

CANADA / JUDGMENT

M.N.L.A. v. P.T.

2023 BCSC 1131

COURT

Supreme Court of British Columbia

DECIDED

30 June 2023

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2023 BCSC 1131 M.N.L.A. v. P.T.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

M.N.L.A. v. P.T.,

2023 BCSC 1131

Date: 20230630

Docket: E210561

Registry: Vancouver

Between:

M.N.L.A.

Claimant

And

P.T.

Respondent

Before: Master Harper

Reasons for Judgment

The Claimant, appearing in person:

M.N.L.A

The Respondent, appearing in person:

P.T.

Place and Date of Hearing:

Vancouver, B.C.

June 9, 2023

Place and Date of Judgment:

Vancouver, B.C.

June 30, 2023

Introduction

- [1] Each of the parties in this family law case seeks orders arising from the orders I made on December 6, 2022 (the "December Order"). My reasons for judgment are indexed at 2022 BCSC 2121 (the "December reasons"). The background is set out in my December reasons and will not be repeated here.
- [2] The claimant, Ms. A., seeks an order that Mr. T. comply with my order for the production of documents regarding assets in Iran. She also seeks an order that she may apply to renew the children's passports without the consent of Mr. T.
- [3] The respondent, Mr. T., seeks orders for specified parenting time, counselling for the children, and that he may give the children a cell phone.
- [4] In her written submissions on the present applications, Ms. A. summarizes the toll the last two years have taken on her. She says, "From false allegations to financial hardship, to constant disagreements regarding the children's schedule and activities, the respondent wants to continue to control me and the fact that I am trying to move on with my life and continue to be the best mother I can be for my two daughters upsets the respondent". Having now heard two applications, read voluminous affidavit evidence, and heard Mr. T. in person (as he is now self-represented), I am of the view that the totality of the evidence validates Ms. A.'s submissions.

Disclosure of Assets in Iran

- [5] In my December reasons, I made the following order with respect to Mr. T's assets in Iran:
 - 1) By February 15, 2023, Mr. T. shall provide to Ms. A.:
 - a) copies of all documents related to real property, corporate property, trusts or any other property in which Mr. T. has a legal or beneficial interest in Iran, Canada, or any other country;
 - b) copies of any rental agreements and documents relating to rental income from any rental agreements in Iran;

- c) information and particulars of the location and contents of all safety deposit boxes in Iran, Canada or any other country;
 - d) any documents related to Mr. T.'s claim to excluded property; and
 - e) copies of all documents regarding his efforts to find employment since his lay-off in September, 2022.
- [6] Mr. T. says that he owns no assets in Iran. He says the home in Iran that Ms. A. says was the parties' family home was not, in fact, their home, but belonged to Mr. T.'s father, M.T. This is despite the contract of purchase and sale that clearly states that Mr. T. purchased the home in December, 2013. Mr. T. says his father, M.T., sold the family home and put it in Mr. T.'s brother, K.T.'s name.
- [7] Ms. A. has put forward compelling evidence that the title to assets in Iran that would be considered family property has been manipulated by Mr. T. and his family members to make it look as if Mr. T. owned no assets.
- [8] If a document is in the possession of a non-party, Mr. T. must obtain the document from that person and disclose it to Ms. A.
- [9] Ms. A. says that before the family moved to Canada in April 2017, Mr. T. granted M.T. a power of attorney so that M.T. would be able to deal with the family's assets and rental income. Ms. A. says that Mr. T. told her in 2020 that he was going to sell the former family home in Iran in order to upgrade their home in Canada. Instead, Mr. T. asked his father to sell the former family home and buy Mr. T. another warehouse in Golgoon, Iran.
- [10] The parties bought their former family home located at No. 1, West Nillofar, Kooye Faraz, Saadat Abad, Tehran, Iran (the "former family home") in 2013 and they lived in the former family home from 2013 to 2017 when they moved to Canada. The former family home was sold on February 18, 2020 by M.T. using his power of attorney. One of the buyers was Maryam Abbaszadeh Khan Gheshlaghi.
- [11] Mr. T. provided a partially translated sales document that omitted important details. In the Farsi version, the property was sold by M.T. based on the power of attorney. In the English translation, which was provided by Mr. T., the section of the document saying that the home was sold based on M.T.'s power of attorney was completely deleted. Mr. T. purported to know nothing of this omission and says that his father was responsible for translating the document. The version Mr. T. provided is unreliable. Ms. A. obtained a translation in Vancouver that includes the omitted portions for which she paid \$240.
- [12] Ms. A. says that in the Farsi version of the sales document regarding the former family home disclosed by Mr. T., the notary public number, and the date that the power of attorney was issued to M.T. is faded and illegible. Mr. T. provided no evidence to cause me to doubt Ms. A.'s evidence on this point.

