

FILED
Court of Appeals
Division II
State of Washington
4/30/2018 1:28 PM

IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON
DIVISION II

RONALD R. BRETT

Appellant,

v.

STATE OF WASHINGTON, DEPARTMENT OF SOCIAL & HEALTH SERVICES.

Respondent.

REPLY BRIEF OF APPELLANT

Appeal from the Superior Court of Lewis County
No. 16-2-00869-21
The Honorable Joely O'Rourke, Presiding

E. Allen Walker,
Attorney for Appellant
2607 Bridgeport Way West, Ste. 2C
Tacoma, WA 98466
Telephone: 566-3383

Table of Contents

1. WHETHER RECOGNITION AND ENFORCEMENT OF A 1983 SPOUSAL MAINTENANCE ONLY CANADIAN JUDGMENT IS MANIFESTLY INCOMPATIBLE WITH WASHINGTON STATE PUBLIC POLICY WHEN THE FORMER SPOUSE WAS REMARRIED IN 1987 AND DIVORCED FROM THE SECOND SPOUSE IN 2001 AND THE SUPPORT ORDER DID NOT ADDRESS THE EFFECT OF REMARRIAGE REGARDING ONGOING SPOUSAL MAINTENANCE?	3
2. WHETHER RECOGNITION AND ENFORCEMENT OF A CANADIAN SPOUSAL SUPPORT JUDGMENT IS MANIFESTLY INCOMPATIBLE WITH WASHINGTON PUBLIC POLICY WHEN THE ORIGINAL STATUTE OF LIMITATIONS AS TO SOME OF THE SUPPORT EXPIRED BUT THEN WAS LATER RESURRECTED WITH PASSAGE OF A NEW STATUTE OF LIMITATIONS IN CANADA?	4
3. WHETHER THE PRIOR STATUTE OF LIMITATIONS EXISTING AT THE TIME THAT THE CANADIAN SPOUSAL MAINTENANCE WAS ORDERED HAD EXPIRED AS TO SOME OF THE ALLEGED ARREARAGES AND WHETHER THAT PRECLUDES ENFORCEMENT OF SOME OF THE ALLEGED ARREARAGES AND JUSTIFIES THE COURT IN NOT REGISTERING SOME OR ALL OF THE CANADIAN SPOUSAL MAINTENANCE?	6
CONCLUSION.....	7

Cases

<u>Marriage of Williams</u> , 115 Wn.2d. 202, 796 P.2d 421 (1990)	3, 4
---	------

Statutes

RCW 4.24.820	4
--------------------	---

Other Authorities

Uniform Conflict of Laws Limitations Act	5
--	---

1. WHETHER RECOGNITION AND ENFORCEMENT OF A 1983 SPOUSAL MAINTENANCE ONLY CANADIAN JUDGMENT IS MANIFESTLY INCOMPATIBLE WITH WASHINGTON STATE PUBLIC POLICY WHEN THE FORMER SPOUSE WAS REMARRIED IN 1987 AND DIVORCED FROM THE SECOND SPOUSE IN 2001 AND THE SUPPORT ORDER DID NOT ADDRESS THE EFFECT OF REMARRIAGE REGARDING ONGOING SPOUSAL MAINTENANCE?

In the reply briefs, the State and the former wife opposed the appellant's position that the Canadian judgment is manifestly incompatible with Washington State Public Policy despite the fact that the former spouse remarried in 1987 and divorced from the second spouse in 2001. In contrast to Washington law, the spousal maintenance is being enforced.

At least the State agrees that this is the proper issue before the Court albeit they indicate it is a different statute that applies despite it being the same issue.

The Washington Supreme Court made its determination that absent a determination from the trial Judge to the contrary, when a spouse remarries, spousal maintenance ends. Marriage of Williams, 115 Wn.2d 202, 796 P.2d 421 (1990). This is a long outstanding Washington law. It flies in the face of Washington State public policy to enforce forever maintenance under these circumstances which would not be allowed under Washington State law. Indeed, in this case, not only did the former spouse remarry, she re-divorced. It has become ludicrous.

