

CANADA / JUDGMENT

Kapoor v. Makkar

2020 BCCA 81

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 81 Kapoor v. Makkar COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Kapoor v. Makkar, 2020 BCCA 81 Date: 20200305 Docket: CA46702 Between: Sapna Kapoor also known as Sapna Makkar Appellant (Claimant) And Sonam Makkar and Saroj Makkar Respondents (Respondents) Before: The Honourable Madam Justice Saunders (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated January 20, 2020 (Kapoor v. Makkar, New Westminster Docket E054162). Oral Reasons for Judgment Counsel for the Appellant: M. Dyonisius The Respondent, appearing in person: S. Makkar Place and Date of Hearing: Vancouver, British Columbia March 5, 2020 Place and Date of Judgment: Vancouver, British Columbia March 5, 2020 Summary: An interim stay of an order of the British Columbia Supreme Court made under the Family Law Act was obtained in the Court of Appeal, to allow the appellant to apply for a stay in the British Columbia Supreme Court, the court with jurisdiction to issue such a stay (s. 234 of the Act). This application was to extend that interim stay. Held: Application dismissed. In the circumstances, s. 234 of the Family Law Act precludes the order sought. Comments made concerning procedures on ex parte orders.

- [1] SAUNDERS J.A.: On February 26, 2020, Ms. Kapoor filed an application, acting for herself, asking that an order made January 20, 2020, said to be inclusive of an order dated December 9, 2019, for sale and exclusive occupancy of a home, be stayed. The matter was heard in this court by a single justice on February 28, 2020. It was dealt with ex parte. That means the respondent had not been served with the materials and did not know the application was coming on. In the circumstances, which seemed to be of an emergency nature, the justice made an interim order staying the Supreme Court orders of December 9, 2019 and January 20, 2020 until March 6, 2020 or until further order of this court. The order is drafted in a way that appears only to deal with the property question although, I am uncertain whether that is so because the order drafted and entered refers to paragraph 10 of the order of January 20, 2020, and I do not have that in front of me today to know whether that is only the property issue. In any case, I understand what was intended to be stayed was the order requiring Ms. Kapoor to vacate the premises by March 1, 2020. In doing so, there was mention in the hearing of s. 234 of the Family Law Act, S.B.C. 2011, c. 25. That section provides: 234 Despite any other enactment, if an order made under this Act is appealed, the order remains in effect until the determination of the appeal unless the court that made it orders otherwise.

- [2] Section 234 has been considered by single justices in this court in several cases including: *Bennett v. Bennett*, 2002 BCCA 580; *Stasiewski v. Stasiewski*, 2006 BCCA 53; and *Sharifpour v. Rostami*, 2018 BCCA 458. In particular, Mr. Justice Donald said in *Bennett v. Bennett*:
- [12] I do not rest my decision on jurisdiction because there may arise a case in which this Court will have to act on an obviously wrong exercise of the Supreme Court's stay jurisdiction. This is not such a case. Here Mr. Justice Wilson gave careful consideration to the matter and concluded that he should not interfere with the liquidation of the assets. With the benefit of hearing eight days of trial he was well placed to decide that the parties could not afford to hold on to the assets pending the appeal because their creditors were closing in. Since the Act gives exclusive jurisdiction to the Supreme Court in this area, I do not think the legislature's intention should be finessed by means of an appeal of this kind. No extraordinary circumstances or egregious error have been shown to override the trial judge's decision to refuse a stay.
- [3] *Stasiewski* is a case that dealt with property. *Stasiewski* referred to *Bennett v. Bennett* and said:
- [10] The unusual framing of Ms. *Stasiewski*'s application today to include a request for an order for leave to appeal the stay, and for an order amending the notice of appeal to include that issue is directed to the sliver of jurisdiction that exists in this Court in respect to staying orders made under the Family Relations Act which is discussed in *Bennett v. Bennett*. The real object of Ms. *Stasiewski*'s application, however, is a stay in respect of the sale of the matrimonial home.
- [11] Notwithstanding the able submissions of Mr. Rose on behalf of Ms. *Stasiewski*, I am not persuaded that this is one of those cases described by Mr. Justice Donald as extraordinary, or demonstrating egregious error.
- [4] *Sharifpour* is to the same effect.
- [5] I do not express a definitive opinion, but this situation may have been considered by the justice on February 28, 2020 as an extraordinary situation requiring some action by the court, because it appeared that the appellant had landed in the wrong court when asking for a stay of the British Columbia Supreme Court order. It is accepted that the order that deals with the property is one that is made under the Family Law Act and thus, in general terms, this court would not be able to deal with a stay application. A stay is something that should be dealt with by the Supreme Court of British Columbia. I understand that the judge who made the order has seized himself of the file and that the parties are scheduled on the court list to appear tomorrow in chambers before him. They will thus have an opportunity to make whatever submissions they consider appropriate in favour of a stay and in opposition to a stay.

- [6] There is no basis that I can see for extending the stay that was issued on February 28, 2020. Ms. Kapoor has had some considerable time now to understand that she must get herself before the Supreme Court judge, and also to make her arrangements should she not succeed in obtaining a stay. I have no basis on which to make the extension which she applies for today.
- [7] I will say also, for the record, that the order that was issued last week by the justice should have included an order that the materials filed in support of that application and a copy of the order be served on Mr. Makkar by an hour certain and a day certain, so that he knew what had been going on with respect to his life. That was not in the order, and the omission has caused some extra tension. Having said that, I am dismissing the application for an extension of the stay issued and dismissing whatever is left of the original application for a stay.
- [8] Ms. Kapoor has also applied for leave to appeal. Her counsel, Ms. Dyonisius, has helpfully explained that the leave application is not before the court today. The order that is appealed does not draw out those parts of the order that are made under the Divorce Act and those that are made under the Family Law Act. As there is a difference as to whether leave to appeal is required in respect to the two statutes, the basis of the orders appealed or sought to be appealed needs to be sorted out. It may be that once that is sorted the parties themselves may be able to resolve whether this appeal can advance without another appearance in these chambers. "The Honourable Madam Justice Saunders"

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