
CANADA / JUDGMENT

Greene v. Greene

2011 BCSC 172

COURT

Supreme Court of British Columbia

DECIDED

10 February 2011

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2011 BCSC 172 Greene v. Greene

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Greene v. Greene,

2011 BCSC 172

Date: 20110210

Docket: E47138

Registry: Nanaimo

Between:

Sharon Anthea Greene

Plaintiff

And

Kenneth Leroy Greene

Defendant

Before: The Honourable Mr. Justice Greyell

Reasons for Judgment

Counsel for the Plaintiff:

J.A. Anthony

Counsel for the Defendant:

M.O. Screech

Place and Date of Hearing:

Nanaimo, B.C.

December 16, 2010

Place and Date of Judgment:

Vancouver, B.C.

February 10, 2011

- [1] The parties have brought cross-applications in this family law matter. The defendant seeks to vary the terms of an order (the "Order") made by Mr. Justice Wilson on April 10, 2008 ordering him to pay spousal support to the plaintiff in the amount of \$1,750 per month. He also seeks an order cancelling or reducing the arrears accrued under the Order.
- [2] The defendant says there has been a change in circumstances since the making of the Order and that he should no longer be required to pay spousal support.
- [3] The plaintiff seeks a number of orders in addition to dismissal of the defendant's application. She seeks an order for security for costs under Supreme Court Family Rule 22-1(6); security for monthly spousal support pursuant to s. 15.2(1) and 17(3) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.); and the production of documents.

BACKGROUND

- [4] The parties were married August 1, 1979. They separated in March 2005, the marriage lasting some 35 years.
- [5] The parties had three children, all of whom are now grown and self-supporting, although the plaintiff had claimed custody and support for the youngest daughter, Kendra, who was born April 11, 1989.
- [6] Following the breakdown of the marriage the plaintiff sought a divorce, spousal support and a division of family assets.
- [7] The matter ultimately came on for trial before Mr. Justice A. F. Wilson on January 17 and March 12, 2008. He issued detailed reasons April 10, 2008: see 2008 BCSC 426.
- [8] After considering all the relevant criteria, he ordered the defendant to pay spousal support in the amount of \$2,000 per month for 2007 and \$1,750 commencing January 1, 2008. He concluded a reduction in support commencing in 2008 was appropriate because the plaintiff would be earning more income commencing in that year and the defendant would be earning less investment income.

- [9] Mr. Greene operates Ken Greene Trucking Ltd. ("Greene Trucking"). The company hauls road construction materials. Mr. Greene operates a company-owned truck-trailer for this purpose. At one time the plaintiff worked for Greene Trucking and the parties split the income earned from its operations. Subsequent to their separation the plaintiff no longer was involved in the company. In the division of family assets Wilson J. ordered her to convey her shares to the defendant. The defendant's source of income is from Greene Trucking as well as pension and interest income.
- [10] The present application was brought June 28, 2010.
1. The Order of Mr. Justice Wilson
- [11] The portions of Wilson J.'s judgment which relate to the issues raised on the defendant's application are found at paragraphs 73-85:
- [73] Entitlement to maintenance is not in issue in this proceeding. In any event, I would have found Ms. Greene entitled to maintenance. As noted in paragraph 48, she has been disadvantaged as a result of the marriage and its breakdown. She thus has a valid claim to compensatory maintenance. She also has a valid claim to spousal support based on her need for such support to maintain a standard of living comparable to that before the separation, and comparable to that which Mr. Greene will be able to attain.
- [74] There is also no issue about the duration of maintenance. It is agreed that it should be payable for the five years until Mr. Greene achieves age 65. The issues are thus the quantum of maintenance, whether it should be retroactive to January, 2007, when Ms. Greene no longer received payments and benefits from the company, and whether it should be paid as a lump sum or as periodic payments.
- [75] As noted on Appendix B, Mr. Greene's income tax return for 2006 indicates that he had a total income of \$69,592. Of that, \$40,456 was employment income from K.G.T. Although some of the rest relates to investment income of Mr. Greene, or jointly with Ms. Greene, most of it appears to be income relating to his mother's estate. That income can properly be taken into account in determining his ability to pay spousal support.
- [76] Ms. Greene's tax return for 2006 is not available, however her T4 from Vancouver Island Powder Coating indicates an income in that year of \$15,405. In addition, she received income or benefits from K.G.T. of \$25,265. There is also some investment income in that year earned jointly with Mr. Greene. It thus appears that her income was in the neighbourhood of \$45,000.
- [77] The parties' incomes for 2007 are not known. On the 2007 Financial Statement for the company, the amount of administration wages is shown as only \$27,687, although that results in a net income for the company of \$48,276. In all previous years since 2001, except 2003, the amount of administration wages drawn has been such as to take the company into a small loss position. Even in 2003, the amount of the income was only \$5,673, not \$48,276 as in 2007. In the same year, from 2006 to 2007, the company was able to reduce the

