

CANADA / JUDGMENT

A.J.S.A. v. K.L.W.

2024 BCSC 2233

COURT

Supreme Court of British Columbia

DECIDED

21 November 2024

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2024 BCSC 2233 A.J.S.A. v. K.L.W.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.J.S.A. v. K.L.W.,

2024 BCSC 2233

Date: 20241121

Docket: E94892

Registry: Nanaimo

Between:

A.J.S.A.

Claimant

And

K.L.W.

Respondent

Before: The Honourable Justice Mayer

Oral Reasons for Judgment

The Claimant, appearing in person:

A.J.S.A.

Counsel for the Respondent:

J. Aucoin

Place and Date of Hearing:

Nanaimo, B.C.

November 18, 2024

Place and Date of Judgment:

Nanaimo, B.C.

November 21, 2024

Table of Contents

Introduction.. 3

Legal Basis for Payment of "Fines". 4

Analysis and Reasons: 5

Failure to Transfer Title to the Family Home. 5

Failure to Disclose Tax/Financial Documents. 8

Retrieval of Various Personal Items. 10

Breach of Parenting Orders. 11

Conclusion.. 14

Introduction

- [1] In this application heard on November 18, 2024, the respondent K.L.W. seeks various orders which arise from alleged breaches by the claimant A.J.S.A. of the final order and clarification order made by Justice Marzari - after a family trial - on March 19, 2024 (the Final Order) and May 31, 2024 (the Clarification Order).
- [2] In particular, K.L.W. seeks the following orders pursuant to ss. 213, 228, and 230 of the Family Law Act, S.B.C. 2011,c. 25, [FLA] that A.J.S.A. pay K.L.W. \$2,500 for each of the following alleged breaches:
- a. for failing to transfer title to the former family home, currently registered in the names of himself and K.L.W., and to remove K.L.W. from mortgages on the family home - by June 10, 2024 as ordered by Marzari J;
 - b. for failing to disclose various financial records including income tax returns and financial statements for himself and companies in which he has an ownership interest;
 - c. for failing to facilitate K.L.W. retrieving various personal items (the "personal items") from the former family home and a corporate owned or leased storage locker under A.J.S.A.'s control; and

- d. for failing to follow the parenting order of Marzari J. with respect to summer parenting time.
- [3] As well, including for the purpose of remedying some of the above listed alleged breaches, K.L.W. seeks the following additional orders:
 - a. That if title to the former family home and refinancing in A.J.S.A.'s name alone (the "transfer and refinancing") is not completed by December 31, 2024 that this home be listed for sale with K.L.W. having exclusive conduct of sale - or alternatively, that A.J.S.A. pay "post-judgement" interest" (on the sum of approximately \$114,000) of 6% from the date of the Final Order until the transfer and refinancing is completed;
 - b. That K.L.W. be authorized to attend at both the former family home and the corporate storage locker with a third party of her choosing, including a peace officer or bailiff, to retrieve her personal items;
 - c. A declaration under Rule 21-7 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR], that A.J.S.A. is in contempt of court for breaching the Final Order by failing to disclose the documents set out above.
- [4] K.L.W. seeks special costs of this application.
- [5] Because this Court did not have time to address all of the relief sought by K.L.W., her application for an order that A.J.S.A. breached the Final Order by applying for child benefits for the children and that he reimburse K.L.W. for CRA costs, penalties and interest resulting from him doing so was adjourned generally.

Legal Basis for Payment of "Fines"

- [6] Although in her notice of application K.L.W. sought payment of a "fine" for various breaches of the Final Order and Clarification Order, during the hearing before me counsel for K.L.W. confirmed that K.L.W. is seeking that the requested \$2,500 payment for each breach be paid to her and not as a fine paid to the Court.
- [7] K.L.W. has not stipulated which provisions of the FLA she relies upon for seeking payment of this amount for the alleged breaches.
- [8] Section 213(2)(d)(ii) of the FLA authorizes the court to order payment to a party (or an affected spouse or child) of up to \$5,000 for a failure to disclose documents pursuant to an order of this Court or the SCFR.
- [9] Section 222 of the FLA sets out, in summary, that the purposes for which various conduct orders may be made include facilitating settlement of a family law dispute or issue, managing behaviours, prevent misuse of court process and facilitating arrangements pending final determination of a family law dispute. Section 228(1)(b)(ii) of the FLA authorizes the court to order payment to a party (or an affected spouse or child) of up to \$5,000 for a failure to comply with an order made under s. 222.

