

CANADA / JUDGMENT

Croll v. Brown

2003 BCCA 105

COURT

British Columbia Court of Appeal

DECIDED

20 February 2003

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2003BCCA0105 Citation: Croll et al v. Brown et al Date: 20030220 2003 BCCA 0105 Docket: CA29913
COURT OF APPEAL FOR BRITISH COLUMBIA BETWEEN: ANDREW C. CROLL RESPONDENT
(PLAINTIFF) AND: CAROLE ANN BROWN APPELLANT (DEFENDANT) CA30097/CA30098/
CA30099/CA30100/ CA30292/CA30293/CA30294 BETWEEN: PRADEEP KUMAR VERMA
PETITIONER (APPELLANT) AND: PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA,
ATTORNEY GENERAL OF BRITISH COLUMBIA, LEGAL SERVICES SOCIETY, HER MAJESTY THE
QUEEN as REPRESENTED BY THE PROVINCE OF BRITISH COLUMBIA RESPONDENTS
(RESPONDENTS) BETWEEN: CAROLE ANN BROWN PETITIONER (APPELLANT) AND: THE
PUBLIC GUARDIAN AND TRUSTEE OF BRITISH COLUMBIA RESPONDENTS (RESPONDENTS)
Before: The Honourable Chief Justice Finch The Honourable Mr. Justice Lambert The
Honourable Mr. Justice Thackray In Person The Appellant Carole Ann Brown appeared in person
and on behalf of Pradeep Kumar Verma C. Herb-Kelly L.D. McBain M. Smith Counsel for the
Public Guardian and Trustee Counsel for the Attorney General of British Columbia Counsel for
the Legal Services Society of British Columbia Place and Date of Hearing: Vancouver, British
Columbia January 16, 2003 Place and Date of Judgment: Vancouver, British Columbia February
20, 2003 Written Reasons by: The Honourable Chief Justice Finch Concurred in by: The
Honourable Mr. Justice Lambert The Honourable Mr. Justice Thackray Reasons for Judgment of
the Honourable Chief Justice Finch: I.

[1] The matters before the court are:

1. An application to review the order of Mr. Justice Hall pronounced 19 September 2002;
2. An application to review the order of Madam Justice Prowse pronounced 4 December 2002;
and
3. An application for leave to appeal the order of Mr. Justice Lander pronounced 6 November 2002.

- [2] Dr. Brown and Dr. Verma are not represented by counsel in these proceedings. Dr. Verma is said to be a deaf mute, and Dr. Brown made representations on his behalf, as well as her own, both written and oral. Dr. Verma was present in court. The appeal was heard in the presence of a real-time reporter so that Dr. Verma was able to follow the submissions and the court's comments and questions. II. THE ORDER OF MR. JUSTICE HALL OF 19 SEPTEMBER 2002
- [3] There were five applications before Hall J.A. which I will identify by the Court of Appeal file number. Dr. Brown did not seek an extension of time to bring on each application for leave to appeal as she was required to do. Hall J.A. did not, however, quash the applications for being out of time but rather assessed each application on the basis of whether it had a reasonable prospect of success:
1. CA30098 - The order of Mr. Justice Shabbits pronounced 11 February 2002. Dr. Brown applied by notice of motion filed 16 January 2002 for an order seeking relief under 16 heads, and 26 sub-heads. Shabbits J. dismissed the application as being a nullity. Dr. Brown applied for leave to appeal from that order. Hall J.A. dismissed that application.
 2. CA29913 - The order of Mr. Justice Halfyard pronounced 20 June 2002. Halfyard J. dismissed Dr. Brown's appeal from the decision of Master Horn, assessing a bill of solicitor Andrew C. Croll, sent to Dr. Brown for services rendered on behalf of Dr. Verma in a divorce proceeding. Halfyard J. held that the issue was moot because the bill had already been paid by the Public Guardian. Dr. Brown applied before Hall J.A. for leave to appeal and for indigent status. Hall J.A. dismissed these applications.
 3. CA30100 - The order of Madam Justice Downs pronounced 24 July 2002. Dr. Brown applied by way of petition to remove the Public Guardian as Dr. Verma's committee, and have herself appointed as Dr. Verma's committee, among other things. Downs J. dismissed this petition. Dr. Brown applied to Hall J.A. for leave to appeal this order. Hall J.A. dismissed the application.
 4. CA30097 - The order of Mr. Justice Halfyard pronounced 1 August 2002. The Public Guardian and Trustee of British Columbia sought an order pursuant to s.18 of the Supreme Court Act. Halfyard J. declared Dr. Brown to be a vexatious litigant. Halfyard J. also ordered, in respect of action number S35423 commenced by Dr. Brown in the Nanaimo registry of the Court, that in the event she applied for leave to continue with that proceeding, she may do so only through counsel who must be a member in good standing of the Law Society of British Columbia. She applied before Hall J.A. for leave to appeal those orders. Hall J.A. dismissed this application.
 5. CA30099 - There are two leave applications, each bearing file number CA30099, purporting to appeal two different orders. First, the "order" of Mr. Justice Lander pronounced 7 August 2002. Lander J. adjourned generally Dr. Brown's action number S35423 pending the appearance of counsel to represent Dr. Brown. Dr. Brown applied before Hall J.A. for leave to appeal from the adjournment. Second, the "order" of Madam Justice Downs allegedly

pronounced 20 January 2002 in respect of Supreme Court file number S34220. This is Dr. Brown's petition to have herself appointed as Dr. Verma's committee, dismissed by Downs J. Action number S34220 was not, however, commenced until February 2002. Therefore, the nature of the order sought to be appealed in CA30099 is unclear. Hall J.A. dismissed that application.

