

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20200117
Docket: D110239
Registry: Vancouver

Between:

Jennifer Anne Geboers also known as Jennifer Anne McLennan

Claimant

And

Jason Paul Geboers

Respondent

Before: The Honourable Mr Justice Crerar

Oral Reasons for Judgment

Claimant Appearing on own Behalf:

Jennifer Anne McLennan

Counsel for Defendant:

Fanda Wu
Dalton Cameron Stark

Place and Date of Hearing:

Vancouver, B.C.
January 17, 2020

Place and Date of Judgment:

Vancouver, B.C.
January 17, 2020

[1] **THE COURT:** The former husband, Jason Paul Geboers, the respondent in this action, brings this application. Mr Geboers seeks:

- 1) a declaration that his son Aidan James Ryan Geboers born March 15, 1996, that is 23 years ago, is no longer a child of the marriage pursuant to the *Divorce Act*;
- 2) an order that effective August 30, 2019, the child support payable under para. 12 of the order of the Honourable Madam Justice Russell made February 7, 2018 (the “**Russell J Order**”), is hereby terminated;
- 3) an order that the arrears of child support owing under para. 11 of Justice Russell’s order are reduced or cancelled effective August 30, 2019;
- 4) an order that the claimant repay to the respondent all payments made by the respondent to the claimant pursuant to paras. 11 and 12 of the Russell J Order between September 1, 2019, and the date of judgment;
- 5) costs; and
- 6) the typical such further and other relief as this Honourable Court deems just.

[2] This proceeding has a long history. This application has been delayed in its hearing.

[3] The notice of application is date-stamped October 18, 2019. I understand that Ms McLennan, the claimant, received it in draft form September 2019.

[4] This matter was scheduled to be heard on November 1, 2019. On that date, Justice Ehrcke adjourned the matter to the specific date of today: January 17, 2020.

[5] The Ehrcke J Order specifically gave Mr Geboers liberty to seek an order that Ms McLennan repay all payments for ongoing and retroactive child support made by Mr Geboers pursuant to paras. 11 and 12 of the Russell J Order, from September 1, 2019, onwards. Ehrcke J also ordered that Ms McLennan pay to Mr Geboers the costs thrown away, in the amount of \$300, representing that adjourned hearing in November. I understand that the parties dealt with the costs thrown away by deducting the \$300 from the ongoing support payments.

[6] I will make these reasons very brief, because the parties are, of course, familiar with the facts and the materials. I am satisfied that Ms McLennan has received the materials. There does not seem to be a controversy about service or notice.

[7] With respect to Ms McLennan's reply materials, the Registry this morning received some six faxes from Ms McLennan. I have already indicated to Ms McLennan, and I do not wish to press the matter, that this is not an acceptable way to proceed, and it inflicts great burdens on the Registry. It would be open to me to ignore these materials altogether, and indeed it would be open to me to proceed with this hearing as if Ms McLennan were not participating at all, as there is no response provided as required under the *Rules*.

[8] Nonetheless, I have permitted Ms McLennan's participation today. She appears by telephone. The telephone connection is very poor and we have all strained to hear her, but we have heard her submissions. We have also considered the materials that she has faxed to the registry, although they are not in proper sworn affidavit form.

[9] I will start with the law. I anticipate that both parties are very familiar with this law as it would have been canvassed before Justice Russell. Indeed, the hearing before Justice Russell was brought by Ms McLennan for support for Aidan as a child of the marriage, even though he was past the age of majority.

[10] I will not cite at length the law with respect to whether a child is a "child of the marriage" under the Act. The *Divorce Act*, s. 2 defines a "child of the marriage" as a child under the age of majority: in British Columbia, that is age 19. So Aidan is already almost five years past the presumptive age after which he would not receive support.

[11] We are thus in a zone of exceptional support payments, even beyond typical post-secondary education support payments, which would ordinarily be in the zone of age 19 to 22 or so.

[12] Ms McLennan has two main arguments as to why support for Aidan should continue.