- [10] Section 230(2)(b)(ii) of the FLA authorizes the court to order payment to a party (or an affected spouse or child) of up to \$5,000 for a failure to comply with an order - where no other provision of the FLA applies for the purpose of enforcing an order made under the FLA.

Analysis and Reasons

Failure to Transfer Title to the Family Home

- [11] As I have already set out, K.L.W. seeks an order pursuant to s. 213 of the FLA, for payment of \$2,500 to her by A.J.S.A. and related orders arising from the alleged failure on his part to transfer title of the family home to his name only and to remove K.L.W. as a co-mortgagor. She submits that removal of her as a co-mortgagor is implicit in the Final Order and Clarification Order. Section 230(2)(b)(ii) applies.
- [12] Reasons for judgment were released on March 19, 2024 - after trial conducted in December 2023 - and the Final Order was not entered until October 30, 2024.
- [13] In the Final Order, Marzari J. ordered that by no later than May 20, 2024 A.J.S.A. shall pay K.L.W. on account of her interest in the former family home. He did so prior to the May 20 deadline and accordingly; this order does not form any part of K.L.W.'s current application.
- [14] In addition, in the Final Order Marzari J. ordered that contemporaneously with payment to K.L.W. for her share of the former family residence that K.L.W. will sign a Form A transfer document to transfer her interest in the family home to A.J.S.A. and would remove the CPL registered against title to the former family home, with the transfer of title to A.J.S.A. occurring no later than June 10, 2024. As well Marzari J. ordered that [upon transfer of the former family home] A.J.S.A. would be solely responsible for the mortgage on the property and would "indemnify and save harmless K.L.W. from the same".
- [15] For various reasons, K.L.W. did not provide a signed Form A transfer until on or about June 25, 2024. A.J.S.A. provided a Form A to her mother on or about June 20, 2024.
- [16] In the letter dated June 25, 2024 from counsel for K.L.W. to then counsel for A.J.S.A., counsel for K.L.W. stated that the Form A was provided on undertakings that it not be registered until, amongst other things, A.J.S.A. had sufficient funds to pay out the mortgage on the property "and/or" K.L.W. has been removed as a mortgagor. In this letter counsel advised that the CPL would only be removed after notification of K.L.W.'s removal as a mortgagor.
- [17] A.J.S.A. submits that he was unable to obtain financing and to complete a transfer of title of the former family home to himself and remove K.L.W. as a mortgagor until the CPL is discharged from title. I accept this submission. I also note that that removal of the CPL was required by Marzari J. upon payment to K.L.W. for interest in the former family home - which has not been done.

- [18] A.J.S.A. submits that once the CPL is removed he will be in a position to comply with the order for transfer title in the family home and to take other steps including removing K.L.W. as mortgagor - which he notes was not specifically ordered by Marzari J.
- [19] I agree that there is nothing in the Final Order or Clarification Order specifically requiring A.J.S.A. to remove K.L.W. as a mortgagor in respect of the former family home. I am not satisfied that A.J.S.A. has breached either of these orders by failing to do so, although it is logical that this step occur as part of the process of transferring title in the property solely to A.J.S.A. and him taking sole responsibility for the mortgages as ordered.
- [20] With respect to the transfer of title in the former family home, in her reasons pronounced in March 2024, Justice Marzari ordered that K.L.W. sign a Form A upon payment of \$114,870 to her by A.J.S.A. for K.L.W.'s interest in the former family home. This order required K.L.W. to provide the signed Form A upon payment. It did not set out that it was the responsibility of A.J.S.A. to provide her with a Form A for her to sign.
- [21] In the Clarification Order made on May 31, 2024, Marzari J. ordered, in summary, that a Form A transfer document be given to K.L.W. by A.J.S.A. for her signature and that title to the former family home be transferred to A.J.S.A. by June 10, 2024. A.J.S.A. provided a Form A on June 20, 2024 which was returned to him signed with an undertaking which effectively prevented A.J.S.A. from completing financing and a transfer of the property to him.
- [22] I conclude that both parties share responsibility for the failure to perfect the transfer K.L.W.'s registered interest in the family home by the June 10, 2024 deadline imposed by Marzari J.
- [23] In the hearing before me A.J.S.A. submitted that he can complete the necessary refinancing and transfer of title to the former family home, in his sole name, once the CPL is discharged by K.L.W. As I result, given that K.L.W. has already been paid for her interest in the former family residence and no longer has a claim against that property, I order that she do so and take other necessary steps required for transfer of title to the former family home solely to A.J.S.A. forthwith. If after these steps are taken A.J.S.A. has not completed the necessary steps required of him to effect transfer and removal of K.L.W. as co-mortgagor by December 31, 2024, K.L.W. is at liberty to seek further relief from this Court.
- [24] K.L.W.'s applications for payment of \$2,500 to her pursuant to s. 213 of the FLA and for a declaration that A.J.S.A. be found in contempt pursuant to Rule 21-7 of the SCFR for the failure to perfect the transfer of title in the former family home to him and to remove K.L.W. as a mortgagor in respect of this property are dismissed.
- [25] K.L.W.'s application for an order that the former family home be listed for sale, with her having sole conduct of sale, by December 31, 2024, and her alternative application for payment of "post judgment interest, are adjourned generally.

