

CANADA / JUDGMENT

Marioni v. Marioni

2006 BCCA 83

COURT

British Columbia Court of Appeal

DECIDED

23 February 2006

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2006 BCCA 83err Marioni v. Marioni COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Marioni v. Marioni, 2006 BCCA 83 Date: 20060223 Docket: CA033609 Between: George Paul Marioni Respondent (Plaintiff) And Irene Olga Marioni Appellant (Defendant) Before: The Honourable Mr. Justice Smith (In Chambers) Appellant In person Respondent In person Place and Date of Hearing: Victoria, British Columbia 13 February 2006 Place and Date of Judgment: Vancouver, British Columbia 23 February 2006 Reasons for Judgment of the Honourable Mr. Justice Smith:

- [1] The appellant seeks an order that "the court grant an extension to the appellant's appeal process". The parties appear without counsel.
- [2] The appeal is from an order of Mr. Justice Johnston of the Supreme Court pronounced November 18, 2005, in a proceeding involving the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) and the Family Relations Act, R.S.B.C. 1996, c. 128. The appellant filed her notice of appeal on December 19, 2005, one day out of time. Accordingly, she requires an extension of time to bring the appeal: Divorce Act, s. 21(4), Court of Appeal Act, s. 10(1). As well, during her submissions she requested extensions of the time limits for the filings necessary to perfect her appeal. She says she has the transcript but has not filed it pending disposition of this application. She has not yet taken any steps to advance the preparation of the appeal books.
- [3] Mr. Justice Johnston's order has not been entered. The appellant says that she has not been able to get the respondent to endorse his approval on the order and that she will have to apply to settle it. During the hearing, the respondent handed up a copy of a draft order bearing the appellant's signature that is identical to the copy of the draft order she produced. He appears to adopt it as correct in form, so formal settlement may not be necessary.
- [4] The form of order was drafted by the appellant. It states, THIS COURT ORDERS that
1. There be transferred to Ms. I. Marioni 79,364 Air Miles (1/2 of total as of Oct. 7, 2002 in credit of Mr. G. Marioni.)
 2. Mr. Marioni stay away from the premises at [], Victoria, B.C.

3. Balance of the matters including the application to grant an order or vary the order of Madame Justice Morrison as the case may be, with respect to Canada Pension Plan, redistribution of business assets, back child support, back spousal support, are dismissed.
 4. Matter of the timeshare card to be dismissed with liberty to reapply with further evidence as to the existence of such a card and its whereabouts be produced.
 5. Costs - No costs of the application to either party.
- [5] Mr. Justice Johnston's reasons are laconic. He said,
- [1] THE COURT: I am going to order that there be transferred to Ms. Marioni 79,364 Air Miles, being on half of what she has said to me was the number of Air Miles standing to the credit of Mr. Marioni as at October 7, 2002.
- [2] I am going to order that Mr. Marioni stay away from the premises at [].
- [3] The balance of the matters, including the application to - I should say grant an order or vary the order of Madam Justice Morrison, as the case may be, with respect to Canada Pension Plan, redistribution of business assets, back child support, back spousal support, for the reasons I have given during the course of submissions, I cannot do anything about. I am going to dismiss those matters because in my view they were properly the subject of an appeal, and I have no jurisdiction to deal with them.
- [4] There remains the timeshare card, and I am not in a position on the basis of the evidence to be able to decide who has got what card. Both parties have, largely by way of unsworn assertions - one claimed that the other has it, the other denied it. I cannot make a decision. I am going to dismiss that, but with liberty to reapply if further evidence as to the existence of such a card and its whereabouts can be produced.
- [5] That deals with the matters, save costs, and in the circumstances there will be no costs of the application to either party.
- [6] The materials placed before me in chambers were not sufficient to enable me to deal with the application. Accordingly, I have obtained, from the Supreme Court file, copies of the judgment granted by Madam Justice Morrison on December 19, 2002, and of her reasons for judgment and, as well, of the notice of motion filed by the appellant on October 13, 2005, in respect to the hearing before Mr. Justice Johnston from which this proceeding arises.
- [7] Madam Justice Morrison's judgment of December 19, 2002, was pronounced after a trial. She ordered that the parties be divorced. As well, she made an order for joint custody of the two teenaged children of the marriage with specified shared access. She ordered the respondent to pay child maintenance to the appellant in the Guidelines amount based on an annual income which she imputed to the respondent in the amount of \$40,000. She also ordered an unequal division of certain family assets, the appellant receiving approximately 58% in value of the total of \$516,000. This division included transfer to the appellant of the former matrimonial home [] at a value of \$225,000. As well, there was a warehouse which was used

