
CANADA / JUDGMENT

A.N.H. v. L.D.G.

2018 BCSC 2184

COURT

Supreme Court of British Columbia

DECIDED

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2018 BCSC 2184 A.N.H. v. L.D.G.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

A.N.H. v. L.D.G.,

2018 BCSC 2184

Date: 20181206

Docket: 45924

Registry: Vernon

Between:

A.N.H.

Claimant

And

L.D.G.

Respondent

Before: The Honourable Mr. Justice Abrioux

Oral Reasons for Judgment

(In Chambers)

Claimant, A.N.H.:

Appearing in person

Counsel for the Respondent:

C. Chisolm

Place and Date of Hearing:

Vernon, B.C.

November 28, 2018

Place and Date of Reasons:

Vernon, B.C.

December 6, 2018

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INTRODUCTION:

- [1] I intend to issue these oral reasons for judgment in writing in due course. When I do, they may be edited for publishing purposes, but the substance will not change.
- [2] This high conflict family law proceeding has a lengthy history. My most recent reasons for judgment, pertaining to variation of support issues, were rendered on November 14, 2018 and are indexed at 2018 BCSC 2018 (the "Variation Reasons").
- [3] These reasons relate to the issue (described below as the "Preliminary Issue") of whether A.D.H., who has been declared a vexatious litigant and found in contempt of court for deliberately interfering with the administration of justice, should now be permitted to pursue what will no doubt be protracted further proceedings regarding the children, including a relocation application, when he is indebted to L.D.G. in the amount of \$56,000 in outstanding assessed costs.
- [4] L.D.G. is also attempting to obtain dates before the Registrar to assess the following bills of costs against A.N.H.:

Special Costs - Vexatious Litigant Application

July 19, 2017 and December 5, 2017 \$ 92,535

Costs - Summary Trial - November 20, 2017 \$ 15,000

Special Costs - 2018 Contempt June 12, 2018 \$ 24,767

Sub total: \$132,303

for a total of approximately \$188,000 (the "Outstanding Costs").

- [5] For the reasons that follow, I have concluded that, subject to certain specific exceptions which relate primarily to the best interests of the children, A.N.H. should not be granted leave to bring any further applications in this proceeding until he has fully satisfied the Outstanding Costs orders.

II: BACKGROUND

- [6] The background facts for this issue are set out in the Variation Reasons. For the purposes of these reasons, it should be noted that following a summary trial in 2014, Justice Cole permitted L.D.G. to relocate to Estevan, Saskatchewan from Vernon, British Columbia, with the children of the relationship, their son W. born January 25, 2018 and their daughter E. born June 24, 2010.
- [7] On March 5, 2018, at a judicial management conference, I directed that the Variation hearing occur before any relocation proceedings. I also ordered A.N.H. to pay L.D.G. \$6,000 a month on account of current arrears for spousal and child support (the "Interim Order").
- [8] The Variation hearing took place over eight days in late September and early October 2018, completing on October 3, 2018.
- [9] On October 25, 2018, while the variation decision was under reserve, A.N.H. sought leave to file a short leave requisition and notice of application seeking directions and orders relating to, amongst other matters, the children's most recent treating psychologist, Francis Stewart, who was in the process of retiring and closing his practice in Moose Jaw, Saskatchewan, and to set down the relocation application for hearing (the "October 25 materials").
- [10] The October 25 materials also sought to vacate the Interim Order for October and November 2018.
- [11] On October 26, 2018, I issued a memorandum to the parties dismissing the application to vacate the Interim Order, noting that "it is another example of A.N.H.'s vexatious behaviour, specifically attempting to re-argue matters that have already been decided". I also dismissed the short leave application regarding the relocation application, noting that "leave is not granted to bring that application at this time. I will provide directions regarding the relocation application once I have rendered my decision on the variation application currently under reserve".

[12] On November 9, 2018, A.N.H. and L.D.G. attended a further judicial management conference ("JMC") via telephone. At the JMC, I provided directions on Mr. Stewart preparing an updated therapy report regarding his sessions with the children. Specifically, the report was to be provided prior to a JMC scheduled in Vernon for November 28, 2018. It was A.N.H. who requested the preparation of an updated therapy report in May 2018, which request was remade in the October 25 materials.

