

Citation: Baglot v. Baglot  
2002 BCSC 688

Date: 20020507  
Docket: D036492  
Registry: New Westminster

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**JAMES DANIEL JOSEPH BAGLOT**

PLAINTIFF

AND:

**LINDA MAE BAGLOT**

DEFENDANT

**REASONS FOR JUDGMENT**

**OF THE**

**HONOURABLE MR. JUSTICE CRAWFORD**

Counsel for the Plaintiff:

P.G. Kent-Snowsell

Appearing on her own behalf:

Linda Mae Baglot

Date and Place of Hearing:

March 28, 2002  
New Westminster, BC

**INTRODUCTION**

[1] On November 22, 2001, Mr. Baglot filed a motion to vary maintenance for his two children. On December 12, 2001, Mr. Baglot filed a further motion seeking costs arising from Mrs. Baglot's motion originally brought March 24, 2000, where she sought to vary (increase) the children's maintenance.

[2] Mr. Baglot's applications initially came on before me January 18, 2002. During the course of the hearing Mrs. Baglot sought production of more documents relating to Mr. Baglot's employment in 2001. I made an interim maintenance order of \$700 a month and stayed the application to vary and payment of arrears. I did so on the basis of Mr. Baglot's motion being premature.

[3] The matter came on before me again on March 28, 2002. Mr. Baglot argued for his costs of the motion originally begun March 24, 2000, and an order to vary maintenance. Mrs. Baglot, in effect seemed to reargue the initial application of March 24, 2000.

[4] In these reasons I deal with: (1) the motion of Mr. Baglot to vary and regarding arrears (2) Mr. Baglot's motion regarding costs of the motion begun March 24, 2000, (3) Mrs. Baglot's claim for special expenses for the year 2000, which seems to have been forgotten in the various court appearances.

**FILE HISTORY**

[5] The parties divorce was made in 1996. On January 26, 1998, a consent order was made whereby Mrs. Baglot was given sole custody of the two children with generous access to Mr. Baglot and support payments of \$319 a month started January 1, 1998.

[6] On February 25, 2000, Mrs. Baglot registered the maintenance order with the Family Maintenance Enforcement Program.

[7] On March 24, 2000, Mrs. Baglot filed a motion set for April 5, 2000, for an order that a judge of the court vary the order of January 26, 1998, to increase the child support for Kimberly and Jeffrey.

[8] On April 5, 2000, Preston J. made an order finding Mr. Baglot's income to be \$52,000 per annum, Mrs. Baglot's, \$31,844 per annum, that from May 1, 1998, Mr. Baglot pay maintenance at \$722 a month and a one time special expense for 1999 in the amount of \$341.

[9] On May 15, 2000, Mrs. Baglot filed an affidavit seeking to increase the amount of child support, and complained that Mr. Baglot was failing to provide full Form 89 financial statements or quarterly advice regarding his income and

employment. She noted that Mr. Baglot had started paying \$819 a month in September 1998, and in fact he had improved his circumstances in May but had paid the lesser amount of \$319 until September 1998. As well, she said Kimberly and Jeffrey were unable to participate in extracurricular sports due to lack of funds, particularly for such interests as skateboarding, snowboarding, soccer, basketball, lacrosse, skating and other activities.

[10] Mr. Baglot's affidavit filed May 31, 2000, listed his various employments since the consent order of January 26, 1998. He was unemployed until May 1, 1998, and then employed by MultiActive Technologies Inc. That employment terminated February 17, 1999, and he was re-employed by Onvia.com. He commenced making support payments of \$737 a month on September 1, 1999. On November 19, 1999, he was terminated from his position with Onvia.com and thereafter he became self-employed as a computer consultant. He estimated his gross annual income for 2000 would be approximately \$72,500. He indicated he would pay some of the special expenses.

[11] Mrs. Baglot filed a further affidavit October 20, 2000, the main thrust of which argued overly aggressive deductions from Mr. Baglot's self-employed income.

[12] In December, 2000, Mr. Baglot's employment with Rocket Builders was brought to Mrs. Baglot's attention which lead to correspondence regarding medical benefits and the coverage of the children's orthodontic expenses.

[13] In Mr. Baglot's affidavit of January 9, 2001, he acknowledged commencing employment with Rocket Builders Canada Ltd. in September, 2000, at a rate of pay of \$48,000 per annum.