shareholders' loan account to approximately \$8,000 and the deficit by approximately \$18,000. I thus conclude that Mr. Greene could have taken \$70,000 from the company in that year had he chosen to do so. As it is no longer shared with Ms. Greene, that amount would have been paid solely to him.

- [78] In addition, he would, presumably, still have the income from his mother's estate. From the statements of investment income and trust income attached to his 2006 tax return, that appears to have been in the range of \$17,000. There is no reason to expect that a similar amount of income would not have been received in 2007. There was also other interest income, either solely in his name or jointly in the name of himself and Ms. Greene, which presumably would also have continued in 2007. I thus estimate Mr. Greene's potential income in 2007 to be in the range of \$90,000.
- [79] In 2008, and subsequent years, I find that Mr. Greene will likely continue to be able to generate income to himself in the range of \$60,000 from the company. As noted in paragraph 24, I consider the evidence about a possible downturn in his income to be speculative, particularly in light of the increase in both revenue and income from previous years shown on the Financial Statement for the year ended February 28, 2007. However, I accept that Mr. Greene will have to use a substantial amount of his capital to either buy out Ms. Greene's interest in the family home, or to purchase other accommodation for himself. That is likely to use up all of the A2 account, and perhaps some of his other financial assets as well. I thus consider that his income from investment will likely decrease substantially. I thus consider \$10,000 to be a reasonable estimate of the amount of investment income he can expect to earn in 2008 and subsequent years. I thus consider his potential income for 2007 to be \$90,000, but for subsequent years to be \$70,000.
- [80] As to Ms. Greene, she received no income from the company in 2007. Her only income was from employment plus, presumably, some investment income. In her Financial Statement sworn September 27, 2007, she indicated that she expected to earn \$16,000 in 2007, and was hopeful that she would earn about \$24,000 in 2008. However, as noted in paragraph 13, I do not accept that estimate for her 2008 income, and conclude that \$29,000 is a reasonable estimate of her earning potential in 2008 and subsequent years.
- [81] I note that each party will have a substantial amount of R.R.S.P.s, each in the amount of \$370,000. I have not taken into account any potential income or drawings from those accounts.
- [82] I accept this is an appropriate case for retroactive spousal support, to cover the period after Mr. Greene cut off Ms. Greene's payments and benefits from the company. Specifically, I find that Ms. Greene had a need, and Mr. Greene had the ability to pay. I consider it was inappropriate of Mr. Greene to cut off the payments to Ms. Greene, particularly in the period after she lost her employment with Vancouver Island Powder Coating. Although dealing with child maintenance, as many of the factors are the same, I have considered *S.(L.) v. P.(E)* (1999), 67 B.C.L.R. (3d) 254 (B.C.C.A.), leave to appeal refused December 10, 1999; and *D.B.S.*

v. S.R.G. et al. [2006] 2 S.C.R. 231.