RCW 4.24.820 states forth:

- (1) Washington's courts, administrative agencies, or any other Washington tribunal shall not recognize, base any ruling on, or enforce any order issued under foreign law, or by a foreign legal system, that is manifestly incompatible with public policy.
- (2) For purposes of this chapter, a foreign law, an order issued by a foreign legal system or foreign tribunal is presumed manifestly incompatible with public policy, when it does not, or would not, grant the parties all the same rights, or when the enforcement of any order would result in a violation of any right, guaranteed by the Washington state and United States Constitutions.

The Canadian maintenance order is incompatible with Washington law as set for in the underlying Williams case. The appellant has a right under Washington law to not pay maintenance if his former spouse remarries (absent a court order to the contrary). This incompatibility renders the enforcement of spousal maintenance from the time of the remarriage against Washington public policy.

2. WHETHER RECOGNITION AND ENFORCEMENT OF A CANADIAN SPOUSAL SUPPORT JUDGMENT IS MANIFESTLY INCOMPATIBLE WITH WASHINGTON PUBLIC POLICY WHEN THE ORIGINAL STATUTE OF LIMITATIONS AS TO SOME OF THE SUPPORT EXPIRED BUT THEN WAS LATER RESURRECTED WITH PASSAGE OF A NEW STATUTE OF LIMITATIONS IN CANADA?

The respondents, particularly the State, argue that this statute of limitations issue is a non-issue. Given the belated change in Ontario law, where the former statute of limitation was changed by their legislature to have no statute of limitations, and the State here argues that any payments made by appellant were insufficient to have the former statute of limitations apply. However, the respondent's argument fails because the respondent in its calculation doesn't properly attribute child support payments by appellant which are presumed to have priority over spousal maintenance payments.

Further, here the initiating Court was from the Province of British Columbia, not Ontario. See the former wife's brief, P.2.

Given that, it would appear that the more relevant statute of limitations should be considered to be the Providence of British Columbia's statute of limitation as to the maintenance, which is 10 years, in contrast to Ontario's changed statute of limitations to no statute of limitations. See Appendix A, P.2.

Further, the wife claims that the Uniform Conflict of Laws Limitations Act governs this Court's decision. The wife's brief, P.7. However, the UCLLA does not apply to international judgments.

Again, see RCW 4.24.820, which does not recognize foreign law and legal systems and tribunals that have manifestly incompatible public

policy and which do not grant all of the same rights as Washington State law does.

3. WHETHER THE PRIOR STATUTE OF LIMITATIONS EXISTING AT THE TIME THAT THE CANADIAN SPOUSAL MAINTENANCE WAS ORDERED HAD EXPIRED AS TO SOME OF THE ALLEGED ARREARAGES AND WHETHER THAT PRECLUDES ENFORCEMENT OF SOME OF THE ALLEGED ARREARAGES AND JUSTIFIES THE COURT IN NOT REGISTERING SOME OR ALL OF THE CANADIAN SPOUSAL MAINTENANCE?

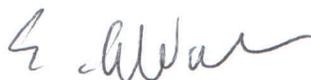
Although all of appellant's child support payments were paid prior to the State pursuing enforcement of the Canadian spousal maintenance obligation in the State of Washington, the State here wrongly attributes appellant's payments of child support as if they were spousal maintenance payments in order to claim that appellant has no claim as to the abolition of the statute of limitations having no affect on the appellant. This is a clear miscalculation. Child support payments rightly have priority over maintenance payments. Even the prior Ontario statute of limitations expired as to spousal maintenance (in significant part), given a proper calculation of child support payments made.

Further, ironically the State claims it has "party" status due to its need to enforce "child support". However, given that at all relevant times, appellant's child support was paid in full this party status claim is unfounded.

CONCLUSION

For the reasons set forth, the lower Court's decision should be reversed.

Respectfully submitted this 30th day of April, 2018.



