1994 CarswellAlta 387, 7 R.F.L. (4th) 100

Lasalle v. Lasalle

GLADYS MAUREEN LASALLE v. IAN LASALLE

Alberta Court of Appeal

Kerans, Conrad and McFadyen JJ.A.

Judgment: July 26, 1994
Docket: Doc. Calgary Appeal 14588

Counsel: *D. **Castle***, for respondent (petitioner).

C. Purdy, for appellant (respondent).

Subject: Family; Insolvency

Family Law --- Support — Spousal support under Divorce Act — Variation or termination — Change in financial circumstances — Change in means of spouse.

Maintenance — Factors governing award — Economic disadvantage — Husband appealing award of spousal support — Husband arguing that wife benefiting from marriage — Wife declaring bankruptcy following divorce — Wife's personal situation not improving and career not developing — Appeal dismissed.

Children — Maintenance — Factors governing award — Ability to pay — One of two children of marriage residing with mother following separation and divorce — Mother making voluntary assignment in bankruptcy in 1991 — Mother awarded $700 per month in child support — Father appealing — Amount of award not being inappropriate having regard to father's ability to pay — Appeal dismissed.

The parties were married in 1972, after having cohabited for one and one half years. The total period of their cohabitation was approximately 16 years. In 1991 the wife made a voluntary assignment in personal and corporate bankruptcy upon the failure of the business that she had incorporated in 1989. Her 1992 income ranged from $12,000 to $14,000. One of the two children of the marriage resided with her. The husband, whose 1992 annual income was $65,000, paid child support of $250 per month. At the trial the wife was awarded $700 per month in child support to a maximum of four years after the child turned 18 years of age, and $800 per month in indefinite spousal support.

The husband appealed.

Held:

The appeal was dismissed.

The wife's personal situation did not improve and her career did not develop during the marriage. Had she not married and looked after the children, it was reasonable to assume that she would have attempted to establish a career. With respect to both orders of support, nothing indicated that the chambers judge had erred in the assessment of the facts and the awarding of an appropriate amount of support.

Cases considered:

Haisman v. Haisman (1994), 7 R.F.L. (4th) 1 (Alta. C.A.) — *referred to*

Levesque v. Levesque, 4 R.F.L. (4th) 375, 20 Alta. L.R. (3d) 429, [1994] 8 W.W.R. 589, 155 A.R. 26, 73 W.A.C. 26, 116 D.L.R. (4th) 314 (C.A.) — *applied*

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

Statutes considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) —

s. 15(5)

Interest Act, R.S.C. 1985, c. I-15.

Judgment Interest Act, S.A. 1984, c. J-0.5.

Appeal by husband from order for child support and indefinite spousal support.

***Kerans J.A.* (orally):**

1 We are able to give a judgment this afternoon, and we have asked Madam Justice Carole Conrad to deliver what is the unanimous decision of the court.

***Conrad J.A.*:**

2 The parties were married in 1972, having cohabited for a period of one and one half years prior to the marriage, bringing the total cohabitation to a period of approximately 16 years. There were two children of the marriage, Brian and Brandy. At the time of the marriage, Mrs. Lasalle had two children from a prior marriage. While she had an order for payment of support from her first husband, she did not receive payment. Mr. Lasalle, to his credit, accepted and raised the children.

3 During the period of the relationship, Mrs. Lasalle remained at home to care for the children, being responsible for the majority of household chores. Mr. Lasalle worked between eight and fourteen hours per day, and assisted at home when he could.

4 During the marriage, Mrs. Lasalle developed and ran a sewing and drapery business from the home. She incorporated that business in 1989, and commenced operations from outside of the home in the name of Sewing

Room Limited. While the business showed significant gross revenue, the net revenues were insufficient, and by 1991 Mrs. Lasalle found herself in a position that she was required to make voluntary assignment into personal and corporate bankruptcy.

5 Each of the parties received $11,000 from the division of matrimonial property. At the time of the separation of the parties, Mrs. Lasalle did not seek spousal support, and Mr. Lasalle made mortgage payments on the matrimonial home. Child support of $500 per month was paid directly to Mrs. Lasalle for approximately a year prior to the divorce judgment in May of 1990. Brian lived with Mr. Lasalle continuously since September of 1992, and was employed on and off. Brandy lived continuously with Mrs. Lasalle. Mr. Lasalle continued to pay child support for Brandy in the sum of $250. In July of 1992, Mrs. Lasalle moved to Kelowna with her daughter Brandy.

