

CANADA / JUDGMENT

Carter v. Carter

2026 ONCA 29

COURT

Court of Appeal for Ontario

DECIDED

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Paciocco, David M.; George, Jonathon C.; Monahan, Patrick J.

Subject

Family

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Carter v. Carter, 2026 ONCA 29

DATE: 20260120

DOCKET: COA-24-CV-1125

Paciocco, George, and Monahan JJ.A.

BETWEEN

Marc James Carter

Applicant (Appellant)

and

Deborah Elizabeth Carter

Respondent (Respondent)

Christopher J. Haber and Andrew Haber, for the appellant

John G. Cox and Johnnie Cox, for the respondent

Myles Anevich, for the intervener Feldstein Family Law Group

Heard: December 4, 2025

On appeal from the judgments of Justice J.A. Finlayson of the Superior Court of Justice, dated October 1, 2024 and April 4, 2025, with reasons reported at 2024 ONSC 5414 and 2025 ONSC 2121.

Monahan J.A.:

I. Overview [1] The vast majority of family law proceedings are resolved without the necessity of a trial. Yet, despite the overwhelming mutual benefits from cooperation over conflict in family law matters, there remains a minority of high conflict cases in which at least one of the parties seems determined to pursue a downward spiral of ruinous litigation.

[2] Even amongst this minority of high conflict cases, the present litigation is an outlier. Since commencing the litigation over 15 years ago, the appellant has been found to have repeatedly engaged in serious, deliberate and flagrant misconduct, including chronic non-disclosure, diversion of assets, lying to the court, and deliberate obfuscation. By the time the matter came to trial in May 2024, at least 97 endorsements or court orders had been made, not including related support enforcement proceedings and foreign proceedings brought by the respondent.

[3] The uncontested trial in May and June 2024 resulted in orders for equalization, child and spousal support, and ancillary matters related to enforcement. The appellant was also found in contempt. On April 4, 2025, after hearing penalty submissions from the parties, the trial judge sentenced the appellant to 90 days incarceration.

[4] The appellant raises essentially two grounds of appeal from the 2024 trial judgment, including the contempt finding, and the April 2025 judgment.[1]

[5] First, he claims that the trial judge erred in finding him in contempt and in sentencing him to 90 days of incarceration. He argues that the way in which the contempt hearing was conducted was improper; that he did not intentionally violate the relevant court order; and that the 90-day custodial sentence was unduly harsh and grossly disproportionate to the alleged contempt finding.

- [6] Second, he argues that the uncontested trial on financial and other enforcement issues was unfair since he was denied the opportunity to give his version of the facts and to respond to the case brought against him.
- [7] Feldstein Family Law Group (FFLG) intervenes with general submissions on the scope and content of the duty to assist unrepresented litigants in the civil contempt context.
- [8] I would not give effect to either ground of appeal.
- [9] The procedure followed on the contempt motion was sufficient in the circumstances. Even taking into account that the appellant represented himself at trial, he was given adequate notice of the respondent's contempt allegation, advised to consult with legal counsel and, after doing so, elected to be cross-examined. He was not left, as an unrepresented litigant, with insufficient guidance. The trial judge did not err in finding, beyond a reasonable doubt, that the appellant intentionally breached the relevant order. Nor did he err in imposing a 90-day custodial sentence, due to the magnitude of appellant's misconduct and the financial harm caused to the respondent and the parties' children.
- [10] The uncontested trial was a fair trial. The fact that there were limitations on the appellant's ability to present "his version of the facts" on the financial issues in dispute was due entirely to the appellant's 15-year campaign aimed at denying the respondent and the court an accurate picture of his financial affairs. Despite that deliberate and continuing obfuscation, the appellant was given numerous indulgences that permitted him to participate in the trial, including presenting his own evidence and making submissions on the matters in dispute. Accordingly, I would dismiss the appeal.

II. BACKGROUND [11] The complex history of this protracted litigation was described in considerable detail in the two judgments of the trial judge and will not be repeated here. However, by way of general overview, the parties were married on July 3, 1999, ultimately separated on December 12, 2009,[2] and divorced by an order dated April 20, 2018. They have two children, both of whom were under the age of ten at the time of separation and are now adults. Their relationship was tumultuous, marked by family violence perpetrated by the appellant on the respondent and their children.

