
CANADA / JUDGMENT

Young v. Barron

2021 BCSC 1329

COURT

Supreme Court of British Columbia

DECIDED

19 February 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCSC 1329 Young v. Barron

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Young v. Barron,

2021 BCSC 1329

Date: 20210219

Docket: E201699

Registry: Vancouver

Between:

Liam Bartholomew Young

Claimant

And

Madison Nicole Barron

Respondent

Before: The Honourable Madam Justice Francis

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant

(via telephone):

S.S. Silber

Y. Li-Reilly

Counsel for the Respondent

(Via telephone):

S.P. Simpson

Place and Date of Hearing:

Vancouver, B.C.

February 10, 2021

Place and Date of Ruling:

Vancouver, B.C.

February 19, 2021

- [1] THE COURT: These are reasons for judgment on an application brought by the respondent. I am delivering these reasons orally today. If a transcript is ordered of these reasons, I may amend them for clarity and grammar and to include full case citations, but the substance of them will not change.
- [2] The respondent has brought an application for the following relief:
- a) An order that income be imputed to the claimant for the purposes of determining his interim child support and spousal support obligations.
 - b) An order that, commencing March 1, 2021, the claimant shall pay interim child support and interim monthly spousal support.
 - c) Pursuant to Rule 13-4 of the Supreme Court Family Rules, B.C. Reg. 169/2009, an order jointly retaining an expert to value certain corporate interests of the claimant at the claimant's expense.
 - d) Various document disclosure orders.
- [3] The claimant consents to the court making an order for interim child support and interim spousal support but he disputes the imputation of income sought by Ms. Barron. He objects to the court making an order appointing a joint expert at this phase, and he objects to the scope of the joint expert's appointment. He consents to some but not all of the document disclosure requested by Ms. Barron.

Background

- [4] The parties have been in a marriage-like relationship since 2014. They have three children between the ages of five and two. This action was commenced by notice of family claim by Mr. Young on August 24, 2020, and the parties have agreed to interim parenting time on a two-two/five-five schedule. A trial is set for February 22, 2022.
- [5] The issues in dispute in this application relate primarily to disagreements about Mr. Young's income. Ms. Barron does not agree that the income stated in Mr. Young's Form F8 is an accurate statement of his actual income. She also seeks disclosure of documents and the appointment of an expert to better enable the parties and ultimately the court to determine Mr. Young's financial circumstances in advance of trial.

Income for Support Purposes

Issues re: Mr. Young's income

- [6] In her initial notice of application, Ms. Barron asked the court to impute income to Mr. Young in the amount of \$1,115,300. At the hearing, she resiled somewhat from this position and asked the court to impute income to Mr. Young such that his guideline income would be \$507,324.
- [7] As I understand Ms. Barron's submissions, there are three different bases on which she says it is appropriate to set Mr. Young's guideline income at this amount:
- a) She refers to large and generous bonuses that Mr. Young received prior the year of separation from the family company for which he works, Marin Investments Ltd. ("Marin"). She notes that at the time of separation, Mr. Young's income dropped precipitously, and he stopped receiving bonuses. She says that by averaging his income for the last three years so as to account for the large bonus received in 2018, a fairer guideline income can be reached.
 - b) She submits that, rather than looking at dividend income Mr. Young receives from his holding company, Wardell Pacific Capital Inc. ("Wardell"), I should impute the pre-tax corporate income of that company to Mr. Young.
 - c) She asks the court to take an "expenses approach" to ascertaining Mr. Young's income. If the court looks at the amount of the expenses declared on the Form F8 by Ms. Barron and Mr. Young, they vastly exceed the income Mr. Young has declared on his Form F8.
- [8] Before analysing Ms. Barron's arguments in this regard, it is important to note that this is an interim not a final application. I have lengthy materials in front of me containing a number of contested allegations of fact. I do not have the benefit of live witnesses or cross-examination, and therefore resolving these contested facts is not possible.