Failure to Disclose Tax/Financial Documents

- [26] K.L.W. seeks payment of \$2,500 to her pursuant to s. 213 of the FLA and a declaration under Rule 21-7 of the SCFR that A.J.S.A. is in contempt of court - arising from his failure to produce the following financial documents:
- a. His 2023 T1 Tax Return;
 - b. The 2023 T2 Tax Return for a financial services company which he owns with his brother, The Saints Team;
 - c. The 2023 year-end financial statements for The Saints Team;
 - d. The 2023 T2 Tax Return for A.J.S.A.'s holding company AJSTA; and
 - e. The 2023 year-end financial statements for AJSTA.
- [27] I note that the reasons for judgment of Marzari J. pronounced March 19, 2024 state that "by no later June 1 of each year, the parties will exchange copies of their respective income tax returns ". The reasons do not specify the year when this disclosure obligation starts.
- [28] The Final Order, entered October 30, 2024 provided more clarity. It requires that by "no later than June 1 of each year, commencing in 2024, the parties will exchange copies of: (a) their respective income tax returns for the previous year; and (b) their respective Notices of Assessment for the previous year".
- [29] A.J.S.A. says that he filed his 2023 income tax return in November 2024. He submits that he has only recently filed his 2023 income tax return which he delayed as a result of his desire to remain in compliance with CRA requirements that both he and K.L.W. properly record their shared parenting arrangement. He submits, that he did not understand that he was required by court order to provide his 2023 income tax return earlier because the Final Order was not settled until October 30, 2024, and that he did not consider that the Final Order applied retroactively.
- [30] In my view, it was not clear that A.J.S.A. was required to provide his 2023 income tax return to K.L.W. until the Final Order entered on October 30, 2024.
- [31] In the circumstances I do not find that his failure to disclose his 2023 income tax justifies payment of a penalty under s. 213 of the FLA or constitutes contempt of court. Although A.J.S.A. is in my view, in technical breach of the Final Order for not disclosing his 2023 personal income tax return after entry of the Final Order he advises the Court that he will do so this week - I order him to do so.

- [32] With respect to the provision of business financial records, the reasons of Marzari J. released in March 19, 2024, state only that by no later than March 15 of every year, A.J.S.A. shall also provide the most current year-end financial statements for his companies. The Final Order provides more clarity and sets out that " by no later than March 15 of every year commencing in 2024, A.J.S.A. will also provide the most current year-end financial statements for [The Saints Team] and AJSTA "
- [33] A.J.S.A. submits that reasons for judgment were not issued until March 19, 2024 - four days after the March 15 - and the Final Order itself was not concluded until October 30, 2024. He submits, in summary, that he did not understand this provision in the Final Order to apply retroactively. That is, he thought that any corporate disclosure obligations commenced in 2025.
- [34] In my view, the reasons for judgment and the Final Order, arguably, do not clearly set out what year A.J.S.A. obligation to provide financial statements for his companies commences. I find that the Final Order requires A.J.S.A. to produce financial statements for companies in which he has an ownership interest - although not until the Final Order was entered on October 30, 2024. I note that this order does not require that he disclose corporate tax returns. As a result, I don't find his conduct in failing to disclose these materials to be contumacious or justifies the imposition of a penalty under s. 213 of the FLA.
- [35] At the time that the parties appeared before me A.J.S.A. had already voluntarily provided (on or about November 15, 2024) the 2023 return and financial statements for AJSTA.
- [36] A.J.S.A. submits that in any case his brother, a partner in The Saints Team, refuses to allow him to disclose financial statements for this company. This is not an excuse for A.J.S.A.'s failure to do so. I note that A.J.S.A. is an officer and director of this company. A court order requiring disclosure of financial statements for this company has been made and must be complied with.
- [37] A.J.S.A. is ordered to produce the 2023 financial statements for The Saints Team, if they have been prepared, forthwith and no later than December 31, 2024.
- [38] I dismiss K.L.W's application that A.J.S.A. be required to pay her \$2,500 as a penalty for non-disclosure of documents and dismiss her application that A.J.S.A. be found in contempt of court for failing to disclose documents.