- [13] The former family home was sold for the amount of 30,600,000,000 Iranian Rials (IRR) on February 18, 2020. Mr. T. received 30,000,000,000 IRR and the remaining amount of 600,000,000 IRR on February 23, 2020. However, Mr. T. only disclosed the latter amount and not the former. There was no evidence before me as to the value in Canadian dollars of IRR. In submissions, Ms. A. said that the former family home sold for more than six times the purchase price in 2013.
- [14] Mr. T. has disclosed a property located at No. 41, West 1st St., Phase 2, Golgoon Industrial Town, Saeid Abad, Shahriyar, Iran which is under Mr. T.'s brother's name, K.T., purchased from Maryam Abbaszadeh Khan Gheshlaghi, the same person who "bought" a half interest in the former family home.
- [15] Ms. A. says that the Court should conclude that M.T. sold the former family home and bought the warehouse for Mr. T. under K.T.'s name (on the same day and using the same real estate agent who is a close friend of Mr. T.) in order to hide the fact that Mr. T. owns property. It will be open to the trial judge to draw this conclusion.
- [16] If the trial judge finds that Mr. T. has failed to disclose assets in Iran in which he had an interest that he now says are in the name of another person, the trial judge may take that into account in the division of family property (See, for example, *Bandpey v. Talebpourazad*, 2021 BCSC 736 and 2022 BCCA 352). In the meantime, Mr. T. needs to make full disclosure of all aspects of the transactions of the Iranian properties.
- [17] I make the following orders:
- a) Mr. T. will fully comply with the order of Master Harper made December 6, 2022 regarding document production by July 30, 2023.
 - b) Mr. T. will obtain, and provide to Ms. A., by July 30, 2023, a properly-translated copy of the document regarding the transfer of ownership of the former family home.
 - c) Mr. T. will obtain, and provide to Ms. A., by July 30, 2023, all deeds to all properties that Mr. T. formerly owned in Iran including, but not limited to, No. 41, West 1st St., Phase 2, Golgoon Industrial Town, Saeid Abad, Shahriyar, Iran, and copies of all bank drafts, cheques or transfers of any kind related to the sale of the former family home.
 - d) Mr. T. will obtain, and provide to Ms. A., by July 30, 2023, all documents pertaining to the following properties:
 1. Number 17, South 8 St, Golgoon Industrial Town, Saed Abad, Shahriar, Iran;
 2. Number 7, Separ St, Jahan Koodak Highway, Tehran, 1518717311, Iran;

(This address is the address for Tehran Para Company (an engineering company owned by Mr. T., K.T., and M.T.), which is the same address that Mr. T. mentioned in the contract of purchase and sale when the parties bought the former family home in Tehran as his residence before moving into the former family home, which is M.T.'s residence as well. Mr. T. recently removed his name from the property and transferred it to his brother K.T.)

3. Company documents relating to Tehran Para Company in Iran, Tehran, an engineering company owned by Mr. T., K.T., and M.T.;

(On July 13, 2021, Mr. T, M.T., and K.T. are selected as the Board of Directors for a period of two years.)

4. All of Ms. A.'s furnishings located at Mr. M.T.'s residence located at Number 7, Separ St, Jahan Koodak Highway, Tehran, 1518717311, Iran.
5. Mr. T.'s "Karafain" bank account mentioned in his Form F8 financial statement filed September 24, 2021. (At the same bank in Tehran/Iran, he has a safety deposit box where he has been keeping the gold coins, watch, and jewellery).

