

CANADA / JUDGMENT

I.J. v. J.A.M.

2013 BCCA 430**COURT**

British Columbia Court of Appeal

DECIDED

29 August 2013

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2013 BCCA 430 I.J. v. J.A.M. COURT OF APPEAL FOR BRITISH COLUMBIA Citation: I.J. v. J.A.M., 2013 BCCA 430 Date: 20130829 Docket: CA039932; CA040433; CA040653; CA040017 Docket: CA039932; CA040433; CA040653 Between: I.J. Appellant (Plaintiff) And J.A.M., J.M., G.S., J.S., T.B. Respondents (Defendants) Docket: CA040017 Between: I.J. Appellant (Plaintiff) And J.A.M., J.M., T.B. Respondents (Defendants) Restriction on publication: The Supreme Court of British Columbia imposed a publication ban in this case on any information that could disclose the identities of the parties. Before: The Honourable Mr. Justice Frankel (In Chambers) On appeal from: Supreme Court of British Columbia, April 12, 2012: I.J. v. J.A.M., 2012 BCSC 519, Vancouver Registry S117157 June 18, 2012: I.J. v. J.A.M., 2013 BCSC 892, Vancouver Registry S113392; January 13, 2013: I.J. v. J.A.M., 2013 BCSC 270, Vancouver Registry S117157 Oral Reasons for Judgment Acting on her own behalf: I.J. Counsel for the Respondents, J.A.M., J.M., T.B.: P.M. Pulver and M.E. Tweedie Counsel for the Respondents, G.S. & J. S.: D.W. Pangman Place and Date of Hearing: Vancouver, British Columbia August 29, 2013 Place and Date of Judgment: Vancouver, British Columbia August 29, 2013 Summary: Applications brought in chambers for publication bans, initialization of the styles of cause, and sealing of this Court's files. Orders of that nature had been made in the proceedings in the Supreme Court of British Columbia. Held: (1) the jurisdiction of a chambers judge to issue publication bans and sealing orders was doubted; (2) as in criminal matters, publication bans endure and continue to operate in respect of any appeal taken from the decisions in which the bans were originally issued; and (3) the styles of causes having been ordered amended (i.e., initialized), those styles of cause apply to the appeals.

- [1] FRANKEL J.A.: With respect to the applications for publication bans and sealing orders, as I indicated, I have some reservations as to whether a judge of this Court sitting in chambers can grant those applications. I am aware of the one case, that was included in the material, from a number of years ago by Mr. Justice Braidwood--Dr. X v. Southam Inc., 2003 BCCA 647 (Chambers)--that may well be distinguishable. There are, at least to my knowledge, no other authorities that deal with this issue, in particular the jurisdiction of a judge in chambers. I note that Mr. Justice Braidwood in his reasons for judgment does not refer to the Court of Appeal Act, R.S.B.C. 1996, c. 77. Indeed, what he granted was an interim injunction which may well be something that a chambers judge has the authority to do given s. 10(2)(b) of the Court of Appeal Act.

- [2] In terms of where we are today, in the proceedings below there have been, in respect of all of the matters that are before me, orders banning the publication of the names of the parties and any information that would disclose their identities. Those orders also include an order that the styles of cause of the various actions be amended to replace the parties' names with initials. In my view, and it has been subject to limited argument today, the styles of cause are now initialled and I would direct that the styles of cause in these matters in this Court be as per the order of Mr. Justice Burnyeat, that they be by initials, and I will take steps to draw this to the registry's attention.
- [3] In terms of the publication bans, at the moment I am of the view that they endure and continue to operate in respect of any appeals taken from the decisions in which the bans originally made. The authority for that is *R. v. V.K.*, (1991) 68 C.C.C. 3rd 18 (B.C.C.A.), which, although a criminal case, in my view, is simply an application of the well-known rule and doctrine that a court order is valid until it is set aside and, therefore, has to be respected. It certainly would be open to Ms. J., as I understand she wishes to do, to ask that those bans be set aside, but at the moment they exist and, therefore, there is no need for me to engage in what might be the interesting academic exercise of deciding whether a judge in chambers could order a publication ban other than, perhaps, an interim ban until the matter could be heard and decided by a division.
- [4] There is also the question of the request by the respondents to seal this Court's files in relation to the action which has generated three appeals. The order in the court below contains the following term: "all court files and materials in this action be sealed". Whether that applies to this Court's files is another interesting question, and whether a judge in chambers as opposed to a division could make a sealing order with respect to this Court's files is, in my view, an outstanding matter. I do not think there is any need for me to deal with that today given my view as to the extant publication bans and a requirement that the styles of cause in this Court be in initials as they are in the court below.
- [5] If the respondents wish to pursue the matter of a sealing of this Court's files, then they will have an opportunity to do so next week when the appeal in file CA040017 comes on for hearing before a division. It would also be open to the respondents to apply in respect of the other files at some later date. Should they wish to do so, I would suggest that further research be done into the question of the application of the ban in the Supreme Court to this Court's files. It is an interesting question whether a judge of the Supreme Court can make an order with respect to the files of this Court. That may or may not be the case, but if it is, then it would apply. If it does not apply, then there is the question of this Court's jurisdiction to make a sealing order and whether it should be done in the circumstances of these cases. But I am going to leave that in the hands of the counsel for the respondents to pursue if they are so advised.
- [6] As I have already indicated, I am not disposed to adjourn the judicial review appeal which is set for next week. However, I do think it would be appropriate for a number of reasons, not the least of which is judicial economy and efficiency, to adjourn all other matters to await

the outcome of the ongoing trial in the Supreme Court. Once that trial is concluded, and there may not be appeals taken from whatever decision is made, then steps can be taken to bring all matters before a division of this Court at one time so that a division will have the complete picture. I think there is sufficient overlap, including even understanding the background, that it would not be an efficient use of anyone's time to go over the matters time and time again.

- [7] There is another issue that needs to be dealt with and that concerns the appeal filed by Ms. J. in file CA040653 from an order made by the trial judge ordering her to post security for costs. A matter such as that does require leave to appeal; there is no appeal as of right. I can well understand how Ms. J. may have not understood that a leave application as opposed to a notice of appeal was required in that particular matter.
- [8] What I am going to do is order that the notice of appeal filed by Ms. J. stand as a notice of application for leave to appeal and that the time for her to take the steps necessary to bring on her application for leave to appeal run from today.
- [9] It does seem to me that, in respect of all of the things that have come before me, success has been to some extent divided, and I am, therefore, going to make no order as to costs of today's proceedings. This means that all parties will bear their own costs. "The Honourable Mr. Justice Frankel"

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