
CANADA / JUDGMENT

Hunt v. Hunt

2022 BCSC 1535

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Supreme Court of British Columbia

DECIDED

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2022 BCSC 1535 Hunt v. Hunt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hunt v. Hunt,

2022 BCSC 1535

Date: 20220831

Docket: E13345

Registry: Rossland

Between:

Debbie Arlene Hunt

Claimant

And

Darryll Clark Gary Hunt

Respondent

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Counsel for Claimant:

T.W. Pearkes

Counsel for Respondent:

B.R. Coyne

Place and Date of Hearing:

Nelson, B.C.

July 20, 2022

Place and Date of Judgment:

Rossland, B.C.

August 31, 2022

Table of Contents

Introduction. 3

Background Information. 3

Application to vary Hori Order. 5

Application for an Interim Distribution. 10

Application for appointment of a joint business valuator. 13

Summary. 14

Introduction

- [1] These applications are filed within a family law action in which Debbie Hunt is the claimant and Darryll Hunt is the respondent.
- [2] Mr. Hunt filed two applications which I heard together on July 20, 2022. In the first, filed May 16, 2022, he seeks an order pursuant to Rule 13-4(3) of the Supreme Court Family Rules, B.C. Reg. 169/2009 [the "Rules"], that the parties jointly retain a business valuator to conduct a business valuation of the parties' business, Pass Creek Enterprises Ltd. (the "Company"). The Company is the entity through which the parties operate a logging business on Woodlot 1766, a 600-hectare woodlot near Grand Forks, of which they are joint licensees (the "Woodlot").
- [3] Mr. Hunt also seeks in the first application an order for an immediate interim distribution of \$100,000, to be sourced from the Company's credit union account.
- [4] In the second application, filed May 20, 2022, Mr. Hunt seeks an order varying an interim order made by Mr. Justice Hori on June 4, 2021. In that interim order, Hori J. authorized Ms. Hunt to manage the Woodlot pending trial, further agreement of the parties, or further court order (the "Hori Order"). Mr. Hunt seeks to vary the interim order to provide that, notwithstanding Ms. Hunt's interim management of the Woodlot, no further harvesting activity will occur on the Woodlot, pending trial, further agreement of the parties, or further court order.

- [5] Ms. Hunt opposes all orders sought.
- [6] I will first provide brief background information. I will then consider the variation application, followed by the application for an interim distribution and finally the application for the appointment of a joint business valuator.

Background Information

- [7] The parties began living together in a marriage-like relationship in 1974, were married in May 1979, and separated in December 2015. Mr. Hunt is now 66 years of age, and Ms. Hunt is 65 years old.
- [8] Ms. Hunt filed her Notice of Family Claim on August 4, 2017. Mr. Hunt filed his response on September 1, 2017. Among the claims made in this case is for the division of family property, in particular, the Company and Woodlot.
- [9] The management of the Woodlot, and with it the Company, has been a contentious issue since the parties separated. Both parties filed applications seeking to be authorized to manage the Company and the Woodlot, to the exclusion on the other; those applications resulted in the Hori Order. As mentioned previously, the Hori Order gave Ms. Hunt exclusive management authority. The Hori Order provides as follows:
 - 1. The claimant, Debbie Arlene Hunt, is authorized to manage the family property woodlot until trial of this family law action or until further agreement between the parties or further order of the court.
 - 2. The claimant's authority includes the authority to sign permit applications, retain consultants, work with the Ministry of Forests, mills, contractors, and other third parties who may be required for the proper management of the woodlot.
 - 3. The claimant will manage the woodlot for the benefit of herself and the respondent.
 - 4. The revenues and expenses generated by the woodlot will continue to be processed through Pass Creek Enterprises Ltd. and the claimant may pay the expenses for the woodlot from funds currently held by Pass Creek Enterprises Ltd.
 - 5. The claimant will not charge or receive any remuneration from Pass Creek Enterprises Ltd. or from any revenues generated by the woodlot.
 - 6. The respondent will sign the Woodlot Licence 1766 Amendment Np. 2019.02 amending the north boundary within seven days of the date of this order, without prejudice to the respondent's right to claim a set off against the claimant's property division claim for the value of the timber lost by the boundary adjustment if he can establish to the satisfaction of the court that the boundary amendment was unjustified.
 - 7. The respondent will cooperate with the claimant in the management of the woodlot and not interfere with the claimant's management of the woodlot.