Mr. T.'s Application for Specified Parenting Time

[18] In accordance with my December reasons, Mr. T. has had parenting time at the discretion of Ms. A.

[19] Mr. T. was sentenced in December 2022. He is under a probation order.

[20] The relevant conditions of the probation order, in summary, are:

- 1) Keep the peace and be of good behaviour;
- 2) Appear before the court when required to do so by the court;
- 3) Notify the court or the probation officer of any change of name, address, or employment;
- 4) No contact with Ms. A. except:
 - a) for the sole purpose of arranging parenting time; pickup up and dropping off the children for parenting time;
 - b) as allowed by a court order, from a court which has received the probation order;
 - c) through a lawyer; and
 - d) through or in the immediate presence of a counsellor, family justice counsellor, mediator or restorative justice counsellor who has been given a copy of the probation order;
- 5) Not to be within 100 meters of any place Ms. A. lives, works, attends school or worships, except
 - a) to pick up and drop off the children for parenting time at which time Mr. T. must remain inside his vehicle; and

- b) as allowed by a court order made by a court that has been given a copy of the probation order;
 - 6) Report to his probation officer as directed;
 - 7) Attend, participate in and complete any intake, assessment, counselling, or education program as directed by his probation officer; and
 - 8) and 9) Both of these conditions prohibit the possession of weapons.
- [21] In my December reasons, I reviewed the legal principles regarding the effect of family violence on victims and children and the court's duty to take a history of family violence into account when making parenting orders.
- [22] Mr. T. continues to demand parenting time that does not accommodate weekend parenting time for Ms. A. His demands persist despite my December reasons and despite the dismissal of Mr. A.'s appeal of my order. Mr. T. fails to demonstrate flexibility or willingness to compromise on his demands for parenting time. His rigidity is not in the best interests of the children.
- [23] There is no evidence in any of Mr. T.'s affidavits that he acknowledges the abuse or accepts responsibility. He continues to express no remorse despite the guilty plea. It was only in response to a direct question from the court as to whether Mr. T. was accountable for the violence that he said words to the effect that his guilty plea was an expression of his accountability. He then went on, however, to imply that the assault to which he pled guilty was due to cultural differences.
- [24] Mr. T. has attended counselling at an organization called North Shore Counselling. It appears from the list of appointments produced in evidence that Mr. T.'s counsellor was Saba Sedighi. It is not clear whether this counselling was required by Mr. T.'s probation officer. The counsellor's notes are not in evidence.
- [25] Mr. T. says he has had counselling as directed by his probation officer. In his oral submissions (although this was not in evidence), he said that he attended a program for "people like me". I take this to be a program for people who have assaulted their intimate partners. To put it bluntly, counselling appears to have had little to no effect on Mr. T.'s attitude towards Ms. A. nor in his understanding of the direct and indirect impact of family violence on the children.
- [26] Because there was no application before me for the production of counselling records, I am unable to make an order that the counsellors produce their records to Ms. A. However, Mr. T. should be able to obtain copies of his counselling records himself and provide them to Ms. A. I recommend that Mr. T. sign an authorization allowing Ms. A. to obtain copies of his counselling records.

