

CANADA / JUDGMENT

Falkener v. Falkener

2020 BCSC 784

COURT

Supreme Court of British Columbia

DECIDED

8 May 2020

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2020 BCSC 784 Falkener v. Falkener IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Falkener v. Falkener, 2020 BCSC 784 Date: 20200508 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 appearing by teleconference: M. Perry P. Mennie Counsel for the Respondent appearing by teleconference: G. Lang Place and Dates of Hearing: Vancouver, B.C. April 24, 2020, May 8, 2020 Place and Date of Judgment: Vancouver, B.C. May 8, 2020

- [1] THE COURT: This is my decision.
- [2] I will begin by saying that I have reviewed, actually for the first time today, the order of March 18, 2020, which was signed by the Registrar and entered.
- [3] I have heard the parties' submissions and I must find that Mr. Falkener has to some extent complied with the orders that I made. I reiterate, and Ms. Lang has this point, of course, that Mr. Falkener is still in contempt of the substantive orders. He has made some disclosure and provided some explanations. Whether they are complete or not, I am unable to say in terms of determining as proof beyond a reasonable doubt.
- [4] It is clear to me that Mr. Falkener certainly had some funds in 2019 after the Dillon order was made and had some funds in January of 2020 when he deposed that he had none. He was able to provide a substantial retainer to his counsel. He clearly has the ability, if he does not have actual money, to raise funds. In this case, he has decided not to pay the spousal support nor seek any assistance to ensure that he can.
- [5] However, strictly speaking, and that is of course how I must address this, I find that he has satisfied me that he is in compliance with the orders that I made on March 18, 2020. I cannot find that he is in breach of those orders beyond a reasonable doubt. I therefore must dismiss the claimant's application today.
- [6] The intention that I had when I made the order of March 18, 2020, was that Mr. Falkener would make some disclosure, but that he was still obliged to pay the court orders for spousal support. That is what I continue to be concerned about.

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- [7] Mr. Perry, you have an order that if Mr. Falkener fails to comply with the orders that I found him to have been in breach of, he is to pay a fine of \$500 per day to the Ministry of the Attorney General and he is to commence a jail term 60 days after my decision of March 18th; that is on May 18, 2020.
- [8] I am not going to make any order as to costs today. I appreciate that Ms. Falkener is put in a position of having to deduce where Mr. Falkener's money is. That is not her role. Mr. Falkener has provided information which does raise questions, but I cannot find that he is in breach of the order of March 18, 2020 and, therefore, I am not making any order as to costs. "Gropper J."
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Prepared on 26 October 2026 · Esheria