

CANADA / JUDGMENT

M.F.G. v. K.J.M.

2023 BCSC 2322

COURT

Supreme Court of British Columbia

DECIDED

30 May 2023

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2023 BCSC 2322 M.F.G. v. K.J.M.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.F.G. v. K.J.M.,

2023 BCSC 2322

Date: 20230530

Docket: L-62055

Registry: Kamloops

Between:

M.F.G.

Plaintiff

And

K.J.M. and

S.C.M.

Defendants

Before: The Honourable Mr. Justice Doyle

Corrected Oral Reasons for Judgment: These Reasons have been amended throughout to anonymize the parties and other factual information that may discern the identities of the parties on January 17, 2024.

Oral Reasons for Judgment

(Without Notice Application)

In Chambers

Counsel for the Plaintiff/Applicant:

S.T. Walter

No other appearances

Place and Date of Hearing:

Kamloops, B.C.

April 24, 2023

Place and Date of Judgment:

Kamloops, B.C.

May 30, 2023

- [1] THE COURT: These are oral reasons in this matter. I am providing oral reasons in the interests of urgency and efficiency in the circumstances. As is the practice of this Court, if these reasons are transcribed, I reserve the right to edit them for grammar, style, and clarity. However, if edited, both the outcome and the reasoning will remain the same.
- [2] This is an ex parte application by the applicant with respect to an Enforcement Order of the Alberta Court of King's Bench made March 7, 2023, and filed March 21, 2023 (the "Enforcement Order"). The applicant seeks an order that the Enforcement Order is enforceable as if it was an order of this Court, as well as directions. The applicant seeks alternative relief as set out in the notice of application.
- [3] The Enforcement Order was made ex parte upon the application of the applicant.
- [4] The applicant has registered the Enforcement Order with this Court as a "Canadian judgment" pursuant to the provisions of the Enforcement of Canadian Judgments and Decrees Act, S.B.C. 2003, c. 29 (the "B.C. Enforcement Act"). The applicant also registered the 2017 Order defined below, though she acknowledges it is not the subject of this application as set out in written submissions dated May 2, 2023, at para. 57.
- [5] There are two issues before me:
1. Is the Enforcement Order properly registered under the B.C. Enforcement Act and, if so, what is the effect of that proper registration?
 2. In light of Issue 1, what, if any, directions should this Court make respecting its enforcement?

The Enforcement Order

- [6] For clarity and ease of reference, I will respectfully refer to the applicant's children by their initials.
- [7] On March 7, 2017, the Honourable Justice Goss, in what is now the Court of King's Bench of Alberta, made an order filed March 17, 2017 (the "2017 Order") upon application of the applicant. The 2017 Order, pursuant to Alberta's Adult Guardianship and Trusteeship Act, S.A. 2008, c. A-4.2 (the "Act") made the applicant and her son, J., guardians of the defendant, K.J.M., a person at the time over 18 years old (the affidavit filed states K.J.M. is now over 30 years old). The 2017 Order appointed K.J.M.'s sister, the defendant S.C.M., as an alternate guardian.
- [8] Section 32(1) of that Act mandates that one precondition to the appointment of an alternate guardian is that the proposed alternate guardian must give written consent.
- [9] Although the Enforcement Order was granted on an ex parte application, I am advised by counsel that the 2017 Order was not. Indeed, as mentioned earlier, for S.C.M. to have been an alternate guardian, her written consent was required.
- [10] The applicant notes that none of the triggering conditions for the alternate guardian to act as guardian has occurred (see s. 32(3)), and thus the guardians remain the applicant and her son, J. Although the applicant's son, J., remains a guardian, she deposes in her April 13, 2023 affidavit in this matter that she has been, effectively, the guardian exercising the care and control of K.J.M. in Alberta. This is consistent with the April 18, 2023 affidavit of the applicant's sister at para. 6.
- [11] As mentioned, on March 7, 2023, the Enforcement Order was made and it was filed March 17, 2023. The applicant explains this brief delay and the further brief delay in registering the Enforcement Order in this Court at para. 26 of her April 13, 2023 affidavit.
- [12] The Enforcement Order is brief and focused. It does not involve monetary matters, aside from the costs related to obtaining that order. In essence, it is an interim order of the Court of King's Bench of Alberta related to the ability of the applicant as a guardian to fulfill her obligations in relation to K.J.M. The Enforcement Order is reviewable by the Alberta Court of King's Bench upon application by K.J.M. or S.C.M. within 90 days of the return of K.J.M. to Alberta.