- [12] The appellant husband was the only income earner during the marriage. The respondent wife's evidence was that the husband began earning "millions of dollars" during the marriage. This was supported by independent sworn affidavit and documentary evidence accepted by the trial judge.
- [13] From the outset of this litigation, the appellant has repeatedly failed to comply with orders for financial disclosure and for the payment of child and spousal support, including orders made on consent. This pattern of pervasive noncompliance resulted in the appellant's pleadings being struck on financial issues by the order of Douglas J. dated June 11, 2014. The appellant's continued refusal to comply with various court orders for disclosure and support culminated in Sutherland J. making a preservation order and a Mareva injunction on

February 6, 2019, among other relief (the “Sutherland J. Order”). The appellant did not modify his litigation conduct, and, in April 2019, Jarvis J. found him in contempt of six disclosure orders, including various provisions of the Sutherland J. Order.

- [14] While Jarvis J. initially resisted ordering the appellant’s incarceration, the appellant did not take advantage of the opportunities Jarvis J. afforded him to remedy his breaches. Jarvis J. noted that not only had the appellant actively sought to suppress disclosure of his income and financial affairs, but he had deliberately and repeatedly misled the court through a game of “cat and mouse”. For example, in February 2019, the appellant signed a direction before Nicholson J., instructing various Canadian and international banking institutions to release information and documentation about his accounts and assets to the respondent. However, two days after he signed this direction, the appellant wrote to his bank in the Cayman Islands that he “wish[ed] to confirm in writing that it is not my wishes that Cayman National [Bank] respond to the request or order of the Ontario Court and release information about myself or my accounts.” When this instruction was later disclosed to respondent’s counsel, the appellant complained to the bank that he was “horrified” by the disclosure of these “private discussions” and that “[he was] not sure how [he would] address this [matter] when [he attends] court to address the Contempt of Court motion now filed by [the respondent].” The parties attended before Jarvis J. on over five occasions regarding this contempt. At the last appearance in February 2020, Jarvis J. concluded that the appellant had still not provided a clear and credible picture of his financial circumstances and sentenced him to 30 days incarceration, to be served on weekends.
- [15] Two years later, in November 2022, Jarvis J. found that the appellant had continued his pattern of deceit, and the respondent was no closer to concluding this litigation than she had been in January 2011, when the first temporary support order was made on consent. Justice Jarvis nevertheless set the matter down for trial since “the litigation had to come to an end”. In 2022, a case management worker at the Family Responsibility Office (FRO) tasked with enforcing support orders for benefit of the respondent and children determined that the husband was a salaried employee, with an annual income of \$185,000.00. At this time, the husband had been claiming to the FRO that he was self-employed and earned only \$69,765.24 annually.
- [16] At the trial scheduling conference in April 2024, notwithstanding that the appellant’s pleadings had been struck a decade earlier, Jarvis J. granted the appellant permission to file an updated financial statement and a net family property statement, in addition to making opening and closing statements.
- [17] The appellant took advantage of these indulgences. With the assistance of counsel, he filed a 238-page opening statement that attached unsworn affidavits and new medical evidence. The appellant also filed two updated financial statements alongside his net family property statement, including pages of explanatory notes and further documents that had not been previously produced. The result was almost 200 pages of documents in which the appellant attempted to explain and justify how he had dealt with his assets and liabilities. Although

the respondent had not had the opportunity to review this voluminous material in advance, the trial judge admitted most of it,[3] provided the appellant made himself available to be cross-examined.

III. THE TRIAL AND SENTENCING JUDGMENTS [18] On October 1, 2024, the trial judge delivered a comprehensive and detailed trial judgment of over 500 paragraphs. I summarize below only those aspects of the judgment relevant to issues on appeal.

1. Credibility [19] The trial judge found that, as a result of the appellant's actions, the court still did not have a complete and accurate record of his financial affairs. Not only had the appellant spent years hiding his assets and income from the respondent, but he had also forged documents and engaged in fraud to defeat his disclosure obligations, reflecting what the trial judge described as "an utter disregard for his former spouse, an utter disregard for the children, and an utter disregard for the Court's orders and process."

[20] The trial judge cited the well-established principle that where disclosure is inadequate and inferences are to be drawn, those inferences should be favourable to the party who must make sense of the incomplete financial disclosure and against the party in breach of their disclosure obligations: *Reyes v. Rollo* (2001), 24 R.F.L. (5th) 120 (Ont. S.C.), at para. 44. The trial judge found that he could not trust the accuracy or reliability of anything the appellant said. Accordingly, he decided to favour the respondent's evidence and "genuine" documentary evidence when it conflicted with the appellant's evidence and to draw reasonable inferences in the respondent's favour.

2. Financial issues [21] Cognizant that the respondent must still prove her claims in an uncontested trial, the trial judge provided extensive explanations for his findings on equalization, child support and special or extraordinary expenses, and spousal support. It is unnecessary for the purposes of this appeal to describe these findings, since (apart from claiming that the trial was generally unfair) the appellant has not identified any error in the legal principles utilized by the trial judge, nor does he suggest that the trial judge failed to properly apply those principles.