- [9] In *Atterby v. Rich*, 2019 BCSC 869, I relied on the comments of Madam Justice Ballance in *I.F. v. R.J.R.*, 2015 BCSC 793, with respect to interim orders. I again adopt her comments about interim support applications:
- [13] This would seem a logical place to make some general remarks about interim orders. By their very nature, they are stop-gap orders. It is routinely the situation that parties embroiled in matrimonial litigation will have conflicting versions of the material facts. In the vast majority of cases, the evidence required for a complete exploration of the controversial issues is underdeveloped or not available.
- [14] It is commonplace for the chambers judge on an interim application to make preliminary findings based on the evidence as it then stands. Due to the interlocutory nature of the proceeding, it is understood that those findings are almost invariably drawn from a limited record. They are not intended to fetter the trial judge who will decide the issues on a broader and more developed body of evidence and, for that reason, may arrive at different conclusions. Appreciating that only when extensive evidence is adduced at trial can the disputed issues be fairly determined on their merits, does not mean that the court will necessarily be hamstrung on an interim application.
- [15] While the court is inclined to take a cautionary approach on most every interim application, it strives to ensure that it is not so overly cautious as to be timid.
- [10] I also echo the words of Justice Fitzpatrick in *Devathasan v. Devathasan*, 2017 BCSC 1010 at para. 89, wherein she said that at best, interim support applications call for rough justice. The interim nature of this application means that the best the court can do is stabilize the financial circumstances of the parties pending trial.
- [11] This is particularly apt in a case like this, where Ms. Barron alleges that Mr. Young's sworn evidence about his income is simply not true. Mr. Young has sworn that his bonuses from Marin are based on a formula, they are not discretionary, and in any given year whether or not he receives a bonus will be determined solely with reference to the performance of the company's assets. He also swears that he does not expect to receive a bonus in 2021, just as he did not receive a bonus in 2019 or 2020. Ms. Barron does not believe Mr. Young's evidence on these points, and she criticizes Mr. Young's failure to produce documents to substantiate this assertion.
- [12] There may well be documents that should and presumably will be disclosed in the course of this litigation that will shed light on the bonus structure of Marin and will either corroborate Mr. Young's statement about how the bonus structure works or refute it. For the purposes of this interim application, I cannot reject Mr. Young's sworn evidence on the basis of Ms. Barron's suspicions that he may not be telling the truth. That will be a matter for trial, with the benefit of a full evidentiary record and cross-examination.

Facts relevant to determining income for support purposes

- [13] Ms. Barron has tendered extensive evidence about the extravagant lifestyle that she and Mr. Young led. She has testified about the cost of hotel rooms, brands of household appliances, restaurants at which meals were enjoyed and other indicia of a lavish lifestyle. Mr. Young does not deny that the couple lived well but testified that he and Ms. Barron disagreed about whether they could maintain the lifestyle they were living and that a major source of tension in their relationship was Mr. Young's wish to cut back on the family's spending.
- [14] Mr. Young has two sources of income: employment income from Marin and dividend income from Wardell.
- [15] Mr. Young's T4 salary income from Marin has gradually increased since 2014, and for the last three years, his salary has been in the range of \$145,000. The significant variation in his income from year to year is a result of his annual bonus. Since 2014, he has received bonuses in varying amounts in some years and has received no bonus in others. His highest bonus year was 2018 when he received a bonus of \$507,748. As I previously noted, in 2019 and 2020 he received no bonus.
- [16] Wardell is a holding company entirely owned and controlled by Mr. Young. Wardell owns a stock portfolio, but its primary asset is its 14.5 percent interest in Marin. This interest is substantial: Wardell's shareholdings in Marin have a book value of over \$10 million. The annual dividends received by Wardell from Marin have ranged in the amount of \$36,000 to \$106,838.
- [17] In 2019 Wardell paid dividend income to Mr. Young in the amount of \$100,000. In 2020, Wardell paid dividend income to Mr. Young in the amount of \$106,838. This was the same amount of dividend income that Wardell received from Marin in that year.
- [18] Mr. Young tendered a guideline income expert report from Keith Jensen of BDO Canada LLP (the "Jensen Report"). The report was based on a review of Mr. Young's tax information, financial statements of Wardell, and Wardell's TD investment account statements.
- [19] In the Jensen Report, Mr. Jensen noted that Mr. Young's sources of income consisted mainly of employment income from Marin, including bonuses, and dividend income from Wardell. Mr. Jensen made a number of adjustments to Mr. Young's income to come to an opinion on the amount to be used for support purposes.

Analysis

Averaging

- [20] Ms. Barron submits that Mr. Young's Guideline income is best determined by averaging his annual income over the last three years.

[21] Section 15 of the Federal Child Support Guidelines, S.O.R./97-175 [Guidelines], stipulates that a spouse's annual income is to be determined in accordance with ss. 16 through 20.

Accordingly, the starting point in the determination of income is s. 16, which states:

Subject to ss. 17 to 20, a spouse's annual income is determined using the sources of income set out under the heading "Total Income" in the T1 general form issued by the Canada Revenue Agency and is adjusted in accordance with schedule III.