[13] At the November 9, 2018 JMC, I raised a preliminary issue with the parties, which I wished to receive submissions on at the November 28, 2018 JMC. This was confirmed in a memorandum to the parties and counsel dated November 16, 2018, in which I stated:

As I indicated to the parties on November 9, 2018, the JMC will first deal with a preliminary issue; that is, whether the court should grant leave to Dr. Hokhold to proceed with the outstanding matters which remain from his notice of application received by me on October 25, 2018 and which are subject to my memorandum of October 26, 2018, and the setting down of the Relocation Application while he is still in arrears of the 2012 Support Orders and in breach of several court orders, including the costs orders all of which are referred to in my reasons for judgment on the Variation Application, which have now been released and indexed at 2018 BCSC 2012 (the "Preliminary Issue").

[14] On November 14, 2018, I rendered the Variation Reasons, in which I:

- (a) varied the support orders made in 2012 by reducing A.N.H.'s income for support purposes from \$610,000 to \$325,000;
- (b) set ongoing child support at \$4,224 a month; and
- (c) terminated L.D.G.'s spousal support as at August 31, 2017.

The Variation Reasons effectively reduced A.N.H.'s support obligations from \$16,900 a month as ordered by the trial judge to \$4,224 a month, as of September 2017.

[15] FMEP was ordered to recalculate the amount of arrears owing in accordance with my decision. Its November 15, 2018 Record of Payments was to the effect that arrears were reduced from approximately \$600,000 to \$200,000.

[16] On November 16, 2018, without obtaining leave of the court, A.N.H. filed a notice of application seeking the same relief sought in the October 25, 2018 materials, including relief which had been dismissed as a result of the October 26, memorandum.

[17] Mr. Stewart filed his therapy report, entitled "Therapy Report #3", on November 23, 2018 (the "Stewart report"). Therapy Reports #1 and #2 had been before Cole J. in July 2017 when he granted L.D.G.'s application to reduce A.N.H.'s parenting time with the children.

[18] At the commencement of the JMC on November 28, 2018, I granted leave to A.N.H. to file a further notice of application and affidavit so that, for ease of reference, his various applications bore a date. These materials included:

- (a) a 20 page notice of application in which A.N.H. sought, amongst other things, that:
- the court provide forthwith further directions regarding a supplementary report from Mr. Stewart to deal with material changes in his expert opinion from Therapy Reports #1 and #2 and from his evidence before Cole J. in July 2017;
 - the 2018 variation trial be re-opened and that leave be granted to rely upon new and fresh evidence;
 - the entry of the order arising from the Variation Reasons for judgment "be delayed until after the notice of application to re-open the 2018 variation trial to rely upon new and fresh evidence is heard";
 - my October 26, 2018 order be amended such that the amended April 10, 2014 Application to relocate the children be accepted for filing;
 - Cole J.'s order of November 20, 2017 regarding Christmas access be varied;
 - the hearing of the "Preliminary Issue" be adjourned generally;
- (b) a 12 page proposed amended relocation application, the original filed on April 10, 2014, which sought to rely on voluminous affidavits he had previously filed;
- (c) Affidavit #122, filed and sworn May 23, 2018; Affidavit #132, filed November 16, 2018 and sworn October 18, 2018; Affidavit #133, filed November 16, 2018 and sworn November 8, 2018; Affidavit #134, sworn November 26, 2018; and Affidavit #135, sworn and filed November 28, 2018. All together, these affidavits totalled several hundred pages.

