

CANADA / JUDGMENT

Hokhold v. Gerbrandt

2021 BCCA 325

COURT

British Columbia Court of Appeal

DECIDED

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2021 BCCA 325 A.N.H. v. L.D.G.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

A.N.H. v. L.D.G.,

2021 BCCA 325

Date: 20210902

Dockets: CA43916; CA43917

Docket: CA43916

Between:

A.N.H.

Appellant

(Plaintiff)

And

L.D.G.

Respondents

(Defendants)

- and -

Docket: CA43917

Between:

A.N.H.

Appellant

(Plaintiff)

And

L.D.G.

Respondent

(Defendant)

The judgment was updated on May 25, 2022.

Before:

The Honourable Madam Justice DeWitt-Van Oosten

(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated
June 23, 2021 (A.N.H. v L.D.G., Vernon Docket 45924).

The Appellant, appearing in person

(via videoconference):

A.N.H.

The Respondent, appearing in person

(via videoconference):

L.D.G.

Place and Date of Hearing:

Vancouver, British Columbia

August 10, 2021

Place and Date of Judgment:

Vancouver, British Columbia

September 2, 2021

Summary:

The appellant, A.N.H., seeks to consolidate three outstanding requests to proceed with applications for leave to appeal from orders made in contentious family law proceedings in the British Columbia Supreme Court. His notice of motion also seeks other forms of relief. Held: Application dismissed, without a determination of the merits. A justice of this Court has declared A.N.H. a vexatious litigant. His spousal support payments are in arrears. He has also failed to pay

costs that have been fixed and assessed against him. In the circumstances of this case, considered as a whole, it would bring the administration of justice into disrepute if this Court considered and resolved A.N.H.'s application on the merits while he continues to show disdain for court orders by failing to comply with their terms.

Reasons for Judgment of the Honourable Madam Justice DeWitt-Van Oosten:

Introduction

- [1] In May 2017, the appellant, A.N.H., was declared a vexatious litigant pursuant to s. 29 of the Court of Appeal Act, R.S.B.C. 1996, c. 77. A justice was satisfied that A.N.H. "habitually, persistently and without reasonable cause commenced vexatious proceedings" (s. 29).
- [2] Because of that order, A.N.H. requires leave before bringing or commencing proceedings in this Court against or "otherwise involving" the respondent, L.D.G., or any of her family members.
- [3] In a notice of motion dated July 23, 2021, A.N.H. seeks leave to file an application for leave to appeal an order pronounced in the British Columbia Supreme Court on June 23, 2021. That order, now entered, adjourned A.N.H.'s June 2, 2021, request for leave to file a notice of civil claim in the Supreme Court. It also dismissed an application that the presiding judge recuse himself from proceedings involving A.N.H. and L.D.G.. Finally, the order directed that the parties fix a date for continuation of one or more ongoing applications in the Supreme Court. I understand a continuation has since been set for October 2021.
- [4] At the hearing of the July 23 motion, adjourned from August 3, 2021, A.N.H. advised that he was not ready to address the merits of his proposed application for leave to appeal. For one, the reasons for judgment underlying the impugned order are not yet before this Court. Instead, he asked that his request to bring the application for leave to appeal be determined at the same time a justice of this Court decides whether he can also pursue two other (and outstanding) applications to commence appeal proceedings. The latter applications seek to challenge Supreme Court orders pronounced October 7, 2019, and October 20, 2020, respectively. The October 2019 order issued ex mero motu. The October 2020 order issued in response to requests for relief brought by A.N.H.. It is not clear to me that the parties have settled the October 2020 order. I am unable to locate an entered order in A.N.H.'s material. In any event, he asks that I consolidate his outstanding applications to bring appeal proceedings for purposes of a combined hearing.
- [5] In his notice of motion, A.N.H. also asks that this Court declare a reasonable apprehension of bias in the ongoing Supreme Court proceedings involving him and L.D.G. (Supreme Court File 45924), and order recusal of the judge who is seized of those proceedings. The motion furthermore requests the relief sought in a Supreme Court application dated September 14, 2020, which the same judge denied in October 2020. If I cannot grant this relief because a "conflict of interest arises or is identified in the hearing of this matter," A.N.H. suggests that I "make a referral to the Supreme Court of Canada." He does not cite any court rule, statutory

or jurisprudential authority allowing for such a referral.

