

CANADA / JUDGMENT

A.H.B. v. C.L.B.

2020 BCCA 257

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 257 A.H.B. v. C.L.B. COURT OF APPEAL FOR BRITISH COLUMBIA Citation: A.H.B. v. C.L.B., 2020 BCCA 257 Date: 20200909 Docket: CA46686 Between: A.H.B. Respondent (Claimant) And C.L.B. Appellant (Respondent) Before: The Honourable Chief Justice Bauman The Honourable Mr. Justice Harris The Honourable Mr. Justice Butler On appeal from: An order of the Supreme Court of British Columbia, dated January 30, 2020 (A.H.B. v. C.L.B., Kelowna Docket E92972). Oral Reasons for Judgment The Appellant, appearing in person (via videoconference): C.L.B. The Respondent, appearing in person (via videoconference): A.H.B. Place and Date of Hearing: Vancouver, British Columbia September 9, 2020 Place and Date of Judgment: Vancouver, British Columbia September 9, 2020 Summary: An appeal of interlocutory orders made by a judge in contested family law proceedings is dismissed as lacking utility given events unfolding in the trial court since the orders were made.

- [1] BAUMAN C.J.B.C.: The appellant appeals an interim order of Justice Groves made on 27 January 2020, and pronounced on 30 January 2020, in this high-conflict family dispute.
- [2] The order required the parties to retain a psychologist or other qualified independent assessor to prepare a home study report before the matter could be set for trial. I understand that term as referring to a full s. 211 report, regarding the needs of a child in relation to a family law dispute and the ability and willingness of each party to that dispute to satisfy those needs.
- [3] The parties have a 12-year-old daughter who has been living in a shared parenting arrangement, pursuant to previous orders made in these family proceedings that have been ongoing since 2012. The order under appeal also requires each party to make further financial disclosure and provide new financial statements by 1 April 2020.
- [4] The appellant's factum alleges four errors made by the chambers judge. Three of the alleged errors concern the order for the s. 211 report. The appellant says the chambers judge erred: (1) in failing to consider that it would be more appropriate to order a Views of the Child report, given the age of the child; (2) in basing his decision on a lack of evidence and on hearsay submissions by the respondent; and (3) in failing to consider the economic position of the parties by ordering a report that could cost upwards of \$15,000.

- [5] The fourth alleged error is that the order regarding the financial disclosure was "incorrect", as it would overrule the order made by this Court in *A.H.B. v. C.L.B.*, 2019 BCCA 349, a decision arising from a previous appeal brought by the appellant. The history of the proceedings and the family's circumstances are set out in the previous decision of this Court and in many decisions of the trial court. I need not repeat those circumstances here.
- [6] Suffice it to say, in 2012, Justice Bowden ordered the parties share equal parenting time, so long as each party resided in Salmon Arm, British Columbia. The appellant has applied to vary that order on a number of occasions, as he works in Kelowna, British Columbia, and would prefer his daughter to have her primary residence with him in Kelowna.
- [7] Indeed, a second trial took place in December 2017, following which Justice Bracken dismissed the appellant's application to vary the order providing for equal shared parenting time.
- [8] I would note that relevant steps have taken place in the proceeding in the trial court since the order was made: (1) I understand that Dr. Elterman was retained to prepare the s. 211 report; (2) Dr. Elterman's report was delivered to the parties and, presumably, to the court in late July 2020; (3) the appellant's application to vary the parenting arrangements has been set for a five-day trial commencing on 28 September 2020; and (4) the appellant filed a trial brief in which he has stated his intention to rely on the s. 211 report of Dr. Elterman.
- [9] It is evident from these developments that the appeal of the order requiring the parties to obtain a s. 211 report from a qualified assessor is of no utility whatsoever at this time. The report has been prepared and is now before the trial court. Further, it appears that the appellant intends to rely on Dr. Elterman's report at trial, which is scheduled to commence in less than three weeks' time.
- [10] This Court has frequently indicated its reluctance to interfere with discretionary interim orders made in family proceedings. Accordingly, even without the most recent developments, it seems to me that this appeal is ill-conceived. However, in light of these developments in the trial court, since the s. 211 order was made, this appeal would represent a waste of judicial resources.
- [11] I would dismiss the appeal of the s. 211 order.
- [12] We are invited by the appellant to use the occasion to provide guidance on this issue for litigants in British Columbia and guidance to trial court judges on the ordering of such reports. I would decline to do so in the circumstances of this case.
- [13] The appeal of the order requiring the parties to make further financial disclosure and to prepare new financial statements is similarly lacking in merit. It is also an appeal from a discretionary interim order. Moreover, contrary to the appellant's assertion, the chambers judge did not overrule the 2019 order of this Court. In *A.H.B.*, at para. 37, this Court stated the respondent's new spouse was required to make financial disclosure "at least for equipping a court to determine child support obligations". An order of this Court dated 17

October 2019, provided that the respondent's "financial disclosure is to include financial disclosure of her spouse".

[14] While the chambers judge expressed disagreement with this Court's order, he did not make an order to the contrary.

[15] The terms of the order appealed from provide in part:

5. By April 1, 2020, each party to provide new financial statement: [The respondent] to produce husband's income tax for 2015-2019 and produce some evidence of what property her husband owns. If [the respondent's] husband files an Affidavit [in] which he sets out the same information for 2015-2019 of what his income was, extraordinary expenses, and if there were any financial windfalls [, even] if [the respondent's] husband does not have his tax returns, that will be considered compliant. Additionally, attached to [the respondent's] husband's Affidavit should [be] a property statement similar [in] form [to] what would be in [the respondent's] financial statement, including real estate, RRSPs, bank accounts, vehicle he owns and debts .

[16] The order does not contravene or contradict the order of this Court in any way. The order operates in a similar fashion to this Court's order as it requires the respondent's spouse to provide sufficient financial information to equip the trial court to determine the parties' child support obligations.

[17] I would dismiss the appellant's appeal with costs to the respondent payable forthwith. It would accordingly follow that the appellant's application to adduce fresh evidence is dismissed.

[18] HARRIS J.A.: I agree.

[19] BUTLER J.A.: I agree.

[20] BAUMAN C.J.B.C.: The appeal and application are dismissed in accordance with my reasons. "The Honourable Chief Justice Bauman"

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