

1999 CarswellAlta 296, 241 A.R. 355, 50 R.F.L. (4th) 411

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Lauderdale v. Lauderdale

Julie Dianne Lauderdale, Petitioner (Counter-Respondent) and William Mark Lauderdale, Respondent
(Counter-Petitioner)

Julie Dianne Lauderdale, Plaintiff and William Mark Lauderdale, Defendant

William Mark Lauderdale, Applicant and Julie Dianne Lauderdale, Respondent

Alberta Court of Queen's Bench

LoVecchio J.

Judgment: April 6, 1999

Docket: Calgary 4801-84100, 9501-06828, 9501-07323

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Counsel: *Ms Diann P. Castle*, for Petitioner/Plaintiff/Respondent.

Mr. David P. Vallance, for Respondent/Defendant/Applicant.

Subject: Family

Family law --- Support — Spousal support under Divorce Act — Time-limited award — General

Husband and wife were married for over 16 years and had four children — Wife had no post-secondary education and had not worked since first of four children was born — Petition for divorce, counter-petition and matrimonial property action were joined for trial and judgment was rendered — Husband appealed lump sum award given in lieu of periodic spousal support and assessment of child support — Appeal was allowed in part and reconsideration of quantum of periodic spousal support on record as stood was ordered — Husband was ordered to pay temporary spousal support payment of \$1,750 per month for period of three years — Wife had economic disadvantage in future earning capacity directly flowing from decision made with husband to interrupt career and become stay-at-home mother — Fact that wife was likely to remarry did not mean that economic disadvantage was only theoretical — Possibility of wife's remarrying was relevant to consideration of whether periodic support should be limited — Requiring husband to pay potentially forever if wife did not decide to attempt to become self sufficient was unfair — Periodic spousal support, ordered on interim basis, was ordered continued at existing level for three more years from date of earlier decision.

Family law --- Support — Spousal support under Divorce Act — Entitlement — Economic disadvantage of marriage

Husband and wife were married for over 16 years and had four children — Wife had no post-secondary education and had not worked since first of four children was born — Petition for divorce, counter-petition and matrimonial property action were joined for trial and judgment was rendered — Husband appealed lump sum award given in lieu of periodic spousal support and assessment of child support — Appeal was allowed in part and reconsideration of quantum of periodic spousal support on record as stood was ordered — Husband was ordered to pay temporary spousal support payment of \$1,750 per month for period of three years — Wife had economic disadvantage in future earning capacity directly flowing from decision made with husband to interrupt career and become stay-at-home mother — Fact that wife was likely to remarry did not mean that economic disadvantage was only theoretical — Possibility of wife's remarrying was relevant to consideration of whether periodic support should be limited — Requiring husband to pay potentially forever if wife did not decide to attempt to become self sufficient was unfair — Periodic spousal support, ordered on interim basis, was ordered continued at existing level for three more years from date of earlier decision.

Family law --- Family property on marriage breakdown — Order for division of property — Factors to be considered in determining nature of order — Miscellaneous factors

Husband and wife were married for over 16 years and had four children — Petition for divorce, counter-petition and matrimonial property action were joined for trial and judgment was rendered — Wife was determined to owe husband \$74,162.86 as equalization payment in matrimonial property action — Trial judge determined \$30,000 should have been paid as child support to date of judgment and amount was included in lump sum award — Husband appealed lump sum award given in lieu of periodic spousal support and assessment of child support — Appeal was allowed in part and reconsideration of quantum of periodic spousal support on record as stood was ordered — Calculation of child support was confirmed on appeal — Reduction of equalization payment by \$30,000, leaving net equalization amount of \$44,162.86, was appropriate.