[13] First, in 2018, Aidan was diagnosed with sepsis. He apparently has other ongoing health issues. It appears that he had a day surgery operation earlier this month to deal with issues with his nasal passage. There is a doctor's note from January 2, 2020 to the effect that Aidan is unable to attend work for two weeks as a result of the surgery. An MRI has apparently been taken, and there will be a discussion about the MRI at the end of the month. The results of that MRI are presently unknown.

[14] Second, apparently Aidan is about to start attendance at a BPP University in London ("**BPP**") next week.

[15] I turn to the February 2018 Russell J Order which imposed specific conditions for the payment of child support for Aidan, who at that time was just under 22 years old.

[16] Paragraph 12 ordered Mr Geboers to pay to Ms McLennan, as support for Aidan, \$1,519 per month starting on October 1, 2017, and continuing on the first day of each month and every month thereafter. Such support was, however, conditional upon Aidan reporting to Mr Geboers on six specific items:

- a) his application for and progress of his United Kingdom immigration status;
- b) his applications for and attendance at post-secondary institutions and the results of such attempts;
- c) copies of his academic performance once attending post-secondary education;
- d) the costs associated with attending post-secondary education;
- e) other income sources of the child including scholarships and part-time work; and
- f) any educational plans.

[17] I understand that Russell J was advised that Aidan planned to apply to medical school in the immediate future, and that he would study full-time at a

university. Medical school is a full-time course of study in the conventional sense: at a post-secondary educational institution such as a university. I understand that Aidan applied to various United Kingdom universities, such as the University of Liverpool, and that he was accepted at the University of Liverpool, but that for economic or other reasons, Aidan did not pursue that acceptance, and in any case did not enrol. He has not attended post-secondary education since the Russell J Order in February 2018.

[18] I understand that Aidan has taken one course at the Open Campus University in London. But that is not full-time post-secondary education of the sort that was contemplated before Russell J. And again, it was only one course, not a full-time course of study.

[19] Ms Wu, for Mr Geboers, has taken me to the best evidence available with respect to Aidan's current educational circumstances.

[20] In an email dated September 2, 2019, Aidan stated to his father:

Hey Dad I hope you're well. I have accepted an offer of FT [full-time] study recently which will commence on September 30th in London.

I'm still waiting to receive the academic confirmation documents on the program. I should get them once the program starts after September 30th. I have just submitted my month's notice resignation at work yesterday.

[21] The proposed study is summarized in several documents that have been put before me. I will start with one dated June 11, 2019, from the Santander Bank, a leading bank in the United Kingdom, to Aidan. That email states:

Congratulations!. We're delighted you've accepted our offer to join our **Corporate and Commercial Banking Apprenticeship** scheme and look forward to welcoming you to Santander.

[22] The email refers to the basic salary of £ 20,000 per year. It refers to "acceptance of the offer." It refers to a "contract of employment" as well as "pre-employment checks". It is clearly a work-study programme. It states:

You will be permitted 20 percent of your contractual hours for off-the-job training/study and you will also be expected to study outside of these hours to complete the apprenticeship qualification.

[23] With respect to the manifestation of that off-the-job apprenticeship study, I was taken to a communication from the BPP educational institution dated November 29, 2019:

Dear Aidan Geboers,

We are delighted to welcome you to our **Financial Services Professional programme**.

[24] The BPP programme description is consistent with the Santander description of the educational component in the emails cited earlier. The BPP document is entitled "Apprenticeship Frameworks and Standards Application Pack." The application form template and the information provided in that template makes it very clear that it is an apprenticeship for an employee as part of paid employment: the form provides particulars of Aidan, as a paid employee of Santander Bank, working 35 hours a week for Santander, and studying part-time at BPP. The form also lists particulars of the employer, Santander Bank.

[25] I note that the BPP programme and information, and the BPP welcome email, came just under a month after Ehrcke J had adjourned this application and indicated that it would be heard on January 17, 2020. It also came just after Ms McLennan had been served with this notice of application referring back to the requirements of the Russell J Order.

