Citation: M[redacted] v. G[redacted]
2000 BCSC 0471

Date: 20000317
Docket: K970037
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

BETWEEN:

J[redacted] M[redacted]

PETITIONER

AND:

G[redacted] G[redacted]

RESPONDENT

REASONS FOR JUDGMENT

OF THE

HONOURABLE MR. JUSTICE ROMILLY

Counsel for Petitioner:	Diane MacKinnon
Counsel for Respondent:	Angela Thiele
Date and Place of Hearing:	March 13, 2000 Vancouver, BC

Nature of the application

[1] The respondent seeks an order varying the order of Morrison J. made December 29, 1997 by the court declaring that J[redacted] G[redacted] ("J[redacted]"), born [redacted], is no longer a "child of the marriage" as defined by the ***Divorce Act***, 1985; and that support payments for her cease effective September 1, 1999. The respondent seeks this order primarily on the basis that J[redacted] has unilaterally terminated her relationship with him since she was [redacted] years old.

[2] The petitioner makes an application for an order that:

1. That the maintenance order of Morrison J. be varied as follows:
   a. that the respondent pay a portion of the extra-ordinary expenses pursuant to the Federal Child Support Guidelines retroactive to September, 1998;
   b. that the respondent pay a portion of ongoing expenses pursuant to the Federal Child Support Guidelines for ongoing educational costs;

c. that the respondent's current obligations pursuant to the Federal Child Support Guidelines be determined in accordance with his current income;

[3] In order to deal with these issues, it may be prudent to first deal with the factual background to these proceedings.

Factual Background

[4] J[redacted] was born [redacted] - she is now [redacted] years old. Mr. G[redacted] and Ms. M[redacted] were divorced in 1983.

[5] By Separation agreement and various orders, Mr. G[redacted] has paid maintenance for J[redacted], and continued to pay maintenance until September 1, 1999, at which time Mr. G[redacted] advised Ms. M[redacted] that he took the position that J[redacted] was no longer a child of the marriage and that J[redacted] had unilaterally terminated her relationship with her father.

[6] Mr. G[redacted] exercised access to J[redacted], including overnight access, until 1988, when Mr. G[redacted] attended Law school and moved back into his parents' home. Because of concerns expressed by J[redacted], Mr. G[redacted] ceased overnight access in 1988, but continued to exercise access to J[redacted] until 1991.

[7] In 1991 J[redacted] began refusing to see Mr. G[redacted], and to accompany him on access visits. A Child Advocate, Ms. Alison Burnet, was appointed, at the request of Ms. M[redacted].

[8] In a letter to Ms. Burnet from J[redacted], which Ms. Burnet provided to Mr. G[redacted], J[redacted] wrote:

> I want him to leave me alone and to respect the way I feel, and If when I'm older If I want to see him I will see him because I know that's O.K. That is why I will not see my father.

[9] In a letter from Ms. Burnet to Mr. G[redacted] of July 31, 1992, Ms. Burnet advised Mr. G[redacted], speaking of J[redacted], that:

> I am sure as she grows and matures that she will understand that although parents have different perspectives that they both have something to offer their child. I am sure that with growing maturity she will once again reach out to you and you will be able to re-establish a rewarding relationship.

[10] By that same letter, Ms. Burnet also advised Mr. G[redacted] that she would seek J[redacted]'s co-operation and consent to obtain any specific information about J[redacted] for provision to Mr. G[redacted], stating "This makes sense to me since otherwise I would be pushing the child to do something which she was finding difficult or uncomfortable".

[11] Ms. Burnet also advised J[redacted] of the terms of the consent order reached by all parties, including Ms. Burnet on

J[redacted]'s behalf, that J[redacted] was not barred from having contact with her dad, but, if she did not wish to have contact at the present time she did not have to visit.

[12] In a letter Mr. G[redacted] provided to Ms. Burnet to give to J[redacted], dated July 6, 1992 he wrote the following to J[redacted]:

> I am sorry that you have decided that you don't feel comfortable seeing me. Sometimes a parent makes decisions that their children don't like, or don't understand, but that is the decision that the parent thinks is best for everyone, including the child. All decisions I have made which involve you and me have been made to do what I believe is best for you, and me. All decisions I have made as your Dad have been made knowing that I love you, and care for you, very much; and knowing that I have always wanted the happiest possible life for you. You are welcome to call me or to come and see me anytime. You have a very special place in my heart; that will never change. All my love, Dad.

[13] Despite knowing, both from Mr. G[redacted] and from Ms. Brunet, that she was welcome to contact her father, J[redacted] has not contacted Mr. G[redacted], except with the documents referred to in this matter, for the past 9 years.