8. The net sale proceeds of any timber harvested from the woodlot will be distributed in accordance with the agreement made in writing between the parties or, failing agreement, the net sale proceeds will be held in trust by Pass Creek Enterprises Ltd. or the claimant's solicitors until an agreement on the distribution of the proceeds is reached or there is further order of the court.
 9. Neither party will access the funds in Pass Creek Enterprises Ltd. or the net sale proceeds of any timber sales for their personal use until further agreement between the parties or further order of the court.
 10. If the claimant does not currently hold signing authority of the accounts of Pass Creek Enterprises Ltd., the respondent will execute all documents as necessary to give the claimant signing authority on those accounts within seven days of this order.
 11. The claimant will record all of her activities in the management of the woodlot and will report those activities to the respondent on a monthly basis.
 12. The claimant will maintain detailed records of all revenues and expenses generated by the woodlot and will account to the respondent for those revenues and expenses on a monthly basis.
 13. The respondent will produce to the claimant all documents in his possession and control relating to the woodlot, including documents relating to revenues and expenses from January 1, 2016.
- [10] The action is scheduled to proceed to trial for eight days starting October 17, 2022.

Application to vary Hori Order

- [11] Mr. Hunt seeks to have the Hori Order varied to prevent any further harvesting of timber from the Woodlot, pending trial.
- [12] Mr. Hunt says that historically he was the directing mind and will of the Company, and responsible for its management, with Ms. Hunt performing some bookkeeping and reporting duties. Mr. Hunt emphasizes his own experience in forestry management. He says that the Woodlot has unique cultural and heritage features connected to the mining and railroading history of the region, and says that he has been a key proponent of the preservation of those features. The Woodlot is also used for public recreation, with users travelling on old rail grades.
- [13] The Woodlot is subject to a five-year cut control period, renewable every five years. The Hori Order was made in the context of the Woodlot approaching the end of the then existing five-year cut control period on December 31, 2021.

- [14] Mr. Hunt expresses concerns about Ms. Hunt's management of the Woodlot, and in particular the timber harvesting that occurred under her management under Cut Permit EE ("CP EE"), since the Hori Order was pronounced. He alleges it amounted to a "clear cut", which went far beyond targeting trees affected by invasive fir bark beetle species, and disregarded the heritage and historical values of the Woodlot.
- [15] Mr. Hunt refers to an inspection by a Natural Resource Officer for Compliance and Enforcement on December 3 and 10, 2021, in which concerns were expressed about the size of landings, dirty slash piles and improper harvesting of veteran trees, all in violation of the site plan. He also refers to a complaint received by the Ministry of Forests about an agreement with the Phoenix Interpretive Forest Society (the "PIFS") being breached by the manner in which the CP EE harvest was being conducted.
- [16] Due to his concerns, Mr. Hunt retained a registered professional forester, Stuart Deverney, to assess the state of the Woodlot and the CP EE harvest. Mr. Hunt relies on an April 2022 report written by Mr. Deverney, in which he identifies a number of issues with the manner in which the harvest was conducted, and provides recommendations for future harvesting in the Woodlot.
- [17] Mr. Hunt filed the variation application because Ms. Hunt intends to commence another round of harvesting under a new cut permit obtained in January 2022, Cut Permit FF ("CP FF"). He opposes any further harvesting of the Woodlot pending the resolution of their family law case.
- [18] Ms. Hunt says in response that she was granted exclusive management authority under the Hori Order because of Mr. Hunt's failure to effectively manage the Woodlot during the preceding five-year cut control period. She says that she inherited a situation in which approximately 4000 cubic metres of timber had to be harvested by December 31, 2021, and many trees were damaged by Douglas Fir beetles.
- [19] Ms. Hunt says that she has managed the Woodlot effectively and complied in all respects with the Hori Order. She says that the harvest was challenging due to the time pressure of having to cut so much timber in a short period of time, and the amount of beetle damaged wood on the Woodlot.
- [20] In applying to vary the Hori Order, Mr. Hunt relies on s. 91(1) of the Family Law Act, S.B.C 2011, c. 25 [FLA]. It provides as follows:

Temporary orders respecting protection of property

91(1) On application by a spouse, the Supreme Court must make an order restraining the other spouse from disposing of any property at issue under this Part or Part 6 [Pension Division] until or unless the other spouse establishes that a claim made under this Part or Part 6 will not be defeated or adversely affected by the disposal of the property.