[22] Mr. Young has appended his tax returns to his Form F8, and his T1 income is easily ascertainable. However, s. 16 does not end the inquiry.

[23] Section 17 states:

If the court is of the opinion that the determination of a spouse's annual income under s. 16 would not be the fairest determination of that income, the court may have regard to the spouse's income over the last three years and determine a fair and reasonable amount in light of any pattern of income, fluctuation in income, or receipt of a non-recurring amount during those years.

[24] It is therefore open to this Court to look at Mr. Young's pattern of income in recent years to determine his Guideline income.

[25] The "averaging" provision in s. 17 was considered by the BC Court of Appeal in *Harras v. Lhotka*, 2016 BCCA 246, where Justice Garson made it clear that while s. 17 allows the court to examine income over the previous three years, there is nothing in the language of that section that requires the use of averaging in setting income. She noted at para. 24:

This makes sense; accepting that one of the goals of the Guidelines is the fair determination of the amount available to pay child support, fairness is unlikely to be achieved by the mechanical application of averaging.

[26] While I accept that it is appropriate for me to look at Mr. Young's income over the last three years to determine a fair and reasonable amount, I do not agree that this case calls for averaging his last three years of income. This is because it would be an inaccurate estimate of Mr. Young's available means to include in his income a bonus that he has not received in two years and is unlikely to receive this year.

[27] I therefore decline to take the averaging approach advocated by Ms. Barron.

Expenses Approach

[28] In the alternative, Ms. Barron submits that I should determine Mr. Young's Guideline income with reference to the expenses each party declared in their Form F8. Ms. Barron argues that if Mr. Young's stated expenses in his Form F8 are accurate, he would need to earn an annual income in the range of \$500,000. From this, she argues I should impute income to Mr. Young.

- [29] The problem with this approach is that it is not consistent with what the Guidelines mandate that this Court must do in order to determine Mr. Young's income. The Guidelines require that I determine a spouse's income with reference to T4 income, business income, or the financial statements of a company in which the spouse has an interest. The Guidelines do not direct the court to determine income with reference to declared expenses in a Form F8.
- [30] The two cases that Ms. Barron relies on to support the court determining income with reference to expense statements, *Janmohamed v. Janmohamed*, 2016 BCSC 513 and *Devathasan*, are not helpful to her position. *Janmohamed* is a case about whether under s. 18 of the Guidelines, income a party receives from a company in which they have an interest should be adjusted to include personal expenses that were paid by the company. In *Devathasan*, the claimant analyzed the spending patterns of the family to support the imputation of income in her argument, but Justice Fitzpatrick did not end up determining the respondent's income with reference to the family spending at all.
- [31] In my view, whether or not the parties lived beyond their means, or simply lived well when they could afford to live well, is not something I can determine on the conflicting evidence before me. Nor does it much matter in this interim support application, since there is no dispute that the parties have no savings, and it is Mr. Young's current circumstances that are determinative of the means that he has available for interim support purposes. It is clear and undisputed that when Mr. Young was making a lot of money, this couple spent a lot of money. Now he is making less money. The habitual spending habits of the couple over the course of their relationship are simply not particularly probative of the income that is presently available for support purposes. I therefore decline to take the expense-based approach advocated by Ms. Barron.

Corporate Income of Wardell

- [32] The final alternative argument Ms. Barron makes about Mr. Young's income is that the entire pre-tax corporate income of Wardell should be included in Mr. Young's income for Guideline purposes.
- [33] Section 18 of the Guidelines contemplates circumstances such as this one, where a spouse is a shareholder in a company and may have money available to him or her for the purposes of child support that is not reflected on their tax returns. Section 18(1) of the Guidelines states:
- 18 (1) Where a spouse is a shareholder, director or officer of a corporation and the court is of the opinion that the amount of the spouse's annual income as determined under section 16 does not fairly reflect all the money available to the spouse for the payment of child support, the court may consider the situations described in section 17 and determine the spouse's annual income to include
- (a) all or part of the pre-tax income of the corporation, and of any corporation that is related to that corporation, for the most recent taxation year; or