- [83] However, I do take into account that during 2007 Ms. Greene did have the use of the family home, without payment of expenses relating to it, while Mr. Greene was renting premises. I have calculated that there was a difference between the potential incomes of Mr. and Mrs. Greene in 2007 of approximately \$74,000. In order to equalize those incomes, spousal maintenance would be payable in the amount of approximately \$3,000 per month. However, in light of the fact that Ms. Greene had the use of the family home, while Mr. Greene was renting, that amount will be reduced to \$2,000 per month. The arrears of spousal maintenance for the year 2007 will thus be \$24,000.
- [84] In 2008 and subsequent years, the income discrepancy will be less, because of Ms. Greene's increased employment income, and Mr. Greene's decreased investment income. The difference between their incomes is likely to be in the range of \$46,000. I thus award spousal support in the amount of \$1,750 per month, commencing January 1, 2008. Unless there is a material change in circumstances justifying a variation, that maintenance will be payable up to and including the month of September, 2012, when Mr. Greene will reach the age of 65 years.
- [85] I note that this amount of spousal maintenance does fall within the amount as determined in accordance with the Draft Spousal Support Advisory Guidelines. However, under those Guidelines the award of spousal support would be indefinite in duration, as this marriage has been longer than 20 years. I do not consider that appropriate, as it is reasonable to expect that Mr. Greene will retire when he is 65. At that time, Ms. Greene will be age 61, and may thus still be capable of working. Further, Ms. Greene on this application seeks spousal support only until Mr. Greene reaches age 65, with the right of review at that time. That is appropriate, and there will be an order accordingly.

[Emphasis added]

- [12] In summary then, Wilson J. concluded that Mr. Greene could have withdrawn \$70,000 from his company, Greene Trucking, in 2007 and that he would have a further \$20,000 in interest and trust income and he therefore estimated Mr. Greene would have an income for 2007 of approximately \$90,000. He concluded Mr. Greene's income would decline in 2008 and subsequent years to \$70,000 per year. He dismissed Mr. Greene's concerns about a possible downturn in his income to be "speculative". He concluded Mr. Greene would continue to generate approximately \$70,000 in income to his retirement in September 2012 after which he ordered a review of the maintenance Mr. Greene was to pay.

2. The Application to Cancel / Vary Spousal Support

- [13] Mr. Greene's application is based on what he asserts is a material change in his circumstances since the Order. He says, at paras. 12 and 13 of his affidavit filed June 18, 2010:

12. With respect to my income, Mr. Justice Wilson was particularly struck by the increasing revenue by Greene Trucking. He noted that from 2005 through to 2007 the gross income of Green Trucking was as follows:
- (a) 2005: \$123,032.00
 - (b) 2006: \$131,800.00
 - (c) 2007: \$152,914.00
13. Since the judgment of Mr. Justice Wilson; however, the gross revenues of Greene Trucking have declined as follows:
- (a) Year ending February 29, 2008: \$147,426.00
 - (b) Year ending February 28, 2009: \$138,568.00
 - (c) Year ending February 28, 2010: \$ 95,110.00
- [14] Mr. Greene deposed that in 2009 he had a total income of \$33,400 and of that sum \$27,000 was drawn from Greene Trucking with the rest coming from Canada Pension Plan benefits. He deposed that since the Order was made there have been several significant developments: Hub City, his major client, had acquired three new tandem gravel trucks and hired three new unionized employees to operate the trucks. The last such position was filled in late 2008. As he is not a unionized employee, Mr. Greene is the last in priority to receive work from Hub City. The unionized employees are dispatched before he is called to work. He deposed the need for his services has "substantially diminished".
- [15] Mr. Greene says the effect of Hub City owning its own trucks was "not fully measurable" in 2008 as that company "had not really gotten into gear at that time".
- [16] Mr. Greene also deposed that the income taken from Greene Trucking in 2009 was a draw against a bonus account created for the financial year ended February 2009. He deposed that from the end of 2008 to February, 2010 he "took approximately \$2,250 per month from the company" and that he paid spousal maintenance of \$1,750 to the plaintiff leaving him with \$500 per month to live on.
- [17] Mr. Greene deposed that since February, 2010 "things have got worse since I have refrained from even taking a draw from the company."
- [18] In response to an assertion by Ms. Greene that he has chosen to "retire" and has not searched for alternate work, Mr. Greene filed an affidavit dated November 10, 2010, deposing that: he had made "strenuous efforts to find other work"; he had signed a purchase order with the City of Nanaimo that allows him to work for the City; and he has been employed at Island Aggregates in 2010 and is on the contractor list for both the Department of Highways and the Forestry Employment Service for both Nanaimo and Port Alberni. Nonetheless he maintains he and his company have been faced with a declining revenue "despite all these efforts".

