

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *P.W. v. G.Z.*,
2021 BCSC 467

Date: 20210316
Docket: E193422
Registry: Victoria

Between:

P.W.

Claimant

And:

G.Z.

Respondent

Before: The Honourable Madam Justice Murray

Reasons for Judgment

Counsel for the Claimant:

R. L. Neary

Counsel for the Respondent:

J. Liu

Place and Date of Hearing:

Victoria, B.C.
February 25, 2021

Place and Date of Judgment:

Victoria, B.C.
March 16, 2021

Summary: Application by the mother (represented by Richard Neary) for interim child and spousal support, retroactive and ongoing, to be paid from proceeds of the sale of the matrimonial home held in trust and interim distribution of funds to pay outstanding legal fees. The parties lived in a common-law relationship from 2009 to 2019. They had one child born in 2011 who resided with the mother since separation. Both spouses had children from a prior relationship. The mother did not work during the relationship. During the relationship, the parties enjoyed a lavish lifestyle. The husband stopped making the mortgage payments on the matrimonial home and stopped paying funds into the joint account. He had also paid no child or spousal support. The matrimonial home was sold, leaving net proceeds of sale of \$579,384. The husband claimed that in 2015 he made \$150,000 through his company and that his annual income was \$36,000 for the last 12 years from working at a pub in China.

HELD: Application allowed.

The husband was ordered to pay to interim child support of \$1,356 and interim spousal support of \$2,887 per month retroactive to September 2019 based on an imputed income of \$150,000 to the husband and \$36,000 to the wife. The wife made out a prima facie case for entitlement of spousal support. Since the husband stopped putting money in the parties' joint bank account she had been left without income. The family residence was sold and all the proceeds paid into trust. As the evidence pertaining to the husband's income was so conflicting and his assertions that he had earned only a modest income of \$36,000 was substantially incongruous with the parties' lifestyle prior to separation, the court must impute income to him to order interim support. An advance was required for the mother to adequately represent herself at trial and in other pre-trial motions. An interim distribution of the proceeds of the sale of the matrimonial home in the amount of \$137,000 was to be made to the mother to fund her family law proceedings.

Introduction

[1] P.W. seeks orders for interim child and spousal support, both retroactive and ongoing, to be paid from proceeds of the sale of the matrimonial home which are being held in trust by her counsel. In addition she seeks an order for interim distribution of funds to pay outstanding legal fees and fund ongoing litigation pursuant to s. 89 of the *Family Law Act*, S.B.C. 2011, c. 25 (*FLA*).

[2] A trial date for this high-conflict family matter is scheduled for nine days commencing October 12, 2021.

[3] By way of background, the parties lived in a common-law relationship from about June 2009 to about April 2019. The parties disagree as to when they separated. P.W. says it was April 15, 2019; G.Z. says May 10, 2019. Whether they separated in April or May 2019 is of no moment to this application. The parties have one son together, N.Z., born May 4, 2011. N.Z. has lived with his mother since the separation and has seen little of his father.

[4] P.W. has an older daughter from a previous relationship, M.M. G.Z. has a daughter and two sons from other relationships. His daughter is currently attending UBC and is reportedly living with G.Z. in Richmond. The boys, aged nine and 15, live with their mother, Y.S., in Victoria. Y.S. lived in China while G.Z. was living with P.W. in Canada. G.Z. and Y.S. had their youngest son while he was involved in the common-law relationship with P.W. G.Z. and Y.S. were legally married. While there is an indication that they may have divorced in about 2019, it is unclear. What is clear is that they are together as a couple now. G.Z. refers to Y.S. as his wife. I will do the same throughout these reasons for judgment.

[5] G.Z. was the sole financial provider during the parties' relationship while P.W. was the primary caregiver for N.Z. and two of G.Z.'s children from other relationships. The parties' financial arrangement was that G.Z. would deposit money into the parties' joint bank account and P.W. would pay the mortgages, bills and expenses and manage the family home.

[6] Throughout the parties' relationship G.Z. travelled back and forth to China for business. According to P.W., mainland China is G.Z.'s primary place of business and source of income. He would stay in his house in China for weeks to months at a time.

[7] The parties enjoyed a lavish life. They lived in a home which in 2020 was assessed at over \$3.9 million; drove expensive cars including a \$170,000 Mercedes that G.Z. bought outright with cash in 2013; and sent N.Z. to a private school. G.Z. belonged to a private golf course and he pledged a donation of \$350,000 to N.Z.'s private school in return for a building at the school being named after him. His name remains prominently displayed on the building.