3. Contempt motion [22] In her opening statement on May 31, 2024, the respondent clarified that she was seeking a second finding of contempt against the appellant for his breach of paragraphs 4 and 5 of the Sutherland J. Order. As previously mentioned, part of the Sutherland J. Order granted a preservation order and a Mareva injunction in relation to the appellant's assets inside and outside Canada, including assets or interests in various corporations and bank accounts.

[23] When it became apparent that the respondent was seeking a finding of contempt, the trial judge stopped the respondent's opening statement to discuss the appellant's participation and the manner in which the contempt motion would be dealt with. The trial judge advised the appellant that he had a right to participate in the contempt proceeding and, in particular, he could choose to testify or remain silent. The trial judge directed the appellant to get legal advice about how he wanted to deal with the contempt issue and whether he

wanted to testify. The trial judge further ordered respondent's counsel to immediately serve the appellant with a notice of contempt motion and an affidavit. This was done by the end of the first day of trial.

- [24] When the trial resumed on June 3, 2024, the trial judge confirmed with the appellant that he had in fact obtained advice from his lawyer on the contempt issue. The appellant stated that although he had not spoken with his lawyer, he had communicated with her by email. While he decided not to testify, he was prepared to be cross-examined on the respondent's contempt motion.
- [25] The trial did not resume until June 27, 2024, at which time both parties gave viva voce evidence and the appellant was cross-examined. The parties made closing submissions on June 28, 2024.
4. Contempt finding [26] Relying on this court's decision in *Moncur v. Plante*, 2021 ONCA 462, 57 R.F.L. (8th) 293, at para. 10, the trial judge noted that three elements must be proven beyond a reasonable doubt for a party to be found in contempt of court for breaching a court order:
- (i) the order alleged to have been breached must state clearly and unequivocally what should and should not be done;
 - (ii) the party alleged to have breached the order must have had actual knowledge of it; and
 - (iii) the party allegedly in breach of the order must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.
- [27] The trial judge found that the first requirement was satisfied because the relevant paragraphs of the Sutherland J. Order were clear and unequivocal. The paragraphs were drafted broadly and did not grant any exceptions for the appellant to access funds that were preserved, frozen or otherwise subject to the Mareva injunction. Moreover, the Sutherland J. Order remained in effect at the time of trial, in line with its purpose to restrain the appellant from dealing with his property to ensure sufficient assets would be available to satisfy a later monetary judgment in favour of the respondent.
- [28] The trial judge further found that the respondent had proven the second requirement beyond a reasonable doubt, since the appellant had admitted he was aware of and understood the Sutherland J. Order at his questioning in January 2024 (the "Questioning") pursuant to r. 20(5) of the Family Law Rules, O. Reg. 114/99 (the "Rules").
- [29] With respect to the third requirement, the trial judge noted that there was uncontested documentary evidence showing that the appellant transferred significant amounts into or out of six bank accounts on numerous occasions in contravention of the Sutherland J. Order. For example, between July 2019 and October 2023, the appellant deposited approximately \$750,000 into one of the bank accounts in question.

- [30] The appellant claimed that these transfers did not violate the Sutherland J. Order because most of the bank accounts he used had been opened after the Sutherland J. Order in February 2019. The trial judge rejected this interpretation of the Sutherland J. Order, calling it “an affront to the [Sutherland J. Order] and...offensive to the administration of justice”. He found that the terms of the Sutherland J. Order clearly included existing and newly opened bank accounts and that the appellant had used these bank accounts to spend or divert funds intended to be preserved by the Sutherland J. Order. The appellant then attempted to hide these transactions from the respondent. The respondent had therefore proven beyond a reasonable doubt that the appellant had breached the Sutherland J. Order and done so intentionally.
- [31] Finally, the trial judge declined to exercise his discretion to not find the appellant in contempt, given the appellant’s deliberate misconduct extending over many years.
5. Penalty for contempt [32] After receiving separate written and oral submissions on the appropriate penalty, the trial judge issued a detailed supplementary judgment setting out his analysis and findings.
- [33] The trial judge identified the factors relevant to the determination of an appropriate sentence for civil contempt, as set out in *Boily v. Carleton Condominium Corporation* 145, 2014 ONCA 574, 121 O.R. (3d) 670, at para. 90. Applying these factors, the trial judge found the magnitude of the appellant’s wrongdoing was significant. The appellant had engaged in years-long, deceitful and obstructive behaviour intended to hide the true state of his financial affairs, while causing considerable financial and other harm to the respondent and their children. Moreover, unlike the contemnor in *Boily*, the appellant was motivated by personal gain and vengeance, in furtherance of his vow at the time of the parties’ separation that the respondent “would never see a dime of money” from him.
- [34] The trial judge found that the appellant had made no serious attempt to purge since being found in contempt eight months earlier. While the appellant stated that he was sorry for what happened and that he “never intended to commit contempt” during the sentencing proceedings, the trial judge did not regard this apology as a genuine show of remorse. In the trial judge’s view, the appellant was sorry that he was facing a jail sentence, but not sorry for what he had done.
- [35] While the appellant claimed an inability to repay the funds that he diverted in contravention of the Sutherland J. Order, the trial judge found that his claim of impecuniosity had not been established. The trial judge was also unpersuaded by medical evidence tendered by the appellant in support of his claim for a reduced sentence.
- [36] The trial judge concluded that considerations of general denunciation and deterrence, combined with the absence of any mitigating factors, required the imposition of a significant custodial sentence for the appellant’s contempt. Accordingly, the trial judge sentenced the appellant to 90 days in custody. At the same time, the trial judge remained seized of the matter such that if the appellant demonstrated a meaningful effort to make