- [6] Sadly, the requests before me form part of a long chronology of family law claims, civil actions and appeal proceedings that directly or indirectly arise out of past and ongoing disputes between A.N.H. and L.D.G. The litigation has subsisted for more than ten years. The chronology is too extensive to canvass in its entirety. However, I consider it necessary to summarize some of it to provide an explanatory context for my decision below. I will refer only to the parts of the chronology that I consider particularly germane to the issues before me.
- [7] In doing so, I will limit myself to claims that have arisen directly between A.N.H. and L.D.G. At present, there is a substantive appeal before this Court involving civil actions that A.N.H. commenced against judges involved in the family litigation and the federal and provincial Attorneys General: see 2019 BCSC 1106. The matters raised in that appeal, currently under reserve, are not properly before me. Consequently, I will not address them. Nor have I considered the specifics of those claims in this matter, other than to note that they form part of the larger context.

Background

- [8] A.N.H., a registered dentist, and L.D.G., a pharmacist, have been involved in high-conflict family litigation since 2009. They have two children from a common-law relationship, who are now 13 and 11 years of age. After a trial in 2012, Justice Cole of the Supreme Court granted sole custody of the children to L.D.G. and joint guardianship to both parents. He dismissed L.D.G.'s application to relocate with the children to Saskatchewan: 2012 BCSC 1313. He ordered that A.N.H. pay child support of \$7,900 per month and spousal support of \$9,000 per month: 2012 BCSC 1683. A.N.H. sought a review of the support orders in this Court; however, he later abandoned that appeal.
- [9] I note that in November 2018, the Supreme Court varied the support orders. The court reduced the child support obligation to \$4,224 per month effective November 2017. The obligation to pay spousal support was terminated effective August 2017. A.N.H. is currently obliged to pay L.D.G. \$6,000 per month. As I understand it, that payment covers his child support obligation and a contribution towards arrears. See 2018 BCSC 2012 at para. 174 and 2018 BCSC 2184 at paras. 14-15.
- [10] Approximately two years after the 2012 trial, L.D.G. obtained an order allowing her to relocate to Saskatchewan. Justice Cole granted that order and directed that the children's primary residence be with their mother: 2014 BCSC 1875.

- [11] In June 2015, A.N.H. appealed the primary residence order. At the material time, his support payments were in arrears (in the approximate amount of \$500,000). This Court declined to hear the appeal because A.N.H. did not provide a convincing explanation for the arrears. The Court concluded that it would bring the administration of justice into disrepute if A.N.H. received a hearing on the merits: 2015 BCCA 268 at para. 13.
- [12] A.N.H. later applied to reopen his appeal from the primary residence order. This Court dismissed the application: 2016 BCCA 159. Among other things, he remained in arrears "to a very substantial amount" (at para. 5).
- [13] In addition to the family law matters, A.N.H. filed two civil actions against L.D.G. and her mother in which he purported to be acting as the litigation guardian for both children. In those actions, he claimed that L.D.G. and her mother acted in breach of trust in connection with certain gold coins held for the children.
- [14] For reasons indexed as 2016 BCSC 1559, Justice Abrioux (then of the Supreme Court) struck the civil actions and awarded special costs to L.D.G. and her mother.
- [15] A.N.H. subsequently sought to appeal orders made by Justice Abrioux. Those filings resulted in four Court of Appeal files: CA43916, CA43917, CA43942 and CA43943.
- [16] In their original form, files CA43916 and 43917 challenged a decision by Justice Abrioux to deny A.N.H. an adjournment of the application to strike the civil actions. Files CA43942 and 43943 challenged the actual decision to strike.
- [17] In December 2016, Justice Newbury of this Court dismissed the applications for leave to appeal in files CA43916 and 43917 as "moot."
- [18] She stayed the appeals in files CA43942 and 43943, subject to an order for reinstatement. I understand that she did so, at least in part, because A.N.H.'s support obligations remained in arrears.
- [19] In May 2017, Justice Newbury declared A.N.H. a vexatious litigant under s. 29 of the Court of Appeal Act. Since then, he has been precluded from bringing or commencing any proceedings "in this court against, or otherwise involving the Respondent, L.D.G., or any of her family members, without leave of a justice".
- [20] The reasons for the vexatious litigant order are indexed as 2017 BCCA 216. At the material time, the majority of A.N.H.'s problematic litigation conduct had taken place in the Supreme Court. However, his conduct in this Court was also of significant concern. Justice Newbury found:
- [22] two factors that amplify the seriousness of his conduct in this court - the extreme pressure that it has put on [L.D.G] and the children; and the fact that [A.N.H.] insists on filing (usually very shortly before the relevant hearing) volumes - literally hundreds if not thousands of pages - of materials with every application, no matter how insignificant. Virtually every affidavit has attached to it other affidavits and their exhibits, with the result that any