[8] The family home, which was purchased by the parties in around 2015, had in November 2019 a mortgage of approximately \$1.6 million on it. The mortgage payments were up-to-date at the time of separation.

[9] Over approximately three and one-half months from the separation date and July 15, 2019, G.Z. indirectly deposited roughly \$100,000 into the parties' joint account. P.W. used it to pay mortgages and living expenses. Between the house in Victoria and the condo in Richmond that G.Z. bought in 2011, G.Z. was making mortgage payments of approximately \$12,000 a month with no difficulty.

[10] By sometime in July 2019, G.Z.'s sons from other partners moved out of the parties' home to live with their mothers. As soon as P.W. and N.Z. were the only ones living in the house, G.Z. withdrew all forms of financial support. He stopped putting funds in the joint account and stopped paying the mortgage on the matrimonial home. P.W. was left with no money.

[11] On November 4, 2019, G.Z. demanded that P.W. give him the vehicle she drove, the Mercedes. When she refused, G.Z. broke into the family residence when she was not home and took the vehicle. He still has it. Following this incident, on November 12, 2019, Master Bouck granted P.W. a Protection Order. In her Reasons for Judgment, Master Bouck found that G.Z.'s behaviour in asking P.W. to engage in

sexual favours in exchange for money was “coercive, intimidating” and “violent”. She further found that G.Z.’s discontinuation of mortgage payments on the family home while P.W. and N.Z. were still living in it coupled with P.W.’s financial reliance on him (by G.Z.’s own admission) constituted a form of economic violence.

[12] G.Z. has not paid any child or spousal support. He has not given P.W. any money since July 2019. The matrimonial home went into foreclosure and was sold on July 31, 2020. The net proceeds of the sale, \$579,384.38 are being held in trust by P.W.’s counsel, Mr. Neary.

[13] At the Judicial Case Conference in February 2020, I ordered that G.Z. provide to P.W. a filed F8 financial statement and other financial disclosure by March 30, 2020. G.Z. did not provide P.W. with an F8 until February 19, 2021. He has failed to provide any of the other documentation in breach of the court order.

[14] Regarding his financial position, G.Z. makes the following claims:

- 1) in 2015 he made \$150,000 through his company;
- 2) he has had an annual income of around \$36,000 for the last twelve years from working at his wife’s pub in China;
- 3) he started delivering food in November 2020 and expects to earn approximately \$45,000 a year before deductions;
- 4) the parties have lived on loans of approximately \$2.9 million from his mother and \$2 million from some other friends;
- 5) he is responsible for paying rent and other expenses for his 21-year-old daughter who is attending UBC;
- 6) at his examination for discovery on November 20, 2020 G.Z. testified that he was living on Esplanade across from Willows beach in Victoria with his wife and sons. However, in his most recent affidavit he declares that he is living in his condo in Richmond with this daughter

but is currently 5 months in arrears of his mortgage. His wife was formerly paying the mortgage but she ran out of money;

- 7) although the condo in Richmond is in his name it belongs to his wife and his mother, yet he used part of the proceeds from the sale of the matrimonial home to pay off a mortgage which was on both the matrimonial home and the condo. The Richmond condo was assessed in 2020 at over \$1.2 million;
- 8) his wife and their two sons are living in a suite in a house on Esplanade in Victoria. The house is owned by a friend of his, who is letting his family live there rent free until this family matter is settled “because he feels sorry for me”. He further asserts that he has told his friend that he would pay him rent of \$2,200 a month when he has money. At the examination for discovery G.Z. said that the friend that owns the house is T.L. In his affidavit sworn February 18, 2021, he said W.K.L. is the owner;
- 9) he sold a property in China for 6.5 million RMB (approximately \$1.2 million CAD) in September 2019 and he used the proceeds to pay two people that lent him money. He still owes two other people 4.5 million RMB.

[15] G.Z. says that he has “critical documents” that pertain to his financial position but that they are in Chinese and he can not afford to have them translated. I pause to note that his financial documents were ordered to be disclosed over a year ago. In the interim G.Z. has paid, among other things, his golf club dues and over \$17,400 for his eldest son’s golf expenses.