Cases considered by *LoVecchio J.*:

Lauderdale v. Lauderdale (1996), 21 R.F.L. (4th) 17, 180 A.R. 81 (Alta. Q.B.) — referred to

Lauderdale v. Lauderdale (1997), 200 A.R. 198, 146 W.A.C. 198, 29 R.F.L. (4th) 34 (Alta. C.A.) — referred to

Moge v. Moge (1992), [1993] 1 W.W.R. 481, 99 D.L.R. (4th) 456, [1992] 3 S.C.R. 813, 81 Man. R. (2d) 161, 30 W.A.C. 161, 43 R.F.L. (3d) 345, 145 N.R. 1, [1993] R.D.F. 168 (S.C.C.) — referred to

REHEARING on question of quantum of periodic spousal support.

***LoVecchio J.*:**

Introduction

1 This decision is the determination ordered by the Court of Appeal of Alberta in a decision of that Court dated May 13, 1997 [reported at 29 R.F.L. (4th) 34]. In that decision, the Court was reviewing a decision of mine dated January 23, 1996 [reported at 21 R.F.L. (4th) 17 (Alta. Q.B.)].

2 My decision dealt with the issues raised by three separate actions which were joined for trial. They were a Petition for Divorce, a Counter Petition and a Matrimonial Property Action.

3 The Court of Appeal was asked by Dr. Lauderdale to reconsider the lump sum award given by me in lieu of periodic spousal support and my assessment of child support. There was no request to review my conclusions respecting the Matrimonial Property Action.

4 The Court of Appeal rejected the Appellant's submissions respecting the calculation of child support but allowed the appeal in part and remitted "the question of quantum of periodic spousal support to the trial judge to be determined on the Record as it now stands supplemented only by further oral argument"[FN1]. The Court also stated "(T)he trial judge will consider whether such periodic spousal support will be temporarily limited"[FN2].

Procedure Followed for the Determination Ordered

5 The Court of Appeal ordered that the determination be made "on the Record as it now stands" so I did not hear any new evidence. I met on several occasions with Counsel and they requested the right to make written submissions on their positions in addition to any oral representations they wished to make. While I accept this was not in strict compliance with what the Court of Appeal ordered, I saw no reason which was detrimental to the process to allow written submissions. In addition, I have personally found their written submissions to be thoughtful, well prepared and of assistance to me in the determination that I was required to make.

Determination

6 For the reasons which follow, the Court orders Dr. Lauderdale to pay to Mrs. Lauderdale a temporary spousal support payment in the sum of \$ 1,750.00 per month gross for a period of 3 years. At the conclusion of this period, the obligation of Dr. Lauderdale to make a periodic spousal support payments shall cease. The right of Mrs. Lauderdale to seek any additional spousal support payments shall will not be determined by me but will be subject to the discretion of any appropriate Court hearing any application which may be brought by her on proper notice after consideration of all relevant circumstances.

Analysis

7 This determination was predicated on my understanding of what the Court of Appeal decided. So there will be no misunderstanding on this front, I intend to commence by setting forth my understanding of what it is I was required to do. It has three essential facets.

8 First - it is to be on the record as it now stands. This I have taken to be the trial record. This is important for there have been developments in Mrs. Lauderdale's life which were the subject matter of speculation on my part in my earlier decision for which we now know the answer.

9 Specifically whether she might remarry and continue to be a stay at home mother and thus continue to keep on hold her plans to upgrade her employment skills. This is in fact the case, she has married Dr. True and has continued to be a stay at home mother. The fact that the anticipated marriage has occurred is not relevant but its possibility at the time of my earlier decision continues to be relevant for this determination but only for the purposes of whether the periodic spousal support payment to be ordered by this determination should be temporarily limited. Her decision to further postpone plans to upgrade her employment skills is likewise not relevant but its possibility at the time of my earlier decision continues to be relevant for this determination but again only for the purposes of whether the periodic spousal support payment to be ordered by this determination should be temporarily limited.

10 Second - it was only the question of quantum that was remitted back to me. I take that to mean the issue of whether or not there should have been spousal support has been confirmed. Put another way, I determined that the obligation of Dr. Lauderdale to provide spousal support which I found to exist at trial could be satisfied by the payment of a lump sum and the Court of Appeal said no, that obligation should be satisfied by a periodic payment the quantum of which you are to determine based on the record as it now stands which, as I stated above, I have taken to be the trial record.