DISCUSSION

- [19] The application brought by the defendant is an application to vary the Order: it is not in the nature of a review of the Order. The Order of Wilson J. was a permanent one subject only to change under s. 17 of the Divorce Act if there has been a material change in the circumstances. The Court of Appeal discussed the difference between a variation application and a review application in its recent decision in *Domirti v. Domirti*, 2010 BCCA 472, at paras. 33-36.
- [20] In *T.(T.L.A.) v. T.(W.W.)* (1996), 24 R.F.L. (4th) 51, the British Columbia Court of Appeal considered the proper test to be applied on an application to vary a maintenance order. After considering the decision of the Supreme Court of Canada in *Willick v. Willick* (1995) S.C.J. No. 72, 15 R.F.L. (4th) 201 (S.C.C.), Newbury J.A. stated at pp. 64 and 66:
34. ... Thus it appears that the formula enunciated by this Court in *Dickson v. Dickson* (1987), 21 B.C.L.R. (2d) 69 - that the change be "catastrophic, radical and unforeseen" - has been superceded by the less onerous formulation of "material change" adopted by the majority in *Willick* and B.(G.) c. G.(L.). Closer to the mark, perhaps, is the formulation given by Proudfoot, J.A. in *Carter v. Carter* (1991), 34 R.F.L. (3d) 1 (B.C.C.A.), where she stated that a court will vary a support order only where it finds a change that is "substantial, unforeseen and of a continuing nature.
- [21] Mr. Greene has the burden to demonstrate on the balance of probabilities his employment circumstances and his income have changed in a 'substantial, unforeseen and continuing nature'.
- [22] The test for a variation of a spousal support order is a strict one: *Willick*, at pp. 688-90; *Domirti*.
- [23] I am of the view the materials presented to the court in support of this application fall short of this requirement.
- [24] Mr. Greene has provided no corroborative evidence, apart from the averments in his affidavits that he has "strenuously" searched for alternate employment, to demonstrate his change in circumstances. The court should not rely on the simply assertion by a party they are "strenuously" searching without independent evidence to support such an assertion. To do so would allow many payor spouses to avoid the "strict" test required by the court to change a permanent court order.
- [25] The obligation on a payor spouse is to demonstrate he is exhausting all reasonable efforts to replace his lost income given his training, experience and circumstances in order to maintain his spousal support obligations. There are many examples where the court imputes income to a payor spouse where the court is not satisfied such efforts are being expended. For example, where a payor spouse may have decided to voluntarily retire. The court's response to such retirement has been to consider whether the decision to stop work was voluntary and whether the payor spouse has taken steps to replace his lost income:

Paton v. Paton unreported, September 25, 1995; Coultas J.; Callison v. Callison (1992), 40 R.F.L. (3rd) 451 at 454; and Smith v. Smith (1992), 39 R.F.L. (3rd) 445.