III: THE PRELIMINARY ISSUE

A: The Legal Framework

- [19] The leading authority on this issue is the Court of Appeal decision in *Larkin v. Glase*, 2009 BCCA 321. In *Larkin*, Justice Chiasson reviewed the applicable principles at paras. 30-38, which I shall not set out in these reasons.
- [20] The court in *Larkin* emphasized that the refusal to hear or dismiss an appeal is based on the policy of protecting the administration of justice by avoiding circumstances where the court could be held in disrepute by assisting a party who has exhibited disdain for the judicial process (at para. 31). In ultimately exercising its discretion to permit Mr. Glase to proceed with the appeal, the court noted the unusual circumstances surrounding the appeal and the reasons for not complying with the support orders, specifically, the insufficient time to obtain accurate and detailed information concerning Mr. Glase's compliance or non-compliance (at para. 38).

[21] In *Hokhold v. Gerbrandt*, 2015 BCCA 268 [Hokhold BCCA], the Court of Appeal declined to hear A.N.H.'s appeal, including the relocation decision of 2014, due to his continuing disobedience of court orders, particularly the 2012 support orders. At paras. 10-13, Justice Newbury stated:

[10] In the circumstances, this court became concerned that it might be inappropriate to hear the appeal and thus appear to be assisting a party who has continuously disobeyed court orders, in particular support orders. Accordingly, the Registrar contacted Mr. Hokhold and Mr. Kahn, counsel for Ms. Gerbrandt, on May 22 advising them to be prepared to respond to speak to this matter at the outset of the appeal hearing. We brought to their attention *Larkin v. Glase* 2009 BCCA 321, in which the Court observed:

In my view, the authority of this Court to refuse to hear or to dismiss an appeal is not limited to disobedience of the order under appeal. The refusal to hear or to dismiss an appeal is based on the policy of this Court to protect the administration of justice by avoiding circumstances where the Court could be held in disrepute by assisting a party who has exhibited disdain for the judicial process. Whether that disdain is of the order under appeal or some other court order may be a matter this Court would take into account in considering how it will proceed, but it is not determinative.

In *Bettinson v. Bettinson*, [1965] 1 All E.R. 102 (Ch. Div.), Plowman J. stated as follows, at 105-106:

There is a well-settled rule that the court will not entertain an application by a person who is in contempt of court until he has purged himself of that contempt. In *Hadkinson v. Hadkinson*, [1952] 2 All E.R. 567, Denning L.J., traced the origin of the rule in Chancery back to an ordinance of Lord Bacon in the year 1618, which laid down that

'They that are in contempt are not to be heard [sic] neither in that suit, nor any other, except the court of special grace suspend the contempt'

[Footnotes omitted]

More recently, courts have considered the issue more in context: the decision to hear or refuse to hear a party is treated as a matter of the court's discretion. [At paras. 31-2, 34.]

[11] Dr. Hokhold made oral submissions aimed almost completely at the orders made by Cole J. with respect to the imputation of his income, the financial situation of his professional corporation and its loss of a research grant, and his alleged inability to work more than three days per week in his dental practice. All of these matters have been before the Supreme Court on multiple occasions. He also submitted that he was up to date with respect to child support, although not with respect to spousal support. Dr. Hokhold said little or nothing about the interests of his children in arguing that the appeal should proceed.

[12] Mr. Kahn provided other authorities which affirm that a person who has not paid a support order must provide a "convincing reason" to this court as to why his appeal should be heard: see *Bullock v. Bullock*, 2008 BCCA 162; *Berry v. Berry*, 2002 BCCA 129. *Bullock* involved a failure to pay spousal support.

[13] Having heard from both Dr. Hokhold and Mr. Kahn, we formed the view that Dr. Hokhold had not provided any 'convincing explanation' as to why he remains in arrears with respect to the Supreme Court orders relating to support. In the circumstances of this case, the administration of justice would be called into disrepute by our hearing an appeal at the request of a person who has exhibited disdain for the judicial process and continues to use this process to overwhelm his former partner.

[Emphasis added.]

[22] In *A.-F. v. M.-A.*, 2015 BCSC 1572, a father's application to vary orders regarding support was stayed upon a consideration of the interests of justice which included an assessment of the balance of convenience between the parties (at para. 68), with the court stating at para. 70:

Under the circumstances, I conclude it would be contrary to public policy and the interests of justice to allow Mr. M.-A. to pursue these applications, which include the possibility of a costly trial unless he complies with his support obligations arising from the Consent Orders.