- [27] Mr. T. provided a letter dated May 20, 2023 from a counsellor, Mr. N., who apparently provided counselling to the parties jointly before the separation (the letter says since August 2, 2019 which predates the separation), but seems now to be counselling Mr. T. alone. The letter is not credible or reliable and I give it no weight. Mr. N. extols the virtues of Mr. T., but fails to mention any family violence. Mr. N.'s opinions about Mr. T.'s character are irrelevant on the issues currently before the Court for determination. The intimate partner violence that has occurred in this case took place in private. The face that Mr. T. presents in public is probably the polar opposite of the face he presents to Ms. A.
- [28] As I said in my December reasons, the children should be able to enjoy weekend parenting time with their mother. I accept Ms. A.'s evidence that the history of family violence, including Mr. T.'s exertion of power and control over her, have taken a mental and emotional toll. As she succinctly put it, "He makes life hard for me". And yet, despite the relentless harassment by Mr. T., Ms. A. has done a commendable job supporting the relationship between the children and Mr. T. That said, Ms. A. and the children need some time and space to themselves to heal.
- [29] Ms. A. is starting a new job on June 12, 2023. Her hours of work will be 7:30 a.m. to 1:30 p.m. Ms. A.'s mother is visiting from Iran so she will be able to take care of the children before school and in the summer during the day when Ms. A. is at work. Ms. A. will be able to pick the children up from school until school is out at the end of June, 2023, and when school starts up again in September.
- [30] Mr. T. is an electrician (having been an engineer in Iran). He is recovering from an injury, but will be returning to work very shortly. Mr. T. works all over the lower mainland. Because of his work schedule, he will not be able to pick the children up from school. Obviously, he will not be able to take care of them during the day when he is at work.
- [31] The parenting time for Mr. T. that Ms. A. proposes is Thursday after school until Friday morning when Mr. T. will drop the children off at school.
- [32] I agree with Ms. A.'s proposal. It is in the children's best interests. I repeat para. 30 of my December reasons:
- [30] Even if there were no criminal proceedings, I would have ordered that the parenting schedule be revised. The school week is taken up with homework and extracurricular activities. The current schedule leaves Ms. A. with very little weekend parenting time. The children should have the benefit of unstructured, relaxing weekend time with their mother. The stress of parenting the children with an abusive former partner would be alleviated somewhat with a change of parenting schedule that gives the children the opportunity of having fun with their mother.
- [33] Mr. T. has not always acted in the children's best interests and restricting his parenting time will enable Ms. A. to provide a stable home for them, free (as much as possible) from the detrimental effects of Mr. T.'s conduct.

[34] I provide here some examples of Mr. T. not acting in the children's best interests:

- a) Mr. T. unilaterally and without the consent of Ms. A. gave the children cell phones ostensibly so that they could phone him;
- b) He had the older child phone him from the school principal's office for reasons that are unclear but which appear to be an attempt to align the child with him;
- c) He involves the children in the parenting time dispute. The children return to the care of Ms. A. in an unsettled state;
- d) Very recently, the older child was home from school sick while the younger child was at school. Mr. T. was supposed to pick up the children, but at the last minute he said he would not, leaving Ms. A. to rush to pick up the younger child from school. This example demonstrates Mr. T.'s attitude that parenting time will take place at his convenience when conditions are ideal for him;
- e) Mr. T. hurt his back and declined to exercise his parenting time at the last minute. Ms. A. points out that she takes care of the children when sick or ill because that is what a parent does. Mr. T. does not share that commitment;
- f) He has made unfounded allegations against Ms. A. that she has abused the children;
- g) Mr. T. engages in unnecessary disputes with Ms. A. over things like the children's dental appointments and eye examinations; and
- h) Despite the conditions of his probation order, Mr. T. has sent derogatory texts to Ms. A., calling her "junk food" and "doctor" in a derogatory tone (Ms. A. has a Ph.D.). Mr. T.'s probation officer warned Mr. T. that he needed to be very careful about any snide or derogatory comments as those comments could be considered a breach of his probation order.

[35] Section 16.1(4)(b) of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) provides that the court may make orders that allocate decision-making responsibility and include requirements with respect to any means of communication. The examples I have noted above lead me to conclude that on an interim basis, all parental responsibilities should be allocated solely to Ms. A. Furthermore, the probation order provides that there can be contact between the parties solely for the purpose of arranging parenting time, not for discussions (or arguments in this case) over parental responsibilities or decision-making about the children.