amends and purge his contempt while serving this sentence, the trial judge was prepared to entertain submissions about a possible sentence reduction.

6. Costs [37] The trial judge ordered the appellant to pay the respondent costs of \$650,000. As the successful party, the respondent was entitled to her costs. The trial judge further found that the appellant had engaged in bad faith behaviour throughout the litigation.

[38] Counsel for the appellant did not suggest that the respondent's costs were excessive or inappropriate but focused their submissions, instead, on the appellant's alleged inability to pay costs. However, the trial judge found that the appellant had failed to establish that he had an inability to pay. The trial judge also adopted McGee J.'s statement in *Mohr v. Sweeney*, 2016 ONSC 3238, at para. 17, to the effect that "those who can least afford to litigate should be most motivated to seriously pursue settlement and avoid unnecessary proceedings." Accordingly, the trial judge found that even if the appellant lacked the ability to pay costs, such inability could not be used as a shield against liability.

IV. SUBMISSIONS ON APPEAL [39] The appellant argues that the trial judge erred in finding him in contempt and imposing a 90-day custodial sentence in three respects:

- (i) the manner in which the contempt hearing was conducted violated the appellant's constitutionally protected rights because he was not given timely notice of the motion for contempt; was not provided with adequate guidance as a self-represented litigant, was not advised that he had the right to a full hearing where he could call witnesses and cross-examine the respondent; and the finding of contempt was based on statements he made in his Questioning and during the trial in violation of his right against self-incrimination;
- (ii) the Sutherland J. Order was not clear and unequivocal, and in any event, he did not intend to breach it; and
- (iii) the 90-day custodial sentence was harsh and excessive and grossly disproportionate to the alleged contempt.

[40] The appellant also argues that he did not receive a fair trial on financial issues because he was not allowed to give evidence due to the fact his pleadings had been struck.

[41] Last, he argues that the costs order was excessive due to his current financial situation and his limited ability to pay.

[42] The court also heard submissions from the intervener, who urged the court to clarify the constitutional safeguards that apply in civil contempt proceedings, particularly the duty of trial judges to assist self-represented litigants facing allegations of contempt.

[43] The respondent tendered fresh evidence consisting of an updated statement of account from the Family Responsibility Office (“FRO”) reflecting adjustments to the appellant’s support arrears as of August 19, 2025. The admission of this evidence was not opposed by the appellant and is credible and relevant evidence not available at the time of trial. This court admitted the evidence on this basis at the hearing of the appeal.

V. DISCUSSION 1. The trial judge did not err in finding the appellant in contempt and imposing a 90-day custodial sentence a. Governing legal principles

[44] A finding of contempt is a blunt mechanism to enforce a court order, one that emphasizes that binding court orders cannot be disobeyed: *Castillo v. Xela Enterprises Ltd.*, 2024 ONCA 141, 171 O.R. (3d) 16, at paras. 86-88; *Carey v. Laiken*, 2015 SCC 17, [2015] 2 S.C.R. 79, at para. 58. In the family law context, contempt is governed by r. 31 of the Rules, which provides that an order, other than a payment order, may be enforced by a contempt motion. Rule 31(5) contains a list of seven available sanctions for contempt, including imprisonment for any period. The court has broad discretion to craft orders and impose conditions to remedy a finding of contempt.

[45] Given the serious quasi-criminal nature of contempt proceedings, there are substantive and procedural requirements that must be satisfied before someone may be found in contempt and have a penalty imposed on them. These requirements have been clarified by this court as well as the Supreme Court of Canada.