[23] See also: *Kawana v. Shemal*, 2013 BCSC 1630, at paras. 68-69; *Myers v. Myers*, 2014 ONSC 1804; and *Dorey v. Havens*, 2017 BCSC 2206.

B: The Parties' Positions

[24] A.N.H. takes the position that:

- (a) it is clear that he does not have the financial capacity to pay either the arrears of support or the Outstanding Costs;
- (b) the court, exercising its *parens patriae* role, should intervene to protect the children from an abusive or negligent parent (allegedly L.D.G.), and act as their parent since they need protection. This supersedes any obligation he has to pay arrears of support or the Outstanding Costs;
- (c) my role in this proceeding, including my refusal to recuse myself and to predetermine issues in advance against his and the children's interests, has been clearly established;
- (d) the Stewart report provides indisputable proof that the children are in harm's way when in L.D.G.'s care. He points to statements attributed by Mr. Stewart to L.D.G. that she considers A.N.H. and his family to be Nazis, and that W. told Mr. Stewart that his mother had advised him that, but for the presence of a physician, A.N.H. would have attempted to kill her. A.N.H. says that had this report been available in May 2018 as per his request, he would not have been found in contempt of court and wrongfully imprisoned. In other words, the Stewart report "vindicates" and "exonerates" him; and

- (e) the Stewart report also provides the necessary foundation to re-open and re-hear the recently completed Variation hearing.

[25] L.D.G.'s position includes:

- (a) A.N.H., notwithstanding the vexatious litigant order of July 2017, continues to act egregiously towards her and, by extension, the children;
- (b) she does not have the emotional or financial resources to defend herself against what will surely be an onslaught of further applications regarding the children, including a relocation application;
- (c) the Stewart report, when considered in its entirety, does not provide any basis for a relocation application or question that L.D.G. is taking proper care of the children's ongoing needs and interests. She also disputes certain comments that Mr. Stewart attributes to her, although she says that when she and A.N.H. were together, she witnessed anti-Semitic conduct; and
- (d) it is long past the time for the court to address the situation because, notwithstanding the vexatious litigant order in place for the better part of a year and a half, her and the children's best interests need to be protected from A.N.H.

C: Discussion

[26] When I apply the applicable legal framework to the circumstances of this proceeding as of November/December 2018, certain matters are clear.

[27] First of all, the court has a duty to protect L.D.G. and the children, to the extent possible, from further oppressive and egregious conduct from A.N.H.

[28] I make this observation within the context of the recently completed Variation hearing. I have no doubt that the next "Western Front" in A.N.H.'s "scorched earth war" against L.D.G., and by extension the children, will focus on parenting issues, in particular, the relocation of the children from Saskatchewan to Vernon, British Columbia.

[29] I have also taken into account that, in so far as my involvement in this proceeding is concerned, A.N.H. has raised issues regarding the children when he considers it to his tactical advantage to do so.

[30] One recent example involves his conduct in May 2018, which resulted in A.N.H. being found in contempt of court. In that regard, as I described in the June 2018 contempt reasons which are indexed at 2018 BCSC 1086 at paras. 96-102 (the "June 2018 Contempt Reasons"), once A.N.H. was ordered to serve L.D.G. and her counsel with the "urgent" without notice leave requisition to be permitted to proceed with the relocation application, which was said to be necessary to protect the best interests of the children, he decided not to proceed with it.