11 Third - I was specifically to consider whether that payment should be temporarily limited.

12 Going back in time, as I must to December of 1995 when I heard the trial and January of 1996 when I rendered my decision, what were the relevant circumstances. There are several.

13 As I said in my previous decision, Mrs. Lauderdale has "an economic disadvantage in future earning capacity which flows directly from her decision made with the concurrence of Dr. Lauderdale to interrupt her career and become a stay at home mother. (See *Moge v. Moge* (1992), 43 R.F.L. (3d) 345 (S.C.C.)) The disadvantage only arises on the breakup of the marriage. When things are running smoothly on the home front and the parties are working together for their mutual benefit and that of their children, it is a lifestyle choice and should not be seen as creating disadvantaged individuals or second class citizens. Stay at home mothers who do so by choice are fully participating members in the building of a family unit. It is outside the home in the workplace where a diminished value develops by a stay at home mother abandoning her career opportunities. Dr. Lauderdale did not sacrifice his career outside the home to the same extent. Quite to the contrary through Mrs. Lauderdale's efforts he was able to pursue his career without the day to day burden of the children. Mrs. Lauderdale did share the benefits of his success through a very comfortable lifestyle but that has ended and each must rebuild their lives and here Mrs. Lauderdale is clearly behind on the economic front. As regards this latter point, it is to be noted that the relationship which Mrs. Lauderdale has with Dr. Trew should not mean that Mrs. Lauderdale has only theoretically suffered an economic disadvantage and thus Dr. Lauderdale has no obligation of spousal support to Mrs. Lauderdale"[FN3].

14 Mr. Vallance has again argued that this disadvantage is theoretical only in asserting that any spousal support payment to Mrs. Lauderdale even on a temporary basis should be nil. Just as I could not accept that position in relation to a lump sum payment, it is equally unacceptable in the context of determining whether spousal support should be paid on a periodic basis. In Counsel's view of the world, it is only if something were to happen to Dr. Trew which might constitute a change in circumstances for her that the issue of support should arise but in the meantime she is just fine.

15 Again, as I said before, "I cannot accept that only those who do not find a new partner suffer an economic disadvantage. To accept this view would lead to accepting a logical absurdity namely that Mrs. Lauderdale was not disadvantaged when she divorced Dr. Lauderdale because she has a new prospective spouse. That links Dr. Trew to the lifestyle choice of Dr. Lauderdale and Mrs. Lauderdale. She is still disadvantaged from her choice with Dr. Lauderdale however, because of Dr. Trew on her divorce from Dr. Lauderdale she is just luckier than most other spouses who find themselves in the same situation. That does not mean that her decision to marry Dr. Trew is irrelevant"[FN4].

16 Just as it was important in my thinking to award her a lump sum it is equally important in considering whether any periodic spousal support should be temporarily limited. In my view, it would be a relevant consideration and would lead one to limit the period of time that spousal support should be paid. The logic is really the

same as earlier. Just as it is unfair to link the economic disadvantage to Dr. True, it is equally unfair to say to Dr. Lauderdale that he should pay support to Mrs. Lauderdale potentially forever when she has decided to remarry and continue to be a stay at home mother rather than attempt to become self sufficient as the law mandates she must. Such a decision would inappropriately link a lifestyle choice between Dr. Trew and Mrs. Lauderdale back to Dr. Lauderdale.