[14] On January 3, 2001, he negotiated and obtained employment with Merlin Technologies as Vice-President of Sales at a rate of pay of \$90,000 USD or \$135,000 CDN.

[15] Mrs. Baglot's affidavit filed January 10, 2001, also sought special expenses for glasses and contacts for Kimberly in the amount of \$547.20, dental consultation regarding Kimberly's TMJ of \$350 and contact lenses for Jeffrey in the amount of \$250 plus current year school fees. As far as I can tell there has been no court ruling on that issue. Subject to Mr. Baglot's right to respond, I would be inclined (but I will not yet order) that Mr. Baglot's contribution to special expenses for the year 2000, be \$550.

[16] On February 5, 2001, Warren J. ordered Mr. Baglot to pay child maintenance on the figure of \$126,000 at \$1,480 a month

effective January 1, 2001. The terms of the order were not settled until June 7, 2001.

[17] Pursuant to Rule 32, Mr. Justice Warren referred to the Registrar the issues of Mr. Baglot's income for the years 1998, 1999 and 2000. Warren J. also made an interim order that \$10,000 be paid to Mrs. Baglot as the anticipated arrears for 1998, 1999 and 2000.

[18] On March 1, 2001, Mr. Baglot filed a Notice of Appeal with the Court of Appeal from Warren J.'s order of February 5, 2001.

[19] It appears the matter came before a Court of Appeal chambers judge on October 29, 2001, where in essence Mr. Baglot argued that an order of costs in favor of Mr. Baglot would offset the arrears then outstanding. The application was adjourned generally as it appeared the hearing before the Registrar had yet to result in confirmation of the order before Warren J.

[20] The Registrar's hearing had come on before the Registrar on June 7, 2001.

[21] The February 5, 2001, order of Warren J. did not get settled until June 7, 2001, and has the following features:

- (1) the court determined on an interim basis, the plaintiff's annual income was \$126,000 for the purpose of the **Child Support Guidelines**;
- (2) payments of \$1,480 per month commencing January 1, 2001, and payable on the first of each month which continue until further order of the court;
- (3) on an interim basis arrears of maintenance for 1998 and 1999 were found to be \$10,000;
- (4) the court ordered payment of \$10,000 on or before March 30, 2001;
- (5) there was a reference to the Registrar to determine the plaintiff's **Child Support Guidelines** income for 1998, 1999 and 2000;
- (6) the court ordered the issue of costs with respect to the application be determined at the final hearing of the matter.

[22] On November 15, 2001, Mr. Justice Warren heard the application regarding confirmation of Registrar Sainty's findings and confirmed those findings. While costs had been

set before him, he did not deal with them which in turn gave rise to Mr. Baglot's application for costs before me.

**BACKGROUND**

[23] Mr. Baglot is a computer consultant. Mrs. Baglot is a clerk. There are two children of the marriage, Kimberly Carol, born May 13, 1983, and Jeffrey Clarke, born February 15, 1985. The parties were divorced in 1996. It appears to me that from that time at least Mrs. Baglot has had custody of the children. Mr. Baglot's employment in the computer industry has fluctuated and lack of disclosure on his part has lead to Mrs. Baglot's frustration. She filed with the Family Maintenance Enforcement Program, February 25, 2000. Mr. Baglot has remarried and there are three children of the second marriage.

**COSTS**

[24] Mr. Kent-Snowsell, on behalf of Mr. Baglot, argues that he did, by correspondence, offer settlement, that he was largely successful on the maintenance application that began March, 2000, and his client should have costs of the many days and/or half days spent in bringing the matter to a conclusion. Mr. Kent-Snowsell, as to costs, relies on a letter of January 22, 2001, headed "WITHOUT PREJUDICE EXCEPT AS TO COSTS" written to Mrs. Baglot's then solicitor Mr. Leibovitz. Mr.

Kent-Snowsell's letter reviewed the matter in anticipation of the hearing before Warren J. on February 5, 2001.

[25] Mr. Leibovitz replied January 24, 2001, rejecting the offer made and making a counter proposal. The principal difference in the two letters is the amount of arrears anticipated to be then outstanding.

