

CANADA / JUDGMENT

## Jones v. Jones

2025 BCSC 290

### COURT

Supreme Court of British Columbia

### DECIDED

20 February 2025

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2025 BCSC 290 Jones v. Jones

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Jones v. Jones,

2025 BCSC 290

Date: 20250220

Docket: E14575

Registry: Campbell River

Between:

Angela Lynn Jones

Claimant

And

Kevin Cameron Jones, All-Pro Diesel Ltd., All-Pro Power and Marine Ltd. and 1143789 BC Ltd.

Respondents

Before: The Honourable Justice E. McDonald

Oral Reasons for Judgment on Claimant's Stay Application

The Claimant, appearing in person:

A. Jones

Counsel for the Respondents:

M. McCubbin

Place and Date of Hearing:

Campbell River, B.C.

February 14, 2025

Place and Date of Judgment:

Campbell River, B.C.

February 20, 2025

- [1] These reasons for judgment were delivered orally and they have since been edited for distribution and publication.

## Introduction

- [2] Facing collection action in respect of a trial judgment rendered in this proceeding in mid-2023, the claimant seeks a stay of proceeding. The claimant submits that she has met the test for a stay pending appeal of the trial judgment.
- [3] The respondent, Mr. Jones, opposes the stay application and submits that the claimant does not meet the requirements for a stay and that she failed to seek a stay in a timely fashion.
- [4] In the event that the court decides to grant a conditional stay, the respondent submits that the claimant should be required to make instalment payments and funds should be released to satisfy the CIBC family debt and the retroactive child support since those orders are not under appeal. However, the claimant submits that such orders are indeed covered by her grounds of appeal.

## Background

- [5] Following the summary trial of this family law proceeding, I made orders on June 22, 2023 and January 18, 2024, requiring the claimant to pay the respondent retroactive child support and trial costs, among other things (the "Judgment").
- [6] The parties disagree about the amount the claimant owes to the respondent based on the Judgment. However, the key point for the purpose of this application is that regardless of the exact amount owing, the Judgment remains largely unpaid and interest continues to accrue, including on family debt owing to a bank.
- [7] The claimant has appealed and the respondent has cross-appealed from the Judgment. On October 27, 2023, following an application by the respondent, the claimant was ordered to post security for costs in the appeal. On March 11, 2024, the claimant posted the security for costs. The hearing of the appeal is set for March 20, 2025.

- [8] Following the respondent's application in the Court of Appeal, the respondent took steps to enforce the Judgment. By way of garnishing orders made January 31, February 2 and March 4, 2024, funds belonging to the claimant were attached and paid into court. The garnishing orders were subsequently released on terms that included the claimant paying the respondents \$300 by July 15, 2025, followed by \$100 on the 15th and 30th of each month.
- [9] On June 13, 2024 the claimant filed an application seeking a stay of proceedings. On September 24, 2024, I granted the claimant leave to file a new stay application. On November 1, 2024, the claimant filed the new stay application and that application came on for hearing before me on February 14, 2024.
- [10] In the meantime, the respondent applied in this proceeding to have certain funds held in trust for the claimant released to him. On February 3, 2025, Justice W.A. Baker heard the respondent's application to release funds. On February 5, 2025, Baker J. issued oral reasons stating, among other things, that:
- a) The order releasing the garnishing orders is terminated as of November 21, 2024 (para. 30);
  - b) The estate of the claimant's father is presently in a position to disburse \$77,575.69 to the claimant" and that "such funds are properly attached to the benefit of the respondent in partial payment of the outstanding judgment" (para. 31);
  - c) Granting paragraph 1 of the respondent's application to pay the funds to the respondent's counsel, in trust, in partial satisfaction of the Judgment and granting paragraph 2 of the respondent's application to release the funds to the respondent but staying this aspect of the order until the hearing of the claimant's stay application.
- [11] On February 14, 2025, I extended the stay of the order provided by Baker J. until delivery of my oral reasons for judgment on the claimant's stay application.