[46] The substantive requirements applicable to contempt proceedings in family law proceedings include the following:

- (i) The order at issue must (a) state clearly and unequivocally what should or should not be done, with any ambiguity in the order being resolved in favour of the alleged contemnor; and (b) be an operative order at the time of the contempt hearing, in accordance with r. 31(1), which provides that an order “may be enforced” by a contempt motion: See generally *Carey*, at para. 33; *Fiorito v. Wiggins*, 2015 ONCA 729, 69 R.F.L. (7th) 5, at para. 17;
- (ii) The alleged contemnor must have had actual knowledge of the order: *Carey*, at para. 34;
- (iii) The alleged contemnor must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels (but need not have intended to breach the court order): *Carey*, at paras. 35, 38;
- (iv) Each of these elements must be proven on the criminal standard of proof beyond a reasonable doubt, rather than on a balance of probabilities: *Carey*, at para. 32;
- (v) Contempt is a discretionary enforcement measure of last rather than first resort and should not be routinely used to obtain compliance with court orders: *Morasse v. Nadeau-Dubois*, 2016 SCC 44, [2016] 2 S.C.R. 232, at paras. 20-21; *Carey*, at para. 36. The court may decline to impose a finding of contempt where it would work an injustice in the circumstances of the case, such as where less onerous remedies, such as a declaration that the party breached the

order, would be sufficient. The exercise of discretion to decline to make a finding of contempt is particularly important in family law proceedings where contempt may inflame conflict and deflect the parties from less adversarial approaches that are more productive and conducive to the best interests of the children, which remain the paramount consideration. Absent an error of law, such discretionary determinations are generally entitled to deference on appeal: *Moncur*, at paras. 10, 17-20; *Chong v. Donnelly*, 2019 ONCA 799, 33 R.F.L. (8th) 19, at paras. 10-12.

[47] The relevant procedural requirements include:

(vi) The alleged contemnor must be given reasonable particulars of the alleged contempt in the notice of motion and/or supporting affidavit served in accordance with r. 31(2): *Follows v. Follows* (1998), 41 R.F.L. (4th) 248 (Ont. C.A.), at para. 3;

(vii) There is no prescribed procedure that must necessarily be followed in a contempt hearing, which will vary depending on the nature of the allegations and the matters in dispute. However, liability and penalty are discrete issues and should generally be considered in separate hearings so as to avoid unfairness and to provide the contemnor with the opportunity to purge their contempt before the penalty phase of the proceeding begins: *College of Optometrists of Ontario v. SHS Optical Ltd.*, 2008 ONCA 685, 93 O.R. (3d) 139, at paras. 72 to 76, leave to appeal refused, [2008] S.C.C.A. No. 506; *Boily*, at para. 121;

(viii) The alleged contemnor has the right to retain and instruct counsel; to give or call evidence; and cannot be compelled to testify at the contempt hearing, in accordance with s. 11(c) of the Canadian Charter of Rights and Freedoms: *Kassay v. Kassay* (2000), 11 R.F.L. (5th) 308 (Ont. S.C.); *Sutherland Estate v. Murphy*, 2025 ONCA 227, at para. 44, leave to appeal to S.C.C. requested, 41818;

(ix) Section 11(c) of the Charter only protects against testimonial compulsion and is prospective in its application. Thus, it does not reach back in time to protect statements or testimony offered before the contempt proceedings began, nor does it prevent the alleged contemnor from being required to produce pre-existing documents, statements or other tangible evidence: *Sutherland*, at paras. 48 to 50; and

(x) The proceedings are subject to and must satisfy the evidentiary requirements set out in r. 31(3).

b. The procedure followed in the contempt proceeding was sufficient in the circumstances

[48] The appellant objects to the way in which the contempt proceeding was conducted and alleges that he was denied the principles of fundamental justice. In support of this claim, the appellant points to the following circumstances: the contempt proceeding was conducted as part of an uncontested trial rather than as a separate proceeding; he was not given the notice of motion and supporting affidavit until the first day of trial; as a self-represented party, he was not advised that he had the right to counsel, he was not advised that he had the right to a full hearing where he could call witnesses and cross-examine the

respondent; and the trial judge's finding of contempt was based on statements he made in his Questioning as well as during the trial, in violation of this right against self-incrimination.