[26] I am satisfied that although the ongoing employment of Aidan does have an educational employment, it is not the form of full-time conventional post-secondary education that is contemplated in the Russell J Order and that was presented to Russell J as the basis for ongoing child support past the presumptive termination age of 19.

[27] I am also satisfied that the stringent requirements for reporting set out in the Russell J Order expressly anticipate that Aidan would, sometime soon after the

issuance of the Order, be enrolled in studies, such that he would be able to report on his academic performance to his father, and such that he would need financial support.

[28] We are now almost two years after that date. Aidan is not enrolled in full-time university studies. He will not likely be in the foreseeable future. He is being paid a salary by Santander Bank.

[29] In the circumstances I will grant paragraphs 1, 2, and 4 of the orders sought by Mr Geboer.

[30] I grant Ms McLennan leave to come back at a future date on a proper application with a properly-sworn affidavit and complete documentation as required under the Russell J Order, to seek an order to vary or reconsider my order today. That application to vary may be on the basis of Aidan's health circumstances or his educational circumstances or otherwise.

[31] I am not giving any special entitlement in granting Ms McLennan leave to return to vary. It would be open to any parent to seek support for a child in any case where the child's circumstances require it.

[32] But I reiterate that the application will have to be properly prepared and served. It will have to ensure that everything required under the Russell J Order is provided.

[33] I would also state that better provisions would have to be made by Ms McLennan, as the applicant, if she brings an application. I would urge her either to retain local counsel or an agent, or else to conduct the hearing on something other than an iPhone with a limited long distance plan.

[34] I will direct that Ms Wu draft up the formal order. She will then email it to Ms McLennan. Ms Wu will not formally enter the order in the Court Registry until one week after she has emailed it to Ms McLennan. For logistical and other reasons, Ms

Wu does not need Ms McLennan's signature before she enters the order in the Registry.

[35] If Ms McLennan thinks that Ms Wu's draft differs from I have now ordered, or she has other concerns, she can communicate that to Ms Wu. I am certainly not encouraging her to do that. Ms Wu is an officer of the Court and she has an ethical obligation to accurately draft the order as best as she can. So I do not expect her to have anything in the draft order that differs from I have ordered. But of course Ms McLennan has the right to raise a concern. I encourage Ms McLennan to read the draft order carefully and to communicate back to Ms Wu if she thinks the draft order differs from what I have ordered today.

[DISCUSSION RE ARREARS OWING]

[36] Insofar as Mr Geboers has been making payments from September 1, 2019 to the present for child support for Aidan, that is a credit against the arrears owed by Mr Geboers to Ms McLennan.

[SUBMISSIONS RE COSTS]

[37] I will order pursuant to Rule 14-1 and Appendix B that costs be fixed for today's appearance and awarded to Mr Geboers in the amount of \$1,000 for preparation and attendance and \$700 for disbursements. I recognize that these costs are higher than for the typical application, but I order them in the present circumstances, given the volume of the materials and the complexities of service and other matters arising from Ms McLennan being in London. Those costs may also be set off against the arrears.

[38] Anything else, Ms McLennan or Ms Wu?

[39] MS WU: No, My Lord. Thank you.

[40] THE COURT: Ms McLennan?

[41] MS MCLENNAN: No, I think I understand that. So just to be clear, if something changes with Aidan's circumstances and if it's merely about sending in forms on a technicality, I would prefer to go through Family Justice counsellors. I have done that before, but last time I attempted that with my ex-husband he didn't want to go that route. So am I able to still use Family Justice counsellors?

[42] THE COURT: Well, I cannot give you legal advice on that, but there are provisions where you can ask for a mediation and there are provisions under the *Rules of Court* that may allow you those things. I cannot give you advice in that regard, although there is, happily, a lot of information online. Some counsel in town will give you brief consultations, and the Law Society has a list of counsel that may be able to assist on a *pro bono* or reduced fee structure.

[43] Thank you very much both, and I encourage you to resolve things in future.

[44] MS MCLENNAN: Thank you for hearing us out.

"Crerar J"