

CANADA / JUDGMENT

Bullock v. Bullock

2008 BCCA 162

COURT

British Columbia Court of Appeal

DECIDED

9 April 2008

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2008 BCCA 162 Bullock v. Bullock COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Bullock v. Bullock, 2008 BCCA 162 Date: 20080409 Docket: CA034947 Between: Ronald Edward Bullock Appellant (Petitioner) And Marilyn Elaine Bullock Respondent (Respondent) Before: The Honourable Mr. Justice Donald The Honourable Madam Justice Kirkpatrick The Honourable Mr. Justice Frankel Oral Reasons for Judgment E. Raponi Counsel for the Appellant S. J. Loney Counsel for the Respondent Place and Date: Victoria, British Columbia 09 April 2008

- [1] DONALD, J.A.: Mr. Bullock appeals from the order of Macaulay J. pronounced 7 March 2007 which, in refusing to confirm a provisional court order under s. 19 of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), failed to remit the application to cancel spousal support to the court in Nova Scotia, that made the provisional order. He proposes to argue that since Macaulay J. found that Mr. Bullock did not satisfactorily explain his financial circumstances, the judge should have remitted the case to give him the opportunity to provide more evidence.
- [2] The original order was made by consent in the Ontario Court of Justice, General Division, on 23 November 1993 and, adjusted for inflation, requires payment of \$3,229.08 per month. The record shows that since the provisional order was issued, Mr. Bullock has paid nothing voluntarily on maintenance. He is about \$47,000 in arrears. Mrs. Bullock is destitute. The judge in Nova Scotia who made the provisional order told Mr. Bullock the order did not suspend his obligation to pay.
- [3] In these circumstances, the Court informed counsel last week that unless Mr. Bullock provides a convincing reason why he could not comply with the support order, the Court will not hear him. This notice is in accordance with the Court's policy expressed in such cases as *Elensky v. Elenskaya*, [1993] B.C.J. No. 2144, and *Berry v. Berry*, 2002 BCCA 129, [2002] B.C.J. No. 417.
- [4] In *Berry*, Lambert J.A. said for the Court:
- [1] LAMBERT J.A.: It is an important rule that a party who wishes to appeal from a spousal maintenance or child maintenance order should make the payments ordered by the Supreme Court of British Columbia pending the hearing of the appeal. In several cases the court has refused to hear an appeal where a maintenance order has been flouted.

- [2] Of course, the rule is not an absolute one, and in cases where the interests require it, usually the interests of justice as they affect the respondent, the court will hear the appeal.
- [5] Mr. Bullock's counsel has not provided a convincing explanation for his client's default. It amounts to a claim that having retired he is left with two modest pensions, both of which are shared with Mrs. Bullock and his expenses exceed his income.
- [6] Unlike the respondent, Mr. Bullock is coping well with his financial condition: he owns a home in Dartmouth, Nova Scotia; and a 41-foot yacht in Florida, and winters in Florida; where he says he lives aboard the yacht. There is some evidence that he has an interest in a condominium in Florida but, because of Mr. Bullock's selective methods of disclosure, nothing conclusive can be said about that or a host of other questions concerning his financial affairs. In short, he is living well and has not given a satisfactory reason why he continues in breach of the Ontario court order.
- [7] I would dismiss the appeal.
- [8] KIRKPATRICK, J.A.: I agree.
- [9] FRANKEL, J.A.: I agree.
- [10] DONALD, J.A.: The appeal is dismissed. "The Honourable Mr. Justice Donald"

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