[14] A birthday card was sent by Mr. G[redacted] to J[redacted] for her [redacted] birthday in [redacted], after he made numerous attempts to contact her. Not only did J[redacted] not respond to any of Mr. G[redacted]'s attempts, she returned the Christmas card

and an enclosed cheque Mr. G[redacted] sent to her in 1995. This happened three years after any contact between J[redacted] and her father. Counsel for the respondent submits that this snub comes within the type of communication described by Madam Justice Southin, in ***Turecki v. Turecki***, (1989), 57 D.L.R.(4th) 267 (B.C.C.A.), as "sharper than a serpent's tooth".

[15] Despite the above, Mr. G[redacted] continued to attempt to contact J[redacted], only to find that J[redacted] was advising her school that Mr. H[redacted] was her father. Further, J[redacted] did not respond to cards left with J[redacted]'s high school counsellor or mailed to J[redacted] in 1996 and 1997. In a Christmas card Mr. G[redacted] sent to J[redacted] in December, 1997 he wrote:

> Dearest J[redacted] - Especially at this time of year, I want you to know how much I think of you and how much I love you. I know we are not a part of each other's lives, but I also think that trying to cast blame for that is a waste of energy. Please know that I always did what I thought was right for you, as your father. I realize that may be difficult for you to understand, but perhaps as time passes we can put energy into understanding, not blaming, each other. I think of you often, still care very much, and love you very much. Hope you have a wonderful Christmas season! All my love, Dad.

[16] Mr. G[redacted] also wrote to J[redacted] in April, 1998 telling Jennifer he would appreciate being invited to her high school graduation ceremonies, and inquiring about her plans for post

secondary education and for any summer or part-time employment. The letter stated:

> J[redacted], you are on the verge of an exciting new phase in your life; a time for you to take new paths, and to have new freedoms as well as new responsibilities. This is a time of great opportunity in all areas of your life. It is also a time when there is opportunity for us to re-establish our relationship. I've missed you deeply and would love to hear from you.

[17] Mr. G[redacted] tried to obtain a ticket to J[redacted]'s high school graduation, but he was informed that Ms. M[redacted] had contacted the school telling the administration that there was a court order preventing Mr. G[redacted] from having contact with J[redacted]. This was of course not true.

[18] Mr. G[redacted] attended at the graduation ceremonies on June 15, 1998. He had purchased a bouquet of roses and a graduation card for J[redacted], in which Mr. G[redacted] wrote:

> Dearest J[redacted] - As you stand poised to take the first steps into your future - know how much you are loved and valued! All my love, Dad.

[19] Mr G[redacted] was not able to deliver those roses to his daughter. He had to leave them with a teacher who promised to deliver them to J[redacted].

[20] Mr. G[redacted] describes finding out about J[redacted] performing in a piano recital on Father's Day, Sunday, June 21, 1998, and advising Ms. M[redacted] that he would like to attend that recital. This led to Mr. G[redacted] receiving a letter from J[redacted] in which J[redacted] wrote to her father:

> I am writing this letter since you seem to be having such a difficult time `understanding me. This should make it very clear: you are not welcome in my life. I do not want to see you, nor do I want you phoning me or showing up at events such as my recital. I am aware that you showed up at my graduation and was very angry at your ignorance in showing up without my consent and against my wishes. You need to understand that these feelings are mine; my mom has done absolutely nothing to influence me. I am nearly eighteen years old and fully capable of making up my own mind. Do not contact me at home or anywhere else. I do not want to hear from you or see you. If at any time my feelings change, I will contact you. I do not wish to see you at my piano recital or on the site. You are not welcome or invited.
>
> I expect that you will respect my wishes.

[21] This letter from his daughter must indeed have been what Madam Justice Southin had in mind when she used the term, in ***Turecki***, "sharper than a serpent's tooth". These words, and especially "you are not welcome in my life" take this far beyond a breakdown in communications.

[22] Notwithstanding this obvious animosity by J[redacted] towards her father, Mr. G[redacted], there is no evidence whatsoever from J[redacted] to explain her attitude toward her father.

[23] There has been no contact or communication between J[redacted] and her father since this letter of June 19, 1998. J[redacted] has never discussed her educational goals, her scholarship or Passport to Education funds, her employment or any other aspect of her life with Mr. G[redacted]. The above noted communications have been the only contact between J[redacted] and Mr. G[redacted] since 1991, nine years ago.

[24] From the age of 11 the only information that Mr. G[redacted] received about J[redacted] was from her mother, the petitioner. She provided Mr. G[redacted] with news about J[redacted]'s progress in school and that she was registered at Simon Fraser University. J[redacted] has not sought fit to even swear an affidavit for these proceedings stating whether she is able to contribute to her own support through part-time employment. In fact she has sworn no affidavit at all.

[25] This is obviously a case where J[redacted] does not wish to have anything whatsoever to do with Mr. G[redacted] and has made this clear to him since she was 11 years old. I have no difficulty whatsoever in finding that J[redacted] unilaterally terminated the relationship with Mr. G[redacted] for no apparent reason.