- [26] The question is, what income could the payor earn given his experience, training and circumstances. The payor must establish he/she has made "wholehearted" efforts to mitigate his change in circumstances - in this case the assertion of a material reduction in his ability to pay the spousal support ordered by Wilson J.
- [27] That is not to say the facts of this case suggest Mr. Greene has elected to voluntarily reduce his income or to retire. While he had indicated at one time in the proceedings before Wilson J. he intended to retire (para. 25 of Wilson J.'s reasons), he subsequently denied he had such an intention and Wilson J. dismissed Mr. Greene's potential retirement as "speculative".
- [28] As stated, Mr. Greene has an onus to establish he is unable to replace his income and that the income loss will likely be of a continuing nature.
- [29] There is no independent evidence of any steps taken by Mr. Greene to replace the income Mr. Greene says he and his company have lost as a result of the loss of hours with Hub City. He has produced no evidence from the latter company showing his decline in hours and earnings. He has not stated when he placed his company on the contractor lists with Nanaimo, the Ministry of Highways and Forestry or what, if any, income Greene Trucking has earned from these and any other sources. He has not indicated what other steps he has taken to secure employment or contracting work for his company. Mr. Greene deposed he has "been employed at Island Aggregates in 2010" but has provided no particulars of such employment including how much he earned, when such employment commenced, its duration and whether it is likely to continue.
- [30] In support of his application Mr. Greene produced financial statements for both himself and Greene Trucking. The financial statements establish the following net income:

Greene Trucking

February 29, 2008 year end gross sales

\$147,426.00

2008 Net Income

\$12,557.00

February 28, 2009 year gross sales

\$138,569.00

2009 Net income

\$40,010.00

February 28, 2010 year end gross sales

\$ 95,110.00

2010 Net income

\$35,843.00

Mr. Greene

2008 Income tax return

Income

\$28,000.00

Dividends

\$37,500.00

Interest

\$ 2,891.00

\$78,496.00

2009 Income tax return

Income

\$27,000.00

Pension

\$ 6,438.00

\$33,138.00

[31] While Mr. Greene's income is less than the income attributed to him by Wilson J., I am unable to say that Mr. Greene has demonstrated such change meets the test of being a material change or that or it will be of a continuing nature.

[32] Wilson J. reviewed the business of Greene Trucking at paras. 15-24 of his decision. He produced Appendix "A" to his reasons setting out the company's revenue and net income over the seven-year period 2001-2007. He concluded the revenue "has been remarkably consistent" (para. 17). After reviewing the financial information before him for 2008 he found (as noted above in para. 79 of his decision) that Mr. Greene would be able to generate income to himself of \$60,000 per annum.

[33] A change in circumstance must be one which has some measure of continuity: *Marinangeli v. Marinangeli*, 228 D.L.R. (4th) 376, 66 O.R. (3d) 40 (C.A.). One must assume, given the successful history of Greene Trucking and reasonably diligent efforts by Mr. Greene, that he stands a reasonable prospect of replacing the income he says he has lost as a result of lack of work from Hub City.

- [34] The fact that Greene Trucking gross sales declined from \$138,568 in the fiscal year ending February 2009 to \$95,110 in fiscal year 2010 does not meet the test that the change has a measure of continuity.
- [35] Further, this application is particularly of concern given the number and nature of the applications brought by Mr. Greene subsequent to the Order.
- [36] He made applications resulting in further Orders on June 4 and October 23, 2008, on April 7 and September 8, 2009. On April 7, 2009 Shabbits J. issued oral reasons for dismissing one of these applications (in which he dealt with some 14 separate issues). He stated in part:
- [6] In my view, what the plaintiff is seeking falls into three different categories. First, the defendant seeks to have decisions made by Judge Wilson either set aside or reconsidered. The defendant seeks to have some matters reconsidered with evidence that was not before Judge Wilson at all but which he says he has now available to him. The second category of issue is that the defendant seeks to have some matters decided that were not in front of Judge Wilson at all. They are, for example, issues that have arisen after the trial. The third category of issue is that the defendant seeks, at least to some extent, to have orders implementing what Judge Wilson ordered.
- [7] As to the first category, that is, as to issues relating to decisions made by Judge Wilson, I would reiterate what I said during argument. The trial in this proceeding has been heard. The law does not permit a second trial in this proceeding on matters that were decided by Judge Wilson unless, of course, a new trial is ordered by the Court of Appeal on either all or some of the trial issues. I, as a trial judge, do not have the jurisdiction in this proceeding to reconsider decisions made by Judge Wilson. I cannot hear the same issues, neither because a party says the wrong decision was made nor because a party says that there is now available additional evidence that was not before the trial judge that should lead to a different outcome. If a litigant wishes to have a trial decision reviewed or retried, or if a litigant seeks to have new evidence heard, the application must be made to the Court of Appeal.
- ...
- [15] Paragraph 14 relates to Mr. Greene's submission that Judge Wilson ought not to have ordered that he pay arrears of spousal maintenance to the plaintiff for the year 2007 in the sum of \$24,000. Mr. Greene submits that the evidence that he now has available to him demonstrates that he did not have the income on which that order was made and that the matter should be reconsidered. However, Judge Wilson did order that. I have no jurisdiction to make a different order. I have no jurisdiction to hear further evidence in respect of this matter and to reconsider whether or not the order was appropriate. The matter has been decided, and Mr. Greene's application to me in respect of that is dismissed.
- ...