substantive issues he might raise or response he might make, are simply lost in a sea of paper. No judge can digest such a stream of irrelevancies on a regular basis; and few litigants could afford to pay counsel to review such materials carefully. Certainly [L.D.G.] cannot.

- [23] It is these factors, together with his filings in this court, that lead me to conclude that [A.N.H.] has been using the judicial process in a manner calculated to divert attention from the real issues outstanding between the parties - his annual income, the amount of support he should pay, and his rights and obligations as a parent. Even [A.N.H.] admits that he is "tired" as a result of the litigation, and there are more than a few judges who feel the same.
- [21] In addition to the vexatious litigant order, Justice Newbury directed that the appeals from the order striking the breach of trust actions, CA43942 and 43943, "continue to be stayed pending further Order" (at para. 25). To my knowledge, there has not been an order for reinstatement.
- [22] Subsequent to Justice Newbury's ruling, A.N.H. was declared a vexatious litigant in the Supreme Court. Justice Abrioux made the declaration and ordered that A.N.H. not institute legal proceedings against L.D.G. or any members of her family without leave. His reasons for judgment are indexed as 2017 BCSC 1249.
- [23] In finding A.N.H. a vexatious litigant, Justice Abrioux took the following factors into account (at para. 43):
- the length of time over which A.N.H. has engaged in vexatious court-related conduct;
 - the number of applications he has filed in the Supreme Court, as well as requests to appear or reappear;
 - a habit of seeking adjournments and filing vast amounts of material at the last moment;
 - A.N.H.'s decision to commence and pursue the civil actions against L.D.G. and her mother even though he acknowledged that he had no legal basis to do so;
 - A.N.H.'s acknowledgment that underlying much of his conduct is an attempt to prove that both L.D.G. and the trial judge who granted permission to relocate to Saskatchewan have committed fraud; and,
 - the "additional hundreds, and at times thousands, of pages of materials filed in relation to various applications before the court."
- [24] I note that since the vexatious litigant order in the Supreme Court, the restrictions on A.N.H.'s ability to initiate proceedings in that court have expanded. A.N.H. is presently "enjoined from instituting any legal proceedings, on his own behalf or on behalf of others, in the Supreme Court of British Columbia, without first obtaining leave" from a judge from that court. See 2019 BCSC 1106 at para. 106 (emphasis added).