[36] I make the following orders:

- a) All decision-making responsibility about the children is allocated to Ms. A.;
- b) Mr. T. is not permitted to enrol either of the children in counselling without Ms. A.'s prior written consent;
- c) Ms. A. may enrol the children in counselling without the consent of Mr. T.; and

- d) Mr. T. must take the cell phones away from the children immediately and not provide the children with a cell phone without the prior written consent of Ms. A.
- [37] In my December reasons, I described some drafting oddities in Master Muir's November 26, 2021 order (the "Muir Order"). Therefore, the parenting time provisions in the Muir Order should be vacated and replaced by orders that are clearer.
- [38] With respect to the Muir Order, paragraphs 1 and 2 of the Muir Order are set aside and are replaced with the following orders:
- a) Mr. T. will have parenting time of the children from Thursday after school until Friday morning when he will take them to school;
 - b) If the children are not in school, Mr. T.'s parenting time will be from Thursday at 5 p.m. until Friday morning when Mr. T. will return the children to Ms. A.'s home by 9:00 a.m.;
 - c) If the children are not in school, the pick-ups and drop-offs of the children will be at Ms. A.'s home;
 - d) Mr. T. will remain in his vehicle during pick-ups and drop-offs;
 - e) Mr. T. may have further parenting time during July and August, 2023 at the sole discretion of Ms. A.;
 - f) Ms. A. may apply for the renewal of the children's passports without the necessity of Mr. T.'s signature on the application forms;
 - g) Mr. T. may not travel with the children outside the lower mainland without Ms. A.'s prior written consent; and
 - h) Ms. A. may enrol the children in any extra-curricular activities, lessons, summer camps and the like ("children's activities") without the consent of Mr. T. Mr. T. will ensure the children attend the children's activities during his parenting time.
- [39] I am not satisfied that Mr. T. has achieved sufficient insight into his behaviour, nor benefitted from the counselling programs he has attended. His counsellors need to be aware of the impact on Ms. A. and the children of the unaddressed harmful behaviour that Mr. T. exhibits. Hopefully, the counselling program can then target the issues that Mr. T. needs to address and resolve. Therefore, I make the following order:
- a) Mr. T. must provide his probation officer and his counsellor, or counsellors, with a copy of my December reasons and a copy of these reasons.

The Appeal Order

- [40] Mr. T.'s appeal of my December Order was dismissed with costs. Ms. A. requested Mr. T.'s counsel draw the formal order, but counsel did not do so. Mr. T. is now self-represented. It will now fall to Ms. A. to draw the formal order. She will need an entered order to have her costs assessed. The order is straightforward and will simply state "the respondent's appeal is

dismissed with costs to the claimant in any event of the cause." I would recommend that Ms. A. draw the formal order, send it to Mr. T.'s former counsel for her signature, and then file it in the registry. If counsel does not immediately sign the order, Ms. A. may take out an appointment to settle the order before me and provide Mr. T. of notice of the date for the hearing. The hearing may be at 9 a.m. on any day that Supreme Court Scheduling provides for my availability. I will grant leave to both parties to attend the hearing by MS Teams so they may avoid having to attend court in person.

Preparation for Trial

- [41] Ms. A. has expressed concern about roadblocks being put up by Mr. T. regarding preparation for trial. After much effort, Mr. T.'s examination for discovery has now been scheduled for September 11, 2023.
- [42] Ms. A. wishes to schedule the trial management conference ("TMC") for November, 2023, but Mr. T. is not cooperating. There is no impediment to Ms. A. scheduling the TMC without Mr. T.'s agreement to the date because a TMC is mandatory.
- [43] Mr. T. is pressuring Ms. A. to attend mediation. However, mediation is a voluntary process and there are valid reasons why Ms. A. does not wish to attend mediation. For one thing, Mr. T.'s document disclosure has been inadequate. For another, Mr. T. has inflicted violence, both physical and mental, on Ms. A. She is well within her rights to decline mediation.