Registration of the Enforcement Order

- [13] A "Canadian judgment" is defined in s. 1(1) of the B.C. Enforcement Act:

"Canadian judgment" means a judgment, decree or order made in a civil proceeding by a court of a province or territory of Canada other than British Columbia

- (a) that requires a person to pay money, including

- (i) an order for the payment of money that is made in the exercise of a judicial function by a tribunal of a province or territory of Canada other than British Columbia and that is enforceable as a judgment of the superior court of unlimited trial jurisdiction in that province or territory, and
 - (ii) an order made and entered under section 741 of the Criminal Code in a court of a province or territory of Canada other than British Columbia,
 - (b) under which a person is required to do or not do an act or thing, or
 - (c) that declares rights, obligations or status in relation to a person or thing, and, subject to section 1.1, includes a domestic trade agreement award, but does not include a judgment, decree or order that
 - (d) is for maintenance or support, including an order enforceable under the Family Maintenance Enforcement Act,
 - (e) is for the payment of money as a penalty or fine for committing an offence,
 - (f) relates to the care, control or welfare of a minor, except in the case of a Canadian civil protection order,
 - (g) is made by a tribunal of a province or territory of Canada other than British Columbia, whether or not it is enforceable as an order of the superior court of unlimited trial jurisdiction of that province or territory, to the extent that it provides for relief other than the payment of money, or
 - (h) relates to the granting of probate or issuing a grant of administration or the administration of the estate of a deceased person;
- [14] The applicant submits that the Enforcement Order meets the definition of a "Canadian judgment" by virtue of provisions (b) and (c) above, since it is an order "under which a person is required to do or not do an act or thing" and an order "that declares rights, obligations or status in relation to a person " The applicant further submits that the exclusions in the balance of the definition of "Canadian judgment" are inapplicable to the Enforcement Order. Most notably, the applicant notes that K.J.M. is over 30 years old and is not a minor as set out in paragraph (f).
- [15] Registration of the Enforcement Order is provided for in s. 2 of the B.C. Enforcement Act. A Canadian judgment can be registered whether or not it is final. The Enforcement Order in this matter is not final and, as mentioned earlier, permits the defendants to review the order before the Court of King's Bench of Alberta within 90 days of K.J.M.'s return to Alberta.
- [16] The applicant paid the fee for registration with this Court and filed a copy of the Enforcement Order (see s. 3 of the B.C. Enforcement Act).