- [25] In November 2018, Justice Abrioux varied A.N.H.'s child and spousal support obligations (noted earlier). The next month, he considered a request by A.N.H. for leave to bring additional applications in the family litigation, including a relocation application. At that time, A.N.H. owed L.D.G. approximately \$56,000 in assessed court costs. L.D.G. was also seeking to have an additional \$132,303 in costs assessed by a Supreme Court registrar: 2018 BCSC 2184 at paras. 3-4. Justice Abrioux ruled that "subject to certain specific exceptions which relate primarily to the best interests of the children," A.N.H. should not be allowed to pursue further applications in the family litigation until he had "fully satisfied" the outstanding costs orders (at para. 5).
- [26] In November 2018, A.N.H. returned to this Court, filing a notice of motion under file numbers CA43916 and 43917 even though the applications for leave to appeal in those files had been dismissed two years earlier on the ground of mootness.[1] In the notice of motion, he sought permission to bring appeal proceedings from an October 26, 2018 decision by Justice Abrioux denying requests for various forms of relief.
- [27] In December 2018, A.N.H. filed another notice of motion under files CA43916 and 43917, seeking permission to bring an application for leave to appeal the November 14, 2018, ruling of Justice Abrioux varying his child and spousal support obligations. The variation application, although filed in the Supreme Court in 2014, was not resolved until November 2018.
- [28] Justice Fenlon heard both motions on December 14, 2018. She denied permission to proceed. She found that A.N.H. did not provide a reasonably founded or arguable case in support of his proposed appeals (unreported decision, at paras. 17-25).
- [29] On December 21, 2018, A.N.H. filed a motion to vary Justice Fenlon's order. He appears not to have pursued that motion. I understand that it did not proceed to a hearing.
- [30] In each of January 2019 and September 2019, A.N.H. filed notices of motion seeking permission to bring additional appeal proceedings against orders in the Supreme Court. It does not appear that either of those motions proceeded to a hearing.
- [31] In November 2019, A.N.H. filed a notice of motion seeking permission to pursue an application for leave to appeal an October 7, 2019 order by the Chief Justice of the Supreme Court assigning Justice Betton to case manage the family litigation. That motion was set for hearing on November 18, 2019. However, the hearing was adjourned. There is no indication of its having been rescheduled.
- [32] In November 2020, A.N.H. filed another notice of motion for permission to pursue appeal proceedings. This time, he sought to review an October 20, 2020, decision of Justice Betton. The October 2020 order denied A.N.H. leave to pursue various applications for relief in the Supreme Court. Justice Betton also declined to recuse himself from the family law proceedings.

- [33] The applications for relief, dated September 2020, included an application to cross-examine A.N.H.'s former legal counsel in the family litigation; an application to preserve and/or obtain access to certain investigative files held by the Royal Canadian Mounted Police; and an application to obtain and/or use certain audio recordings. There may have been other relief requested. It is not necessary that I capture it all here.
- [34] A.N.H. submitted to Justice Betton that his applications were necessary to facilitate a re-opening of his appeal from the 2014 relocation decision. He said they would also assist with various lawsuits brought by A.N.H. in the Federal Court of Canada and British Columbia Supreme Court. The relief would help him respond to applications initiated by L.D.G for increased support or otherwise, and to advance a claim of contempt against her. Finally, the applications, if successful, would produce information he considered relevant to his claims against judges involved in the family law proceedings.
- [35] Justice Betton declined to recuse himself on grounds that A.N.H. failed to identify any principled legal basis for the recusal: Oral Reasons for Judgment, October 20, 2020, Vernon Supreme Court File No. E45924 at para. 18.
- [36] He also denied leave to pursue A.N.H.'s various applications, primarily out of a concern that A.N.H. was attempting to use the family law proceedings "in an effort to discover or create a record of evidence for other proceedings" (at para. 21). The materials in support of the request for leave offered "no insight as to how the orders sought may be relevant to any existing or active application in [the family] proceedings" (at para. 21). Justice Betton noted at para. 6 of his reasons that since he assumed case management responsibility for the family litigation in October 2019, A.N.H. had filed "at least" 18 applications for permission to pursue relief.
- [37] In support of his November 2020 motion in this Court for leave to challenge Justice Betton's ruling, A.N.H. appeared before Justice Griffin on December 14, 2020. At the start of the hearing, A.N.H. sought an adjournment because the parties had not settled the October 20, 2020 order. Nor had A.N.H. filed a transcript of Justice Betton's reasons. Justice Griffin adjourned the motion, generally, but ordered that A.N.H. pay L.D.G's costs of the hearing forthwith.
- [38] Justice Griffin also gave notice to A.N.H. that based on his ongoing conduct, the Court might consider at a next appearance varying the terms of its vexatious litigant order to require that he not file materials with the Court without the assistance of a member in good standing of the Law Society of British Columbia.
- [39] Shortly thereafter, in December 2020, A.N.H. filed a notice of motion for a review of Justice Griffin's order by a division; however, it appears that he took no steps to pursue that motion and it has not proceeded to a hearing.

