

CANADA / JUDGMENT

McClaghry v. McClaghry

2018 BCCA 446

COURT

British Columbia Court of Appeal

DECIDED

29 November 2018

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2018 BCCA 446 McClaghry v. McClaghry COURT OF APPEAL FOR BRITISH COLUMBIA Citation: McClaghry v. McClaghry, 2018 BCCA 446 Date: 20181129 Docket: CA44465 Between: Maureen Wing Che Fong-McClaghry Respondent by Cross Appeal (Plaintiff) And Lester Andrew McClaghry Appellant by Cross Appeal (Defendant) Before: The Honourable Mr. Justice Frankel The Honourable Mr. Justice Groberman The Honourable Madam Justice Fenlon Supplementary Reasons to McClaghry v. McClaghry, 2018 BCCA 146. The Appellant by Cross Appeal in Person L.A. McClaghry The Respondent by Cross Appeal in Person M.W.C. McClaghry Place and Date of Hearing: Vancouver, British Columbia April 16, 2018 Place and Date of Judgment: Vancouver, British Columbia April 16, 2018 Written Submissions Received October 29 and November 19, 2018 Date of Supplementary Judgment: Vancouver, British Columbia November 29, 2018 Supplementary Reasons of the Court Summary: In earlier reasons, the Court declared that, as of February 1, 2018, Mr. M. owed Ms. M. \$8,504.10 in spousal support. It awarded Mr. M. the costs of the appeal. Subsequently, Mr. M. made several payments to Ms. M. The costs were assessed at an amount that exceeded the remaining amount owing in support. The Family Maintenance Enforcement Program, however, does not recognize a setoff in respect of the costs award and continues to demand the outstanding support payments from Mr. M. He seeks a supplementary order allowing him to set off the costs award against the amounts owing on the support orders. Held: Supplementary order granted. The intention of the Court in the earlier judgment was to resolve all financial matters between the parties, insofar as that was possible. The order should have provided for the setting off of costs, once assessed, against any debt remaining. Reasons for Judgment of the Court:

- [1] In our reasons for judgment in this matter, we declared the net amount owed by Mr. McClaghry to Ms. McClaghry up to February 1, 2018 to be \$8,504.10. Mr. McClaghry has not had ongoing obligations to pay support to Ms. McClaghry since February 1, 2018.
- [2] Mr. McClaghry made a \$700 payment to Ms. McClaghry, through the Family Maintenance Enforcement Program ("FMEP"), on February 2, 2018. He made two additional payments, totalling \$2,563.10, since we pronounced our judgment. As of May 17, 2018, then, the unpaid spousal maintenance totalled \$5,241.00.

- [3] The Registrar assessed Mr. McClaughry's costs at \$5,941.00 on May 3, 2018, and issued a certificate of costs on May 15, 2018. Therefore, the amount Ms. McClaughry owes Mr. McClaughry for costs exceeds the amount of his support arrears.
- [4] Mr. McClaughry has filed an affidavit stating that the FMEP refuses to recognize a setoff of the costs order against his spousal support arrears in the absence of a Court order specifically authorizing it. He says that FMEP is threatening to take collection measures against him. He has, accordingly, applied for an amendment to the entered order of the Court so that the setoff is specifically addressed.
- [5] Although Ms. McClaughry did not file her material in response to the application in a timely manner, we have considered her submissions. She asks the court to re-open matters in their entirety and to make additional awards to her. She also seeks to set off additional amounts that we already accounted for in our earlier judgment. Our view is that the relief she seeks is not available to her.
- [6] Mr. McClaughry's position, on the other hand, is meritorious and our order should be amended. The Court of Appeal Rules give the Court limited powers to amend entered orders:
50. At any time, the court or a justice may
- (a) correct an error in an order that arose from a clerical mistake or from any other accidental slip or omission, or
- (b) amend an order to provide for any matter that should have been but was not adjudicated.
- [7] In the last paragraph of our judgment, we expressed our understanding that all financial issues between the parties were resolved, apart from any child support obligations Ms. McClaughry might continue to have:
- [30] This has been high-conflict litigation. The parties have been before the courts on numerous occasions. As things stand, spousal support has now been terminated, though child support obligations continue. This judgment should resolve all financial issues between the parties up to February of this year. Any issues of child support from February 1, 2018 onward are beyond the scope of this appeal. I am hopeful, that the parties will not require further resort to the courts.
- [8] At the time, we did not recognize that there would be a problem in setting off our costs award against Mr. McClaughry's indebtedness. This is a matter "that should have been but was not adjudicated". Accordingly, we retain the power to amend the order under Rule 50(b).
- [9] To effect the clear intention of our order, we need to amend it to deal with the setoff issue. Accordingly, the order pronounced April 16, 2018, and entered May 9, 2018, is amended by adding the following paragraph: THIS COURT FURTHER ORDERS THAT the costs awarded to the Appellant by Cross Appeal, Lester Andrew McClaughry, are, once assessed, to be offset from the net amount declared in this order to be owed by Mr. McClaughry to Ms.

McClaghry in respect of spousal and child support obligations. "The Honourable Mr. Justice Frankel" "The Honourable Mr. Justice Groberman" "The Honourable Madam Justice Fenlon"

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Prepared on 29 October 2026 · Esheria