The Issues

[16] There are two issues to be determined on this application:

- 1) Whether G.Z. should pay interim child and spousal support; and

- 2) Whether funds should be released to P.W. from the proceeds of the family residence being held in trust, pursuant to s. 98 of the *FLA*.

[17] With respect to the first issue, P.W. is seeking an order imputing an income of \$300,000 to G.Z.

[18] I will consider each issue in turn.

Issue 1: Whether G.Z. should pay interim support and if so in what amount

[19] Parents have an obligation, independent of statute or court order, to support their children as is commensurate with their income: *D.B.S. v. S.R.G.*, 2006 SCC 37 at para. 54; see also *FLA*, s. 147.

[20] I have no difficulty concluding that G.Z. should pay interim child support in respect of N.Z. and that he should have been paying same since separation.

[21] The question then is whether he should he pay interim spousal support.

[22] The obligation to pay spousal support is set out in s. 160 of the *FLA*.

[23] Section 161 of the *FLA* requires the court to consider the following objectives in determining entitlement to spousal support:

- (a) to recognize any economic advantages or disadvantages to the spouses arising from the relationship between the spouses or the breakdown of that relationship;
- (b) to apportion between the spouses any financial consequences arising from the care of their child, beyond the duty to provide support for the child;
- (c) to relieve any economic hardship of the spouses arising from the breakdown of the relationship between the spouses;
- (d) as far as practicable, to promote the economic self-sufficiency of each spouse within a reasonable period of time.

[24] The same essential objectives are set out in s. 15.2(6) of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.).

[25] Compensatory support, which relates to the first two objectives, is intended to provide redress for economic disadvantage arising from the marriage or the conferral of an economic advantage on the other spouse.

[26] Non-compensatory support, which relates to the last two objectives, aims to narrow the gap between the needs and means of the spouses on marital breakdown.

[27] The primary purpose of interim orders is to maintain the status quo between the parties: *Kouznetsova v. Kouznetsova*, 2014 BCCA 160 at para. 44.

[28] The principles applicable on an application for interim spousal support are as follows:

- (1) The applicant's needs and the respondent's ability to pay assume greater significance;
- (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;
- (3) On interim support applications the court does not embark on an in depth analysis of the parties' circumstances which is best left for trial. The court achieves rough justice at best;
- (4) The courts should not unduly emphasise any one of the statutory considerations set out in the *FLA*;
- (5) On interim orders the need to achieve 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;

- (7) Interim support should only be ordered where it can be said a *prima facie* case for entitlement has been made out; and
- (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.

See *Robles v. Kuhn*, 2009 BCSC 1163 at para. 12 (citations omitted).

[29] The factors for whether to award retroactive child support from *D.B.S.* have been applied to retroactive spousal support: see *Reis v. Bucholtz*, 2010 BCCA 115; *McKenzie v. Perestrelo*, 2014 BCCA 161. In *Kerr v. Baranow*, 2011 SCC 10, Cromwell J. specifically applied the principles from *D.B.S.* to a retroactive award of spousal support and stated as follows:

[207] While *D.B.S.* was concerned with child as opposed to spousal support, I agree with the Court of Appeal that similar considerations to those set out in the context of child support are also relevant to deciding the suitability of a “retroactive” award of spousal support. Specifically, these factors are the needs of the recipient, the conduct of the payor, the reason for the delay in seeking support and any hardship the retroactive award may occasion on the payor spouse. However, in spousal support cases, these factors must be considered and weighed in light of the different legal principles and objectives that underpin spousal as compared with child support.

[30] With those principles in mind, I turn to the facts of this application.

[31] While there has been a delay in P.W. applying for interim support I do not find that it is fatal to her application. As stated above, the JCC took place in February 2020, about a month before the global pandemic struck. Although no argument was raised regarding the delay I take judicial notice of the fact that the world has been on pause for the past year. I further take into account that G.Z. has yet to make any meaningful financial disclosure.

[32] Before Master Bouck in November 2019, G.Z. admitted that P.W. was “financially dependent” on him. However, on this application he now claims that she has assets and income in China. As proof of this assertion he appended to an

affidavit photographs of the outside of an apartment building and a photo of a bank card with no name on it.

[33] Given the conflicting evidence, I am not persuaded that P.W. has sources of income other than from G.Z. Having considered all of the evidence, I am satisfied that P.W. has made out a *prima facie* case for entitlement of spousal support. Since G.Z. stopped putting money in the parties' joint bank account P.W. has been left without income. The family residence was sold and all the proceeds paid into trust. As a result P.W. and N.Z. have been left without a home or source of income and have had to move in with P.W.'s adult daughter.