### Legal Principles

- [12] There is no disagreement between the parties as to the applicable legal principles that apply to the claimant's application for a stay.
- [13] The starting point is that a successful party, in this case, the respondent is entitled to the fruits of the Judgment unless the interests of justice require otherwise: *Chapman v. Chapman*, 2020 BCSC 1409 at para. 5 [Chapman].
- [14] To obtain a stay in a family law proceeding pending an appeal, the test to be met is the following: (i) that there is a serious question to be tried; (ii) the applicant will suffer irreparable harm if the stay is not granted; and (iii) the balance of convenience favours the granting of the stay because the harm to the applicant if the stay is refused exceeds the harm to the respondent if the stay is granted: *Rotaru v. Rotaru*, 2009 BCSC 480 at para. 10.

- [15] To establish irreparable harm, the applicant must demonstrate "harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other": *RJR-MacDonald Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311, 1994 CanLII 117 (SCC) at para. 64.

## Objections to Application Materials

- [16] The claimant objects to material included in the respondent's supplemental record filed for the stay application, namely, Dawn Brazier's affidavit #22 filed February 10, 2025, Angela Dewberry's affidavit #18 filed on March 25, 2024 in another proceeding and the copy of the respondent's cross-appeal factum filed in the Court of Appeal on January 15, 2025 (the "Supplementary Material"). The Supplementary Material post-dates the respondent's application response that was filed on November 13, 2025.
- [17] The respondent submits that the Supplementary Material is necessary because it was unavailable at the time the response was filed. Indeed, the claimant agrees that Exhibits "A" and "B" to Ms. Brazier's affidavit #22 are appropriate and should be considered as part of this application. Those exhibits are the oral reasons for judgment and order made in this proceeding by Baker J. on February 5, 2025.
- [18] Since the claimant does not object to my considering certain exhibits attached to Ms. Brazier's affidavit #22, I find it appropriate to consider that material. In my view, the balance of the Supplementary Material was not available at the time the respondent's application was filed and it is also appropriate to consider it in all of the circumstances.
- [19] I further note that the Supplementary Material consists of documents, such as a cross-appeal factum and a claimant affidavit that have already been filed, so there can be no suggestion that claimant was unaware of these materials prior to their inclusion in the record.

Is there a Serious Question to be tried?

- [20] While the respondent acknowledges that the threshold to establish a serious question to be tried is low, he submits that the claimant's appeal does not clear this low bar.
- [21] In my view, notwithstanding the respondent's submissions, I have no difficulty concluding that when viewed overall and in light of the numerous grounds of appeal, there is a serious issue to be tried respecting the claimant's appeal. I find that this branch of the test is met.

Has the claimant shown she will suffer irreparable harm if a stay is refused?

- [22] This element concerns the nature of the harm, not its magnitude, and it includes harm that cannot be quantified in monetary terms or which cannot later be cured: *Chapman*, at para. 10.

- [23] The application must establish irreparable harm based on a sound evidentiary foundation and not just speculation: *Ibid.*
- [24] The claimant submits that if her appeal succeeds and she also succeeds at any subsequent non-summary trial of this family law proceeding, she will not owe the respondent any money. In the claimant's view, the respondent will end up owing her substantially more money than what was determined in the Judgment.
- [25] The claimant is concerned that she will suffer irreparable harm if the stay is not granted because the funds will be released and expended by the respondent in circumstances where he has no assets to satisfy an award in her favour if she ultimately succeeds. The claimant points out that the respondent's income since 2021 is not in evidence. However, both parties also acknowledge that sale proceeds presently held in trust represent partial security for any award.
- [26] In support of the application for a stay, the claimant refers me to *Zhao v. Fang*, 2019 BCSC 2023 [Zhao] where the court granted a stay pending the appeal of trial orders. In seeking the stay, the applicant alleged irreparable harm including because the respondent had stated that he had no intention of paying support and over many years, he had failed to voluntarily pay the applicant support and he continued to do so. In *Zhao*, the respondent did not work, or hold any assets, in Canada. The court in *Zhao* found a real risk of dissipation of the property sale proceeds by the respondent.
- [27] However, in my view, the facts in that case are distinguishable in some important respects. In the present case, the respondent paid the applicant significant amounts of support. While the claimant takes the position that she is owed additional support by the respondent, this is not a situation where the payor always refused to pay support.
- [28] As well, the respondent continues to work and earn an income in Canada and in the past, the claimant successfully collected against the respondent using garnishing orders. This demonstrates that the claimant has been able to collect, through both voluntary and involuntary means, from the respondent.
- [29] The harm at issue is monetary in nature and I find there is no evidence to establish that if the claimant succeeds on her appeal that she would be unable to collect a monetary award from the respondent. The claimant has not shown a substantial risk of irreparable harm if the stay is denied.

