
CANADA / JUDGMENT

Huitson v. Huitson

2018 BCSC 491

COURT

Supreme Court of British Columbia

DECIDED

28 March 2018

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2018 BCSC 491 Huitson v. Huitson

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Huitson v. Huitson,

2018 BCSC 491

Date: 20180328

Docket: E46731

Registry: New Westminster

Between:

Niki Rae Huitson

Claimant

And

Craig Brian Huitson

Respondent

Before: The Honourable Mr. Justice Jenkins

Reasons for Judgment

Counsel for the Claimant:

F. Tromans

Counsel for the Respondent:

M. Smyth

Place and Date of Hearing:

New Westminster, B.C.

August 29 and 30, 2017

Place and Date of Judgment:

New Westminster, B.C.

March 28, 2018

Introduction

[1] This application by the claimant seeks an order under s. 213 of the Family Law Act, S.B.C. 2011, c. 25 [the "FLA"], that the respondent "pay a fine of \$5,000 to the claimant and in addition or in the alternative, the respondent pay all or part of the expenses incurred by the claimant as a result of the respondent's non-disclosure and incomplete disclosure".

[2] Further, the claimant seeks an order:

6. That if the respondent does not provide financial disclosure as required by the consent order of November 4, 2016 and the Supreme Court Family Rules, the Respondent's annual income shall be imputed to have increased by a minimum of 10 percent from the previous tax year, and child support and special expense contributions shall be calculated accordingly, with liberty to the Respondent to apply to vary his obligations to the children within 21 days of delivering of his financial disclosure to the claimant.

[3] Although there were many other substantive orders regarding parenting, child support, s. 7 special and extraordinary expenses and claims relating to family property sought in the Notice of Application issued by the claimant, all such claims have been resolved as a result of an agreement recently reached between counsel. All that remains for determination is the application for a fine and costs of this application.

[4] Section 213 of the FLA provides:

Orders respecting disclosure

213 (1) This section applies if a person

(a) fails to comply with

(i) an order for disclosure made under section 212 [orders respecting disclosure] or

(ii) a requirement to disclose information in accordance with the Supreme Court Family Rules or the Provincial Court (Family) Rules,

within the time or in the manner required by the order or Rules, or

(b) provides information that is incomplete, false or misleading.

- (2) In the circumstances set out in subsection (1), the court may do one or more of the following:
- a) make an order under section 212;
 - b) draw an inference that is adverse to the person, including attributing income to that person in an amount that the court considers appropriate, and make an order based upon the inference;
 - c) require a party to give security in any form that the court directs;
 - d) make an order requiring the person described in subsection (1) to pay
 - i. a party for all or part of the expenses reasonably and necessarily incurred as a result of the non-disclosure of information or the incomplete, false or misleading disclosure, including fees and expenses related to family dispute resolution,
 - ii. an amount not exceeding \$5,000 to or for the benefit of a party, or a spouse or child whose interests were affected by the non-disclosure of information or the incomplete, false or misleading disclosure, or
 - iii. a fine not exceeding \$5,000;
 - e) make any other order the court considers appropriate.
- [5] Section 212 of the FLA permits a court to order the disclosure of information in accordance with the Supreme Court Family Rules [the "Rules"]. The section uses the term "may" which provides for a discretion in the court as to whether or not to impose a fine.
- [6] This application was heard over parts of two court days during which counsel for the claimant expressed great frustration over the failure of the respondent to comply with the Rules and previous orders requiring the production of income information in particular. During part of the time period which counsel for the claimant expressed her frustration, the respondent was self-represented which likely exacerbated the issues related to non-disclosure.
- [7] I will briefly review the proceedings to date and summarize the situations which have led to this unfortunate application. Of particular concern to the claimant is that although several consent orders have been entered into between the parties on various topics, there have been systemic delays in disclosure on the part of the respondent which has resulted in the consent orders regularly being entered into at the last minute after the claimant has had to bring on applications.

Background

- [8] This action was commenced in June 2014, which is also the month which the parties separated.

