

Citation: Eaton v. Eaton  
2000 BCSC 556

Date: 20000330  
Docket: 7201  
Registry: Nelson

**IN THE SUPREME COURT OF BRITISH COLUMBIA**

BETWEEN:

**SHIRLEY DIANE EATON**

PLAINTIFF

AND:

**BRIAN JOHN EATON**

DEFENDANT

**REASONS FOR JUDGMENT**

**OF THE**

**HONOURABLE MR. JUSTICE MCEWAN**

Counsel for the Plaintiff:

W.A. Morrow

Appearing on his own behalf:

Brian J. Eaton

Date and Place of Hearing/Trial:

December 16, 1999  
Nelson, B.C.

[1] The parties were married March 25, 1966 and separated in April 1997. They were divorced October 30, 1998. On October 7, 1999 they executed a Separation Agreement settling all issues except spousal support, which was referred to this court in the following terms:

D.1. The issue of Child Support is currently before the Supreme Court of British Columbia in action number 7201, Nelson Registry. It is the intention of the parties' that this issue be dealt with by way of these court proceedings.

[2] The parties married young: the petitioner was 19 and the defendant was 20. They were married in Ontario but came out to the Rossland-Trail area in about 1971. They had three children born in 1966, 1968 and 1970. The children are now independent.

[3] The defendant worked for most of the time the parties were married as an insurance adjuster. He and the petitioner engaged in a number of other enterprises including, for two years, the operation of a moving company and, with others, the weekend operation of the Penticton Speedway, a stock car racing track. Mr. Eaton acknowledges that Mrs. Eaton worked alongside him in these enterprises through the marriage.

[4] The parties moved from Rossland/Trail to Campbell River in 1989, where Mr. Eaton again worked as an adjuster. Mrs. Eaton worked as a hostess at the Painter's Lodge and as a secretary at Mr. Eaton's adjusting firm. In 1994 they returned

to Trail, where Mr. Eaton started his own adjusting business "from scratch", as he put it. Mrs. Eaton became his office manager. The business thrived, and Mr. Eaton reported income of \$81,000 in 1996. Mr. Eaton brought two more adjusters into the business in 1997.

[5] In April of 1997 the parties separated. Mrs. Eaton continued to work for the business from home because it was too awkward for them to be in the same place. Mrs. Eaton was paid \$1500 per month for working at home until the end of December 1997.

[6] At about this time Mrs. Eaton was told business was slowing down and she was "laid off". Thereafter she received \$1000 per month from Mr. Eaton until April 1998. In May she got \$500 and then the payments were cut off.

[7] After she stopped working in the adjusting firm, Mrs. Eaton said she earned some income upholstering, babysitting, and assisting Mr. Eaton's parents with some work around their house. She said she looked for employment through the newspapers. She remained in the family home until Mr. Eaton bought out her interest. The value of her half interest was fixed at \$65,000, which Mr. Eaton paid. He still owes \$22,500 on account of the property settlement worked out between the parties.

[8] Mr. Eaton made a number of submissions questioning Mrs. Eaton's efforts to gain employment. While it may be that she has not made every possible effort to find work, I think the fair inference on the evidence is that, given her age (53) and limited marketable skills, it is doubtful that more assiduous efforts would have yielded secure, steady employment. I do not think it reasonable to expect Mrs. Eaton to uproot herself from the Trail area to go wherever work might be found. It is also hard to be critical of Mrs. Eaton's refusal to manage the Trail office of Mr. Eaton's insurance business, under his nominal leadership. Her position, I think, reflected a realistic appraisal of the long-term prospects for such an arrangement rather than a lack of industry on Mrs. Eaton's part.

[9] What Mrs. Eaton has done, apart from some occasional housecleaning, is to qualify for and to take placements of foster children for the Ministry of Children and Families. She presently has one child under a special arrangement that pays her \$946 per month. The usual scale is \$637.77 for children up to 11 years of age, and \$732.44 for children up to 19. A portion of these rates (\$350) is her allowance and the rest is paid for expenses. Mrs. Eaton expects to be taking in two children at a time, which would pay some \$1380 per month. This

amount compensates for some indivisible expenses such as property taxes, utilities and household costs and so is of some benefit to the foster parent. The work is time consuming, and, practically speaking probably precludes Mrs. Eaton from seeking anything else.