- [28] Now, if there are to be any orders in respect of paragraphs 4, 10, or in respect of any other issues which, in fact, have not been concluded following Judge Wilson's orders, in my view, then should be dealt with at some later time. I do not invite that at all because I think that this litigation has gone on for far too long and those issues, I believe, are very minor.
- [29] Now, in saying that, I acknowledge that Mr. Greene is obviously dissatisfied with the outcome of this proceeding. He genuinely feels that he has suffered an injustice and he wishes to have the whole of this matter retried. However, the matter has been decided. There has been a trial. Judge Wilson has made his decisions. If it is to be reviewed, it has to be reviewed by the Court of Appeal, not by further applications to a different trial judge.
- [30] In my view, it is Mr. Greene's dissatisfaction with the trial result that is generating these applications in front of the court and not any real concern that Judge Wilson's orders are not being implemented, and it is for that reason that I decline to try to make any orders in connection with the few very minor matters that have not yet been finally resolved.

[Emphasis added]

- [37] I also note from correspondence attached as exhibits to the plaintiff's July 15, 2010 affidavit, the defendant advised the plaintiff's counsel on several occasions (he had changed counsel and was acting on his own behalf), the first such occasion being March 5, 2009, that he was intending "to apply to end spousal support because he is not working". This comment was, of course, before Shabbits J. issued the above noted reasons and heightens the court's concern Mr. Green has adopted a strategy to avoid his obligations under the Order. It has certainly caused me to look closely at the grounds upon which he has relied in seeking to vary the Order.
- [38] Given the circumstances of this case I am not satisfied the applicant has met the tests of establishing a material change in circumstances such as to warrant the review requested.
- [39] Accordingly, I dismiss the defendant's application to vary or cancel spousal support under the Order of Wilson J. and further dismiss the application to cancel or reduce the arrears of spousal support under that Order.

The Plaintiff's Applications

- [40] The subject matter of several of the plaintiff's applications arise from the fact that shortly before the parties separated Mr. Greene became the holder of a joint account with his mother (referred to by the parties as "the A-2 account"). The mother had died by the time of the trial. The plaintiff argued before Wilson J. that the value of the account should be taken into account in determining the defendant's "means" to pay spousal support. The account had a value of about \$560,000 at that time.