- [9] The parties entered into a mediated settlement of issues relating to assets, debts and spousal support in May 2015. A trial had been scheduled for August 29, 2016, for five days during which parenting issues were hopefully to be resolved. A parenting regime was entered into shortly after the parties separated which provided for shared parenting based upon the respondent's work schedule (which was to work four days on, then have four days off). During the respondent's parenting time, the children were most often with the respondent's parents. The claimant's position has been that she should have primary care of the children, however, the shared parenting regime continued until August 2016.
- [10] Two significant consent orders were previously agreed upon and entered. The first was an order of Master Baker made February 24, 2016, regarding a s. 211 parenting report and costs related to the same. There had been disagreement between the parties up to that date on the need for a s. 211 report. However, an order for the production of a report was consented to, albeit there was no agreement to share in the costs of the same which was also in issue between the parties.
- [11] On September 30, 2016, the respondent provided to claimant's counsel his Notices of Assessment from the Canadian Revenue Agency for the years 2014 and 2015.
- [12] On October 2, 2016, the respondent delivered to the claimant a copy of a letter which had been addressed to him by his employer congratulating him on his promotion and stating his new salary. That letter was heavily redacted to delete considerable information regarding his new employment status and additional benefits he received.
- [13] The second consent order made on November 4, 2016, by Master Caldwell provided for:
- a) a detailed parenting regime with primary residence to the claimant and supervised parenting time for the respondent;
 - b) child support, and s. 7 special and extraordinary expenses;
 - c) the respondent to pay his one-half of the cost of the s. 211 report ordered by Master Baker within 14 days of the date of the November 6, 2014, order;
 - d) the respondent to deliver a sworn F8 Financial Statement including three recent pay statements;
 - e) authorizations for the claimant to contact the respondent's health care provider for the children; and
 - f) each party to exchange income tax returns and assessments on or before June 1 each year commencing in 2017.

- [14] Of note is that between March and mid-June of 2017, the respondent was without counsel and was self-represented until he retained his current counsel on or about June 14, 2017. Since his current counsel has been retained, substantial progress has been made regarding disclosure including delivery of a sworn F8 Financial Statement as ordered by Master Caldwell which was filed in June 2017.
- [15] Also, in July 2017, approximately nine months after having delivered the redacted letter from his employer, counsel for the respondent provided to counsel for the claimant an unredacted copy of the letter from his employer congratulating him on his promotion which revealed other benefits and payments which had been made available to the respondent.
- [16] Since July 2017, considerable progress was made such that the orders sought in the present Notice of Application filed June 6, 2017, have all been consented to save for those orders remaining in dispute and referred to in the opening paragraphs of these reasons, ie. the application that the respondent pay a fine under s. 213 of the FLA and costs.
- [17] At this point, I will add that this proceeding has been hotly contested by both parties since commencement and in the circumstances, the accomplishment of having achieved consent orders on very significant issue is, based upon judging many family disputes, remarkable. So far as I am aware, this is the first contested application to proceed to a hearing.

Law Relating to Section 213 of the FLA

- [18] The claimant provided two authorities which deal with the imposition of fines under s. 213 of the FLA.
- [19] The first is a decision of Punnett J. in *J.D.G. v. J.J.V.*, 2013 BCSC 1274, in which the claimant was 124 days past the date for production of a financial statement and 84 days past an order for production required by a JCC order. Regarding the application of s. 213, Punnett J. stated, starting at para. 27:
- [27] While an application to hold a party in contempt is still available, presumably in all but the most egregious cases an application under s. 213 should be made initially. This recognizes the seriousness of a contempt application with its more onerous procedural and evidentiary requirements. It also recognizes that the FLA adds to the arsenal for enforcement available to the courts rather than subtracting from the court's remedies.
- [28] Both the issue of non-disclosure and the severity of any order made under s. 213 will, as was the case under s. 92 of the FRA, depend on the facts. It should depend on the circumstances of the case, the degree of non-disclosure, the reasons for the late disclosure and when it is made. Likewise the need for the information in order to resolve the matter may be a factor. In addition, while in most cases disclosure may not be either complex or onerous there will be such cases where disclosure is. That should be recognized as well.