- (b) an amount commensurate with the services that the spouse provides to the corporation, provided that the amount does not exceed the corporation's pre-tax income.
- [34] This section allows but does not require the inclusion of all pre-tax corporate income of a corporation into a spouse's Guideline income.
- [35] I have considered Ms. Barron's argument that the entire pre-tax corporate income of Wardell should be included in Mr. Young's income. I have also reviewed the Jensen Report. I prefer the approach taken by Mr. Jensen, as it more accurately reflects the money available to Mr. Young for the payment of child support. Specifically, Mr. Jensen went through a process where he added the net income of Wardell to Mr. Young's guideline income, and then he made a number of adjustments, all of which I find are appropriate:
- 1) In order to avoid double counting, he deducted the amount of the dividends from the accumulated profits of Wardell.
 - 2) He added the net income before income taxes of Wardell to Mr. Young's guideline income and adjusted the income of Wardell for each year to account for unrealized gains and losses in its investment portfolio so that the adjusted income of Wardell represented the actual income earned in each period.
 - 3) He reduced Wardell's income from 2018 with respect to dividends declared from a related entity in the amount of \$998,127 because a partial payment for these dividends was in the form of a life insurance policy with a cash surrender value of approximately \$410,000, and was not cash income available to Mr. Young.
 - 4) Wardell received a cash dividend in 2019 in the amount of \$367,765 as a partial payment of the 2018 dividends of \$998,127. This has been recorded as a corresponding increase to Wardell's 2019 income.
 - 5) He removed all the capital dividend income from Wardell's revenue for 2019 because those dividends have not been paid yet to Wardell. Mr. Young does not have the ability to control the quantum of dividends declared to Wardell from Marin and does not control the timing of payments. So those are not funds that are available to Mr. Young.
 - 6) He did not include moneys received by Mr. Young as repayment for a shareholder loan to Wardell because those were repayments for capital and not income.
- [36] In his report Mr. Jensen provided three income scenarios for Mr. Young for 2020. The second scenario posited by Mr. Jensen was referred to by him as a "normalized scenario" insofar as it ignored the investment losses Wardell had in 2020, which would have artificially decreased his income in that year, and instead estimated an annual rate of return of five percent. This would lead to a 2020 Guideline income of \$289,000. In all of the circumstances, I find this is an appropriate amount to assign as Mr. Young's Guideline income for interim support purposes.

Support Orders

- [37] Ms. Barron seeks orders pursuant to the Family Law Act, S.B.C. 2011, c. 25 [FLA], that commencing March 1, 2021, Mr. Young shall pay child support and spousal support.
- [38] Counsel for Mr. Young has provided DivorceMate calculations on the basis of Mr. Young having income of \$289,000. The Guidelines mandate child support in the amount of \$4,970 per month, and I make that order.
- [39] With respect to spousal support, the Spousal Support Advisory Guidelines suggest a low of \$2,314, mid of \$5,371, and high of \$6,056.
- [40] The primary purpose of an interim order for spousal support is to bridge the period between when the action is commenced and the trial, at which time the court will be in a position to make a decision on the merits. In *Robles v. Kuhn*, 2009 BCSC 1163, Master Keighley set out the appropriate considerations for the court in an application for interim spousal support at para. 12 as follows:
- [12] On interim support applications, the application of these provisions must be qualified by certain established considerations:
1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
 2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
 3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 3299; *Newson v. Newson*, 1998 CanLII 6440 (BC CA), [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);
 4. The courts should not unduly emphasise any one of the statutory considerations above others;
 5. On interim applications the need to achieve economic self-sufficiency is often of less significance;
 6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
 7. Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);

8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: L.G.B.

[41] I have considered all of the factors set out in that paragraph.

[42] In this case, I am satisfied that the claimant has made out a prima facie case for compensatory and non-compensatory interim support. She has no income, and prior to separation, she was the primary caregiver of the couples' three very small children.

[43] I am also mindful of the fact that on an interim basis, the parties have agreed to equal shared parenting. In these circumstances, the fairest outcome on an interim basis is often to ensure that spousal support generates something close to a 50/50 split of the family's net disposal income. A payment at the low end of the Spousal Support Advisory Guidelines range would achieve this 50/50 split.

[44] However, there is an additional factor which in my view militates in favour of an interim spousal support award in the mid range rather than the low range. That is the parties' decision, made during the relationship, to rent a house for \$6,000 a month. While I understand that the house is listed for sale and the status quo may not last for long, I do accept Ms. Barron's argument that on an interim basis, there is stability for the children in remaining in the home in the medium term.

[45] One of the relevant factors under s. 161 of the FLA is to apportion between the spouses any financial consequences arising from the care of the children beyond the duty to provide support for the children. If Ms. Barron is awarded spousal support at the low end of the range, almost the entirety of spousal and child support would go to rent on the house. I find a fairer outcome is to award spousal support in the mid range. As a result, I will order interim spousal support in the amount of \$5,371 per month commencing March 1, 2021.