- [17] As a result, the applicant submits that s. 4 of the BC Enforcement Act provides that the effect of such registration is that, subject to ss. 5 and 6, the Enforcement Order may be enforced in British Columbia as if it were an order of this Court. The applicant further submits that s. 5 is not applicable, the only relevant provision being s. 5(2) with respect to delay. The applicant says she has acted promptly. I agree.
- [18] In *Solehdin v. Stern*, 2014 BCCA 482, our Court of Appeal considered the B.C. Enforcement Act, albeit in different, economic-based circumstances. The Court considered the purpose of the B.C. Enforcement Act at paras. 22 to 26. The Court found the Ontario judgments at issue were "clearly 'Canadian judgments,'" and that permitting registration was consistent with the purpose of the B.C. Enforcement Act and the principles in *Morguard Investments Ltd. v. De Savoye*, [1990] 3 S.C.R. 1077. At para. 30, the Court stated:
- The judgments the BC Creditors seek to register are not "foreign". They are Ontario judgments, the result of substantive legal proceedings that occurred in Ontario. The fact they address the recognition of a foreign judgment does not render them foreign.
- [19] In *Apollo Real Estate Limited v. Streambank Funding Inc.*, 2012 BCSC 1088 [Apollo], the Honourable Mr. Justice Punnnett addressed the issue of whether an Ontario judgment was properly registered under the B.C. Enforcement Act. Again, this was in an economic context, but the decision is informative, in my view. Punnnett J. sets out the applicable law at paras. 23 to 33.
- [20] There appears to be no reported B.C. authority addressing the B.C. Enforcement Act in relation to a guardianship order from another Canadian province.
- [21] I received submissions from counsel with regard to *Alsager, Re*, 2006 SKQB 144, and the appeal of that case. The case involved a committee seeking to register a B.C. order in Saskatchewan pursuant to that province's equivalent to the B.C. Enforcement Act (The Enforcement of Canadian Judgments Act, 2002, S.S. 2002, c. E-9.1001, which I will refer to as the "Saskatchewan Enforcement Act").
- [22] One dispute in *Alsager* was whether a B.C. Master's order dated July 5, 2001, appointing Judith Alsager as committee of the person and estate of her mother, who had been diagnosed with dementia (the "Committee Order"), could be registered in Saskatchewan in 2006 pursuant to the Saskatchewan Enforcement Act. The respondents were opposed, contending that a power of attorney granted to the appellant's brother, Rick, should prevail.
- [23] The Court of Queen's Bench found that the Committee Order should be registered. At para. 23, the Court found the Committee Order was a Canadian judgment. The Court noted that the B.C. Master who made the Committee Order on July 5, 2001, could not have anticipated possible registration under the Saskatchewan Enforcement Act since that Act did not come into force until January 1, 2003.

- [24] That finding was overturned on appeal: *Alsager, Re*, 2007 SKCA 134. The brief reasons of the majority found that the Saskatchewan Enforcement Act did not apply due to s. 13(b) of that Act which provided that, in order for the Act to apply to a Canadian judgment made before the Act came into force, the party against whom enforcement is sought must have taken part in the proceeding which resulted in the grant of that order. Although the respondents had taken part in proceedings subsequent to the July 5, 2001 Committee Order, the Court found that did not amount to participation within the meaning of s. 13(b). That issue had not been raised in the court below.
- [25] Section 10 of the B.C. Enforcement Act has an identical provision to s. 13 of the Saskatchewan Enforcement Act:

Application of Act

10 This Act applies to

- (a) a Canadian judgment made in a proceeding commenced after this Act comes into force, and
 - (b) a Canadian judgment made in a proceeding commenced before this Act comes into force and in which the party against whom enforcement is sought took part.
- [26] *Alsager* is of some assistance with the definition of a "Canadian judgment." Although the majority did not register the Committee Order due to the transitional requirements of s. 13(b), the majority did not do so because it was not a "Canadian judgment". Smith J.A. in dissent found the Committee Order was a Canadian judgment pursuant to the provisions of the Saskatchewan Enforcement Act, which mirrors the definition in s. 1(1) of the B.C. Enforcement Act.
- [27] The circumstances underlying the majority decision of the Court of Appeal in *Alsager* are not present here. The Enforcement Order was made on March 7, 2023. The B.C. Enforcement Act came into force long before that, on May 4, 2006 (B.C. Reg 121/2006 as noted at para. 5 of *Vanden Brink v. Russell*, 2010 BCSC 337, which was cited above in *Apollo*).
- [28] As such, the requirement of s. 10(b) of the B.C. Enforcement Act, that "the party against whom enforcement is sought took part" is not relevant in this matter. Rather, s. 10(a) of B.C. Enforcement Act confirms that the Enforcement Order is a Canadian judgment made in a proceeding after the B.C. Enforcement Act came into force and as such that Act applies to the Enforcement Order.
- [29] As noted earlier, the Enforcement Order expressly provides that K.J.M. or S.C.M. can apply for a review of that order once K.J.M. is back in Alberta. This permits the defendants to seek review before the King's Bench in Alberta--the Court that made the order. This is consistent with the purpose of the B.C. Enforcement Act. As stated in *Apollo* at para. 46 by Punnett J., it is not for "this Court to determine whether or not there was a defect" in the proceeding in another province. Instead, the B.C. Enforcement Act "is designed to remove from B.C. such a supervisory role" (see also paras. 26 and 27).

