,000 per month and child support order of \$30,000 per month on grossed up Guidelines income of \$1.6 million); *Chapman v. Summer*, 2010 BCCA 237 (husband's Guidelines income not limited to draw but to recognize money available to him from company income); *Kowalewich v. Kowalewich*, 2001 BCCA 450 (appeal of eight day hearing to review final spousal and child support order); *N.A.J. v. P.L.J.*, 2014 BCSC 948 (child and spousal support and calculation of Guidelines income following 15 day trial); *Purvis v. Purvis*, 2009 BCSC 1794 (12 year marriage, variation of final order and determination of Guidelines income available in corporate situation); *Hathaway v. Hathaway*, 2014 BCCA 310 (20 year relationship, appeal of trial decision regarding high income exceeding \$350,000 ceiling and application of Child and Spousal Guidelines) and *Goriuk v. Turton*, 2011 BCSC 652 (6 ½ year common-law relationship, no children, very high income).

- [19] The case before me is, as with most matrimonial cases, different from all of the above cases as regards to basic facts and the stage of the litigation. It involves a long marriage, beginning while the claimant was still a teenager, a traditional marriage, a dedicated, hardworking breadwinner who was ultimately extremely successful, four children in a particular residential arrangement; it also arises as an interim application seeking relief to see the parties through to trial where a more fulsome review of the evidence of the parties may be undertaken.
- [20] Of the cases cited above, I find some of them to be of assistance in this case. I am satisfied from Chapman that I am not limited to what the respondent claims as his draw or salary but rather that I am able to consider as well the money available to him from the businesses. I am satisfied from Hathaway that, while there may be consideration of a \$350,000 ceiling, the court need not depart from the Child Support Guidelines or the Spousal Support Advisory Guidelines. In that regard I am respectfully of the view that where the parties have the type and length of relationship as is present in this case the interim support relief should seek to provide a realistic sharing of the available income or cash flow so that they may move forward in their dealings and the litigation on a somewhat equal footing. Failure to provide such equitable sharing unfairly slants the overall playing field and places one party at a distinct disadvantage in terms of their ability to pursue an appropriate outcome; on the other hand, if the interim order turns out, in the fullness of time and evidence at trial, to have been inappropriate, there are ample assets and sources of income which may serve to remedy that temporary situation and put matters right.
- [21] I would fix Mr. Williams' Guidelines income for purposes of both spousal and child support at \$1.2 million and Mrs. Williams' at zero. Based upon the Child Support Guidelines, interim child support for Ryan is payable by Mr. Williams to Mrs. Williams in the amount of \$9,093 per month commencing November 1, 2014 and continuing thereafter until further order of the court. Based upon the mid-range with child support calculations, spousal support is payable by Mr. Williams to Mrs. Williams in the amount of \$25,495 per month commencing November 1, 2014 and continuing thereafter until further order of the court.
- [22] Mrs. Williams is entitled to her costs in any event of the cause. "Master Caldwell"

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Prepared on 29 October 2026 · Esheria