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Family

Recent Alberta cases illustrate child support obligations of stepparent

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(August 31, 2021, 11:56 AM EDT) -- In situations where there is no biological parent contributing to the support of the child, despite legislative provisions mandating such support, many courts will simply calculate the amount of child support owing pursuant to the *Federal Child Support Guidelines* and assess this against the stepparent. Some cases may diminish the amount of child support assessed against the stepparent on the basis that the biological parent should have been contributing to the support of the child and the parent of the children should have pursued them for support.

If the biological parent is, in fact, contributing, or has contributed, many courts will deduct the amount of contribution made from the guideline amount, and assess the difference against the stepparent. The courts may further reduce the child support obligation of the stepparent, taking other contingencies into account, such as the length of the relationship between the adult parties prior to separation, the age of the child at the time of application for child support payable by the stepparent, and whether there is a continuing relationship between the child and the stepparent.

This was the case in the recent Alberta decision of *Friesen v. Friesen* 2020 ABQB 103. The parties married in 1996 and separated in 2005. At the time they began dating the mother had a 2-year-old son from a previous relationship, who was 4 years old when they married. The parties agreed to change his last name to Friesen and it was officially changed when he was 5 years old.

Until the parties separated in March 2005, the stepfather was the only father figure the child had had. He called his stepfather "Dad." The stepfather did not object to others believing that the child was his son. They enjoyed various activities together, including fishing, ski-dooing, riding of farm equipment, attending sports events and going on family vacations. The stepfather disciplined the son on occasion.

When the parties separated the mother and the then 13-year-old son moved to British Columbia and the relationship between stepfather and stepson was severed. The son attempted to subsequently initiate contact but the stepfather was not interested. When the son was 16 the stepfather told the son he did not want a relationship with him.

The mother received $430 monthly in child support for her son from the biological father until the child's 18th birthday. The child did not go onto post-secondary education and ceased being a "child of the marriage" when he turned 18.

The mother claimed a retroactive "top-up" in child support from the stepfather from the date of separation of the parties until the son's 18th birthday.

Justice Anna Loparco found on the facts that the stepfather "stood in the place of a parent" toward the son. The actual fact of the marriage was held to be key as the son became part of a new family unit. The stepfather conceded to having acted as a dad in many respects and willingly had the son take his last name.

The fact that the stepfather rejected the son after separation of the parties did not change the fact that he had acted in all ways as a father during the time the family lived together. The son was therefore a "child of the marriage" entitled to support from the stepfather until his 18th birthday.

Justice Loparco held that the quantum owing in child support was a matter of discretion, taking into account the Guidelines, the amount paid by the biological father and the standard of living the child was accustomed to. She calculated the Guideline amount, subtracted the amount the biological father had paid, and then reduced the amount owing by a further 50 per cent as the child was then 28 years old and no longer dependent.

In *Nyereyegona v. Schofield* 2014 ABCA 429, the Alberta Court of Appeal overturned a trial judge and found that a stepfather stood in the place of a parent under s. 2(2) of the *Divorce Act* because she had failed to give enough weight to the fact of the marriage itself and the fact that the stepfather had changed his will to bequeath to his stepchildren. The matter was remitted back to the Alberta Court of Queen's Bench to determine the issue of amount of child support in the circumstances.

The mother waited until 2020 to bring an application against the stepfather to quantify the child support owing, arguing that the stepfather should "top-up" the amount of s. 3 child support that the biological father should have been paying (but was not), together with retroactive child support dating back to 2011, the date of separation of the parties. The father argued unreasonable delay.

In *Nyereyegona v. Schofield* 2021 ABQB 662, Justice Don J. Manderscheid noted that the oldest child was then 25 and in his second post-secondary degree, studying to be a doctor. The younger child was 22, and in post-secondary studies. Applying factors arising in the case *Farden v. Farden* [1993] BCJ No 1315 (the "*Farden* factors"), Justice Manderscheid found that both children ceased to be children of the marriage at age 18. The *Farden* factors included, amongst other things, whether the child was enrolled in full or part-time studies, the child's eligibility for student loans, career plans of the child, and the child's part time employment, but the court noted that such factors, while helpful, did not represent an exhaustive list of considerations, as per *Dorey v Dorey* 2011 ABCA 192.

Retroactive child support back to 2011 was granted. The Guideline responsibility of the stepfather was calculated, less the amounts the biological father should have paid. Considering the facts that the relationship of the mother and stepfather lasted less than five years, the stepchildren had no relationship with the stepfather post-separation, the mother had not pursued the biological father for support, and the six-year delay from the time the Alberta Court of Appeal found the stepfather stood as a parent to the stepchildren to the date of application for child support, this amount was further reduced by 50 per cent.

Thus, as these recent Alberta cases illustrate, the courts are ready and willing to impose child support obligations on a stepparent, notwithstanding short relationships between the adult parties, the lack of relationship between the stepchildren and stepparent following the separation of the parties, and the, perhaps notional, child support obligations of the biological parent.

As we described in part one of this series, modern family law has necessarily adapted to the emergence not only of increasing numbers of stepfamilies, but successive stepfamily configurations. Further, as family law has become more child centred, as underscored by the increased emphasis on the best interests of the child, there is expanding focus on the economic needs of the child, which can be met by the stepparent in the absence of or as supplemental to the economic attributes of the biological parent.

The takeaway? If a stepparent stands in place of a parent vis-à-vis the children, significant obligations may ensue.

This is part two of a two-part series. Part one: Obligation of parent to pay child support.

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