- [331] This conduct is entirely consistent with what has occurred in the past, as demonstrated by Justice Newbury's comment in *Hokhold BCCA*, which I emphasised at para. 21 above.
- [332] Since the completion of the Variation hearing in early October 2018, A.N.H. has made numerous filings which appear to be using alleged concerns relating to the children and the need for a further report from Mr. Stewart to provide a basis for the re-hearing of the Variation hearing.
- [333] In that regard, I note that Exhibit C to A.N.H.'s Affidavit #134, sworn November 26, 2018, is a 15-page document described as "Table showing no material change in the Respondent's statements, concerns, feelings, opinions and assumptions about the Claimant. From 2010 to 2018".
- [344] The table is, in my view, quite the document. It essentially places under the microscope all of the alleged lies, inconsistencies and allegations against L.D.G. for an 8-year period, including references to the Stewart report. It must have taken much of A.N.H.'s waking hours to compile this exhibit between when he received the Stewart report on November 23, 2018 and the swearing of the affidavit on November 26, 2018.
- [355] If there was any doubt that A.N.H.'s purpose in proceeding with a relocation application is to re-litigate any and all issues surrounding the children from 2010 to 2018, it is laid to rest by this exhibit.
- [366] This is exactly the same course of conduct A.N.H. followed with respect to the timeframe leading up to the Variation hearing, which resulted in his being found in contempt of court in June 2018.
- [377] The document's description, specifically "no material change", is also contrary to what A.N.H. will have to establish on a relocation application, that is the existence of material changes since the relocation order was made by Cole J. in October 2014.
- [388] Reduced to its essentials, A.N.H.'s submission is that the court should turn a blind eye to his alleged inability to pay the Outstanding Costs and permit him to continue to engage in his course of conduct against L.D.G., since the best interests of the children demands such a result.
- [399] I disagree. If A.N.H. is unable to pay the Outstanding Costs, which have arisen largely due to his vexatious and oppressive conduct, then he has only himself to blame.
- [400] To that extent, I draw a distinction between a contempt of court application, which is brought on the basis that a party is in breach of a court order regarding payment of support obligations, and the situation giving rise to the Preliminary Issue. In the former, the ability to pay must be established by the applicant beyond a reasonable doubt: *A.N.H. v. L.D.G.*, 2018 BCSC 183 at paras. 21-30. In the latter, the party seeks the indulgence of the court to continue with what may well be vexatious and oppressive conduct while significant costs orders remain unpaid.

- [41] Accordingly, it is my view that it is for A.N.H. to provide a "compelling explanation" as to why he should be permitted to continue with the litigation against L.D.G. in the face of the non-payment of the Outstanding Costs. In the circumstances of this proceeding, this should only be if the best interests of the children require that he be permitted to do so.
- [42] Central to A.N.H.'s submission is that the Stewart report has fundamentally altered the landscape, with the children essentially being in danger and/or alienated if they continue to be exposed and influenced by what A.N.H. described in his oral argument on November 28, 2018 as L.D.G.'s "heinous" conduct.
- [43] I do not accept this submission. When the Stewart report is considered in its entirety and proper context, the following conclusions can be drawn:
- (a) as noted at p. 4, Mr. Stewart, notwithstanding reservations regarding the information available to him, had enough relevant information "to formulate an adequate understanding of the issues that W. and E. are facing and in order for this psychologist to make appropriate observations regarding the ongoing parenting and upbringing of W. and E".
 - (b) there is nothing indicating Mr. Stewart's need to prepare a "supplementary report" as requested by A.N.H. in his November 28, 2018 notice of application. In fact, Mr. Stewart's concluding remarks are to the effect that he hopes that his report "can assist the trier of fact [to] reach a conclusion regarding the primary parental contributions for the causes and maintenance of the chronic and anger. Only then can W. and E. be parented in a manner that is truly in their best interests";
 - (c) "both parents have a need to 'win at all costs', which has caused both of them to lose sight of their priorities as parents to the point where one or both of them are unable to meet the needs of their children";
 - (d) while acknowledging some issues the children may have which, in my view, is not surprising due to the history of this matter, including what L.D.G. describes as a "hatred" between the parties, Mr. Stewart indicates they are succeeding at school and sports, are well adjusted and have, for the most part, a healthy relationship with both parents; and
 - (e) there is nothing in the Stewart report demonstrating that the children have a desire to leave their mother's primary care and return to British Columbia to be with their father. To the contrary, W. acknowledges that his father has discussed certain benefits in coming to British Columbia, in particular educational opportunities, "but [he is] also just trying to figure out if it will be better for [him] if [he] live[s] in B.C. or Saskatchewan", an entirely appropriate reaction from a child who will turn 11 years old in January 2019.
- [44] The main conclusion I draw from the Stewart report is that all things considered, the children are remarkably well adjusted and content living in Saskatchewan with their mother.