- [21] Section 91(4) provides that "despite section 215(2), the Supreme Court may change, suspend or terminate an order made under this section." In other words, it is not necessary for the applicant to show a change in circumstances for the court to vary a s. 91(4) order.
- [22] The Hori Order was made as the Woodlot was approaching the end of the then existing five-year cut control period on December 31, 2021. Mr. Justice Hori's decision makes clear that it was commonly understood that, if the parties did not harvest 5,000 cubic metres of unused cut volume by that date, they would not be able to roll that volume forward into the next cut control period, and would lose the value of the asset. The parties were required to take a number of steps to be able to harvest that timber, including consulting with First Nations, obtaining a cutting permit from the Ministry, and retaining contractors to do the work, all before December 31, 2021. The estimated value of the timber was \$450,000.
- [23] As set out in Hori J.'s unpublished reasons for decision, both parties indicated that they intended to take the steps necessary to harvest the timber, and doubted the other party's ability or willingness to do so.
- [24] Justice Hori stated at paras. 16-18:
- [16] It is clear that the parties cannot work together to manage the operations of the Woodlot. Neither of them wishes to work together.
- [17] It is of extreme importance that steps be taken expeditiously to fulfil the requirements for the harvesting and processing of the unused volumes of timber before December 31, 2021. The evidence is clear that there are a number of steps that must be undertaken before regulatory approval is given for the harvest and that each step will take some time.
- [18] Therefore, time is now of the essence in moving this process forward. Therefore, in these circumstances, I find that it is necessary and expedient to authorize one party to assume the responsibility of ensuring that the timber harvest is completed on time.
- [25] Justice Hori explored both parties' positions, and found, at para. 20, that the evidence before him established that Mr. Hunt had not effectively managed Woodlot operations during the existing cutting period. He noted at para. 21 that Mr. Hunt appeared to treat the Woodlot as his own personal asset, without regard for Ms. Hunt's interests. At paras. 23-25, Hori J. held that Mr. Hunt made unreliable representations to the court.
- [26] For all of these reasons, Hori J. held at para. 26 that he was not confident that, if Mr. Hunt was given the authority to manage the Woodlot, he would do so effectively and with the required urgency. Conversely, at para. 27 Hori J. held that, while Ms. Hunt had less experience and knowledge than Mr. Hunt, he had more confidence she would take on the responsibility with the urgency it required, and would record her activities so that Mr. Hunt and the court could review the actions she has taken.

- [27] I am not persuaded that in the circumstances it is appropriate for me to exercise my discretion to vary the Hori Order, as sought by Mr. Hunt. Justice Hori rendered a considered judgment, in full knowledge of the parties' positions. He concluded that it was appropriate for Ms. Hunt to be given authority to manage the Company and the Woodlot, because he believed she would ensure the timber was harvested before the December 31, 2021 deadline.
- [28] That is precisely what Ms. Hunt did, as authorized by the court.
- [29] In the present variation application, Mr. Hunt rehashes some of the same concerns about Ms. Hunt's lack of experience and expertise that he raised before Hori J. Justice Hori considered and rejected those concerns, and I do not consider it appropriate to revisit them on a variation application.
- [30] Under the Hori Order, Ms. Hunt is required to record her management activities monthly and report those activities to Mr. Hunt on a monthly basis. Mr. Hunt says that Ms. Hunt has not complied with those obligations. The evidence does not substantiate that assertion. Ms. Hunt has provided Mr. Hunt with monthly reports setting out her management activities, and has responded to his emailed requests for further information.
- [31] Mr. Hunt disagrees with the manner in which the 2021 harvest was undertaken. The concerns he raises are not significant enough, in my view, to require that the Hori Order be varied to pause all harvesting activity at this time. Mr. Hunt does not appear to appreciate that it was his failure to effectively and efficiently manage the Woodlot that created the time pressure and extent of the beetle damage that rendered the CP EE harvest challenging, and which likely led to some of the concerns he has identified. I do not accept that irreparable harm is likely to be done to the Woodlot in the few months before trial by Ms. Hunt continuing to manage the Woodlot, including deciding whether and how to harvest timber under CP FF.
- [32] In considering the nature and extent of the issues raised about the CP EE harvest, I note that the Inspection Report relied upon by Mr. Hunt states "[t]here were some issues noted, however at this time it is a compliant inspection". In other words, the issues identified by the Natural Resource Officer were not sufficiently serious to result in the harvest being held to be non-compliant. So far as the public complaint about an alleged breach of an agreement with the PIFS, Mr. Hunt is a member of that organization, and a letter from him to other members of PIFS, dated April 4, 2022 (there is another slightly different version, dated April 3, 2022, also in evidence), clearly shows that he has complained to them about Ms. Hunt's harvesting practices, and asked them for their support in challenging them.
- [33] Mr. Deverney's report does indicate that he believes there were some problems with the harvest. Among other things, he noted that the site plans for retention of veteran trees were not complied with. Mr. Deverney wrote that one of the reasons for the problems he observed was:

