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CANADA / JUDGMENT

## Driediger v. Driediger

2020 BCSC 1007

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COURT

Supreme Court of British Columbia

DECIDED

7 July 2020

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2020 BCSC 1007 Driediger v. Driediger

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Driediger v. Driediger,

2020 BCSC 1007

Date: 20200707

Docket: E53016

Registry: New Westminster

Between:

Willemmyntje Driediger

Claimant

And

Robert Allan Driediger

Respondent

Before: The Honourable Mr. Justice A. Saunders

Decision on Application by way of Written Submissions

Counsel for the Claimant:

R. Necsulescu

Counsel for the Respondent:

B. Thompson

Date of Written Submissions:

June 19, 2020

Place and Date of Judgment:

New Westminster, B.C.

**July 7, 2020**

- [1] By way of a notice of application filed May 29, 2020, the claimant seeks certain orders and declarations respecting past and future payments of spousal support, including alleged arrears. The relief sought appears to duplicate, to some extent, relief sought by way of a notice of application originally filed January 31, 2020. That earlier application was initially set to be heard on March 12, 2020; that was adjourned by consent on March 5, 2020, to a hearing date of May 21, 2020; and that was then adjourned generally by operation of COVID-19 Notice No. 8.
- [2] The claimant now brings the present application by way of the Applications by Written Submission ("AWS") process instituted through COVID-19 Notice #14 dated April 27, 2020.
- [3] COVID Notice #14 explicitly states, inter alia, that the matter to be dealt with in an AWS must be limited to one disputed issue; or, if the matter involves more than one disputed issue, where the applicant has chosen one issue.
- [4] The Orders Sought listed in Part 1 of the present notice of application are as follows:
1. An order pursuant to s. 212(1) of the Family Law Act SBC 2011 c. 25 (the "Act") requiring the Respondent to disclose financial information in accordance with Part 5 of the Act.
  2. An order pursuant to s. 213(2)(d)(i) of the Act for the Respondent to pay for all of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution.
  3. An order pursuant to s. 213(2)(d)(ii) of the Act for the Respondent to pay \$5000 to the Applicant (whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure).
  4. An order for the Respondent to pay the Applicant spousal support arrears in the amount of \$75,234 which include the arrears that have accrued since 2018 as a result of the Respondent's underpayment of spousal support pursuant to paragraph 1(c) of the Consent order, as well as the arrears dating back to July 15, 2019 at which time the Respondent ceased paying the Applicant spousal support.
  5. An order determining the amount of on-going spousal support to be paid by the Respondent to the Applicant in the high range of the Spousal Support Advisory Guidelines.

6. A declaration by the court that the total spousal support paid by the Respondent to the Applicant in 2017 was \$2781(3 bi-weekly payments of \$927) and that, as such, this is the maximum tax-deductible amount for the Respondent for the 2017 tax year, and the maximum taxable amount for the Applicant for the 2017 year.
  7. An order that the Respondent pay costs to the Claimant, in any event of the cause.
  8. Such further and other relief as this Honourable Court deems just.
- [5] This application involves more than one disputed issue and therefore falls outside the bounds of the AWS process. Further it is, in any event, manifestly unsuitable for determination through the AWS process, under which the parties are limited to a single affidavit of not more than 10 pages in length, inclusive of exhibits. I make those findings while noting the claimant's submission that though the orders sought "appear to constitute multiple issues, they are all inter-related to the single issue of spousal support".
- [6] The application is therefore dismissed, with the claimant being at liberty to reapply in respect of past and ongoing spousal support, and all remedies in respect of same, by way of chambers application. I refer the parties to COVID-19 Notice No. 28, "Resumption of Further Court Operations - Chambers Applications".
- [7] Some comment and direction on the forms of relief sought, and the content of the filings, is in order:
- a) The relief sought includes an order that the respondent pay arrears. The Court does not make orders for the payment of sums that have already been ordered to be paid. Enforcement of an existing obligation may be pursued directly through the Family Maintenance Enforcement Program.
  - b) There is no mention made in any of the claimant's or respondent's application materials of the respondent having filed an updated Form F8 financial statement. If he has not already, he may be under an obligation to do so under Rule 5-1 of the Supreme Court Family Rules, B.C. Reg. 169/2009 [SCFR].
  - c) The respondent's materials imply that the respondent unilaterally changed his support payments when his employment situation changed. If that is the case, it appears the respondent should be bringing an application for variation.
  - d) Under Part 3 - Legal Basis of the May 29, 2020 notice of application, the applicant listed several authorities and enactments, and provided a lengthy quote from the provisions of the Family Law Act. The respondent's initial application response filed March 4, 2020 simply cited two legal authorities. Neither of these filings complied with Rule 10-6 of the SCFR. Rule 10-6(3)(c) requires that in addition to rules, enactments, and authorities, a notice of application must state "any other legal arguments on which the orders sought should be granted". Rule 10-6(9)(i) requires an application response to briefly summarize the legal bases for opposing the application. In *Crossan v. Crossan*, 2016 BCSC 2102, Mr. Justice

Skolrood wrote:

- [21] Such barebones recitation of the statutes, rules, and some case law is inadequate and does not comply with the Rules of Court. The adequacy of application materials have been commented on by numerous judges and masters of this court. I refer in particular to the decision of Madam Justice Adair in *Dupre v. Patterson*, 2013 BCSC 1561, where she dealt with a similarly barebones notice of application, as well as the decision of Master Bouck in *Zecher v. Josh*, 2011 BCSC 311, where Master Bouck explained the rationale behind requiring a proper legal basis, specifically to give proper notice to the opposing party and to the court of the arguments to be advanced.
- [22] Madam Justice Adair quoted from Fraser, Horn and Griffin, *The Conduct of Civil Litigation in British Columbia*, 2nd ed. loose-leaf (Markham: LexisNexis, 2007), one of the leading texts on practice and procedure, where the authors say the following concerning the legal basis section of the notice of application at page 32-3:
- The notice must set out the rule, enactment or other jurisdictional authority relied on for the orders sought and any other legal arguments on which the order sought should be granted. If appropriate, applicable cases may be cited. The argument to be made in chambers should be fully disclosed and should contain more than a cursory listing of the rules that might support the particular application.
- [23] While Madam Justice Adair is addressing the Supreme Court Civil Rules, identical requirements exist under the Family Court Rules.
- [8] The requirements that application materials provide some level of detail of the parties' legal arguments have been in place since the civil and family rules were overhauled more than ten years ago. Counsel need to update their practices.
- [9] The respondent will have his costs of this AWS proceeding in any event of the cause.

"A. Saunders J."

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