[26] On February 7, 2001, Mr. Kent-Snowsell made a further offer agreeing to pay the \$10,000 arrears figure estimated by Warren J. and paying **Guidelines** support based on \$126,000 a year. He argued Mr. Baglot's income for the year 2000, could be less than \$52,000 due to self-employment expenses. However, on February 15, 2001, by urgent facsimile that offer was withdrawn as instructions had been given to appeal. So the offer of February 7, 2001, lost its effect.

[27] It seems to me there are some difficulties in Mr. Kent-Snowsell's reliance on the letter of January 21, 2001.

- (1) the amount of \$6,000 in satisfaction of the arrears is somewhat less but not a lot less than the amount eventually confirmed by Mr. Justice Warren for payments November, 2001;
- (2) the amount of \$118,000 for income is somewhat less than the \$126,000 eventually ordered.

[28] Further, there was the subsequent offer on February 7, 2001, in turn overtaken by its withdrawal and Mr. Baglot's appeal. There is nothing before me to indicate whether, in fact, Mrs. Baglot had an opportunity to respond to the later offer.

[29] In sum, Mrs. Baglot's application of March 24, 2002, to increase the children's maintenance from \$319 was eventually successful. Registrar Sainty fixed **Guidelines** and subsequently Mr. Justice Warren found arrears to total \$6,285 which amount is still unpaid. As well, due to Mr. Baglot's new employment there was a substantial increase in child maintenance for the year 2001. In sum, it seems on balance that Mrs. Baglot succeeded on her application for child maintenance albeit by a small margin. In part, the proceedings were prompted by Mr. Baglot not promptly communicating the changes in his fortunes, i.e. he seems to have been prompt in giving notice of loss of employment but slower in advising of re-employment, which has lead to Mrs. Baglot's understandable suspicion of his financial disclosure. Further, he appears to be enjoying a better lifestyle than his former wife in that he has remarried, has children from the second marriage, and is relatively debt free which is not Mrs. Baglot's situation in life as she tries to see her eldest

child into university and her younger child through the end of high school. She will, therefore, be entitled to her costs of the motion, taxable on taxation but at Scale 2.

[30] When Mr. Baglot's application came on in December, 2001, Slade J. allowed Mrs. Baglot's adjournment on the basis of costs thrown away. Those costs may be offset against Mrs. Baglot's costs award made herein.

**MR. BAGLOT'S APPLICATION TO VARY**

[31] This is premised on Mr. Baglot's employment terminating in July, 2001, and his inability to find new employment. Unfortunately, in late December, 2001, he fell from a ladder, dislocating his elbow. I was advised that he would not have recovery of function in his arm until approximately mid-March.

[32] Mr. Baglot maintained his financial support for the children until November, 2001, when he made a payment of \$319 and no payment in December. I ordered payment of \$700 a month for January and the months thereafter on an interim basis.

[33] When the matter came back before me in March, Mr. Baglot had not been able to find employment in spite of an evident pursuit of same. One might expect that with his credentials he would be able to obtain employment in a reasonably short term and at least be providing consulting services as he did

in the year 2000, the more so with reports of economic improvement appearing on the daily news.

[34] At the same time I do not doubt his intention to obtain new employment given his responsibilities for his two families.

[35] What must be kept in mind is the maintenance of Kimberly and Jeffrey. There are presently arrears owing of \$6,285 which has been unpaid since November 15, 2001. As well there are arrears for November and December of 2001, totaling \$2,621.

[36] For the months of January, February, March and April arrears are accumulating at \$700 a month.

[37] I will make an interim order effective May 1, 2002, that Mr. Baglot's income be imputed at \$23,400 and **Guidelines** income will be payable at \$350 a month.

[38] I expect that Mr. Baglot's attempts to obtain employment will soon be successful. There will be an order that he promptly notify Mrs. Baglot of any new employment. It also may be that he has returned to self-employment and he should also promptly notify Mrs. Baglot if that is the case. As and when Mrs. Baglot deems it appropriate, she can then be

entitled to seek review of the interim order, unless agreement is reached between the parties.

[39] Further, Mr. Baglot is to take prompt steps to pay the \$6,285 arrears found owing at the Registrar's hearing in June, 2001, and in any event, should be paid up by August 1, 2002, but with liberty to apply. I do note Mr. Baglot appears to be largely debt free and should be able to borrow monies to retire the outstanding arrears which are needed for Kimberly and Jeffrey's maintenance.

"R. Crawford, J."  
The Honourable Mr. Justice R. Crawford