

CANADA / JUDGMENT

De Cotiis v. De Cotiis

2020 BCSC 2105

COURT

Supreme Court of British Columbia

DECIDED

27 January 2020

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2020 BCSC 2105 De Cotiis v. De Cotiis IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: De Cotiis v. De Cotiis, 2020 BCSC 2105 Date: 20200127 Docket: E111973 Registry: Vancouver Between: Juanita May De Cotiis Claimant And Donato I. De Cotiis Respondent Before: The Honourable Mr. Justice G.C. Weatherill Oral Reasons for Sentence re Respondent's Contempt In Chambers Counsel for the Claimant: M. Campbell Counsel for the Respondent: J.M. Diakow M.J. Gismondi Place and Date of Hearing: Vancouver, B.C. January 27, 2020 Place and Date of Judgment: Vancouver, B.C. January 27, 2020

- [1] THE COURT: Before me, this morning is the matter of sentencing for the respondent's contempt. I have been the case management judge in this long acrimonious family proceeding for well in excess of five years. I think it is close to seven years by now. Given my lengthy history with this case, it had become plain by November 2019 that the time had come to deal with what Ms. Campbell has rightly described as the repeated failures on the part of the respondent to abide by the orders I had made over the years. In November, I found Mr. De Cotiis to have been in contempt and we are dealing today with the appropriate sentence.
- [2] I thank counsel for their helpful submissions. As Mr. Gismondi pointed out, the principles that can be distilled from the case law dealing with sentencing for civil contempt include: (a) that contempt of court is a serious matter which strikes at the heart of the rule of law; (b) that the court can impose jail, fines, and community work service as punishment for contempt of court; (c) that the court may suspend the imposition of any sentence on conditions which can be designed to compel compliance with a previous court order, and in this case, court orders; (4) that the sanction of imprisonment must be used sparingly and when used should be the least amount of time possible; and (5) that while deterrence and denunciation are legitimate considerations when sentencing for contempt of court, sentencing for civil contempt should be concerned with rehabilitation because the court is primarily focused on securing compliance with its court orders.
- [3] I accept that the respondent Mr. De Cotiis has a mental illness, namely a bipolar disorder. I accept as well that his mood was not very well stabilized during his most recent contemptuous period, in respect of which we are here today, and I accept that his mental

illness contributed to his contemptuous behaviour. I accept as well the assessments of his treating physicians, Doctors Kjernisted and Small, that a sentence of incarceration may well result in Mr. De Cotiis experiencing a significant increase in depressive symptoms and could result in him becoming highly resistant to mental health interventions and cause him to return to his previous depressive state.

- [4] I am buoyed by what I have learned this morning regarding reported improvements to Mr. De Cotiis' mental health condition. Nevertheless, I continue to be troubled by the financial aspects of this case. The court's attempts over the years to obtain a full picture of the lives of the two children involved, Zaffira and Innocenzo, was repeatedly thwarted by Mr. De Cotiis' failure to meet his financial obligations and contribute to the cost of both a s. 211 report and counselling sessions. In my view, those financial obligations must be addressed.
- [5] Mr. De Cotiis, I see that you are in the courtroom. Could you come forward for a moment, please? Is there anything that you want to say to me?
- [6] DONATO DE COTIIS: Well, I see no reason why my daughter can't speak to her brother.
- [7] THE COURT: Well, no, that is not really what I had in mind. I know you have your personal views regarding what should or should not take place between and among your children and her parents. All of that has been the subject of much discussion in these courtrooms. And I know you well aware that others, including professionals, disagree with your views. All of us are trying our best to get to the bottom of what is best for your children.
- [8] DONATO DE COTIIS: Well --
- [9] THE COURT: All right. No, that is not really what I had in mind when I asked if you had anything that you wanted to say.
- [10] DONATO DE COTIIS: Well, I understand --
- [11] MR. GISMONDI: Just one moment. My Lord, I interject only to say that, traditionally, before a sentence is imposed, this question will be asked. I did not cover that with Mr. De Cotiis this morning.
- [12] THE COURT: All right.
- [13] MR. GISMONDI: That's my mistake. Perhaps I could take a moment to tell him the purpose of that question.
- [14] THE COURT: Well, I am scheduled to commence a criminal matter at 10 o'clock this morning. We are --
- [15] MR. GISMONDI: Yes, My Lord, I'm in your hands. I could even just talk to him right now.
- [16] THE COURT: All right. (BRIEF OFF-RECORD DISCUSSION BETWEEN COUNSEL MR. GISMONDI AND THE RESPONDENT DONATO DE COTIIS)