E. ALLEN WALKER, WSB #19621
Attorney for Appellant

Appendix A

[HOME](#)[ABOUT NCSEA](#)[MEMBERSHIP](#)[PROGRAMS & EVENTS](#)[ADVOCACY & PU](#)

BRITISH COLUMBIA

[HOME](#) [RESOURCES & INFO](#) [INTERNATIONAL CHILD SUPPORT](#) [U.S. VISITORS](#)
[CANADIAN PROVINCES AND TERRITORIES](#) **BRITISH COLUMBIA**

Canada – British Columbia

Contact

Ministry of the Attorney General
Reciprocal Office
P.O. Box 2074 Station Main
Vancouver BC V6B 353
Canada

ISO Forms: <http://www.ag.gov.bc.ca/family-justice/index.htm>

Overview

U.S. Federally Declared Foreign Reciprocating Country – Effective December 15, 2001

Web Link to Guides and Forms

http://www.ag.gov.bc.ca/family-justice/resources/brochures_booklets/iso/pdf-instructions.htm
<http://www.acf.hhs.gov/programs/cse/>

Relevant Laws

Age of Majority

Age of majority in British Columbia, Canada: 19

Q: If not stated in the order at what age is child support automatically terminated as a matter of state law?

Qualify if necessary.

A: Where a termination date is not stated in an order there is no automatic termination.

Q: Does child support end if the child leaves the household but does not emancipate?

A: No. For the purpose of maintenance a child is defined as someone under 19 or over 19 but unable because of illness, disability or other reason to withdraw from their parent's charge or obtain the necessities of life.

Q: Does British Columbia, Canada allow support to be paid beyond the age of majority under any circumstances (for example, the child is handicapped or in post-secondary education)?

A: Yes. If a child is not self supporting for good reason after majority, ie. Education, disability, lack of employment opportunities.

Service of Process

Check which of the following methods are used to serve process on an individual.

personal service

regular mail (no receipt)

registered mail (received by addressee only)

registered mail (received by anyone at the address)

publication (example: in a legal journal, newspaper, public posting)

Where a maintenance order is being registered for enforcement in British Columbia, Canada notice of registration is sent regular mail.

How is a non-resident or person whose whereabouts are not known, notified of proceedings?

It is possible to obtain a court order to serve process by regular mail, registered mail, personal service on another person, or publication.

Statute of Limitations

Q: Is there a statute of limitations for past due support? If yes, describe.

A: Yes. Where the past due support is child support the limitation period is 10 years from age 19. Where the past due support is spousal support, the limitation is 10 years for each payment from the date it was due. In either situation the 10 years is extended by an acknowledgement in writing of the liability or a payment.

Q: Is there a statute of limitations for establishing paternity? If yes, describe.

A: No.

Q: Will British Columbia, Canada accept a petition if the only issue is support for a prior period, that is, no child is currently entitled to support?

A: Yes.

Amount of Support

Q: In setting the amount of support, whose income is considered in addition to the income of the non-custodial parent? (for example: custodial parent's custodial parent's new spouse, child's, etc).

A: Only the non-custodial parent's income is considered except if a parent claims hardship. If hardship is claimed then the custodial parent's income is considered.

Q: How is the amount of support determined? Examples: by formula, % of income, tribunal discretion, etc.)

A: For child support, by formula based on income except where there is hardship, the Payor is under employed, or the child is over 19. Maintenance can be reduced where there are high access costs. Where a contribution for extraordinary expenses such as medical or day care is claimed both parents incomes are considered to establish the required contribution of the non custodial parent to that extraordinary expense. Spousal support is based on the needs, means, capacities and economic circumstances of each spouse.

Q: Does British Columbia, Canada allow for support for a period before the parent applied? If yes, what is the period allowed (for example, from the birth of the child, from date of separation, retroactivity support is limited to X years, etc.)

A: Yes, although courts are hesitant to make such orders unless there is an explanation for delay.

Modification of Orders

Q: May either party request a review for modification?

A: Yes.

Q: Will British Columbia, Canada modify its existing domestic judgment when one of the parties resides in the USA and will not return for or refuses to participate in the proceedings?

A: Yes. The British Columbia court will consider a modification if a provisional variation order is received together with a transcript of proceedings.

Q: Does British Columbia, Canada law require automatic adjustments (for example, based on changes in the cost of living, or X% every 3 years, etc.)

A: No.

Q: If yes, are the automatic adjustments considered to be modifications of the order?