The 'time crunch' imposed by trying to meet cut control objectives, especially when trying to harvest approximately 5 years of allowable cut in 2-3 months, at the time of year when logging and road conditions are traditionally at the worst they could be. Any delays or adverse weather conditions further reduced the time available to meet the cut control objective, further increasing the pressure 'to get things done before December 15, 2021'.

- [34] Ms. Hunt questions Mr. Deverney's qualifications and independence, and the admissibility of his report. Those are matters to be determined at trial, when Mr. Hunt seeks to introduce the report. It is not necessary for me to consider them now, for the purposes of this application.
- [35] The trial of this matter is scheduled in only two months. Given how soon the trial is scheduled to occur, I believe it is better to maintain the status quo established under the Hori Order, which is that Ms. Hunt has full authority to manage the Company and Woodlot in accordance with the terms of the Hori Order. Clearly, in doing so, she must comply with any applicable forest and land management requirements. Any concerns with respect to how she has exercised that authority can be addressed at trial, with the benefit of a full evidentiary record.
- [36] Considering this issue as a whole, I am not persuaded that it is necessary to vary the Hori Order to preserve the family property at issue. Mr. Hunt's claim under Part 5 of the FLA will not be defeated or adversely affected by Ms. Hunt continuing to have exclusive authority to manage the Company and Woodlot pending trial.
- [37] The application to vary the Hori Order is dismissed.

Application for an Interim Distribution

- [38] Mr. Hunt applies for an interim distribution pursuant to s. 89 of the FLA. In his notice of application he sought \$100,000, but in oral submissions reduced the amount sought to \$50,000.
- [39] Mr. Hunt says there are \$374,560.44 in funds currently held in the Company's chequing account, earned from the proceeds of the recent timber harvest. Those funds are held in trust pursuant to the Hori Order, with neither party able to access them, pending agreement or court order. Mr. Hunt says that he needs an interim distribution to fund ongoing litigation expenses, including the application to vary the Hori Order, and to prepare for trial.
- [40] Section 89 of the FLA provides:

Orders for interim distribution of property

89 If satisfied that it would not be harmful to the interests of a spouse and is necessary for a purpose listed below, the Supreme Court may make an order for an interim distribution of family property that is at issue under this Part to provide money to fund

- (a) family dispute resolution
- (b) all or part of a proceeding under this Act, or
- (c) the obtaining of information or evidence in support of family dispute resolution or an application to a court.

[41] Mr. Hunt relies upon McKenny v. McKenny, 2015 BCSC 1345 [McKenny] for the criteria an applicant must establish to obtain an interim distribution under s. 89. At paras. 56-57, Fitch J. summarized the applicable principles as follows:

[56] With respect to the claim for an interim distribution of family property, the authority for such an order may be found in s. 89 of the FLA. This section provides that a court may make an order for an interim distribution of family property if satisfied that it would not be harmful to the interests of the spouse and is necessary to provide money to fund family dispute resolution, all or part of a proceeding under the Act, or to obtain information or evidence in support of a family dispute, resolution or application to a court.

[57] The claimant correctly notes that the order sought by the respondent is extraordinary in nature and must be assessed carefully. The test governing interim distribution of family property has two components:

- 1) The applicant must show an advance is required to mount a challenge to the other spouse's position at trial; and
- 2) The applicant must show that the advance or payment on an interim distribution basis will not jeopardize the other spouse's position at trial.

[42] Ms. Hunt cites I.F. v. R.J.R., 2015 BCSC 793 at para. 192 [I.F.] for the purpose of an interim distribution:

[192] The blunt purpose of s. 89 is to assist economically disadvantaged spouses to access justice in matrimonial disputes; it is meant to help level the litigation playing field that is so often skewed when one spouse controls all or the majority of the wealth and assets. Application of s. 89 calls for a purposive interpretation, where the need of the applicant spouse to receive an interim distribution and the potential entailing harm to the other spouse are evaluated contextually with an eye on the larger objectives endorsed by the FLA.