- [45] The statements attributed to L.D.G. regarding A.N.H. and his family being anti-Semitic and Nazi sympathizers, and/or that A.N.H. would have tried to kill her, are concerning. But from the Stewart report, it would appear that if these comments were made in the presence of the children, it does not appear that they have had a demonstrably negative effect on them. This does not excuse these comments and they should cease immediately. Conversely, the children appear to be more concerned and frustrated regarding their father's attempts to communicate with them by Skype, since it interferes with their daily activities.
- [46] L.D.G. favours ongoing therapy for the children as recommended by Mr. Stewart, but points to A.N.H.'s failure to pay 50% of the outstanding Stewart costs, contrary to Cole J.'s prior order. Further, there is merit to her submission that A.N.H.'s significant support arrears and failure to pay the Outstanding Costs have caused a great financial burden on her.
- [47] A.N.H. submits that he has only the children's best interests at heart. However, despite this, he is in breach of court orders relating to their support, and appears intent on pursuing the litigation against their mother at all costs, a course of conduct which has been found to constitute family violence.
- [48] Furthermore, it is ironic that A.N.H. has been in breach of the interim support order to pay \$6,000 per month on several occasions since it was made in March 2018. He has since unsuccessfully attempted to have that order varied based on his alleged inability to pay. He made no support payment in October 2018. However, on the eve of the November 28, 2018 JMC, when he knew that the Preliminary Issue would be heard, he paid approximately \$20,000 to FMEP, including prepayment of the December 2018 \$6,000 amount.
- [49] In my view, this is further evidence of the selective and tactical manner in which A.N.H. uses the children when he considers it advantageous to his legal position in this proceeding. This was also demonstrated by his many attempts to prevent the Variation hearing from proceeding unless it occurred on his terms, a topic fully canvassed in the June 2018 Contempt Reasons. In addition, the Variation Reasons resulted in a significant reduction in his support obligations.
- [50] Contrary to his submissions, I do not accept that the Stewart report exonerates or vindicates A.N.H. in any way for his conduct which resulted in his being found in contempt of court in June 2018.

IV: CONCLUSIONS

- [51] In conclusion, it is clear that the court, in the interests of justice and public policy, has significant discretion to refuse to hear applications made by a litigant who has been found to be in contempt of court or who has failed to comply with court orders.

- [52] In this proceeding, not only has A.N.H. been found to be a vexatious litigant and in contempt of court as recently as June 2018, but he has continued to disregard his support and costs obligations while apparently spending many hours both before and since the completion of the Variation hearing seeking to litigate parenting issues, in particular, his quest for the children's relocation.
- [53] A.N.H. appears to be of the view that adhering to court orders, including the payment of court costs and ensuring the children's best interests as mandated by s. 37 of the Family Law Act, S.B.C 2011 c. 25, can be mutually exclusive.
- [54] I disagree. In fact, it is the court's duty to strike an appropriate balance if the children's best interests are legitimately at issue. An obvious example would be to permit a parent who is in breach of a support or costs orders to bring an application regarding the children if there was evidence of physical or mental abuse by the other parent.
- [55] What follows is not the court preventing a vexatious litigant from accessing justice, but rather limiting that access in accordance with his conduct, including breach of prior orders, while considering the interests of others who are or who may be affected by that conduct. This is done within the context of the court's attempts to "protect the administration of justice by avoiding circumstances where the Court could be held in disrepute by assisting a party who has exhibited disdain for the judicial process": Larkin, para. 31
- [56] It also bears repeating that the negative effect of A.N.H.'s conduct on the children's best interests has been the subject of comments of this Court and the Court of Appeal: see the Variation Reasons and in particular Appendix A.
- [57] In attempting to find the appropriate balance in this case, there is, on the one hand, the need to protect L.D.G. and the children from the next stage of the litigation war, which A.N.H. is clearly focussed on advancing. On the other hand, there is the need to provide A.N.H. with an avenue, notwithstanding the failure to pay the Outstanding Costs and support obligations, for bona fide applications which raise legitimate issues regarding the children's best interests, as opposed to those being advanced for tactical or oppressive purposes. A.N.H.'s recent attempts to use the Stewart report to re-open the Variation hearing, which dealt only with support and financial issues, is yet another example of that conduct.
- [58] Accordingly, I make the following orders:
- (a) subject to subparagraphs (b), (c) and (d), A.N.H. is prohibited from seeking leave to bring any further applications in this proceeding, including requisitions for short leave, leave to file notices of application, including the filing of affidavits, and/or continue with any applications which have been filed and which remain outstanding until he has fully satisfied the Outstanding Costs orders, totalling \$56,098.52 together with those which are to be assessed;