A: N/A

Q: Is a new order issued as a result of an automatic adjustment?

A: N/A

Q: Is there a minimum or threshold amount of change that must occur before a modification is made? (For example, the order would need to change by 25 dollars or more, or at least 10% change in order).

A: No.

Cost Recovery

Q: What costs, if any, are recovered from the custodial parent?

A: None.

Q: What costs, if any, are recovered from the non-custodial parent?

- Costs of paternity testing where ordered and the test is positive.
- Court costs where awarded to the custodial parent.
- Expenses incidental to prenatal care of the mother or child or birth of the child.

Forms and Procedures

U.S. Federally Declared Foreign Reciprocating Country — Effective December 15, 2001

IF the person in the US wants to...

THEN complete these forms and documents....

Establish a new (initial) support order in British Columbia including the establishment of paternity

Transmittal Form

Case Information Form

Uniform Support Petition

Marriage Certificate, Birth Certificate, Divorce

Decree

Register and enforce an existing US order in British Columbia

Transmittal Form

Case Information Form

Affidavit of Arrears

Two certified copies of existing order(s)

Register & modify an existing US order in British Columbia because the order is not modifiable in the US

Applications to register and modify a US order/assessment must be made to the BC court via the Maintenance Enforcement and Locate Services office ? Reciprocal Program

Transmittal Form

Case Information Form

Uniform Support Petition

Three certified copy of existing order

Statement of Arrears

Certified/sworn evidence, transcripts, exhibits, if any

Enforce an existing British Columbia order in British Columbia

Transmittal Form

Case Information Form

Affidavit of Arrears

Copy of existing order (if possible)

Modify an existing British Columbia court order through the British Columbia Family Maintenance Enforcement Program

The BC FMEP does not have a mandate to make or modify orders/assessments

Applications to modify an order/assessment must be made to the British Columbia court via the Maintenance Enforcement and Locate Services office ? Reciprocal Program

Transmittal Form

Case Information Form

Uniform Support Petition

One certified copy of existing order

Statement of Arrears

Locate a person or provide leads to

Assets in British Columbia

Transmittal Form

Locate Request

Request status, assistance, or information (ex: requesting income information for a modification, service of process, etc.)

Transmittal Form

Locate Request

About NCSEA

Who We Are
What We Do
Governance
Staff
Contact Us
Business Policies

Membership

Individual Membership
State, Tribal or International
IV-D Agency
Local or International IV-D
Agency
Affiliated Governmental Agency
Nonprofit
Corporate

Programs & Events

Web-Talks
Conferences
Premier Education & Training
Program
Event Calendar

Advocacy & Public

NCSEA Advocacy Stat
NCSEA Board Resoluti
Statements
NCSEA Legislative Upd
Papers

© Copyright 2018 National Child Support Enforcement Association. All rights reserved.
7918 Jones Branch Drive, Suite 300, McLean, VA 22102 | Phone: 703-506-2880 | Fax: 703-506-3266 | Privacy Policy

E. ALLEN WALKER

April 30, 2018 - 1:28 PM

Transmittal Information

Filed with Court: Court of Appeals Division II
Appellate Court Case Number: 51011-1
Appellate Court Case Title: Ronald Brett, Appellant v State of Washington et al, Respondents
Superior Court Case Number: 16-2-00869-9

The following documents have been uploaded:

- 510111_Briefs_20180430132657D2185172_3351.pdf
This File Contains:
Briefs - Appellants Reply
The Original File Name was Brett Reply Brief.pdf

A copy of the uploaded files will be sent to:

- amy@buddbaylaw.com
- liannem@atg.wa.gov
- meganc@buddbaylaw.com
- shsappealnotification@atg.wa.gov

Comments:

Sender Name: Susan Heileson - Email: suework2607@yahoo.com

Filing on Behalf of: E. Allen Walker - Email: awalker@tacomalegal.com (Alternate Email: suework2607@yahoo.com)

Address:
2607 Bridgeport Way West, Ste. 2C
Tacoma, WA, 98466
Phone: (253) 566-3383

Note: The Filing Id is 20180430132657D2185172