[34] The question becomes how much interim support G.Z. should pay. P.W. asks this court to impute to him an income of \$300,000 for the purposes of calculating interim support on a without prejudice basis at trial.

[35] In *MacCarthy v. MacCarthy*, 2015 BCCA 496 at para. 34, our Court of Appeal held that "the court has broad discretion to impute income to spouses for the purposes of determining child and spousal support". Spouses have a duty to make reasonable efforts to support themselves, however there is no burden on the party seeking support to prove that they could not become self-sufficient: para. 34. The party seeking to have income imputed to the other spouse must provide an evidentiary basis for the imputation of income: para. 35. Our Court of Appeal has also made clear that the imputation of income is best left to trial "where the parties have fully canvassed their respective earning capacities and an evidentiary basis for such a finding can be properly established": *Kouznetsova* at para. 45.

[36] In this case, I must have some basis upon which to order support. As the evidence pertaining to G.Z.'s income is so conflicting and his assertions that he has earned only a modest income of \$36,000 is substantially incongruous with the parties' lifestyle prior to separation, I must impute income to him to order interim support. I do so only for that purpose on a without prejudice basis at trial.

[37] P.W. bases her claim on G.Z.'s spending patterns before separation and the fact that he had no financial difficulty until they separated.

[38] I pause to briefly discuss *Zhang v. Sun*, 2014 BCSC 2000; a decision which bears many similarities to the case at bar. In that case, the parties were married for 13 years prior to their separation in 2012 and had two children ages 10 and 14. The respondent, Mr. Sun, had primarily lived and worked in China earning an annual income of \$19,000. The claimant, Ms. Zhang, earned \$2,000 per month as a realtor. From 2010 until the time of separation, Mr. Sun sent \$260,000 per year to support his wife and children, primarily through \$1.1 million in loans. That money was put toward family expenses, such as the purchase of a \$2.3 million home in Vancouver and the children's private school tuition fees. Once the parties separated, Mr. Sun stopped paying money to his wife and children. Ms. Zhang took out a second mortgage for expenses. The matrimonial home ultimately went into foreclosure and was sold. The equity in the home was paid into court.

[39] Ms. Zhang applied for and was awarded interim child and spousal support through the funds paid into court from the foreclosure. The court imputed income to Mr. Sun for the purpose of paying interim support:

14 The claimant applied for spousal and child support. In a decision dated July 26, 2013, Mr. Justice Pearlman imputed Mr. Sun's income at \$150,000 and ordered that he pay \$3,000 per month in spousal support and \$2,104 in basic child support on an interim basis: *Zhang v. Sun* (26 July 2013), Vancouver E130052 (B.C.S.C.). In his reasons, he noted it was not credible the respondent would be advanced such loans on the basis of such a low annual income. In that judgment, Mr. Justice Pearlman noted at paragraph 39:

[39] It is contrary to the preponderance of the probabilities that the respondent's family and friends would make loans to him over several years in individual amounts which frequently exceeded his purported annual income and which, with an annual salary of no more than \$19,000, he had no reasonable capacity to repay. None of the purported lenders have confirmed that they advanced the money as alleged, that the advances were loans, or that they were unwilling to advance further funds to the respondent. I also find it is implausible the respondent could have obtained mortgage financing in excess of \$1,000,000 for the purchase of the former matrimonial home if he, as

a sole income earner of the family, had income of no more than \$19,000.

15 The claimant says Mr. Sun has never voluntarily paid child support or spousal support under Mr. Justice Pearlman's order. As a result, an application was made to have it paid out of funds in court. This was granted by order of Mr. Justice McEwan on November 7, 2013.

[Emphasis added.]

[40] Returning to my analysis, I question the veracity of G.Z.'s claim that he made only \$36,000 in the last 10 years, particularly given how plainly inconsistent it is with the extravagant lifestyle lived by the parties. I also have concerns about the accuracy of G.Z.'s F8, filed February 18, 2021. His lifestyle, including his golf membership and living arrangements, all belie his reported income and expenses. Although he claims that he cannot pay his mortgage or any support, his F8 shows that he pays \$17,400 for his eldest son's golf, including lessons, equipment and tournaments. G.Z. still retains at least one active membership at a private golf club and his credit card statements in 2020 show that he had money to spend on golf. Just between June 5 and June 24, 2020, for example, G.Z. spent over \$2,000 at golf clubs in the Vancouver area.