- [49] The trial judge set out the applicable legal principles for contempt proceedings. He was alive to the caution required in the discretionary exercise of contempt powers and the fact that it is an enforcement tool of last resort. The trial judge properly considered various factors in exercising his discretion, including whether the appellant took reasonable steps in good faith to comply with the Sutherland J. Order; whether imposing contempt would work an injustice in the circumstances of the case; and whether less onerous alternatives would be sufficient, such as a declaration that the appellant had breached the Sutherland J. Order accompanied by other remedial options.
- [50] As for the appellant's procedural objections, I note that there is no requirement that a contempt allegation be the subject of a separate hearing rather than considered as part of a trial. The issues relevant to the contempt motion were inextricably bound up with the years of rancorous litigation leading up to the trial. Thus, dealing with the contempt at trial rather than at a separate proceeding, while ensuring the appellant could participate, was appropriate and in furtherance of the "primary objective" of the Rules, namely to deal with cases justly, including furthering judicial economy while ensuring that the procedure is fair to all parties: rr. 2(2), 2(3).
- [51] It was not unfair in the circumstances of this case for the respondent to deliver the notice of motion and accompanying affidavit for contempt on the first day of trial. The appellant could not have been taken by surprise by the contempt motion since contempt was discussed at the trial scheduling conference before Jarvis J. in April 2024 and mentioned on the Trial Scheduling Endorsement Form (TSEF).
- [52] The trial judge halted the proceedings once it was clear that the respondent was seeking a finding of contempt, told the appellant that he could testify at the contempt hearing or could choose to say nothing, and instructed him to seek legal advice. The trial was adjourned to enable the appellant to seek such legal advice and advise the court on how he wished to proceed with the contempt motion.
- [53] When the proceeding resumed on June 3rd, three days later, the appellant advised the court that, having received advice from his lawyer, he did not wish to testify but agreed to be cross-examined. (I note that the appellant had already filed extensive documentation on his financial circumstances and made lengthy submissions in support of his argument that he was not in breach of the Sutherland J. Order since it only applied to existing bank accounts, as opposed to new accounts. He made a similar argument during his Questioning). The trial judge confirmed the appellant's wishes with him several times on June 3rd. The trial did not resume for another three weeks, with the result that the appellant was not cross-examined on contempt until June 27, 2024.

- [54] The trial judge also observed that while the appellant represented himself at the trial, it was clear, and the appellant himself confirmed, that he had ongoing access to legal advice throughout the proceeding. The appellant was given the opportunity to testify, and the voluminous documentary evidence he tendered just prior to trial, in which he claimed that he had in fact complied with various court orders, was accepted into evidence by the trial judge. The appellant has not identified any additional relevant evidence that he was prevented from tendering at trial. Thus, considered in context, the appellant was provided with fair notice and fair opportunity to respond to the case being brought against him.
- [55] I am not persuaded that the trial judge failed to provide the appellant, as an unrepresented person, with adequate assistance to ensure that the contempt allegation was fairly tried and that he had a full opportunity to defend himself: see *R. v. Bancroft*, 2024 ONCA 121, at para. 8. There is no checklist of obligations that apply in all cases. The applicable standard is reasonableness: *R. v. Richards*, 2017 ONCA 424, 385 C.R.R. (2d) 1, at para. 111. The trial judge was well-situated to assess the appellant's comprehension and determine the material matters that required explanation in the circumstances of the case. Contrary to the appellant's written submissions, for example, the trial judge did not have to advise the appellant that contempt was a quasi-criminal matter and that a finding of contempt might result in his incarceration, because, as everyone understood, the appellant knew this possibility from having previously been incarcerated for civil contempt. I am not persuaded that the contempt hearing was unfair or could reasonably appear to be unfair because of the level of assistance the trial judge provided.
- [56] Nor was the appellant's right against self-incrimination violated by reliance on admissions he had made in his Questioning, which was done in accordance with the Rules. As noted above, s. 11(c) of the Charter is prospective in nature and thus did not prevent the respondent from relying on admissions made prior to the commencement of the contempt proceedings: *Sutherland*, at para. 50. As for statements made by the appellant during the trial, he was not compelled to testify but agreed to be cross-examined after receiving legal advice. Once the appellant chose to provide evidence, the trial judge was not only entitled but required to consider that testimony to determine whether the respondent proved the contempt allegation beyond a reasonable doubt.
- [57] Accordingly, the procedure on the contempt motion was sufficient in the circumstances. I would not give effect to this ground of appeal.
- c. The trial judge did not err in finding the appellant in contempt of the *Sutherland J. Order*
- [58] The appellant alleges that the trial judge made two related errors in finding him in contempt. First, he claims that the *Sutherland J. Order* was not clear and unequivocal, as required for a finding of contempt. He claims that it was unclear whether the *Sutherland J. Order* prohibited him from opening and operating new bank accounts, as opposed to accounts in existence on the date of the *Sutherland J. Order*. The appellant further argues that because he believed that the *Sutherland J. Order* permitted him to open and operate

new bank accounts, the respondent did not prove beyond a reasonable doubt that he intentionally breached the Sutherland J. Order.