Summary of Orders

- [44] In summary, I make the following orders.
- 1) With respect to disclosure of assets in Iran:
 - a) Mr. T. will fully comply with the order of Master Harper made December 6, 2022 regarding document production by July 30, 2023.
 - b) Mr. T. will obtain, and provide to Ms. A., by July 30, 2023, a properly-translated copy of the document regarding the transfer of ownership of the former family home.
 - c) Mr. T. will obtain, and provide to Ms. A., by July 30, 2023, all deeds to all properties that Mr. T. formerly owned in Iran including, but not limited to, No. 41, West 1st St., Phase 2, Golgoon Industrial Town, Saeid Abad, Shahriyar, Iran, and copies of all bank drafts, cheques or transfers of any kind related to the sale of the former family home.
 - d) Mr. T. will obtain, and provide to Ms. A., by July 30, 2023, all documents pertaining to the following properties:
 1. Number 17, South 8 St, Golgoon Industrial Town, Saed Abad, Shahriar, Iran;
 2. Number 7, Separ St, Jahan Koodak Highway, Tehran, 1518717311, Iran;

3. Company documents relating to Tehran Para Company in Iran, Tehran, an engineering company owned by Mr. T., K.T., and M.T. from which Mr. T. receives income;
 4. All of Ms. A.'s furnishings listed below are located at Mr. M.T.'s residence located at Number 7, Separ St, Jahan Koodak Highway, Tehran, 1518717311, Iran.
 5. Mr. T.'s "Karafain" bank account mentioned in his Form F8 financial statement filed September 24, 2021.
- 2) With respect to parenting responsibilities, I make the following orders:
 - a) All decision-making responsibility about the children is allocated to Ms. A.;
 - b) Mr. T. is not permitted to enrol either of the children in counselling without Ms. A.'s prior written consent;
 - c) Ms. A. may enrol the children in counselling without the consent of Mr. T; and
 - d) Mr. T. must take the cell phones away from the children immediately and not provide the children with a cell phone without the prior written consent of Ms. A.
 - 3) Paragraph 1 and 2 of the Muir Order are set aside and are replaced with the following orders:
 - a) Mr. T. will have parenting time of the children from Thursday after school until Friday morning when he will take them to school;
 - b) If the children are not in school, Mr. T.'s parenting time of the children will be from Thursday at 5 p.m. until Friday morning when Mr. T. will return the children to Ms. A.'s home before him going to work;
 - c) If the children are not in school, the pick-ups and drop-offs of the children will be at Ms. A.'s home;
 - d) Mr. T. will remain in his vehicle at pick-ups and drop-offs;
 - e) Mr. T. may have further parenting time during July and August, 2023 at the sole discretion of Ms. A.;
 - f) Ms. A. may apply for the renewal of the children's passports without the necessity of Mr. T.'s signature on the application forms;
 - g) Mr. T. may not travel with the children outside the lower mainland without Ms. A.'s prior written consent;
 - h) Ms. A. may enrol the children in any extra-curricular activities, lessons, summer camps and the like ("children's activities") without the consent of Mr. T. Mr. T. will ensure the children attend the children's activities during his parenting time;

- i) Mr. T. must provide his probation officer and his counsellor, or counsellors, with a copy of my December reasons and these reasons.
- 4) The signature of the respondent on this order is dispensed with.

This means that Ms. A. may draw the order and submit it to the registry for entry without obtaining Mr. T.'s signature on the order. The registry will then forward the order to me for my review and signature.

- 5) I will no longer be seized of any further applications in this family law case. If either party wishes to make any further applications, they may be set in regular masters' chambers.

Costs

- [45] Ms. A. seeks an order for a fine against Mr. T. for failing to disclose his assets in accordance with my order. There is merit to Ms. A.'s request, but for the time being, it is appropriate to give Mr. T. a chance to honour the letter and spirit of my December Order and the orders that I have now made. I will include the \$240 that Ms. A. paid for the translation of the contract of purchase and sale in the costs order.
- [46] Ms. A. has been substantially successful on these cross-applications. Mr. T. will pay Ms. A. her costs which I fix at \$1,440. This amount is comprised of \$1,000 for the half-day hearing plus taxes, the filing fee for her notice of application, and the \$240 for the translation of the sales contract. The amount of \$1,440 is payable forthwith pursuant to Rules 16-1(10) and 16-1(14)(b) of the Supreme Court Family Rules.

"Master Harper"

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