[43] Mr. Hunt's application for an interim distribution founders at the first component of the test set out in McKenny. He has not shown that an advance is necessary for him to mount a challenge to Ms. Hunt's position at trial. Mr. Hunt has not provided any evidence of his legal expenses to date, or his anticipated legal budget to take this matter to trial. While the absence of such evidence may not be fatal, it is certainly the preferable approach to provide it, and it may be necessary in order for the court to have sufficient evidence that an interim distribution is necessary: I.F. at para. 200.

- [44] Mr. Hunt filed an updated Form F8 on July 14, 2022. It indicates that he continues to be employed, and to receive pension income, with a total income after adjustments of \$59,802.88. He acknowledges he may earn more than Ms. Hunt, but says the difference could hardly be characterized as significant. His financial assets include a Q Trade account with a value of \$104,167.45. His pensions and RRSPs total \$227,723.98, and he has been able to make RRSP contributions post-separation. Mr. Hunt's Form F8 also indicates that parties disposed of a property at Morrissey Creek in May 2021, at a value of \$173,833.09, with the funds divided equally between the parties. All of this tends to indicate that Mr. Hunt does not need an interim distribution in order to take this matter to trial.
- [45] I accept that there are sufficient funds in the Company to finance the interim distribution sought, and likely to do so without prejudice to Ms. Hunt. But Mr. Hunt's evidence is simply insufficient to establish that he is an economically disadvantaged spouse who needs an interim distribution to finance this litigation, or to achieve a fair distribution of family property.
- [46] The application for an interim distribution is dismissed.

Application for appointment of a joint business valuator

- [47] Mr. Hunt applies, pursuant to Rule 13-4(3), for an order requiring the parties to retain the services of one of two named business valuers, to conduct a business valuation of the Company. He seeks related procedural orders to ensure the valuator appointed has access to the necessary information, with the costs of the valuation to be borne by the Company.
- [48] Ms. Hunt opposes the orders sought. She submits that the valuation of the Woodlot, not the Company, is the primary task, and that neither of the proposed valuers have any expertise in that area. The proposed valuers have advised that they would have to rely on the opinion of another expert or the parties' agreement on the value of the Woodlot.
- [49] Ms. Hunt also submits that she continues to hold out the hope that the parties will be able to operate the Company and Woodlot jointly, in which case no valuation would be required. If a valuation is required, the persons proposed are not the right people to do that.
- [50] In my view, it is necessary that a business valuator be appointed to provide a valuation of the Company and the Woodlot. The prospects of the parties being able to operate the Company and Woodlot together seem dim on the evidence before me. One of them is likely to going to have to buy the other out, and, unless they can agree on its value, they will need a third party valuation in order to do so.
- [51] It is unfortunate that neither of the valuers proposed has expertise in valuing woodlots. But they both propose methods to overcome this, which would involve obtaining the opinion of an appraiser or registered professional forester. This would seem to be the best the parties can do, in the absence of Ms. Hunt proposing any alternative valuers with the requisite expertise.

- [52] I therefore order the parties to jointly retain the services of either Michael Smith of BDO Canada LLP (Kelowna) or Derek Saunders of Spence Valuation Group Inc., or another person agreed to by the parties, to conduct a business valuation of the Company and the Woodlot.
- [53] The business valuator retained shall have the authority to retain an additional expert to assist in valuating the Woodlot.
- [54] The business valuator retained shall advise the parties in writing what documents they require to conduct the valuation of the Company and the Woodlot.
- [55] The parties shall provide such documents as may be requested by the business valuator, within five (5) business days of such requests being made.
- [56] The costs of the business valuation, including of an additional expert to assist in valuating the Woodlot, will be borne by the Company.
- [57] I appreciate that there is little time left for a valuation to be conducted prior to trial. Should any further directions be necessary, such as abridging time limits, the parties are at liberty to apply.

Summary

- [58] The applications to vary the Hori Order and for an interim distribution are dismissed. The application to appoint a business valuator is granted, on the terms set out above.
- [59] Should the parties be unable to agree with respect to costs, they may request a brief hearing to address that issue.

"Lyster J."

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