
CANADA / JUDGMENT

Wooldridge v. Paton

2007 BCSC 1547

COURT

Supreme Court of British Columbia

DECIDED

19 October 2007

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2007 BCSC 1547 Wooldridge v. Paton

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wooldridge v. Paton,

2007 BCSC 1547

Date: 20071019

Docket: D31227

Registry: Kamloops

Between:

Jessica Anne Wooldridge

Plaintiff

And

Randall Lorne Paton

Defendant

Before: The Honourable Mr. Justice Meiklem

In Chambers

Reasons for Judgment

Counsel for Plaintiff

M.R. Payne

Randall Lorne Paton appeared on his own behalf

Date and Place of Trial/Hearing:

September 24, 2007

Kamloops, B.C.

- [1] The plaintiff has applied for an upward variation in basic child support payable by the defendant and claims an amount for extraordinary expenses in respect of gymnastics and music lessons.
- [2] The plaintiff seeks, as a minimum, a basic child support award based on an imputed Federal Child Support Guidelines (the "Guidelines") income of \$50,000.00 commencing January 1, 2006 and seeks a contribution toward extraordinary expenses of either 78.57% or 83.87% depending on the imputations to be made of the incomes of the respective parties.
- [3] There is also an issue as to the correct amount of arrears outstanding. The resolution of this issue depends on whether certain payments made by the defendant to the plaintiff should be credited to basic child support or were gifts or payments toward extraordinary expenses in the past.
- [4] On the hearing of this application there was insufficient evidence supporting the necessity of the orthodontics and liberty to file further evidence was granted. On October 12, 2007 evidence was filed supporting the imminent necessity of orthodontic expenses of \$1,180.00 which can be paid by an initial payment of \$950.00 and six monthly payments of \$155.00 each. The evidence is that 50% of the cost of orthodontics, up to a lifetime maximum of \$2,000.00 is claimable on the plaintiff's common law spouse's dental plan. There will be future orthodontic costs, but these are unknown at the present time. The plaintiff would like to have the court pre-determine the ratio in which the parties will share these future expenses.
- [5] The defendant has voiced a claim of hardship but has not developed an argument or any evidence that would provide any substance to a claim of undue hardship. When I say that he has voiced a hardship claim, I refer to the fact that he has completed a portion of part 5 of his form 89, citing the undue hardship circumstances of a "reduction of wages in comparison to the lower mainland" and "the high cost of rent to provide safe and comfortable home for our children".
- [6] Mr. Paton is a drywaller and deposes that his 2006 Guideline income for basic child support was \$28,264.81, which was his line 150 income on his 2006 income tax return. This was actually the net income on self-employed gross earnings of \$42,016.75. Business expenses included motor vehicle operating expenses of \$6,867.78 and depreciation of \$3,825.00.
- [7] Mr. Paton's line 150 income in 2004 was \$25,682.08 comprised of a mixture of T4 income, workers' compensation benefits and self-employed net income of \$12,685.25 on a gross self-employed income of \$18,085.00. His 2005 line 150 income which included net self-employment income of \$34,858.90 on gross income of \$44,856.00 together with T4 income of

\$5,203.44. This 2005 income was earned in the lower mainland prior to the defendant's move to Kamloops, ostensibly made so that he could be closer to his child. The gross income was reduced in part by \$6,923.56 which was 75% of motor vehicle expenses claimed, totalling \$9,231.41 for fuel, maintenance and insurance. I mention this factor because an issue is made of current motor vehicle expenses claimed in the amount of \$600.00 per month for fuel, maintenance and insurance.