17 In choosing to simply utilize, as the amount which is to be payable for a temporary period of time, the same amount which had been payable on an interim basis, I am trying to balance three things. First, she needs a period to retrain herself in order to become self sufficient, albeit this appears to be on hold because of Dr. Trew. Clearly if she does not utilize this period of time to retrain herself that may ultimately relieve Dr. Lauderdale of some or all of his responsibility for the lifestyle choice they made during their marriage. Second, the situation with Dr. Trew seemed to be headed for a long term relationship. While that was not completely certain at the trial things looked favourable, so again she needs a period of time for the final act to be played in this drama. Finally, if the situation with Dr. Trew does result in marriage this may also, depending on the circumstances, ultimately relieve Dr. Lauderdale of some or all of his responsibility to Mrs. Lauderdale because of the choices which she has made after their divorce but that will be determined in the future after this determination has run its course. Again what is needed is a temporary period of time, as the Court of Appeal stated in its decision in this matter, to deal with "the difficulty of disentangling the economic lives of the divorcing spouses"[FN5].

18 This was a marriage of 16 $\frac{1}{2}$ years, there are four children of the marriage, Mrs. Lauderdale has no post secondary education and has not really worked for economic gain since the first of their children was born. While I am venturing into the realm of speculation, her prospects for retraining do not look good to me and in reality they are likely becoming even more remote each day as they are currently on hold. If she chooses to become "self sufficient" by relying on Dr. Trew, that is her choice.

19 Balancing all of these factors, I intend to continue the periodic spousal support ordered on an interim basis at the current level for 3 more years from the date of my earlier decision. In doing this, I am cognizant of the fact that this is a before tax number and given the level of child support she is receiving, she will lose a substantial portion of this to the tax department. Her loss to the tax department during this trial period with Dr. Trew will be compensated in part by the contribution he is making to their living arrangements.

20 In addition, my earlier analysis of the expense budgets indicated that this was not an inappropriate level of support given their respective financial positions.

21 I am also cognizant of the fact that this temporary period has already expired.

Resulting Economics Consequences

22 In my previous judgment, I determined that Mrs. Lauderdale owed Dr. Lauderdale the sum of \$74,162.86 as an equalization obligation in the Matrimonial Property Action. This determination was not part of the subject matter of the appeal. In addition, I made a determination that an additional \$30,000 should have been paid as child support to the date of my judgment. I included this amount in my lump sum award.

23 While the Court of Appeal directed that a determination should be made of periodic spousal support, the calculation of child support was confirmed. As a result, the equalization obligation should be reduced by that amount, leaving a net equalization amount of \$44,162.86. This net amount remains outstanding. Under normal circumstances, this amount would have been payable within a reasonable time after my judgment was released.

24 In the same vein given the determination I have made, Mrs. Lauderdale would have been receiving spousal support payments of \$1,750 per month. Given that the three year period has elapsed, Dr. Lauderdale owes her a considerable sum of money and needless to say she will have to set aside a considerable portion of that amount for the tax department.

25 In a perfect world Dr. Lauderdale would have been entitled to receive interest on the equalization obligation had it been paid within a reasonable time after judgment. By the same token, Mrs. Lauderdale should have been receiving \$1,750 per month for the past 3 years. I intend to disregard reciprocal interest payments.

Conclusion

26 While the parties are free to do as they wish, it would seem to me the practical approach would mandate that Mrs. Lauderdale and Dr. Lauderdale, along with their respective Counsel, should meet within the next 30 days of this determination to establish how and over what period of time they propose to discharge their respective obligations so as to minimize the impact of this determination on their financial affairs. In addition, the parties should co-ordinate the filing of amended tax returns as in all likelihood Mrs. Lauderdale could have a considerable tax liability and Dr. Lauderdale could be entitled to a considerable tax refund.

27 In view of the manner in which Counsel dealt with their additional submissions for this determination, no additional award for costs will be made to either party however, my original order shall remain in effect.

Order accordingly.

[FN1](#) From the decision of the Court of Appeal of Alberta dated May 13, 1997 (unreported) at page 5.

[FN2](#) Ibid footnote 1 at page 5.

[FN3](#) See my earlier decision dated January 23, 1996 at pages 35-36. Such decision was reported at 21 R.F.L. (4th) 17.

[FN4](#) Ibid footnote 3 at page 36

[FN5](#) Ibid footnote 1 at page 3.

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