- (b) A.N.H. is permitted to seek leave to bring or continue an application(s) relating to parenting issues and which raise the children's best interests, including relocation, if that application is supported by an affidavit and/or current report(s) at the time leave is sought, from independent third parties including, but not restricted to, physicians, psychologists or other mental health professionals or teachers;
- (c) A.N.H. is permitted to seek leave to bring an application relating to alleged denial of access by L.D.G., including telephone and Skype contact but that application must be explicit in identifying the order which is alleged to have been breached and the particulars of that breach; and
- (d) A.N.H. is permitted to seek leave to bring an application relating to his support obligations to the children arising from an alleged material change of circumstances as of November 14, 2018, being the date of the Variation Reasons for judgment;
- [59] In so far as para. 58(d) is concerned, I remind A.N.H. that one of the requirements for the court to find a material change in circumstances is that the change be "long lasting", which in this proceeding, means "long lasting" as of November 14, 2018.
- [60] It follows that the relief claimed by A.N.H. in the requisition and the accompanying notice of application filed November 28, 2018 is dismissed.
- [61] Once the Outstanding Costs orders have been satisfied, L.D.G. has leave to apply to continue or vary the terms of the orders I have made until the arrears of support have been paid.
- [62] Since these issues arose as a result of the court's direction of November 9, 2018 as outlined in the memorandum of November 16, 2018, there will be no order as to costs.

V: ADDENDUM

- [63] During the afternoon of December 5, 2018, A.N.H. forwarded to Supreme Court Scheduling a requisition seeking short leave to proceed with a notice of application, which is 18 pages in length, seeking a five-day hearing to deal with, among other matters, the following issues:
- my recusal and an order restraining me from hearing and deciding any and all matters in this proceeding;
 - a declaration that my conduct is "totally contrary to the impartiality, integrity and independence of the judiciary"; and
 - a declaration that I "have failed in the due execution of the office of judge".
- [64] This is the most recent in a number of attempts A.N.H. has made to have me recuse myself, several of which have been brought on the eve or the day of a hearing or my rendering of a decision. This is the first time, however, that A.N.H. has requested a five-day hearing.

- [65] I have dealt with prior recusal applications as recently as September 25, 2018 in my reasons which are indexed at 2018 BCSC 2001, and also since then when the issue has been raised by A.N.H.
- [66] A.N.H. has advised me on numerous occasions that he has appealed my prior decisions not to recuse myself to the Court of Appeal.
- [67] First of all, I direct that the December 5, 2018 requisition and notice of application be date stamped so that it can be readily identified, if necessary.
- [68] I consider these materials to border, if not meet, the standard of contemptuous conduct, being a deliberate attempt by A.N.H. to interfere with the administration of justice, that is my rendering today of the decision on the Preliminary Issue which I heard on November 28, 2018.
- [69] I have decided, however, not to cite A.N.H. for contempt since, if that were to occur, the penalty may affect his ability to exercise parenting time with his children during the upcoming school vacation. That would not be in the children's best interests.
- [70] The December 5, 2018 requisition is dismissed and leave is not granted to bring the recusal application which was sought.
- [71] I also order, in addition to the orders I have just made, that A.N.H. is prohibited from seeking leave to file any requisition/notice of application/affidavit regarding my recusal until that issue has been decided in the Court of Appeal.

"Abrioux J."

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