- [30] In this case, as in Solehdin, the Enforcement Order is the result of substantive legal proceedings that occurred in another province: Alberta.
- [31] Among other things, the Enforcement Order requires K.J.M., S.C.M., and others having knowledge of the order to comply with the decisions made by the applicant, who is K.J.M.'s guardian pursuant to the 2017 Order and thereby a person having obligations to act and make decisions in relation to K.J.M.

Conclusion on Registration

- [32] Based upon the materials filed and the considerations set out above, I find that the Enforcement Order is an order made in a civil proceeding by the Court of King's Bench of Alberta and falls within the definition of "Canadian judgment" in s. 1(1) of the B.C. Enforcement Act as an order:
1. under which a person is required to do or not an act or thing; and
 2. that declares rights, obligations or status in relation to a person or thing.
- [33] I find that the exclusions set out in paras. (d) to (h) of that definition are not applicable.
- [34] As counsel raised during submissions, with particular regard to para. (f), that section relates to the care or control or welfare of a minor. The defendant K.J.M. is not a minor.
- [35] I find, pursuant to s. 10(a), that the B.C. Enforcement Act applies to the Enforcement Order. The Enforcement Order is not a final order and I find, pursuant to s. 2 of the B.C. Enforcement Act, that the applicant had the right to register it for the purpose of enforcement and to take the steps she did as set out in s. 3.
- [36] I find that the applicant acted promptly in the circumstances, and that equitable doctrines and rules in relation to delay have no application to the circumstances here (see s. 5(2) in that regard). Again, I note para. 26 of the applicant's April 13, 2023 affidavit.
- [37] The Enforcement Order was properly registered pursuant to the B.C. Enforcement Act.
- [38] The effect of proper registration with this Court is that the Enforcement Order "may be enforced in British Columbia as if it were an order or judgment of, and entered in," this Court (B.C. Enforcement Act, s. 4).
- [39] "Enforcement" is defined in s. 1 of the B.C. Enforcement Act as including "requiring that a Canadian judgment be recognized by any person or authority, whether or not further relief is sought."

Directions

- [40] The next issue is what directions, if any, are appropriate at this time.

- [41] Subsection 6(1) of the B.C. Enforcement Act provides that a party to the Enforcement Order may apply to this Court "for directions respecting its enforcement." Subsection 6(2) sets out orders a court may make subject to limitations set out in s. 6(3).
- [42] Paragraph 6(4)(b) provides that an application for directions pursuant to s. 6(1) must be made before any measures are taken to enforce a registered Canadian judgment which was obtained without notice to the persons bound by it.
- [43] Subsection 6(4) applies in this case since, as noted earlier, the Enforcement Order was obtained from the Alberta Court of King's Bench ex parte without notice to K.J.M. or S.C.M., as set out in the materials on file and as reflected on the face of the Enforcement Order.
- [44] The notice of application seeks a direction from this Court to police officers having jurisdiction in British Columbia to enter and search premises, and to apprehend K.J.M. for the purpose of returning her to the appellant's care and physically assisting with K.J.M.'s return to Alberta.
- [45] In oral submissions, counsel for the applicant suggested an alternative direction to the effect that the Enforcement Order be enforced pursuant to s. 4 of the B.C. Enforcement Act.
- [46] The applicant's April 13, 2023 affidavit sets out meetings with both British Columbia Interior Health and the Kamloops RCMP at paras. 18(g) and 18(h). All those interactions occurred prior to the Enforcement Order being made on March 7, 2023:
1. Interior Health advised the applicant on February 22, 2023, that they would not recognize the 2017 Order since it was from Alberta: para. 18(g)(b)(i).
 2. The RCMP advised the applicant on February 16, 2023, that she needed an Enforcement Order or a warrant and advised her on February 27, 2023, that it was an Alberta order and they would not apprehend K.J.M. based on the 2017 Order: paras. 18(h)(a) and (b).
- [47] The situation has since changed, with the Alberta Court of King's Bench having subsequently made the Enforcement Order on March 7, 2023.
- [48] As noted above, pursuant to s. 4 of the B.C. Enforcement Act, the Enforcement Order may be enforced in British Columbia as if it were an order of this Court. That includes para. 3 of the Enforcement Order which authorizes police to assist the applicant as set out therein.
- [49] Pursuant to s. 1 of the B.C. Enforcement Act, as mentioned earlier, "enforcement" includes requiring the Enforcement Order be recognized by any person or authority in British Columbia whether or not further relief is sought.
- [50] The applicant was required by the B.C. Enforcement Act, para. 6(4)(b) to apply for direction under s. 6(1). The applicant has fulfilled that statutory duty in this application.
- [51] The Enforcement Order is clear. I have found it was properly registered with this Court. The statutory authority for it to be enforced in British Columbia is clear.