- [4] Mr. Justice Hall in dismissing these applications quoted at considerable length from the reasons for judgment of Mr. Justice Halfyard pronounced 1 August 2002, to set out the history of this litigation up to that date. Then Mr. Justice Hall said this:
- [3] Concurrently with the various applications brought seeking relief and leave to appeal in this Court is an application for indigent status advanced on behalf of Dr. Brown.
- [4] I have had the opportunity to read a considerable amount of material and to hear submissions from the parties. It is my judgment that none of the applications have any merit, nor do they engage any principles of law that would allow this Court to grant the relief sought.
- [5] In those circumstances, all of the applications are dismissed.
- [6] The application for indigent status is also dismissed because the applications have no merit and no possibility of success. Therefore the question of granting indigent status becomes academic, although I should note that I would not necessarily be of the view that this applicant would qualify financially in any event. But I need not finally determine that question.
- [7] So in sum, all of the applications are dismissed. I should think that in the circumstances the Public Trustee would be entitled to the costs of the application but I am not of the view that costs should be awarded to any other party.
- [5] The test on this application to review the order of Hall J.A. is whether he erred in law or in principle, or whether he misconceived the facts. He was bound to apply the law as laid down in *Davies v. Canadian Imperial Bank of Commerce* (1987), 15 B.C.L.R. (2d) 256 (C.A.). The important questions for him were whether the appeals, or any of them, had merit, and whether it was in the interests of justice that an extension of time be granted.
- [6] I am satisfied on a review of the materials filed by Dr. Brown and Dr. Verma, and on a consideration of the submissions made on the hearing of this application for review, that no error of law, principle or fact has been shown. I consider that Hall J.A. rightly concluded that there was no merit in any of the proposed appeals. It follows that it would not be in the interests of justice to allow any of these appeals to proceed.
- [7] I would dismiss the application to review the order of Mr. Justice Hall pronounced 19 September 2002.

- [8] The effect of this conclusion, among others, is that the order of Mr. Justice Halfyard pronounced 1 August 2002 declaring Dr. Brown to be a vexatious litigant, stands as affirmed.
- III. THE ORDER OF MADAM JUSTICE PROWSE OF 4 DECEMBER 2002
- [9] There were two applications before Prowse J.A. which I will identify by the Court of Appeal file number:
1. CA30293 - The order of Mr. Justice Drost pronounced 28 October 2002. Dr. Brown and Dr. Verma either applied for an order that Dr. Verma be granted indigent status, (or appealed a decision of the provincial court, dismissing Mr. Verma's application for indigent status). Drost J. declined to hear the application on the basis that the Public Guardian and Trustee, the committee of Dr. Verma's affairs, did not authorize the application. The Public Guardian and Trustee applied before Madam Justice Prowse to dismiss their application for leave to appeal this order. Prowse J.A. granted the application and quashed the appeal. Dr. Brown and Dr. Verma applied to review the order of Prowse J.A.
 2. CA30292 - The orders of Mr. Justice Lander pronounced 6 November 2002. Lander J. dismissed Dr. Verma's petition and his application for indigent status. On the Court's own motion, he made the following order: THIS HONOURABLE COURT, on bringing its own motion at Nanaimo, British Columbia, on Wednesday, the 6th day of November, 2002, and on hearing Catharine Herb-Kelly, counsel for the Public Guardian and Trustee of British Columbia; Lisa McBain, counsel for the Attorney General of British Columbia and Her Majesty the Queen in Right of the Province of British Columbia; Michael Smith, counsel for the Legal Services Society; Carole Ann Brown on her own behalf and in the presence of Dr. Pradeep Verma, Patient; THIS COURT ORDERS that no process by or on behalf of Dr. Pradeep Verma, Patient, will be accepted for filing in any Registry of the Supreme Court or the Provincial Court of British Columbia anywhere within the Province of British Columbia in the name of Dr. Verma or in the name of Dr. Carole Ann Brown pertaining to or in any way connected with the legal and financial affairs of Dr. Pradeep Verma, Patient; AND THIS COURT FURTHER ORDERS that no process by or on behalf of Carole Ann Brown will be accepted for filing by any Registry of the Supreme Court or the Provincial Court of British Columbia anywhere within the Province of British Columbia in connection with any matter, except that Dr. Carole Ann Brown may apply for leave to file process but only if she is represented by a member in good standing of the Law Society of British Columbia; AND THIS COURT FURTHER ORDERS that the parties may apply to vary the terms of this Order on 7 days notice but Dr. Carole Ann Brown may only make such application if she is represented by a member in good standing of the Law Society of British Columbia; AND THIS COURT FURTHER ORDERS that the Rules of Court must be strictly adhered to; AND THIS COURT FURTHER ORDERS that the Court Registry of Nanaimo shall advise all Provincial Court and Supreme Court Registries within the Province of British Columbia of the terms of this Order; AND THIS COURT FURTHER ORDERS that it shall not be necessary to obtain the signature of Dr. Carole Ann Brown, to the form of this Order; AND THIS COURT FURTHER ORDERS that Dr. Carole Ann Brown shall pay to the Public Guardian and

Trustee, the Attorney General of British Columbia and the Legal Services Society their costs and disbursements incurred for these proceedings at Scale 3.