[10] Mrs. Eaton has, in turn, been critical of Mr. Eaton's spending habits. I will not attempt to outline the various purchases of vehicles and other transactions concerning which Mr. Eaton was cross-examined, most of which appear to have been money losing. The over-all impression given by his evidence is he is a man who spends - sometimes impulsively - but with the confidence that he will always find the money.

[11] Mr. Eaton has essentially disposed of the Trail part of his adjusting business and commenced a new operation in Nelson. He testified to his misgivings about this new enterprise and about the future of the whole independent adjusting business. It is also, however, evident that certain other factors are at play. He has formed a new relationship with a woman who has experience in business and as a legal secretary, and who has roots in the community of Nelson. Mr. Eaton's living and working arrangements are now out of a house in which this new family unit resides. He is paying \$500 per month rent to a company owned by his new spouse. He is clearly

experiencing the uncertainties that attend any fresh start and he points out that he is not getting any younger.

[12] Taking a long view of the Eaton's marriage, however, it is quite clear that over the course of 31 years Mr. Eaton was able to pursue a stressful career with a fair measure of success. The parties certainly experienced some setbacks, had some false starts and invested in some things that did not work out. Along the way Mr. Eaton did find the time and the money to pursue interests and hobbies that were relatively expensive. It is possible, as he has shown, to go over his affairs and see a pattern of poor choices and financial losses. But it is also possible to view what has happened as the actions of a man who had enough optimism and faith in himself that he did not entirely sacrifice his pleasures on the altar of fiscal prudence.

[13] It is also abundantly clear - and admitted - that Mrs. Eaton, in every sense that is the business of this court, took a full and active role in the marriage, in the raising of the children, the management of the household, in participating in the family's business enterprises, and in supplementing the family income from time to time during the marriage. She does not have the skills or opportunities Mr. Eaton has to make her way in the world. At the age of 53, given the role she took in

the marriage, it is impossible to now say what might have been had she been free to pursue a career. She is certainly resourceful. Since the separation she has pursued some retraining in computers. She has looked for employment and found something she is comfortable doing. I am unable, in the circumstances, to fault her in any way for the particular choices she has made.

[14] This is clearly a case where spousal support should be paid, as Mr. Eaton acknowledges. I will not elaborate on the legal principles involved except to observe that I think the considerations outlined and the guidance offered by the Supreme Court of Canada in **Moge v. Moge** [1992] 3 S.C.R. 812, are fully engaged.

[15] Mr. Eaton is currently bound by an interim order to pay \$1800 per month. Given Mr. Eaton's demonstrated, recent, past earning capacity (\$74,000 per annum); considering Mrs. Eaton's probable ability to assist in her own support; and considering the tax treatment of spousal support, I am of the view that ongoing spousal support of \$1500 appropriately balances the parties' respective entitlement and responsibilities arising out of the marriage, assuming a capacity on Mr. Eaton's part to earn at that level. I am prepared to recognize that there

may be some "lag" in Mr. Eaton's ability to achieve this level of income at the present time.

[16] Accordingly, I am prepared to order that Mr. Eaton pay, from and after January 1, 2000, the sum of \$1500 per month as spousal support, on the basis that I suspend the payment of \$700 of that amount pending a review of Mr. Eaton's actual circumstances at the end of 2000. On January 1, 2001 the amount payable shall be \$1500 per month. After December 31, 2000 on the motion of either party, the court will address whether, on the evidence, the amount suspended shall be paid, or forgiven in whole, or in part. I make this order without prejudice, of course the rights of the parties to apply to the court for any other good reason when and if they choose to do so.

[17] In summary therefore:

- (a) The interim order continues through December 31, 1999;
- (b) For the year 2000 spousal support is fixed at \$1500 per month, provided that, pending a review of Mr. Eaton's actual circumstances at the end of the year, he is obliged only to pay \$800 of that amount.

- (c) Unless this court makes a further order, spousal support shall continue at \$1500 per month from and after January 31, 2001 with no suspension.
- (d) Whether Mr. Eaton is obliged to pay the full amount of \$1500 for the year 2000 will be determined upon a review at the instance of either party after December 31, 2000.
- (e) There will be no order for costs.

"T.M. McEwan, J."  
The Honourable Mr. Justice T.M. McEwan

Nelson, B.C.  
March 30, 2000