
CANADA / JUDGMENT

Falkener v. Falkener

2020 BCSC 844

COURT

Supreme Court of British Columbia

DECIDED

26 May 2020

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2020 BCSC 844 Falkener v. Falkener

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Falkener v. Falkener,

2020 BCSC 844

Date: 20200526

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

Counsel for the Respondent

appearing by teleconference:

G. Lang

Place and Date of Hearing:

Vancouver, B.C.

May 26, 2020

Place and Date of Judgment:

Vancouver, B.C.

May 26, 2020

[1] THE COURT:

[2] I will begin reading the reasons of May 8, 2020, to provide a context.

[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.

- [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.
- [3] On February 13, 2020, I found that Mr. Falkener was in contempt of the order spousal support. I suspended the punishment stage of the proceedings in order to allow Mr. Falkener 14 days to cure his contempt.
- [4] There was another hearing on March 18, 2020. Mr. Falkener had not cured his contempt; he had not paid any of the spousal support that he had been ordered to pay. There were further applications by Ms. Falkener for Mr. Falkener to sell his home in Alberta and to make disclosure of his financial records.
- [5] In my decision of that date, indexed at 2020 BCSC 539, I said:
- [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.
- [6] The parties reconvened on April 24, 2020, on an application by Ms. Falkener to find Mr. Falkener in contempt of my order of March 18, 2020. At that time, I was advised that the parties had signed the order arising from the March 18, 2020 hearing, but I did not see a copy of what the parties had submitted for entry.
- [7] I adjourned that hearing to May 8, 2020. By that date, the entered order from the March 18, 2020 hearing was filed on the court system. The order was jointly signed by both parties and submitted, and it was signed and entered by the registrar on March 25, 2020.

[8] I had not seen a draft or the entered copy of the order arising from the March 18, 2020 order before May 8, 2020. I made that clear. I said that the order did not reflect what my intentions were. I did not intend to suggest that if Mr. Falkener complied with the disclosure requirements that I had made on March 18, 2020 that he was therefore no longer in contempt. Counsel and I had many discussions during the hearing of April 24, 2020 and during the hearing of May 8, 2020 concerning the fact that the entered order, did not reflect my intention. That is why, in my reasons of May 8, 2020, I noted that Ms. Lang understood that Mr. Falkener was still in contempt of the substantive orders to pay spousal support to Ms. Falkener.

[9] This application is to vary the entered order, to correct the order that was signed by the registrar and entered on March 25, 2020, in accordance with Rule 15-1(18) of the Supreme Court Family Rules, B.C. Reg. 169/2009 that provides:

The court may at any time correct a clerical mistake in an order or an error arising in an order from an accidental slip or omission, or may amend an order to provide for any matter that should have been but was not adjudicated on.

[10] I accept that there are limited circumstances where the slip rule applies.

[11] These are unique circumstances, in that the order was not presented to me. They usually are. Although the registrar does have the authority to sign an order, I suspect that it was signed because it was filed jointly and because of the circumstances of the Courts being shut down because of COVID-19, it was not referred to me. Had I seen it before it was signed and entered, I would not have signed it, because it was not properly reflective of the order that I made.

[12] So, in the sense that the slip rule is intended to address accidental slips or omissions or matters not adjudicated upon, I find that this is, while unique, a circumstance where the slip rule ought to apply.

[13] Really, the difference in the orders is a matter of grammar and punctuation. It should not have been a list that the form of order took. It should have been in a different form, and the penalty for that contempt should have been noted as a separate paragraph. That, in my view, is a slip or an omission that is accidental and requires that it be amended to reflect my actual intention.

[14] I did not say, on March 18, 2020 that I was following the exact terms of the application, nor must I. I granted the order that was sought with regard to disclosure, but I did specifically say that if Mr. Falkener continued to not comply with the orders of the court, that he would, after 60 days be subject to a fine and a jail term. I gave him a further 60 days for him to cure his contempt. He has not done so. He has continued to lie to the court about what his assets are or what his abilities are to raise money.

[15] We have been here three times.

- [16] My concern is what I addressed in the May 8, 2020 reasons, that he comply with the orders of the court and pay the spousal support that he was ordered to pay. I did not grant a stay of the orders of Madam Justice Dillon and I already found him in contempt.
- [17] Despite the cases that are relied upon by Ms. Lang, they do not reflect the circumstances here. The circumstances here are that the order that was entered in respect of the March 18, 2020, hearing do not reflect my intention, and I have made that clear to the parties repeatedly.
- [18] I am reviewing the notice of application that Mr. Perry provided, and I am content that the order that is provided in Appendix A is properly reflective of the order that I made in Court on March 18, 2020. I will not sign the draft of it here. I do not think it is necessary for the parties to provide their signatures, because I am making the order that is made in Appendix A. I would ask, Mr. Perry, that you submit the order to the registry and have them ensure that it be referred to me for signature.
- [19] MR. PERRY: Very good, My Lady.
- [20] THE COURT: I am concerned that we are spending what ought to be Ms. Falkener's money on applications to the court, and I continue to use the order of special costs to encourage Mr. Falkener to make the payments that he is required to make and not come back to Court on many occasions, as he has. I will order that Ms. Falkener receive special costs of this application. Thank you.
- [21] MR. PERRY: Thank you, My Lady.
- [22] THE COURT: We will adjourn.
- [23] MS. LANG: My Lady, may I just say that Mr. Falkener has to come to Court when notices of application are filed. I just want to put that on the record.
- [24] THE COURT: Yes. Thank you. And --
- [25] MS. LANG: Thank you.
- [26] THE COURT: -- Ms. Falkener is entitled to special costs. Thank you.
- [27] MR. PERRY: Thank you, My Lady.
- [28] THE CLERK: Order in chambers.

"Gropper J."

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