in the respondent's business, which was valued by the parties at \$150,000 to \$200,000. The trial judge ordered it to be sold and the proceeds divided two-thirds to the appellant and one-third to the respondent. She ordered further that Air Miles be divided equally and that the parties share equally in the use and expenses of a time share in Mexico. She also ordered that the parties be at liberty to apply to divide their respective Canada Pension Plan contributions, by which she obviously intended an administrative division pursuant to the pension statute. She stated that her reason for the particular distribution of assets that she ordered was her view that the appellant had been economically disadvantaged by the marriage and required assistance to develop her own self-sufficiency. Thus, she ordered the respondent to pay spousal maintenance to the appellant until completion of the sale of the warehouse property and receipt by her of her share of the proceeds and that spousal support should thereupon terminate.

- [8] In her notice of motion below, the appellant sought a number of orders including a division of Air Miles, an order adjusting the division of Canada Pension Plan credits, a variation of the division of assets based on an allegation of nondisclosure by the respondent relating to his business, and an order for retroactive child support based upon an upward revision of the income imputed to the respondent by Madam Justice Morrison.
- [9] I see no merit in the appellant's proposed appeal of the dismissal of these claims. They should have been advanced, if at all, by way of an appeal from the judgment of Madam Justice Morrison.
- [10] However, the appellant's motion also sought an order "That The Plaintiff pay to the Defendant the amount of Spousal Support based on income \$60,000 - 70,000/ year". The chambers judge appears to have considered this to be a request for an order of "back spousal support" and to have dismissed it on the basis that it should have been dealt with in an appeal from Madam Justice Morrison's judgment. However, Madam Justice Morrison's order for spousal support was time-limited and, since she ordered a termination of spousal maintenance on the expiry of that time limit and no suggestion has been made that spousal support was not paid during that period, no question of "back spousal support" could arise. Thus, it appears that the chambers judge may have failed to appreciate that the appellant was seeking to vary the spousal support order by awarding her current and ongoing spousal maintenance. If so, the appellant's application was dismissed without a hearing on the merits. In my view, the interests of justice require that she be permitted to pursue an appeal on this point.
- [11] Accordingly, the time for bringing the appeal of the dismissal of the appellant's claim for spousal support is extended pursuant to s. 21(4) of the Divorce Act to January 3, 2006, the date the respondent filed his notice of appearance. Thus, the time for filing the appeal record and transcript will expire on March 6, 2006: Rules 19(a), 20(1)(a). Since the appellant has all the papers necessary to complete the appeal record except for an entered order, the assembly of the appeal record will be a simple matter and I see no need to extend the time beyond that date. By virtue of Rule 26(1), she has a further 30 days to file the appeal book. It,

too, will be simple to prepare in this case. The appellant's factum is required to be filed at the same time as the appeal book (Rule 21(1)). Since the appeal is confined to the sole issue of spousal support, I am not convinced that the appellant cannot meet that requirement.

[12] In the result, the application is granted to the limited extent of extending the time for bringing the appeal of the dismissal of the appellant's application for spousal support to January 3, 2006. "The Honourable Mr. Justice Smith"

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Prepared on 26 October 2026 · Esheria