6 Mr. Lasalle is a heavy equipment operator in the construction industry and is paid on an hourly basis. His income fluctuates. During 1990, it was approximately $54,000; in 1991, it was approximately $48,000; and in 1992, his income was in the range of $65,000.

7 Mrs. Lasalle's income in 1990 was just over $14,000, and in 1992 it ranged between $12,000 to $14,000.

8 The trial judge awarded child support for Brandy Lasalle in the amount of $700 per month up to a maximum of four years past age 18, and $800 per month indefinite spousal support for Mrs. Lasalle. It is from that order that Mr. Lasalle appeals.

9 The leading authority on spousal support is *Moge v. Moge*, [1992] 3 S.C.R. 813. There, the Supreme Court of Canada acknowledged spousal support orders remain essentially a function of the evidence.

10 It is argued by the appellant that, taking into consideration the various subsections of s. 15(5) of the *Divorce Act*, there should be no order for payment of support. Rather, counsel for the appellant said Mrs. Lasalle received an economic advantage as a result of the marriage, having improved her station in life. As a result of the breakdown, she received cash.

11 The first issue we must deal with is whether or not there should be a new trial. The evidence is somewhat scanty in places, but we are satisfied that on the main issues the fact pattern is clear. In any event, if there is a shortage of evidence, each party had the opportunity to place the appropriate evidence before the chambers judge. We do not find a sufficient conflict in the evidence to prevent us from dealing with this appeal at this time.

12 We are also satisfied that there has been a change in the circumstances of the parties since the date of the order, including the fact Mrs. Lasalle went into bankruptcy since the date of the divorce.

13 The Supreme Court in *Moge* has indicated that women have tended to suffer economic disadvantage and hardship from marriage and its breakdown because of the traditional division of labour within that institution. Each case must be examined on its own facts. In this case, the appellant argues that in fact she had benefited from the marriage, having gone from a short-order cook and on social assistance to marrying Mr. Lasalle, developing and enhancing skills as a seamstress, running her own business. However, it is clear that she was unable to make a success of her business and that, in fact, her personal situation and ability to develop herself as a career person did not occur during the time of her marriage. Had she not been married and looking after children, it is a reasonable inference to assume that she would have attempted to establish some career pattern for herself.

14 Even allowing or attributing a $20,000 income to Mrs. Lasalle, we would not interfere with the award. There are no magic formulas. Each case must be determined on its own facts. In our view, we can find nothing on the facts or circumstances of this case that indicate to us that the chambers judge made any error in her assessment of the determinative factors.

15 We would point out that there has been no remarriage or cohabitation by Mrs. Lasalle. If that changes, then, of course, that would lead to circumstances that might justify a change of the order.

16 With respect to the issue of child maintenance, this case predated the decision in *Levesque v. Levesque* [reported at (1994), 4 R.F.L. (4th) 375 (Alta. C.A.)], which sets out general guidelines for the determination of maintenance. However, looking at the gross income of these parties and applying the principles set out in *Levesque*, the order for the child of the marriage is certainly not out of the range that would be considered appropriate, having regard to the age of the child and the litmus test set out in *Levesque v. Levesque*. In our view, there is nothing to convince us that the chambers judge made any error in her assessment of the facts and the appropriate maintenance.

17 The appeal is dismissed.

***Counsel*:**

18 May I speak to the matter of costs?

***Kerans J.A.*:**

19 Costs will follow the event unless somebody makes a submission to the contrary. Do you want something more than that?

***Counsel*:**

20 Yes. I have one other matter and I'd just like to have it changed. If I could ask the panel to look at 167. It's clause 6. Madam Justice Rawlins asked that interest be taxed pursuant to the *Judgment Interest Act*. Clearly come down in the *Haisman* decision [*Haisman v. Haisman* (1994), 7 R.F.L. (4th) 1 (Alta. C.A.)] that if any interest is going to attach, it should be pursuant to the *Interest Act* of Canada, and l know, I mean to my client's advantage, that we would have the interest applied to the judgment interest standard, and I am wondering if the panel is in a position to perhaps —

***Kerans J.A.*:**

21 Well, there's no cross-appeal.

***Counsel*:**

22 No. My friend —

***Kerans J.A.*:**

23 If your friend can consent to an order, that would be different. Otherwise, you may have to go back and see Queen's Bench.

***Counsel*:**

24 Okay.

Appeal dismissed.

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