[41] It is difficult, given the extreme contradictions in G.Z.'s reports and his actions, to estimate his income. From all of the evidence I find that G.Z. has funds for whatever he wants. Similar to Pearlman J.'s observations in *Zhang*, it defies all probability and common sense that someone would advance G.Z. millions of dollars in loans when he earns only \$36,000 annually. It would be virtually impossible for him to repay such loans, even without interest. G.Z. provided no evidence that loans were advanced, that the funds advanced were loans or that he would be unable to obtain further loans if he so desired. Furthermore, it is implausible that G.Z. could have obtained a mortgage for the purchase of the matrimonial home on his purported annual income.

[42] Given the caution from our Court of Appeal about imputing income before trial, the fact that it is an interim order and that the trial is set for the end of October, I am taking a conservative approach to imputing income. For the purposes of interim

support I impute to G.Z. an income of \$150,000. I stress that this is “rough justice” and should not in any way impact final determinations to be made at trial. For the purposes of interim spousal support, P.W. agrees that an income of \$36,000 should be imputed to her although she is unemployed.

Issue 2: Whether funds should be released to P.W. from the proceeds of the family residence that are being held in trust, pursuant to s. 98 FLA

[43] Section 89 of the *FLA* permits the court to make an order for interim distribution of family property to provide money to fund a family law proceeding. The test for whether an interim distribution should be made is:

- 1) the applicant must show an advance is required to adequately mount a challenge to the other spouse’s position at trial or pretrial; and
- 2) the applicant must show that the advance or payment on an interim distribution basis will not jeopardize the other spouse’s position at trial; i.e. it will not be harmful to the interests of the spouse.

(*Bartch v. Bartch*, 2017 BCSC 210 at para. 22)

[44] With respect to the first branch of the test, it is clear that this will be a hard fought legal battle. The key issue will be G.Z.’s income and assets. As can be seen from above, the parties take opposing views and evidence on this point is conflicting. The parties have set a nine-day trial in October 2021. From the tone of this application and the history of the matter it is likely that the issues between the parties will need to be resolved by a court. Legal costs will be substantial.

[45] P.W. is not proficient in English. The issues are complex. It is in her best interests and the interests of N.Z. that she be represented at trial. P.W. has outstanding legal fees of just over \$87,000. Mr. Neary has agreed to represent her through trial for \$50,000 more. I am satisfied that an advance is required for P.W. to adequately represent herself at trial and in other pre-trial motions.

[46] Regarding the second branch, there is almost \$600,000 in trust. The townhouse in Richmond has equity of at least \$600,000. I anticipate a fight over the Richmond property. Although the condominium is in G.Z.’s name only, it was purchased during the parties’ relationship. While G.Z. claims that the Richmond

property belongs to his mother and wife, he used proceeds from the sale of the matrimonial home to pay off a mortgage that was on both the matrimonial home and the Richmond condo. As above, I am satisfied that G.Z.'s financial position is different than he portrays in his F8 and on this application. Of note, G.Z. does not oppose P.W.'s application, rather he asks for an interim distribution as well. Having considered all of the evidence, I am satisfied that an interim distribution will not be harmful to the interests of G.Z. at trial.

[47] I order that an interim distribution of property, being proceeds of the sale of the matrimonial home held in trust by Mr. Neary, in the amount of \$137,000 be made to P.W. to fund her family law proceedings.

[48] G.Z. must bring an application if he wishes to apply for an interim distribution under this section.

Conclusion

[49] I order that G.Z. is to pay to P.W. interim child support of \$1,356 and interim spousal support of \$2,887 per month for a total of \$4,243 per month. This order is retroactive to September 1, 2019 and continues on the first day of every month until further court order or by agreement of the parties. The arrears and the monthly support payments going forward are to be paid to P.W. out of the proceeds from the sale of the matrimonial home being held in trust by Mr. Neary.

[50] I further order that an interim distribution of funds in the amount of \$137,000 be paid to P.W. from the proceeds of the matrimonial home being held in trust by Mr. Neary, to pay outstanding legal fees and to fund ongoing litigation, pursuant to s. 89 of the *FLA*.

[51] I award the costs of this application to P.W.