Disclosure Orders

[46] Most of the document disclosure orders sought by Ms. Barron have been consented to by Mr. Young, and those orders will go on consent. I will read those into the record at the conclusion of these reasons when I summarize my order.

[47] The only disputed items relate to financial statements and meeting minutes for Marin, statements for certain months from a bank account that the claimant says do not exist, financial statements for trusts of which Mr. Young is a beneficiary which he also says do not exist, and a shareholders' agreement for Wardell, which again, Mr. Young says does not exist.

[48] With respect to the documents in the possession and control of Marin, I agree with the claimant that Marin being a separate legal entity, the proper procedure would have been for Ms. Barron's counsel to bring an application for third party document disclosure on notice to Marin. Marin should receive notice of any application for disclosure of its corporate

documents. I therefore will adjourn those portions of Ms. Barron's application with leave for her to bring the application for disclosure of those documents back, on notice to the company.

- [49] With respect to Mr. Young's TD US account, I find it a bit unusual that Mr. Young would not be able to get transaction information that is not even a year old from his bank, but this issue was not addressed in any substantial way in the argument before me. So I will make no order with respect to the production of Mr. Young's TD US account at this time, and Ms. Barron has leave to bring that matter back on should disclosure be unsatisfactory.
- [50] With respect to the trust financial statements and the shareholder agreement for Wardell, Mr. Young cannot produce documents that do not exist. It is not unusual for a trust not to have financial statements, and, obviously, not all companies have shareholder agreements. So given the evidence Mr. Young has provided, I will not make those orders.

Appointment of an Expert

- [51] Ms. Barron seeks an order pursuant to Rule 13-4 (2) of the Supreme Court Family Rules that the parties jointly retain Paul McEwan as a joint expert to value Mr. Young's interest in Wardell and another company in which Mr. Young has an interest, Mintent.
- [52] Mr. Young says he consents to the parties retaining a valuator prior to trial to value the claimant's interest in Wardell, but not a valuation of Mintent. Mr. Young has given evidence that the value of his interest in Mintent is marginal. He says his interest in the company is worth approximately \$2,000, and he derives no income from it and never has. His percentage increase in Mintent is .049 percent.
- [53] Mr. Young has consented to the disclosure of financial statements for Mintent for the three most recent fiscal years. At this point, it does not appear that Mr. Young's interest in Mintent is sufficient that it would be proportional to appoint an expert valuator to value it, but I find that this is an issue that ought to be determined after the disclosure of the Mintent financial statements. As a result, I am not prepared to appoint a valuator for the purposes of valuing Mr. Young's interest in Mintent at this point, but this is without prejudice to Ms. Barron's ability to bring that portion of her application back on at a later date should document disclosure reveal that Mr. Young's interest in this company has sufficient value that an expert valuation would be a proportional expense.
- [54] Mr. Young also objects to the court ordering the appointment of a joint expert at this time to value his interest in Wardell. He accepts that a joint expert will need to be appointed but submits that he needs time to consider the options. His counsel expressed optimism that the appointment of an expert could be dealt with on consent at a later time.

- [55] I see no reason to delay the appointment of the expert. I do not agree with Mr. Young that the appointment of a valuator is premature. The sooner Mr. Young's interest in Wardell is valued, the sooner the parties will have a critical piece of information they require if they are to resolve this case. Mr. Young has provided no evidence or argument to suggest that Paul McEwan is not an appropriate joint expert to value Wardell. Indeed, his only objection appears to be that he has not yet had an opportunity to consider the appropriate expert.
- [56] Having been duly served with this application, it was incumbent upon Mr. Young to take the opportunity to consider the choice of expert in advance of the application. Having not done so, it is not open to him to oppose Mr. McEwan's appointment on the basis that he has not had sufficient time to think about it.
- [57] Therefore, I grant Ms. Barron's application for an order that Paul McEwan will be retained as a joint expert to value the current fair market value of Mr. Young's interest in Wardell, inclusive of its shareholding in Marin.
- [58] With respect to the up-front costs of the valuation report, in light of the support orders I have made and the distribution of the net disposal income of this family as between the parties, I am not prepared to order that Mr. Young shall solely bear the up-front cost of the valuation report. The valuation report's up-front costs shall be borne equally by the two parties.
- [59] Costs of this application will be in the cause.

"Madam Justice Francis"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/21/13/2021BCSC1329.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/young-v-barron-2021>

Prepared on 28 October 2026 · Esheria