[26] Having made this finding of fact, I must now decide whether, under those circumstances J[redacted] could still maintain the "child of the marriage" status.

The Law

[27] It is trite law that mere attendance at an educational institution does not automatically make a mature child a "child of the marriage." Lackadaisical attitudes toward schooling, unrealistic educational plans, exceedingly long post secondary attendances and "going to college because there is nothing better to do" will all militate against a finding of child of the marriage status.

[28] In the often followed ***Farden v Farden*** (1993, 48 RFL, 3d 60 (BCSC), (Master Joyce) in determining whether a child's educational pursuits justify the child retaining "child of the marriage" status the court said as follows:

> (1) whether the child is in fact enrolled in a course of studies and whether it is a full-time or part-time course of studies;
>
> (2) whether or not the child has applied for or is eligible for student loans or other financial assistance;
>
> (3) the career plans of the child, i.e. whether the child has some reasonable and appropriate plan or is simply going to college because there is nothing better to do;
>
> (4) the ability of the child to contribute to his own support through part-time employment;
>
> (5) the age of the child;
>
> (6) the child's past academic performance, whether the child is demonstrating success in the chosen course of studies;

(7) what plans the parents made for the education of their children, particularly where those plans were made during cohabitation;

(8) at least in the case of a mature child who has reached the age of majority, whether or not the child has unilaterally terminated a relationship from the parent from whom support is sought. "

[29] How to utilize these various factors was examined by our Court of Appeal in ***Darlington v. Darlington*** (1997), 32 R.F.L. (4th) 406 at 410.

[30] The Court of Appeal adopted the ***Farden*** factors noting however that there need not be evidence on all of the factors in order for a positive finding to be made.

[31] At paragraph 14 speaking for the Court, Donald J.A. stated:

> While the evidence regarding Debra's circumstances was somewhat thin, it was in my opinion sufficient to support the learned chambers judge's findings. I do not, with respect, accept Mr. Darlington's position that it was necessary for Mrs. Darlington to present evidence on all the points upon which Master Joyce elaborated ...
>
> [para15] I do not understand those cases to be laying down a minimum requirement for discharging the burden of proof which lies on the party asserting that a child over 19 years remains a child of the marriage. As I understand Mr. Darlington's argument, anything less than the presentation of evidence on all points must result in a dismissal of the claim. I cannot accept that position.

[32] In ***Law v. Law*** [1985] 2R.F.L. (3d) 458 (Ont.S.C.) Fleury L.J.S.C. stated at para. 5:

> ...Kimberly has certainly withdrawn from the applicant's charge as a result of her failure to maintain any contact with him. Although it is sufficient that she be in the custodial parent's charge, I am of the view that where, as here, a mature child unilaterally terminates a relationship with one of the parents without any apparent reason, that is a factor to be considered by the trial judge in determining whether it would be "fit and just" to provide maintenance for that child. A father-child relationship is more than simple economic dependency. The father is burdened with heavy financial responsibilities and the child has few duties in return. It seems reasonable to demand that a child who expects to receive support entertain some type of relationship with his or her father in the absence of any conduct by the father which might justify the child's neglect of his or her filial duties.

[33] On this issue my attention has also been drawn to the following cases: ***Elliot v. Elliot*** (February 9, 1993) Prince George Registry No. 15583 (B.C.S.C.); ***Anderson v. Anderson*** (1997) 27 RF.L. (4th) 323 (B.C.S.C.); ***Durose v. Durose*** (February 12, 1996) Kelowna Registry No. 18731 (B.C.S.C.); ***Broumas v. Broumas*** (July 15, 1998) (Alta.Q.B.); ***Kaleniuk v. Kaleniuk*** (September 24, 1993) Vancouver Registry No D083109 (B.C.S.C.); ***Wahl v. Wahl*** [2000] A.J. No. 29 (Alta.Q.B.); ***Jackson v. Jackson,*** [1973] S.C.R. 205 at p. 218; ***Louise v.***

Scheur (1995), 15 B.C.L.R. (3d) 270 (B.C.S.C.); and ***Kembi v. Kembi*** [1999] B.C.J. No. 165 (B.C.S.C.)

Analysis

[34] After reading all of the above cases, I am satisfied that this case could be distinguished from most of the cases that have been drawn to my attention. The case at bar represents a case of complete rejection by J[redacted] of her father. Although Mr. G[redacted] has made numerous attempts to establish a father-daughter relationship with J[redacted] she has continuously rejected them in no uncertain terms since she was 11 years old. J[redacted] is now an adult and must be aware of the consequences of her actions towards her father. In the unique factors of the case at bar I am not satisfied that J[redacted] is any longer a "child of the marriage". The petitioner's application is therefore dismissed.

[35] Each party should bear their own costs.

"S. R. Romilly, J."
The Honourable Mr. Justice S.R. Romilly