- [41] A claim had been made by Mr. Greene's sister that the defendant was a trustee of the account for their mother's estate in which she claimed an interest. At the time of the trial Mr. Greene apparently thought that the issue between he and his sister had been resolved. The court was advised Mr. Greene's share of the account would be approximately \$330,500.
- [42] It is clear Justice Wilson took this factor into account determining Mr. Greene's income:
- [6] That leaves the issues to be determined: the division of the family assets, and Ms. Greene's claim for spousal support. The claim for division of assets has been complicated by the fact that, shortly before the separation, Mr. Greene's mother, Emma Graf, died, and he became holder of what was a joint account with his mother, which has been referred to by the parties as "the A-2 Account". Subsequently, a claim was made by Mr. Greene's sister that Mr. Greene was not entitled to the beneficial ownership of that account, but that he held it in trust for the estate. That claim has now been resolved. It is agreed that the net amount in the A-2 account, after payment of Mr. Greene's sister's claims and other amounts payable with respect to the estate, is approximately \$330,500.
- [43] Subsequent to Wilson J.'s decision being issued, counsel for the plaintiff sought confirmation the account had been divided as described by the court, sought a "paper trail" of how the account was settled and a copy of the court order finalizing the settlement. Counsel for Mr. Greene did not reply to numerous requests for this information. (Mr. Greene was represented by different counsel at the time.) Ultimately, in March 29, 2009, after he had discharged his then counsel and he was acting on his own behalf, Mr. Greene advised plaintiff's counsel he was not going to settle the A-2 account with his sister.
- [44] Counsel for the plaintiff has made inquiries of counsel acting for Mr. Greene's sister as to the status of the A-2 account. What is apparent from this inquiry is that his sister is not satisfied with Mr. Greene's explanation as to the handling of the account since 2001 when the account was opened. The accounting his sister's lawyer has requested Mr. Greene provide has not been provided and accordingly the matter has not been settled.
- [45] In this proceeding, Mr. Greene, in response to the plaintiff's application, has filed two subsequent affidavits - dated November 10 and December 9, 2010 - for the purpose of attempting to persuade the court he has provided sufficient information to address the concerns raised by his sister's counsel and by the plaintiff. The plaintiff's counsel, Mr. Anthony, remains dissatisfied with the plaintiff's explanations as to the accounting of the A-2 account as does the sister's counsel.
- [46] I am not satisfied the accounting presented by Mr. Greene is a sufficient one. In any event, the persons who must be satisfied with Mr. Greene's accounting before the estate issue is settled in the end, are Mr. Greene's sister and her counsel. They have a number of unanswered questions as to Mr. Greene's administration of the account since its inception. The plaintiff is equally entitled to know the status of the account. It is a relevant matter in these proceedings and, in my view, she is entitled to the disclosure she is seeking.

- [47] The A-2 account played a role in Wilson J.'s determination of spousal support. How significant that role is will depend on the ultimate settlement with the sister and whether the amount he receives approximates the amount referred to by Wilson J.
- [48] Accordingly the defendant is ordered to produce to the plaintiff a running record of the Canaccord Account No. 186-191A-2 ("A-2") from January 1, 2007 to date (to the extent those records have not already been produced) including a record of the use of the funds transferred from and into that account and any other account(s) to which any such A-2 funds were transferred. This accounting will include any account with ScotiaBank or the Royal Bank of Canada.
- [49] I do not grant the plaintiff security for costs generally. However, given that Mr. Greene has not paid the costs ordered from the last two court appearances of April 7 and September 8, 2009 totalling \$1,490, I order that he forthwith pay such costs. He will not bring further proceedings in this matter until he has paid those outstanding costs. I order that before he brings any further application in this matter that he pay into court the sum of \$2,500 as security for the costs of such further application.
- [50] The plaintiff has received no spousal support payments from the defendant since April, 2010. She seeks an order the defendant secure and pay a lump sum as security for spousal support pursuant to Supreme Court Family Rule 22-1(6) and s. 15.2(1) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.).
- [51] The plaintiff has the Order registered with the provincial enforcement service. She is concerned the defendant is dissipating the A-2 account for his own use. The defendant maintains he is not and that he can provide a proper accounting for the A-2 account.
- [52] I am not satisfied at this time it is appropriate in this case to order security as requested. The plaintiff shall have liberty to reapply should, upon full disclosure of the A-2 accounts, she demonstrate the security of her spousal support payments has been placed in jeopardy.
- [53] The plaintiff is awarded costs of this application.

GREYELL J.

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Prepared on 26 October 2026 · Esheria