- [10] The Public Guardian and Trustee applied before Prowse J.A. for orders dismissing Dr. Brown's and Dr. Verma's applications for leave to appeal that order. Prowse J.A. granted the Public Guardian's application. She also refused Dr. Brown's standing to appear in the proceedings before her.
- [11] In her oral reasons for judgment Madam Justice Prowse said in part:
- [1] These are applications by the Public Trustee to quash these two appeals. All that I can say is that, as far as I am able to determine from a legal point of view, the Public Guardian and Trustee has the legal right to bring on the application they have brought on today. They are the legal guardians of the legal and financial affairs of Dr. Verma. They will remain so until if and when the situation ever changes. Therefore, they have a responsibility to Dr. Verma to protect his legal and financial interests. As far as they are concerned, that is precisely what they are doing in bringing on these applications. . . .
- [4] On that basis, I am not prepared to hear from you other than through the written material which you have provided. I can also say that, having read all of the materials, I am satisfied that the applications to dismiss both of these appeals should be granted. In that regard, I note that one appeal is from the decision of Mr. Justice Lander, dated November 6, 2002. The other application is from the decision of Mr. Justice Drost, made October 28, 2002. . . .
- [6] On the basis of all of the materials I have reviewed, I am satisfied that these two appeals should be dismissed on the basis the Public Trustee has asked that they be dismissed, and that they are asking for that relief on behalf of the petitioner-appellant Dr. Verma.
- [12] The test on this application to review the order of Prowse J.A. is the same as the test applied on the application to review the order of Hall J.A., namely, whether the learned chambers judge erred in law or in principle, or misconceived the facts.
- [13] I am satisfied that no basis has been shown on which this Court could interfere with the order of Prowse J.A. I would dismiss the application to review. The effect of this conclusion is that the order of Mr. Justice Lander pronounced 6 November 2002 and the order of Mr. Justice Drost pronounced 28 October 2002 stand as affirmed. IV.
- [14] There remains to consider the application filed under CA30294. This is an application by Dr. Brown for leave to appeal the order of Mr. Justice Lander pronounced 6 November 2002 prohibiting Dr. Verma and Dr. Brown from filing any process in any Registry of the Supreme Court of British Columbia, or the Provincial Court of British Columbia, according to its terms. This is the same order considered by Prowse J.A. under CA30292. This application must also stand dismissed. V.

- [15] In the result, I would dismiss the applications to review the order of Hall J.A. pronounced 19 September 2002 and to review the order of Prowse J.A. pronounced 4 December 2002. I would also dismiss the application for leave to appeal under CA30294.
- [16] Since the hearing of this appeal, Dr. Brown has filed an application to re-open the appeal, together with a substantial body of material in support. I would dismiss this application as without any merit.
- [17] I would further order on this Court's own motion that:
1. No process by or on behalf of Pradeep Kumar Verma, Patient, be accepted for filing in any Registry of the British Columbia Court of Appeal anywhere in the Province of British Columbia in the name of Dr. Verma or in the name of Dr. Carole Ann Brown pertaining to or in any way connected with the legal and financial affairs of Dr. Pradeep Kumar Verma, Patient.
 2. No process by or on behalf of Carole Ann Brown be accepted for filing in any Registry of the British Columbia Court of Appeal anywhere in the Province of British Columbia in connection with any matter, except that Dr. Carole Ann Brown may apply for leave to file process only if she is represented by a member in good standing of the Law Society of British Columbia.
 3. The parties may apply to vary the terms of the order on seven days notice, but Dr. Carole Ann Brown may only make such application if she is represented by a member in good standing of the Law Society of British Columbia.
- [18] I would direct that this order be brought to the attention of the Registry staff in both Vancouver and Victoria.
- [19] I would direct that it not be necessary to obtain the signature of either Dr. Brown or Dr. Verma to the form of order to be entered consequent on these reasons.
- [20] I would further direct that the Public Guardian and Trustee, and the Attorney General of British Columbia both be entitled to the costs of opposing these applications to review the orders of Mr. Justice Hall and Madam Justice Prowse, and to the costs of opposing the application - CA30294.
- [21] Counsel for the Legal Services Society did not ask for costs on the review applications, and accordingly I would not grant costs to it. "he Honourable Chief Justice Finch" I AGREE: "he Honourable Mr. Justice Lambert" I AGREE: "he Honourable Mr. Justice Thackray"

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