

CANADA / JUDGMENT

Carten v. Carten

2015 BCCA 336

COURT

British Columbia Court of Appeal

DECIDED

16 July 2015

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2015 BCCA 336 Carten v. Carten COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Carten v. Carten, 2015 BCCA 336 Date: 20150716 Docket: CA42533 Between: John Frederick Carten Appellant (Petitioner) And Kaiva Carten and Director, Family Maintenance Enforcement Respondents Before: The Honourable Madam Justice Newbury The Honourable Madam Justice Bennett The Honourable Mr. Justice Harris On appeal from: an order of the Supreme Court of British Columbia dated January 9, 2015 (Carten v. Carten, 2015 BCSC 19, Nanaimo Registry No. 5920/010138 Oral Reasons for Judgment Appellant appearing In Person: Counsel for the Respondent, Family Maintenance Enforcement Program B. Hird Place and Date of Hearing: Vancouver, British Columbia July 16, 2015 Place and Date of Judgment: Vancouver, British Columbia July 16, 2015 Summary: Application to quash the appeal as it relates to the Director, Family Maintenance Enforcement granted on the basis that the appeal as against the Director is devoid of Merit.

- [1] HARRIS J.A.: This is an application by the Director, Family Maintenance Enforcement to quash the appeal as it relates to the Director.
- [2] This appeal is from an order pronounced January 9, 2015 within divorce proceedings varying Mr. Carten's obligations to his adult son who remains a child of the marriage because he is severely disabled. Mr. Carten had applied for an order cancelling or substantially reducing child support. The judge accepted that the existing child support order was predicated on Mr. Carten's capacity to earn income in an amount substantially greater than his actual earnings. The judge found that Mr. Carten's "current income is a proper reflection of his earning capacity" and that his inability to earn a greater income was a material change in circumstances warranting a reduction in monthly child support from \$1,250 to \$740.
- [3] The foundation of the judge finding on earning capacity was set out in para. 17 of the reasons for judgment:
- [17] With the benefit of at least 13 years of hindsight, I conclude that Mr. Carten cannot help himself. I am quite sure that he will continue to be blinded by his delusions, and consequently prevented from making anything more than a very modest income. I am not presuming to diagnose a mental illness. I am simply recognizing a very long and firmly

established pattern of conduct that has impaired Mr. Carten's ability to earn income, and I am making a finding that he genuinely holds the beliefs that drive his behaviour. Moreover, because he also believes that the source of his problems is the perceived conspiracy rather than any frailties in his mental health, Mr. Carten is not likely to seek professional help. Unfortunately, as a consequence, I think it almost certain that his income-earning capacity will continue to be severely hobbled. I find that Mr. Carten's current income is a proper reflection of his current income earning capacity. He is underemployed but not wilfully underemployed. His income is substantially below the level that was the foundation for the \$1250 per month child support order, and this is a material change in circumstances.

- [4] The delusions the judge referred to in that paragraph were in connection with Mr. Carten's oft repeated allegations that he is the victim of a criminal conspiracy which he alleges has penetrated government and the court system. It would serve no useful purpose to reiterate the nature of those allegations in this judgment. They have been canvassed several times in judgments of the courts.
- [5] The Director of Maintenance Enforcement had been made a party of the divorce proceedings by order pronounced June 19, 2014. The Director attended the application but did not make submissions.
- [6] Mr. Carten's Notice of Application engaged the Director in a variety of ways. In summary, he sought orders restraining the Director from continuing to enforce his child support obligations, permitting him to join the Director to the proceeding to assess the Director's alleged involvement in conspiracy and damages, and, finally, that the Director pay the costs of the application. The judge's reasons did not deal with these matters.
- [7] In his Notice of Appeal, Mr. Carten seeks an order that the Director be ordered to pay child support for the remaining child of the marriage and pay the costs of the appeal. The substantive order sought in this Court on appeal was not sought in the Supreme Court.
- [8] This Court has jurisdiction pursuant to s. 20 of the Court of Appeal Act, R.S.B.C. 1996, c. 77, to strike an appeal for lack of merit. The issue in this application is not whether the Director is a proper party in these proceedings; it is not an indirect appeal of the order that made the Director a party to the divorce proceedings. The issue is whether the appeal, as it relates to the Director, has any merit. Here, in my view, it is apparent that the appeal is devoid of merit as it engages the Director. Even setting to one side the fact that Mr. Carten seeks relief here that he did not seek in the Supreme Court, there is in my view, no basis on which his appeal could succeed before a division of this Court. Child support under the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.), is payable by spouse. A spouse is defined as "either of two persons who are married to each other". The Director is not a spouse under the Divorce Act and cannot acquire the obligation to pay child support.
- [9] Mr. Carten's allegations of a criminal conspiracy, even if they had any basis in fact, are irrelevant to the issue of who has an obligation to pay child support. There is no basis, in my view, on which an application by Mr. Carten to cross-examine Mr. Miller could possibly

succeed. I am unable to discern in Mr. Carten's factum any legal argument that could possibly lead a division of this Court to pronounce the orders he seeks against the Director. The factum reiterates the allegations of a criminal conspiracy involving the Director which it is alleged has caused harm to Mr. Carten and the family, but nothing more.

[10] In my opinion, this is a proper case to exercise the Court's discretion to quash the appeal as it relates to the Director. I would quash the appeal as it relates to the Director.

[11] NEWBURY J.A.: I agree.

[12] BENNETT J.A.: I agree.

[13] NEWBURY J.A.: The appeal is quashed as it relates to the Director. "The Honourable Mr. Justice Harris"

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