

CANADA / JUDGMENT

Falkener v. Falkener

2020 BCSC 539

COURT

Supreme Court of British Columbia

DECIDED

18 March 2020

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2020 BCSC 539 Falkener v. Falkener IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Falkener v. Falkener, 2020 BCSC 539 Date: 20200318 Docket: E52916 Registry: Kamloops Between: Linda Christine Falkener Claimant And James Falkener Respondent Before: The Honourable Madam Justice Gropper Oral Reasons for Judgment In Chambers Counsel for the Claimant: M. Perry Counsel for the Respondent (via teleconference): G. Lang Place and Date of Hearing: Vancouver, B.C. March 18, 2020 Place and Date of Judgment: Vancouver, B.C. March 18, 2020

- [1] THE COURT: If one were observing in chambers today, it would have appeared that I was addressing the contempt phase of these proceedings. The respondent's submissions echoed those that he made in that phase. In fact, I am addressing the penalty phase, as Mr. Falkener has not cured the contempt in the 14 days that I provided that he do so.
- [2] In my reasons for judgment of February 13, 2020, I found Mr. Falkener in contempt of court. I referred repeatedly to his failure to be forthright with the court before me and before Madam Justice Dillon in the eight-day trial that she heard in February and April 2019. I will review some of those findings.
- [3] I referred to para. 74 of Dillon J.'s Falkener reasons where she describes Mr. Falkener as having engaged in recent undisclosed financial transactions involving significant sums of money and undisclosed finance bank records. At para. 66 of Dillon J.'s reasons, she describes Mr. Falkener's non-disclosure of his overseas' accounts and non-disclosure of his property interest in England or the money that he inherited and the \$25,000 in bullion, coin, silver, and diamonds. She found that the overseas' account was not disclosed and, at para. 66 of her decision, refers to the miscellaneous bullion, coins, diamonds, and silver that were not adequately itemized or evaluated, and the failure to provide any information regarding the two companies that were struck from the corporate registry in 2018.
- [4] In respect of Mr. Falkener's income, Dillon J. reviewed his income from 2015 to 2017 and explicitly rejected Mr. Falkener's position that he had been unable to work since December 2017. She noted that in his 2016 and 2018 financial statements, Mr. Falkener, failed to explain all of his banking transactions. Madam Justice Dillon was critical of his failure to do so. She expressly considered his claim that he had been unemployed for two years due to a disability based on those bank records and concluded at para. 103 that Mr. Falkener had not

been forthright with the court as to his true income.

- [5] Dillon J. awarded lump-sum spousal support based on a lack of financial disclosure on the part of the respondent.
- [6] I also noted that in response to the application to find Mr. Falkener in contempt, he filed his income tax return for 2018 that showed his Line 150 income as \$8,489.73 and he filed documents that showed that he qualified for a disability pension from CPP and he had received some payments. He produced a financial statement apparently in response to the application to find him in contempt on January 14, 2020, and attached his 2018 income tax return only which said his income was limited to his CPP pension. That had, of course, already been rejected by Dillon J.
- [7] In determining that Mr. Falkener was in contempt of court, I found that Mr. Falkener had flouted court orders. He did not pay support in accordance with the Matthews' order of July 2018. He did not make the disclosure he was required to make or obliged to make in accordance with the Family Law Act, S.B.C. 2011, c. 25 and the Supreme Court Civil Rules, B.C. Reg. 168/2009. I commented that while Dillon J. did the best she could to value the parties' properties and Mr. Falkener's income, she was critical of Mr. Falkener's failure to disclose. I reviewed the reasons of Dillon J. extensively to demonstrate her view of Mr. Falkener's consistent non-disclosure. It is also clear from the reasons of Madam Justice Dillon that she found Mr. Falkener's veracity to be lacking. In other words, he was not telling the truth on several matters. I continued "Mr. Falkener has continued in his path of non-disclosure ... He has filed the minimum of financial information".
- [8] He provided his 2018 tax return. Everything that he disclosed supports his view that he has no income and assets. His obligation was to disclose all of his financial information and provide supporting documents. I commented that "He does not refer to [any of the] property that Dillon J. found that he had".
- [9] Mr. Falkener did not provide any documentation regarding his corporate assets. He just said they were of no value. He did not describe how assets were disposed of.
- [10] I concluded that the financial statement that he filed in January 2020 was entirely self-serving and contradicted or ignored the explicit findings that were made at trial and were the basis of the orders made. I also commented that Mr. Falkener suggested that he could be cross-examined on his affidavit, but noted that his evidence about his income and assets had been examined through judicial scrutiny "only months ago" and determined that there would be no point would in cross-examining Mr. Falkener who has been found to be untruthful and engaged in non-disclosure. Dillon J. found that Mr. Falkener had ample ability to pay after a full trial.