Present Application

- [40] That brings me to the notice of motion before me on August 10, 2021. I have summarized its main issues in paras. 3-5, above.
- [41] A.N.H. and L.D.G each represented themselves at the August 10 hearing. They appeared by video/teleconference. Unfortunately, we experienced some technical issues specific to audio associated with A.N.H.'s submissions. As a result, I was unable to hear some of the things he said.
- [42] However, the interruptions were brief and the issues with sound were brought to A.N.H.'s attention, allowing him to repeat his submissions if considered necessary. I am satisfied that I understood the nature of the requests before me, as well as his position in respect thereof. He also filed voluminous material in support of his motion. I have reviewed that material. I have also familiarized myself, generally, with the history of the family litigation, including related reasons for judgment in this Court and some of the decisions in the Supreme Court. (According to my count, there are approximately 20 published decisions from the Supreme Court that are in some way connected to the parties' family law disputes.)
- [43] A.N.H. prepared a written memorandum of argument in support of his motion. He also provided two affidavits. With exhibits, those affidavits consisted of 295 and 221 pages, respectively. Additionally, A.N.H. filed an extensive electronic book of enactments and case authorities, amounting to over 3,000 pages.
- [44] Following the August 10 hearing and consistent with the practice employed on other occasions, A.N.H. contacted the Court's registry in writing and asked for an opportunity to reappear before me and to file additional material. He said that in her materials, L.D.G "did not directly respond to the fundamental issues in [his] leave application, but instead decided to request that the Court order new sanctions against [him]". A.N.H. said he did not have an opportunity to "submit responsive materials to the new issues that [L.D.G] raised".
- [45] I declined to accept further material or submissions. The hearing had taken place and I had reserved judgment. Moreover, in my view, L.D.G's oral submissions were responsive to A.N.H.'s motion and generally consistent with her memorandum of argument and affidavit. L.D.G filed her material well before the hearing. A.N.H. also knew, from his appearance before Justice Griffin in December 2020, that there were ongoing concerns about the manner in which he has continued to pursue appeal processes, notwithstanding the controls in place through the vexatious litigant order. Justice Griffin made it clear to A.N.H. that he should ready himself to address the possibility of additional restrictions at his next appearance. L.D.G emphasized that point in her submissions. Her comments in that regard did not raise anything new.
- [46] I also note that following the appearance before Justice Griffin, A.N.H. filed an Amended Appellant's Memorandum of Argument in support of his request for review by a division (dated December 22, 2020). It forms part of the Court's record. It is apparent from the memorandum that he was aware of the potential for "further sanctions" arising out of his conduct, submitting that: "[His] attempts for justice to be done should not attract further

sanctions as contemplated by Griffin J." Again, the possibility of this happening could not reasonably have caught him off guard.

- [47] Finally, after L.D.G made her submissions on August 10, I allowed A.N.H. an opportunity to reply. Among other things, he addressed concerns expressed by L.D.G about the fact that he remains in arrears on his spousal support obligation and has not paid court costs awarded in her favour.