- [17] DONATO DE COTIIS: Okay. I have nothing further to add.
- [18] THE COURT: All right. Thank you.
- [19] I want to thank you, Mr. Gismondi, for your helpful and persuasive submissions. You have done a very good job for your client.
- [20] I have given this matter a great deal of thought. Having been involved in it much more intimately and deeply than I would have liked to have been, for much longer than I would like to have been, my overarching concern is securing compliance with the orders that I have made.
- [21] MR. GISMONDI: My Lord, I rise one last time. There was a proposed condition that we did not include because we couldn't come up with the correct wording, but it would be an ongoing obligation for Mr. De Cotiis to apply for loans as his financial situation improves and to provide evidence to counsel for Juanita; and should he be approved, then, you know, 50 percent of that loan would go directly to the arrears. That was one thing my colleague and I had considered, but we couldn't come up with a wording that we were satisfied with, but I should leave that with Your Lordship.
- [22] THE COURT: All right. In my view, given the long history of this case and my involvement in it and what has taken place, considering Mr. De Cotiis' mental illness; the assessments of his healthcare professionals; the opportunity I have given to Mr. De Cotiis a moment ago to express some form of remorse, which he declined, a custodial sentence of 30 days is appropriate in this case.
- [23] That sentence will be suspended on conditions, in order to give Mr. De Cotiis, one last opportunity to comply with the court orders I have made. Those conditions, many of which Mr. Gismondi has helpfully set out, in his Appendix A, are as follows:
- (1) Mr. DeCotiis shall appear in court when required to do so by the court;
 - (2) Mr. DeCotiis shall maintain his employment with Onni Group and shall report to the court as soon as reasonably possible should that employment status change in any significant way;
 - (3) Mr. DeCotiis shall make monthly spousal support payments of \$1,200 per month;
- [24] MS. CAMPBELL: My Lord, that's not the current order.
- [25] THE COURT: I understand, but I am cognizant of what his current pay is at the moment.
- (4) Mr. De Cotiis shall make monthly child support payments of \$2,400 per month;
 - (5) Commencing February 1, 2020, Mr. De Cotiis shall make monthly payments toward the arrears of support that I have found to be owing in the amount of \$1,000 per month, until such time as the court varies the arrears I have ordered;

- [6] Mr. De Cotiis will forthwith advise the claimant, through counsel, of any increase in his wage or salary at Onni, and the claimant is at liberty to apply to vary the monthly support payments I have ordered; and, finally
- [7] by February 3rd, Mr. De Cotiis will have paid the amounts that I had previously ordered him to pay in respect of the Dr. England s. 211 report and the Abbey Peterson counselling of \$10,000 and \$5,000 respectively.
- [26] If any one of those conditions is not met, the custodial sentence will be imposed.
- [27] MR. GISMONDI: My Lord, is there a length of time that we can consider these conditions to be imposed? Is it -- you know, are we saying it's a 12-month order or are we just saying it's now an order of the court?
- [28] THE COURT: It is now an order of the court, and these are conditions that will be met to maintain the suspended sentence. If they are not met, at any time, then the custodial sentence will then take place. So it is up to you, Mr. De Cotiis, to ensure that the support payments and other payments I have ordered are made on time. I realize that Mr. Gismondi and, to a lesser extent, Mr. Diakow are relatively new to this case, but it has been going on far too long, and I would very much like to see an end to it. I would like to see the family -- at least the children, reunited with their father, but, each time an attempt is made -- I think one of the phrases I have used before in this case is baby steps -- and each time we try, Mr. De Cotiis' behaviour has been such that those attempts have failed.
- [29] I know Mr. De Cotiis claims not to have the financial resources to be able to pay a lump sum payment of the outstanding amounts that have been owing for quite some time, but the time has come.
- [30] MR. GISMONDI: Thank you, My Lord. I suppose I would just ask, then, that there be some time at which we can come before -- the parties can come before Your Lordship to re-evaluate this order, because the imposition of jail hanging over his head in general -- hanging over someone's head, generally will expire after good behaviour for a couple of years or one year, and I don't want it to turn into a tool in this case. So perhaps we just -- six months or a year from now we appear before you, if the need arises, to address this order.
- [31] THE COURT: That is fine. You can appear before me whenever you wish, to address this if something has happened that needs to be addressed or you otherwise consider it appropriate.
- [32] MR. GISMONDI: Thank you, My Lord.
- [33] MS. CAMPBELL: My Lord, usually there is an additional condition that they will be -- and I don't know the criminal language, but have good behaviour and continue to uphold the laws, and Mr. De Cotiis continues to breach orders. Like right now there's an outstanding order, a year old, for disclosure of documents, so we have some way of knowing what his financial circumstances genuinely are, still outstanding, still not fulfilled. So our concern is that the --

- [34] THE COURT: Mr. Diakow --
- [35] MS. CAMPBELL: -- sentencing conditions should include no further breaches.
- [36] THE COURT: Well, each breach will have to be dealt with on its own merits.
- [37] MR. DIAKOW: My only suggestion on that point, My Lord, is new financial statements will be required for this hearing. I'll ask my friend if she can tell me what she's missing. Some of the material came from Onni directly; some has come from my client.
- [38] THE COURT: This is the variation order that you are seeking?
- [39] MR. DIAKOW: Yeah. Because in order to address the order that was made on March the 6th, my -- child support went back to 2014, so we need to go from 2014 onwards, which I think will involve most of what my friend is looking for. Spousal support was ordered from a period in 2016 onwards. So I imagine it will all be flushed out.
- [40] MS. CAMPBELL: And I only raise the problem that we are again in this aggressive litigation cycle, which my client continues --
- [41] THE COURT: Well --
- [42] MS. CAMPBELL: Some of that -- those orders --
- [43] THE COURT: -- Mr. Diakow advised several months ago that it was his intention to seek to have the order I made back in March set aside, so, really, I do not know how aggressive it is. It has been months. My definition of aggressive is the next day, but it has --
- [44] MS. CAMPBELL: Well, my --
- [45] THE COURT: -- been months.
- [46] MS. CAMPBELL: -- definition of aggressive is five counsel on the other side and my fax machine wearing out with the correspondence.
- [47] THE COURT: All right. Well, that is the price you pay when you are counsel, Ms. Campbell.
- [48] Is there anything further?
- [49] MR. GISMONDI: No, My Lord.
- [50] THE COURT: All right.
- [51] MR. DIAKOW: No, thank you.
- [52] THE CLERK: Order in chambers. Chambers is adjourned. "Weatherill J."

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Prepared on 25 October 2026 · Esheria