- [11] Today, Mr. Falkener has again blamed Dillon J. for making the findings of facts that she did and asserts that there has been a "grave miscarriage of justice". Mr. Falkener, at this penalty stage, has come forward with some minimal new documentation regarding his inheritance from his mother's estate in 2018, but nothing about where the money went. He has provided some spreadsheets that he created, but no documents in support.
- [12] In my view, he has engaged in the same pattern of non-disclosure. I cannot be satisfied that his assertions are assertions of truth. In spite of what Mr. Falkener has produced today, some new documents, I am not reviewing my decision finding him in contempt. This hearing is intended to deal with the penalty phase.
- [13] The legal framework with regard to the imposition of penalty for contempt was set out in the decision of *The Law Society of British Columbia v. Bryfogle*, 2012 BCSC 59, at para: 80, and the factors listed there are:
1. the gravity of the offence;
 2. the need to deter the offender;
 3. the past record and character of the offender and, in particular, whether this is a first offence;
 4. the need to protect the public from the offender's misconduct;
 5. the extent to which the offender is able to pay a monetary penalty; and
 6. the extent to which the breach was flagrant and wilful and intended to defy the court's authority.
- [14] In respect of the first factor, the gravity of the offence, I find that Mr. Falkener's conduct throughout this Family Law Act action has been very grave and he has been found repeatedly to be untruthful.
- [15] Regarding need to deter the offender, it appears to Mr. Falkener that if he simply regurgitates his previous testimony, he will finally be believed. He makes a broad statement of how he respects the court's process, but has continued in his path of lack of forthrightness.
- [16] This is a first offence of Mr. Falkener's, although it is continuing.
- [17] Four, the need to protect the public from the offender's misconduct: in every family law case, the court must be vigilant to ensure that the parties respect court orders and abide by them.
- [18] Five, the extent to which the offender is able to pay the monetary penalty: Mr. Falkener's position is that he cannot pay the monetary penalty, but Dillon J. found that was not the case and I find that is not the case. I am simply not convinced by him about his financial circumstances.

- [19] Six, the extent to which the breach was flagrant and wilful and intended to defy the court's authority: I have already found that Mr. Falkener's conduct is flagrant.
- [20] Based on the fact that Mr. Falkener lacks veracity and his evidence cannot be believed, I am prepared to make the orders that the claimant seeks: that is, that he place his home, the Airdrie Property, for sale immediately and that the money to be paid into trust; that he pay his spousal support arrears from whatever interest in property he has worldwide, the bullion, coins, silver, and unmounted diamonds, the significant inheritance that he received during the currency of these proceedings, and the money that he apparently gratuitously transferred for his friend, Peter Meronek. I am ordering that the respondent immediately liquidate his real property and surrender those funds to counsel for the claimant.
- [21] Should he further disregard the orders of the court, there will be fines and imprisonment imposed. I order that Mr. Falkener begin by paying \$500 a day to the Attorney General of British Columbia in respect of his contempt of court and, should he continue to ignore these orders of the court, that within 60 days of this decision, he will begin a term of imprisonment that will be of 60 days.
- [22] Are there any questions?
- [23] MR. PERRY: No, My Lady, thank you.
- [24] MS. LANG: No, thank you.
- [25] THE COURT: Thank you. We will adjourn.
- [26] MR. PERRY: Costs, My Lady?
- [27] THE COURT: They will be special costs in favour of Ms. Falkener. Thank you.
- [28] MR. PERRY: Thank you, My Lady. "Gropper J."

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