Does the balance of convenience weigh in favour of granting the stay?

- [30] In family law proceedings, at the balance of convenience stage, the court has considered factors such as the adequacy of monetary compensation, the likelihood that the applicant's losses, if any, would be recovered, the public interest and any other factors affecting the balance of justice and convenience: *Chapman*, at para. 18.

- [31] The claimant submits that, for example, the strength of her case on appeal and her dire financial circumstances are factors tipping the balance of convenience in her favour. I have already determined that there is a serious issue to be tried but beyond the claimant's oral submissions, I find there is little evidence concerning the claimant's current financial circumstances or her employment prospects.
- [32] The claimant submitted at the hearing that she deliberately decided not to file additional evidence that addressed her current financial situation since it might have caused a delay of the hearing of the stay application. That is a strategic decision that the claimant made.
- [33] The claimant submits that the harm to her associated with refusing the stay greatly outweighs the harm to the respondent in refusing the stay since she is in dire financial straights while the respondent is employed. However, as already mentioned, she takes the position that she is concerned she would be unable to collect from the respondent when he has not provided evidence of his current income or assets.
- [34] The respondent submits that the inordinate length of this family law proceeding coupled with the claimant's nearly year long delay in seeking a stay, tip the balance of convenience in favour of denying the stay. The claimant's counsel indicated in March 2024 that the claimant would not seek a stay. Only after the respondent's garnishment and application for the payment out of funds held in trust did the claimant finally elect to seek a stay in March 2024.
- [35] The respondent also submits that in considering the balance of convenience, I ought to consider the time that has elapsed since the Judgment for matters such as retroactive child support was granted and the time it took the claimant to post security for costs on the appeal. Interest continues to accrue on the family debt owing to the CIBC and the retroactive child support at issue dates back to a time period nearly a decade ago. Given the significant time that has elapsed, the respondent submits that it would not be in the interests of justice to grant a stay.
- [36] If the claimant is successful on her appeal, the claimant may be put to the inconvenience of having to collect monies owing to her if she obtains a judgment more favourable to her. However, she has had success collecting money from the respondent in the past, and I am not persuaded that she has established financial hardship on the evidence before me. The authorities are clear that the respondent is presumptively entitled to the fruits of the Judgment.
- [37] In circumstances where the claimant allowed a significant period of time to elapse before she confirmed that she would seek a stay and even then, she did so only after the respondent took enforcement steps, these factors do not tip the balance in the claimant's favour.

- [38] I am aware that the appeal is set for March 20, 2025 and that the claimant's appeal may be successful. However, in light of all of the evidence, when I weigh and balance the potential harm to the claimant associated with not granting the stay against the potential harm to the respondent, I do not find that overall the balance favours the claimant. I conclude that the balance of convenience favours the respondent.
- [39] For the reasons explained, the claimant's November 1, 2024 application for a stay is dismissed with costs for all hearings associated with the claimant's stay application.
- [40] For clarity, my February 14, 2025 order extending the stay granted by Baker J. on February 5, 2025 is no longer effective now that I have delivered my reasons for judgment on the claimant's November 1, 2024 stay application.
- [41] The respondent also requests that I pre-emptively address one additional application filed by the claimant on November 1, 2024, that apparently seeks to remove all or part of a filed affidavit from the court file. This additional November 1, 2024 notice of application filed by the claimant was not before me on February 14, 2025 and I therefore decline to address it.
- [42] To the extent that the impugned material, or the claimant's submissions concerning the impugned material have already been placed before or considered by the court, that may be addressed if or when that application is heard.

"E. McDonald J."

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