Retrieval of Various Personal Items

- [39] The Final Order requires A.J.S.A. to return items from the former family home "including a photograph of herself with her sister and uncle, and a bowl from Bali". In addition, the order provides that if there are remaining undivided items in storage they shall be divided between the parties equally.

- [40] K.L.W. says that despite her making requests for return of her items that A.J.S.A. has failed to do so. She seeks orders, I presume under s. 230 of the FLA, for payment of \$2,500 to her for breach of these orders and a finding that A.J.S.A. be found in contempt for failing to comply with them. She also seeks orders allowing her to designate a third party, including a bailiff or peace officer, to conduct a search at the former family residence or A.J.S.A.'s corporate storage facility.
- [41] A.J.S.A. submits that he has not refused to facilitate K.L.W. collecting her remaining belongings. He orally advised the Court that he can not locate personal items ordered to be returned to K.L.W. from the former family home - including a photograph and a wooden bowl. He does not agree to a search of the former family home or his corporate storage unit by third parties but is prepared to provide a video showing the unit's contents after which K.L.W. may indicate which items she wishes to have provided to her.
- [42] With respect to the return of items ordered to be returned to K.L.W., a photograph and a bowl, A.J.S.A. only orally advised the court that those items are no longer in his possession. This may be the case but to resolve this finally, I find it appropriate to, and do order, that he provide written confirmation to K.L.W.'s legal counsel, within 14 days, confirming what steps he has taken to locate these items and further confirming if he is unable to locate them. If he does find them he shall make arrangements for delivery of the same to K.L.W. forthwith.
- [43] With respect to the contents of the corporate storage unit I order that within 14 days A.J.S.A. provide a video showing the contents to K.L.W. and within 7 days of her confirming by reply correspondence which items in storage, if any, she wishes to have provided to her, A.J.S.A. respond confirming whether he agrees to do so and when, and if not why.
- [44] I am not satisfied that A.J.S.A.'s conduct concerning the order for return K.L.W.'s personal possessions justifies the imposition of a financial penalty under s. 230 of the FLA, the applicable section in this case, or a finding of contempt. K.L.W.'s applications for this relief are dismissed.

Breach of Parenting Orders

- [45] In the Final Order Marzari J. ordered, under the heading Summer Holiday Schedule, that during the summer months each parent would have two non-consecutive one week blocks of parenting time - running from Monday to Monday - unless consecutive weeks were agreed to in writing. The order provided that for 2024 the parties parenting coordinator may determine the "holiday parenting schedule" (which I interpret to include summer holiday time) - after which first choice of weeks would alternate between the parties with A.J.S.A. having the first choice of weeks in odd years (i.e. 2025/2027/2029 etc.) and K.L.W. having the first choice in even years (i.e. 2026/2028/2030 etc.). The order also provided that the current parenting coordinator's retainer shall be allowed to lapse after May 4, 2024.