Parties' Positions

- [48] It is difficult to discern with any precision A.N.H.'s position specific to the motion before me. Although he said he did not want to address the merits of the relief sought, he also made submissions on those points, emphasizing, among other things, his allegations of bias in the ongoing Supreme Court family law proceedings. His written material and oral submissions move back and forth between procedural and substantive issues specific to the ongoing family litigation and the proposed appeals, and his complaints about long-past rulings and the conduct of judges. His affidavits on the motion repeat allegations of fraud, bias and obstruction by members of the judiciary. The affidavits are repetitive in parts and revisit issues that were factually and legally resolved many years ago. Unfortunately, the manner in which A.N.H. constructs his material does not lend itself to clarity. Moreover, by framing and articulating his motions as he does, A.N.H. further confuses an already complicated and entangled web of myriad trial court and appellate pleadings--a scenario that does not assist him in clearly identifying points of merit or in laying a relevant and supporting foundation for their advancement.
- [49] However, based on my review of the matter, I understand A.N.H. to say that it makes sense to consolidate his outstanding requests to commence appeal proceedings for the purposes of a single hearing because of their interconnectedness. He also says that each of the applications for leave to appeal and the other relief sought by him in the July 23, 2021 motion is meritorious. From his perspective, appellate intervention with the October 2019, October 2020 and June 2021 orders is necessary to "correct multiple gross subversions of the administration of justice."
- [50] A.N.H. contends that his requests to take fresh steps in his litigation involving L.D.G, including, potentially, one or more requests to vary his support orders, were wrongly determined to lack merit before he had a chance to explain them, and he has not received a fair opportunity to state his case. Nor has there been due consideration of his various applications for relief. He says Justice Betton's conduct in managing the family litigation (as well as other claims), has engendered a reasonable apprehension of bias. A.N.H. contends that instead of allowing a fresh inquiry into wrongs committed against him and his children, Justice Betton has denied leave to pursue relief with the intention of preserving the "injustices" of prior rulings. A.N.H. alleges that Justice Betton has done this by improperly characterizing proposed applications for relief as "collateral attacks" on prior rulings or attempts to gather information unconnected to the family litigation.

- [51] In response to the July 23 motion, L.D.G's starting point is that this Court should not hear A.N.H.. To consider the merits of his requests only serves to facilitate his ongoing vexatious conduct. That conduct includes inundating L.D.G. and the courts with frivolous and unsupported applications that improperly accuse her of breaching court orders, purposefully alienating the children from him and wrongfully denying access. It also includes filing materials and then not pursuing them or seeking last-minute adjournments. She says he overwhelms everyone involved with voluminous amounts of material, much of which is repetitive and irrelevant. L.D.G contends that A.N.H. is improperly using the family law disputes as a vehicle through which to gather information in support of other lawsuits (including his claims against judges). He is also doing everything he can to prevent hearings on applications that L.D.G is pursuing in the Supreme Court, including applications for contempt and increased financial support. She says he is intentionally obstreperous and the motion before me is another manifestation of a long-standing litigation pattern that wreaks havoc on her, on the children, and on the court system.
- [52] L.D.G has deposed that A.N.H. owes her approximately \$150,000 in unpaid court costs arising out of the Supreme Court, as well as unpaid costs ordered by this Court. He has not paid the costs ordered by Justice Griffin in December 2020 (unassessed). Her affidavit also attaches a document from the provincial Family Maintenance Enforcement Program, showing that A.N.H. remains in arrears on his support payments to the amount of \$141,538.38. I understand from A.N.H. that this amount consists predominantly of unpaid spousal support, with accumulated interest and penalties for non-payment. From L.D.G's perspective, A.N.H. should not receive permission to advance any appeal proceedings while in non-compliance with court orders.

Analysis

- [53] The July 23, 2021 notice of motion raises a number of issues, not the least of which is whether I have jurisdiction as a justice sitting in chambers to consider the relief sought by A.N.H. in paras. 3-4 of his motion. My preliminary view is that I do not. For one, the remedies sought in paras. 3-4, if available, appear to be ones that only a division of this Court would have the authority to grant after a full appeal and an assessment of the merits.
- [54] However, after considering the entirety of the circumstances before me, A.N.H.'s litigation conduct specific to the disputes involving L.D.G, and his vexatious litigant status in this Court, I need not resolve the jurisdictional questions. That is because I have decided to dismiss the July 23 motion without a determination on the merits. I would have exercised this discretion even had L.D.G not raised the possibility in her response to A.N.H.'s material.
- [55] Dismissing the motion in this manner is consistent with the approach taken by this Court in 2015 BCCA 268 and 2016 BCCA 159. It is also consistent with the approach taken by Justice Newbury in staying appeal files CA43942 and 43943 in December 2016.