- [8] The defendant discloses debts totalling \$45,800.00 which includes his new common law spouse's student loans of \$17,000.00 and income tax arrears of \$18,800.00. The defendant's new common law spouse's student loan is irrelevant when considering undue hardship, even if Mr. Paton has bound himself to pay it, which is not clear on the evidence. The defendant's submission is that his current gross income, as verified by his pay stubs is potentially \$36,543.12, but he wants to take seven weeks off work, one of the reasons being his wish to maximize his summer access with his son. He said that this will reduce his gross income to \$31,213.91 based on averaging his January to July, 2007 earning history.
- [9] The existing child support order of \$303.00 per month is based on a finding, in August 2005, that he had a Guideline income of \$35,000.00
- [10] The defendant now earns \$22.00 per hour, plus 4% holiday pay. His pay stubs for selected semi-monthly pay periods from January to July 31, 2007 indicate a varying number of hours worked per pay period, rather than a standard 40 hour or 37.5 hour work week. The omission of several pay periods and absence of year-to-date information makes the calculation of his annual earnings based on these pay stubs unreliable. A better estimate of his current income potential is obtained by inferring an average 37.5 hour work week. On that basis, his annual income for 52 weeks, inclusive of 4% holiday pay, would be \$44,616.00 without allowing for any time off for actually taking a vacation.
- [11] The potential gross earning of \$44,616.00 should reasonably be reduced by 4% to allow for a vacation commensurate with the holiday pay that Mr. Paton is entitled to. I therefore determine Mr. Paton's income for Guideline purposes to be \$42,800.00. This has the effect of determining basic child support at \$396.00 per month, which I order to be effective October 1, 2007.
- [12] The evidence does not persuade me that Mr. Paton has been supplementing his wage earnings by additional contract income. Nor do I think it is fair to impute additional income on the basis that he is bound to supplement his regular wages with such contract income or work overtime hours, particularly in a case where the other parent has chosen to prioritize her own role as a parent and has become a full time homemaker rather than work outside the home. The plaintiff concedes that she is capable of working and has previously earned \$25,510.00 as an aquatic supervisor.
- [13] For the purpose of apportioning the burden of extraordinary expenses I impute income of \$24,000.00 to Ms. Wooldridge, therefore Mr. Paton's share of extraordinary expenses is 64%.

- [14] In respect of the orthodontic expenses that are currently recommended as necessary and which are 50% reimbursable by an insurer, Mr. Paton will pay 64% of 50% of \$950.00; that is \$304.00 forthwith, either to Ms. Wooldridge or directly to the office of Dr. Wilcox, Orthodontist. For the next six months, commencing on November 1, 2007, Mr. Paton will similarly remit 64% of 50% of the \$155.00 per month; that is \$49.60 per month. Since the current treatment will exhaust the lifetime limit to reimbursement by the dental insurer, Mr. Paton will remit 64% of future orthodontic expenses on receipt of written verification of their cost and necessity.
- [15] In respect of the amounts claimed as extraordinary expenses for extra curricular activities of music lessons, I do not find that the \$17.00 per lesson cost is in the circumstances of this case extraordinary as the term is defined in the Guidelines. I find that Ms. Wooldridge can reasonably cover that expense taking into account the child support payable by Mr. Paton and her own imputed income.
- [16] As to the competitive gymnastics program costs of \$170.00 per month, I find that this expense does qualify as extraordinary, but on a consideration pursuant to s. 7 of the Guidelines of its necessity in relation to the best interests of the child and reasonableness in relation to the means of the parties and to their spending patterns prior to the separation, I do not find that it would be reasonable to impose a sharing of that expense upon an unwilling Mr. Paton.
- [17] Reference to the Price Waterhouse Coopers 2006 matrimonial tax tables (which I note do not incorporate the most recent, somewhat higher, Guideline table amounts) indicates that Mr. Paton would retain approximately \$2,300.00 per month after child support, income tax and CPP/EI premiums. His property and financial statement estimates monthly expenses of \$2,320.00 excluding child support. Although his choice to rent a house for \$1,100.00 per month has been questioned, he has omitted claiming any expenses in relation to the categories of health expenses, personal expenses, including clothing, hair care, entertainment, gifts, or in respect of vacation reserve or any other category where he must obviously have expenses. His estimates in the categories of food, transportation and utilities are reasonable. I can not find that Mr. Paton has the means at this time to contribute proportionately to the expense of a competitive gymnastics program for his son.
- [18] Returning to the issue in respect of arrears, I am unable to determine on the evidence whether or not there was an old agreement that Mr. Paton would pay gymnastic expenses, thus providing a rationale for the extra payments (usually in the amounts of \$500.00) that Mr. Paton paid in 2005 and that Ms. Wooldridge did not report to the Family Maintenance Enforcement Program ("FMEP"). Ms. Wooldridge argues that \$1,503.60 of the approximately \$2,200.00 of direct payments, unrecorded by FMEP should be considered to be payment of his gymnastics obligation. I cannot agree. Therefore I order the child support arrears recorded by FMEP as \$3,632.38 as at April 24, 2007 be reduced to \$1,432.38 as of April 24, 2007, together with a commensurate reduction in interest penalties occurring since that date, the calculation of which I leave to FMEP.

[19] I consider that there has been mixed success on this application and there will be no order as to costs.

"I.C. MEIKLEM J."

MEIKLEM J.

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