

CANADA / JUDGMENT

McGinn v. McGinn

2010 BCSC 1483

COURT

Supreme Court of British Columbia

DECIDED

3 August 2010

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2010 BCSC 1483 McGinn v. McGinn IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: McGinn v. McGinn, 2010 BCSC 1483 Date: 20100803 Docket: 5151 Registry: Penticton Between: Murray John McGinn Plaintiff And Cornelia Victoria McGinn Defendant Before: The Honourable Mr. Justice Brooke Oral Reasons for Judgment Counsel for the Defendant: P. Boles No other appearances Place and Date of Hearing: Penticton, B.C. August 3, 2010 Place and Date of Judgment: Penticton, B.C. August 3, 2010

- [1] THE COURT: This matter comes before the court in accordance with the Interjurisdictional Support Orders Act. There are two applications, that of the plaintiff and that of the defendant.
- [2] The plaintiff made an earlier application to cancel his support obligation and the accumulated arrears that came on for hearing before Madam Justice Ker on February 22, 2010.
- [3] It was brought to the court's attention that the plaintiff had been ordered, by the order of Master Young made February 7, 2008, to pay a total amount of arrears for support and an education fund in the amount of approximately \$40,000, and to provide income tax returns for the years 1996 through and including 2007.
- [4] In June of 2008, and after this order was made by the Master, the plaintiff and his second wife both made an assignment into bankruptcy and the plaintiff did not disclose the liability for child support or the existing support orders. The effect of that failure, as Madam Justice Ker noted, was to deprive the Family Maintenance Enforcement authorities and the defendant the opportunity to have certain funds exempted from the bankruptcy, consisting of \$25,000 in a locked-in RRSP and \$20,000 representing the plaintiff's putative share of the sale of certain property in Alberta.
- [5] On the hearing of Mr. McGinn's application, counsel for the defendant submitted that the court should exercise its discretion and decline to hear the application because of the failure of the plaintiff applicant to comply with the order of the Master.

- [6] In the result, and here I read from paragraph 10, Madam Justice Ker said this: Certainly, the comprehensive materials filed by counsel for the defendant in this application would suggest a level of disdain or blatant disregard for the orders of this court by Mr. McGinn. He has failed to produce documents that he has been ordered to produce and he has failed to pay any child support, even when he deposed in an affidavit that he would pay at least \$10,570 in late 2007, and as indicated to Master Young in the hearing of February 2008. Moreover, he has failed to comply with the requirement of producing tax returns for the years 1996 to 2007 as ordered by Master Young.
- [7] Mr. McGinn, the plaintiff applicant, has filed two affidavits subsequent to the reasons for judgment of Madam Justice Ker that I have just referred to. One affidavit has been filed on June 3, 2007, and a second affidavit --
- [8] MS. BOLES: 2010, My Lord.
- [9] THE COURT: -- or 2010 rather, yes, and the second affidavit has been filed July 21, 2010. Both affidavits are extensive, and to some extent attempt to reargue the matter without in any way explaining the failure to make full disclosure of the tax returns for the years 1996 through 2007 inclusive. Nor does the plaintiff applicant answer the allegations of fraud or deceit in not informing the court in the bankruptcy proceedings both of his child support obligation and the substantial arrears in regard to child support.
- [10] This application, it seems to me, is abusive of the process of the court, inasmuch as the plaintiff applicant continues to be in breach of the order of the Master, from which no appeal has been taken.
- [11] Accordingly, the plaintiff applicant's application is dismissed.
- [12] With regard to the defendant's application, she seeks an order that the plaintiff post security for costs in order to bring any application in this action, that he be fined \$5,000 for failure to produce the documents previously ordered, and that he, "he" being the plaintiff applicant, provide a fax number or email address for delivery in accordance with the new rules that came into force on July 1, 2010.
- [13] I find that the conduct of the plaintiff applicant is tantamount to an abuse of the process of the court. I am satisfied that this is a rare case where, in a family proceeding, security for costs is appropriate. There will be an order that in order for the plaintiff applicant to bring any application in this action he must post security for costs in the amount of \$7,500.
- [14] I am satisfied as well that this is one of those cases where the plaintiff applicant has been wilfully and contumaciously in breach of the order of Master Young, and that a fine is appropriate in those circumstances. There will be a fine in the amount of \$2,500 for the plaintiff applicant's failure to produce the tax returns for the years 1996 to 2007, both inclusive. That order remains outstanding.

- [15] There will be an order as well that within 14 days of the delivery of these reasons, and the consequent order, that the plaintiff provide the solicitor for the defendant with a fax number or email address for delivery.
- [16] This, I find, is an appropriate case for special costs, inasmuch as the application of the plaintiff applicant is entirely without merit. The defendant will have ordinary costs of her application.
- [17] Thank you. Ms. Boles?
- [18] MS. BOLES: Thank you, My Lord. Two things arising, just for clarity. Would Your Lordship order those reasons for judgment to be put in the file?
- [19] THE COURT: Yes. So ordered.
- [20] MS. BOLES: Thank you. As well, just for clarity, the payee of the fine, so that it is clear in the --
- [21] THE COURT: Pay forthwith.
- [22] MS. BOLES: And -- forthwith. And the payee, to whom they are payable?
- [23] THE COURT: Payable to the defendant.
- [24] MS. BOLES: Thank you. Brooke J.

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