- [29] If for example an application is brought under s. 213 and the responding party makes disclosure prior to the hearing that may justify a lesser penalty. That said, the fact that the applicant had to bring the application should, notwithstanding the late production, be addressed both because of the expense incurred but as well the delay itself. The latter impedes the timely resolution of proceedings. In such a case the remedy brought might be a fine. If however production does not occur until after an application then an order for costs thrown away may be appropriate and depending on the circumstances, imposition of a penalty as well.
- [30] The court in my view should approach the application of the rule so that the significance of timely disclosure is brought home. It should not be taken lightly. Proper and timely disclosure will be enforced.
- [20] Punnett J. imposed a fine of \$500 pursuant to s. 213 and fixed costs thrown away inclusive of disbursements of \$1,500.
- [21] In *Cully v. Cully*, 2013 BCSC 2457, Fleming J. imposed a fine of \$2,500 where the respondent had failed to produce and file a complete financial statement more than 11 months after the due date: see paras. 30 and 32. The respondent had not prepared a response to the application and had provided no explanation for the delay: see para. 31.
- [22] The respondent submits that there has not been any actual extra costs incurred by the claimant as a result of the lack of disclosure and adds that he had consented to an order, all disclosure has been provided and no costs should be ordered against either party. Counsel for the respondent adds that now, having gone through an application for at most a \$5,000 fine and costs, it cannot have been "worth all of this".
- [23] The respondent has referred the court to the decision of *McDermott v. McDermott*, 2014 BCSC 1740, in which the respondent sought a fine where the claimant had failed to disclose financial information and had provided inaccurate and misleading information under s. 213 and its predecessor section under the Family Relations Act. Walker J. stated, at para. 97:
- [97] I am unable to accede to Mr. McDermott's claim for this relief even though I am mindful that non-disclosure or delayed disclosure of financial information has been described as "a costly impediment to the timely and just disposition of family disputes" and as the "cancer of matrimonial litigation" (J.D.G. at para. 1; *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 (S.C.)) and mindful that Ms. Harrington's conduct in respect of financial disclosure has prolonged the length of the case, including the trial, and has prevented the requisite analysis of the circumstances of the parties.

- [198] My decision not to make an order for payment is based on the following reasons. Some of Mr. McDermott's complaints about Ms. Harrington's conduct while the FRA was in force have been disposed of in prior rulings. . . Lastly, the trial of the issues in dispute has, subject to determination of costs and the contempt applications, come to a conclusion, so that an order made now could only be seen as punitive as opposed to one whose purpose was to "secure proper disclosure in a timely way": J.D.G. at para. 25.
- [24] While the facts in this case are similar with respect to the in dispute (with the exception of costs and fines), this case is distinguishable so far as the respondent's behaviour in this case has not yet been addressed. As such, I find it necessary to address his behaviour in these reasons.

Conclusion

- [25] There is no argument that the respondent was several months late in disclosing an updated financial statement as ordered by Master Caldwell in November 2016. As well, his disclosure of a significantly redacted letter from his employer which was ultimately delivered some nine months later through his new counsel delayed an earlier determination of his income and the support payments that would flow from the contents of the unredacted letter.
- [26] However, I have in mind that although there have been delays, full disclosure has now been made by the respondent. Also, after a review of all of the affidavit material before me, the bitterness expressed by both parties to this action has developed or exacerbated an extreme distrust in each other which has tended to make all matters contentious. In those circumstances, as mentioned previously in these reasons, it is all the more amazing that the parties have come to a resolution in almost all matters which have resulted in three comprehensive consent orders.
- [27] I conclude that there has been significantly late disclosure on the part of the respondent and that comparing the redacted letter from his employer to the full, unredacted letter indicates an effort to provide incomplete disclosure to limit his child support obligations. Those actions deserve rebuke. The delayed disclosure has resulted in some additional cost to the claimant, including preparation of the Notice of Application for this hearing.
- [28] I weigh against the late disclosure the cooperation which has led to the three comprehensive consent orders entered to date which has saved the parties considerable uncertainty and cost. As well, I note the issue of late disclosure was largely resolved by the respondent's retention of counsel.
- [29] In the circumstances, I assess a fine to be paid by the respondent to the claimant in an amount of \$750 and costs on Appendix B for a one-half day hearing.

"Jenkins J."

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Prepared on 27 October 2026 · Esheria