[59] I am not persuaded by these arguments. The trial judge correctly instructed himself and applied the three required elements for a finding of contempt, as set out by this court in *Moncur*.

[60] In particular, the trial judge did not err in finding that the Sutherland J. Order applied to new bank accounts, in addition to those in existence as of the date of the Sutherland J. Order. As the trial judge pointed out, the Sutherland J. Order was drafted broadly, freezing the entirety of the appellant's assets. For example, the opening words of paragraph 4 of the Sutherland J. Order provide as follows:

The Applicant's assets are frozen, including any corporations or subsidiaries in which the Applicant has interest or control of, inside or outside Canada, including any bank accounts, and any other assets, business interests, or investment platforms in which the applicant has an interest or control, such corporations including but not limited to... [Emphasis added.]

[61] Paragraph 5 of the Sutherland J. Order is equally broad. The opening words provide as follows:

A *mareva* injunction against any corporations or subsidiaries in which the Applicant has interest or control of inside or outside Canada, and any other assets, business interests, or investment platforms in which the Applicant has an interest or control, such corporations or subsidiaries including, but not limited to... [Emphasis added.]

[62] Paragraphs 4 and 5 go on to identify specific corporations, banks, assets, trusts, trading accounts, foreign currencies, and bank accounts expressly included in the Sutherland J. Order, but this list is not exhaustive and does not limit the generality of the opening words of the paragraphs.

[63] Working together, the two paragraphs impose an obligation on the appellant to preserve his assets and therefore the respondent's entitlements. Such orders are a form of pre-trial execution that restrain a party from dealing with their property before judgment: *Bronfman v. Bronfman* (2000), 51 O.R. (3d) 336 (Ont. S.C.), at para. 22. In this context, the broad drafting of the orders helped to ensure that sufficient assets would be available to satisfy any subsequent order for payment by the appellant to the respondent. As the trial judge correctly pointed out, such orders would be entirely ineffective if they did not also prohibit parties from depleting their assets by opening a new bank account.

[64] The trial judge therefore did not err in finding that the Sutherland J. Order clearly and unequivocally applied to preserve and restrict the appellant's operation of any bank accounts operated by him, regardless of the date upon which the bank account was opened.

- [65] Nor did the trial judge err in finding that the respondent proved beyond a reasonable doubt that the appellant had knowledge of and intentionally breached the Sutherland J. Order. The appellant had admitted in his Questioning that he was aware of the Sutherland J. Order and showed it to his lawyer. Yet, he carried on business as usual, continuing to use at least two bank accounts that pre-dated the Sutherland J. Order. Further, within days of the Sutherland J. Order being issued, the appellant opened new bank accounts and shifted over the bulk of his transactions to these accounts—without regard to his obligations to the respondent and their children. Moreover, the appellant attempted to block the respondent from obtaining information about his activities in these various undisclosed bank accounts (including bank accounts opened after the date of the Sutherland J. Order). It was thus open to the trial judge to find that the respondent had established beyond a reasonable doubt that the appellant understood the scope of the Sutherland J. Order and intentionally operated various bank accounts in direct violation of it.
- [66] Finally, the trial judge appreciated that he had discretion to decline to find the appellant in contempt, notwithstanding the appellant's deliberate breaches of the Sutherland J. Order. That the appellant had previously been found in contempt and yet continued his pattern of ignoring court orders further supports the finding. There is no basis to interfere with that exercise of discretion.
- d. The trial judge did not err in imposing a 90-day custodial sentence
- [67] In sentencing the appellant to a 90-day period of incarceration, the trial judge expressly noted the two broad purposes underlying sentencing for contempt. The primary purpose is to compel compliance by the contemnor to protect and enforce the rights of the party who has obtained the order. A secondary purpose is punishment of the contemnor to uphold the authority and dignity of the court and the rule of law: *Castillo*, at paras. 88-89.
- [68] The trial judge appropriately considered the relevant factors to determine an appropriate sentence for civil contempt, namely: the proportionality of the sentence to the wrongdoing; the presence of mitigating or aggravating factors; deterrence and denunciation; the similarity of sentences in like circumstances; and the reasonableness of a fine or incarceration: *Boily*, at para. 90. The trial judge weighed the magnitude of the appellant's wrongdoing, involving years-long deceitful and obstructive behaviour concerning his financial affairs that had caused significant emotional and financial harm to the respondent and children. Further, the trial judge considered the underlying facts of the offence, including the appellant's improper motivation, his attempts to conceal his misconduct, and his failure to modify his behaviour despite the lesser non-contempt and contempt sanctions previously imposed on him.
- [69] The trial judge was also entitled to reject the appellant's claim that he should not be subject to a term of incarceration on grounds of his alleged impecuniosity and his need to earn income. The appellant did not provide any admissible evidence about his current income or net worth. The trial judge also pointed out that the appellant had made similar claims of

impecuniosity in the past and yet had been able to pay substantial amounts to his legal counsel, as well as transfer substantial assets into various bank accounts or portfolios in defiance of the Sutherland J. Order.