- [56] In my view, it would bring the administration of justice into disrepute if I determined the relief sought in A.N.H.'s motion while he remains non-compliant with court orders, including his request for consolidation of his outstanding applications for purposes of a combined hearing.
- [57] In *Larkin v. Glase*, 2009 BCCA 321, this Court affirmed a discretion to refuse to hear or to dismiss proceedings for non-compliance with court orders even though the "disobedience" at issue may not extend to the order under appeal (at para. 31). That discretion is "based on the policy of this Court to protect the administration of justice by avoiding circumstances where the Court could be held in disrepute by assisting a party who has exhibited disdain for the judicial process" (at para. 31). See also *K.P.B. v. A.S.R.*, 2016 BCCA 382 at para. 37; *Bullock v. Bullock*, 2008 BCCA 162 at paras. 2-7; *Berry v. Berry*, 2002 BCCA 129 at paras. 1-4; *Arrocha v. Harrison*, 2019 ONCA 838, leave to appeal to S.C.C. ref'd, 39036 (23 April 2020).
- [58] In my view, A.N.H.'s litigation conduct in this Court, both before and after the May 2017 vexatious litigant order, and his failure to fulfill his court-ordered obligations, has "exhibited disdain for the judicial process." Moreover, he has been on notice since at least 2015 that a failure to meet his support obligations or to comply with other court orders may result in this Court declining to hear matters that he wishes to pursue, or in dismissing those matters without a determination on the merits.
- [59] In 2016, A.N.H. succeeded in having a Supreme Court contempt order set aside on appeal because of legal error; however, even then, the Court emphasized that he must comply with orders issued against him or "he will face sanction from the court": 2016 BCCA 6 at para. 36.
- [60] At the August 10 hearing, A.N.H. did not dispute that he remains in arrears on spousal support and that he has not paid court costs awarded in L.D.G.'s favour. He provided reasons for the unpaid amounts, including that he does not have the financial capacity to make any payments beyond what he is currently paying on a monthly basis (\$6,000). Moreover, some of the orders to which costs attach may be under appeal and, as I understand it, A.N.H. does not consider it right to pay those costs until any such appeals have been resolved.
- [61] In one of his affidavits filed in support of the July 23 motion, A.N.H. estimates that by the end of this calendar year, he will be in debt by approximately \$20 million. He deposes that L.D.G. "has received substantially all of [his] available monies for 2019 and 2020", leaving him "very little to live on". He says he owes over \$12.5 million in personal and corporate income taxes. He attached a 2020 personal income tax return with a total income of \$157,760.39. A T4 slip for 2019 is also included. It shows gross employment income for that year of \$247,354.33.

- [62] For substantially the same reasons provided in 2015 BCCA 268 at paras. 11-13, A.N.H.'s explanations for non-payment of his outstanding court-ordered obligations do not convince me that I should decline to dismiss his motion on grounds of non-compliance. Those explanations are functionally the same as previously put forward by A.N.H. and they were not found persuasive.
- [63] Importantly, as recently as 2018, Justice Abrioux comprehensively reviewed A.N.H.'s financial circumstances, including a reduced capacity to work, ongoing corporate debt and financial pressures, and personal and corporate tax liabilities: 2018 BCSC 2012. Ultimately, he imputed an annual income to A.N.H. of \$325,000. Although the imputation necessitated a re-calculation of A.N.H.'s arrears (reducing them by approximately \$400,000), Justice Abrioux refused to cancel the arrears altogether, finding that it would not be "grossly unfair" to require A.N.H. to meet his outstanding obligations (at para. 165). Justice Fenlon dismissed A.N.H.'s request for leave to appeal those conclusions, finding no merit in the proposed appeal.
- [64] Subsequent to the variation orders, Justice Abrioux prohibited A.N.H., with certain exceptions, from seeking leave to bring further applications in the Supreme Court family law proceedings until he had fully satisfied the outstanding costs orders arising from that litigation. As at the date of that prohibition, A.N.H.'s outstanding costs amounted to approximately \$188,000 (with \$56,000 representing already-assessed costs): 2018 BCSC 2184 at paras. 3-4.
- [65] A.N.H.'s financial circumstances, as tested, were not sufficient to prevent a tightening of the restrictions governing his access to court processes. I see no compelling reason to find that they do now. It is not for me, on a chambers application of this nature, to revisit A.N.H.'s finances and to make findings of fact about his present income capacity and liabilities, both personal and corporate.
- [66] In my view, to continue to hear A.N.H.'s requests to bring or commence appeal proceedings in matters involving L.D.G or her family members while he is non-compliant with court orders would bring the administration of justice into disrepute. This includes undermining the very purposes of the costs awards made against him. Costs in family law proceedings are meant, at least in part, to discourage frivolous claims, encourage early settlement and deter unnecessary or abusive proceedings: *Scott v. Scott*, 2007 BCCA 392 at para. 20. To continue to give A.N.H. appellate audience in the family litigation without requiring that he pay his fixed or assessed costs would render those awards meaningless.
- [67] In the material before me, A.N.H. has referred to the Canadian Judicial Council's Statement of Principles on Self-Represented Litigants and Accused Persons (2006) (online), which recognizes that the courts "have responsibility to ensure that self-represented persons are provided with fair access and equal treatment by the court". As he correctly points out, the Supreme Court of Canada endorsed the Statement of Principles in *Pintea v. Johns*, 2017 SCC 23 at para. 4.