- [46] It appears that the Final Order contemplated that the parenting coordinator would make decisions regarding the parties' blocks of summer parenting time for the summer of 2024.
- [47] The Final Order stipulates that the party exercising first choice for summer parenting block in a given year (which I consider must be in the years following 2024) is to provide no less than four months notice before the relevant holiday period - in this case the summer holiday blocks. It does not stipulate that any such notice is required for the parent making the second choice for summer parenting block.
- [48] On March 26, 2024, K.L.W. selected summer parenting time for the periods July 22-29 and August 5-12, 2024. It is unclear whether the parenting coordinator was engaged in approving these blocks. It does not appear that A.J.S.A. objected.
- [49] A.J.S.A. initially requested summer parenting time for a ten-day period - June 27 to July 8, 2024 and then varied his request afterwards. On or about June 11, 2024 A.J.S.A. requested that the parties swap parenting time, swapping his parenting time for August 15-19 for K.L.W.'s parenting time on August 24-29, 2024. It is unclear whether this swap was for regular parenting time or a request for summer parenting time. It is also unclear whether A.J.S.A. exercised any blocks of summer parenting time in 2024.
- [50] In any case, K.L.W. declined to agree to grant A.J.S.A. parenting time in August because she had already planned on being away with the parties' children between August 24 and 29. She says that A.J.S.A. made several further requests to swap parenting time during this period which she refused - including providing advice through her counsel on August 23, 2024 confirming that she did not agree to the August 24-29 parenting request.
- [51] K.L.W. says that when she attended to pick up the children at the former family home on August 24, 2024 that A.J.S.A. refused to return the children to her for her parenting time.
- [52] A.J.S.A. says that he had selected his blocks of summer parenting time, including seeking the August 24-29, 2024 dates after K.L.W. had selected her two one-week blocks of summer parenting time and that she unreasonably took the position that he was required to provide 4 months notice. K.L.W.'s letter from counsel, dated August 23, 2024, states that A.J.S.A.'s requests for this summer parenting time block was refused on the basis that it "was made well outside the parameters of the Trial Order" - that is, I assume, that he did not stipulate what summer parenting time blocks he wanted four months prior to the start of the summer.
- [53] I agree with A.J.S.A.'s submission that the terms of the Final Order did not require him to provide four months notice, before the start of the summer of 2024 or at all, with respect to his choice of summer parenting time blocks during this period.

- [54] Again, it is unclear whether A.J.S.A. was seeking a block of summer parenting time from August 24-29 or a swap of the parties' regular parenting time in the summer. If it was the former, arguably, he was not required under the terms of the Final Order to provide four months notice and K.L.W.'s refusal to provide him parenting time during this period was not in accordance with the Final Order. If it was the latter, it was within K.L.W.'s rights to refuse to swap parenting time.
- [55] I note that the Notice of Application of K.L.W. does not briefly set out the factual basis her applications concerning alleged breaches of the order concerning parenting time as is required by Rule 10-6(3)(b). This is unfortunate.
- [56] After having reviewed the available evidence, I am unable to determine whether A.J.S.A. breached the terms of the Final Order with respect to parenting time. As a result, I dismiss K.L.W.'s applications that he pay her \$2,500, pursuant s. 230 of the FLA or be found in contempt for breaching the terms of the Final Order.

Conclusion

- [57] K.L.W.'s applications for payment of \$2,500 to her pursuant to s. 213 of the FLA and for a declaration that A.J.S.A. be found in contempt pursuant to Rule 21-7 of the SCFR for the failure to perfect the transfer of title in the former family home to him and to remove K.L.W. as a mortgagor in respect of this property are dismissed.
- [58] K.L.W.'s application for an order that the former family home be listed for sale, with her having sole conduct of sale, by December 31, 2024, and her alternative application for payment of "post judgment interest, are adjourned generally.
- [59] A.J.S.A. will disclose his 2023 personal income tax return to K.L.W. forthwith and no later than November 30, 2024.
- [60] A.J.S.A. will produce the financial statements for The Saints Team for 2023, if they have been prepared, forthwith and if not no later than December 31, 2024.
- [61] K.L.W.'s application that A.J.S.A. be required to pay her \$2,500 as a penalty for non-disclosure of documents and her application that A.J.S.A. be found in contempt of court for failing to disclose documents is dismissed.
- [62] Within 14 days, A.J.S.A. shall provide written confirmation to K.L.W.'s legal counsel of the steps he has taken to locate the photograph and wooden bowl ordered to be provided to K.L.W. If he finds these items he shall make arrangements for delivery of the same to K.L.W. forthwith.
- [63] Within 14 days A.J.S.A. shall provide K.L.W. a video showing the contents of the corporate storage unit and within 7 days of K.L.W. confirming by reply correspondence which items, if any, she wishes to have provided to her as her personal property, A.J.S.A. shall respond confirming whether he agrees to do so and when, and if not why.

[64] K.L.W.'s applications that A.J.S.A. pay her a \$2,500 penalty and for a finding of contempt for failing to return her personal possessions are dismissed.

[65] K.L.W.'s applications that A.J.S.A. pay her a \$2,500 penalty and be found in contempt for breaching the terms of the Final Order concerning parenting time are dismissed.

"Mayer J."

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Prepared on 28 October 2026 · Esheria