- [70] Similarly, the trial judge was entitled to find that the appellant's health circumstances were not mitigating and that the medical evidence he provided, based largely on his own self-reporting, was suspect. There was also no evidence before the trial judge that a custodial institution would not be able to accommodate the appellant's health needs.
- [71] Given the absence of mitigating factors and the objectives of general denunciation and deterrence, the trial judge was entitled to find that a significant custodial sentence was warranted in the circumstances. The trial judge regarded it as important to send a clear message that behaviour of the kind engaged in by the appellant will not be tolerated or taken lightly, given the resulting harm caused to spouses and/or children as well as to the administration of justice generally.
- [72] Finally, the trial judge provided the appellant with opportunities to mitigate his sentence by allowing submissions under r. 31(12) if the appellant paid \$350,000 toward his outstanding obligations to the respondent. This could enable the appellant to possibly convert the sentence to one of intermittent incarceration or community service.
- [73] I therefore see no reviewable error in the trial judge's exercise of discretion in imposing a 90-day custodial sentence and would dismiss this ground of appeal. Frankly, given the appellant's behaviour throughout this litigation, and the ability of such behaviour to undermine the just settlement of family law disputes, even a longer sentence would have been warranted.
2. The appellant received a fair trial on the disputed financial issues [74] The appellant argues that because his pleadings had been struck on financial issues, he was prevented from giving evidence on financial matters such as equalization, child support, special or extraordinary expenses, and spousal support. He claims this resulted in an unfair trial. He particularly objects to the fact that the trial judge refused to order the reinstatement of his passport, which he says he needs to earn income.
- [75] I see no merit to this ground of appeal. Notwithstanding the fact that the appellant's pleadings had been struck a decade earlier, the appellant was given ample opportunity to provide evidence on financial issues at trial. He did so in the form of his 238-page professionally prepared opening statement and approximately 200 pages of sworn evidence on his financial situation. The appellant does not identify any specific errors in the legal principles relied upon or the factual findings made by the trial judge, but simply objects to the amounts he has been ordered to pay.

- [76] On the specific issue of the appellant's passport, the trial judge questioned whether the court had jurisdiction to reinstate a passport suspended for non-payment of support, particularly when no notice had been provided to interested parties such as the FRO, who had administered that suspension. Once again, the appellant has failed to identify any legal or factual errors in the trial judge's analysis but asks this court to overturn the trial judge's order because he disagrees with it.
- [77] The appellant also challenged the "grossly inadequate" living expenses he was allocated for his own support and the continuation of the Mareva injunction. These grounds of appeal are based on conclusory submissions and are entirely without merit.
- [78] I would therefore dismiss these grounds of appeal.
3. The trial judge did not err in his costs award [79] The appellant similarly does not identify any error in the trial judge's costs analysis, but simply seeks to have the costs award set aside because he claims he cannot afford to pay it.
- [80] The trial judge rejected this same argument and found that the appellant's claims of impecuniosity had not been established. The trial judge also appropriately pointed out that even if the appellant now lacks the ability to pay costs, this was the result of his own misconduct in depleting his assets in defiance of the Sutherland J. Order. I see no reviewable error in the trial judge's analysis or findings.
- [81] I would therefore deny leave to appeal the costs order.

VI. DISPOSITION [82] For these reasons, I would dismiss the appeal. In accordance with the request of the parties, I decline to make a costs order.

Released: January 20, 2026 "D.M.P."

"P.J. Monahan J.A."

"I agree. David M. Paciocco J.A."

"I agree. J. George J.A."

- [1] The appellant raised other grounds of appeal in his factum that he did not pursue in oral argument. As will be briefly discussed below, none of these grounds have merit.
- [2] This was the parties' final date of separation. The parties separated and commenced litigation in 2004, but subsequently reconciled. Accordingly, some of the appellant's conduct and orders referenced by the trial judge were made in the earlier proceedings.
- [3] With the exception of some of the attachments to the opening and closing statements, which had not been disclosed or provided for in the Trial Scheduling Endorsement Form ("TSEF").

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