- [68] I understand A.N.H. to view the current and, importantly, any further restrictions on his access to the courts as violating those Principles. However, the Statement of Principles also makes it clear that "[s]elf-represented persons, like all other litigants, are subject to the provisions whereby courts maintain control of their proceedings and procedures." Moreover, "[t]he ability of judges to promote access may be affected by the actions of self-represented litigants themselves."
- [69] In my view, this is one of those cases. A.N.H. remains in arrears on his support obligations and there is a substantial balance of unpaid court costs. It is also readily apparent to me, based on the materials filed for the August 10th hearing, and my review of the Court's record, that A.N.H. continues to use this Court's processes in a manner that not only overwhelms L.D.G as a self-represented litigant, but unnecessarily uses judicial resources: 2015 BCCA 268 at para. 13.
- [70] I appreciate that A.N.H. does not see it that way. However, objectively, the chronology I have detailed in these reasons and a review of the record supports the contrary view.

Disposition

- [71] Accordingly, and for the reasons provided, I direct that A.N.H.'s notice of motion dated July 23, 2021, his written memorandum of argument and the two supporting affidavits be marked as "filed." However, I dismiss the motion in its entirety.
- [72] I award L.D.G her costs of the motion, payable forthwith as assessed in accordance with Scale 1 of Appendix B to the Court of Appeal Rules.
- [73] In addition, pursuant to this Court's inherent jurisdiction to prevent abuses of process and of my own motion (see *Keremelevski v. Guisti Nairne*, 2020 BCCA 372 at para. 13), I order, effective the date of these reasons, that:
- A.N.H., or anyone acting on his behalf, shall not file or attempt to file, by any means whatsoever, any document in the Court of Appeal for British Columbia, including any application for leave to bring or commence proceedings, under files CA43916, CA43917, CA43942, or CA43943, or in any other matter that is subject to the May 2017 vexatious litigant order;
 - unless A.N.H. has first established, on application and to the satisfaction of the registrar or a justice of the Court of Appeal, that he has paid all outstanding fixed and assessed costs awarded against him in this Court and the British Columbia Supreme Court in proceedings involving L.D.G., her mother or any of her family members; and,
 - the Court of Appeal's registry staff are authorized to discard any document that is submitted for filing in contravention of this order.
- [74] The order in para. 73, above, does not apply to any notice of motion and supporting material filed by A.N.H. for the purpose of seeking a discharge or variation of the order made herein, pursuant to s. 9(6) of the Court of Appeal Act.

[75] For greater clarity, the May 2017 vexatious litigant order remains in place on the terms set by Justice Newbury.

[76] Finally, I direct that the Court's registrar prepare and enter an order to give effect to these reasons. I also direct the registrar to provide a copy of these reasons for judgment and the entered order to each of the parties.

"The Honourable Madam Justice DeWitt-Van Oosten"

[1] Some of the material provided by A.N.H. since the May 2017 vexatious litigant order has been accepted by this Court's registry for "filing". Other of the material has been received but not "filed". For the purpose of these reasons and for convenience only, I will refer to all of the material as "filings."

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