- [52] The statutory authority providing that "enforcement" includes requiring the Enforcement Order to be recognized by any person or authority in British Columbia is equally clear, and measures can now be taken to enforce the Enforcement Order in British Columbia by persons or authorities in this province who are statutorily bound to recognize it without relief being sought.
- [53] The Enforcement Order is straight forward, and the statutory authority and concomitant statutory duty should be sufficient for enforcement.
- [54] With respect to s. 6(2), there is some urgency to this matter for the reasons set out in the materials. In my view, the circumstances at present do not lend themselves to any of the orders referred to in that subsection.
- [55] With particular regard to para. 6(2)(c), the 2017 Order and the Enforcement Order were both granted by the Alberta Court of King's Bench after substantive legal proceedings. Re-litigation of those matters in British Columbia is, as noted in Solehdin at para. 28, "precisely what the [B.C. Enforcement] Act was created to avoid."
- [56] At this time, there is, in my view, no need for directions sought at para. 1 of the notice of application nor any of the enumerated orders referred to in s. 6(2).
- [57] Given the above finding, there is no need to address paras. 2 through 6 of the notice of application.
- [58] Those are my reasons in this matter.
- [59] There was no application for costs, Mr. Walter, and in my view, I expect that would be inappropriate in the circumstances in this case.
- [60] CNSL S.T. WALTER: Yes, Mr. Justice, my understanding from my client, the costs have been ordered in Alberta --
- [61] THE COURT: I am sorry, I cannot hear you.
- [62] CNSL S.T. WALTER: Sorry, can you hear me now?
- [63] THE COURT: I can, thank you.
- [64] CNSL S.T. WALTER: So, Mr. Justice, my client is not seeking costs. She has costs in Alberta and so she is not -- these people are, at the end of the day, her daughters. So, in terms of just seeking clarity on the terms of the order actually made, because my client will want me to draft this as soon as possible --
- [65] THE COURT: Yes.
- [66] CNSL S.T. WALTER: -- is there -- just for clarity on the order being made today, if you -- if we could get that down, is it simply that the order is enforceable pursuant to a particular section?

- [67] THE COURT: It is that the order is properly registered in British Columbia and, essentially, and you can include these details if you wish for clarity for those who might look at it, the various things that flow from that including those which flow as a result of s. 4 and the enforcement provisions of s. 1.
- [68] CNSL S.T. WALTER: So the order is properly registered in -- the order of March -- the order of March 17 -- March 7 -- the order of March 7, 2023, of the Alberta Court of King's Bench, is properly registered -- it's properly registered and enforceable in British Columbia.
- [69] THE COURT: Yes, and it may be worthwhile appending that order from Alberta to this order.
- [70] CNSL S.T. WALTER: And so what I would put is, "The order of March 7, 2023, of the Alberta Court of Queen's Bench, a copy of which is appended as Appendix A to this order, is properly registered in British Columbia and enforceable in British Columbia as if it were an order of this Court"?
- [71] THE COURT: Yes.
- [72] THE CLERK: Right.
- "Doyle J."

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