
CANADA / JUDGMENT

Mead v. Mead

2021 BCCA 66

COURT

British Columbia Court of Appeal

DECIDED

16 February 2021

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2021 BCCA 66 Mead v. Mead

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Mead v. Mead,

2021 BCCA 66

Date: 20210216

Dockets: CA46846; CA46847; CA46848

Between:

Jon William Mead

Respondent

(Plaintiff)

And

Jacqueline Laurel Mead

Appellant

(Defendant)

Before:

The Honourable Madam Justice Fenlon

(In Chambers)

On appeal from: Orders of the Supreme Court of British Columbia, dated

January 29, 2018 (Mead v. Mead, 2018 BCSC 134, New Westminster Docket

E33985); December 13, 2019 (J.W.M. v. J.L.M., 2019 BCSC 2146, New Westminster Docket E33985); and a decision in a Memorandum dated March 26, 2020 (Mead v. Mead, New Westminster Docket E33985).

The Appellant appearing via videoconference:

J.L. Mead

The Respondent, appearing via videoconference:

J.W. Mead

Place and Date of Hearing:

Vancouver, British Columbia

December 16, 2020

Place and Date of Judgment:

Vancouver, British Columbia

February 16, 2021

Summary:

The parties have been engaged in protracted family proceedings since their separation. In the course of the litigation, the case management judge made a number of orders, several of which the appellant seeks to appeal: a 2018 order decreasing spousal support and setting a fixed date for its termination, a 2019 order cancelling arrears of support, and a 2020 decision in a memorandum to the parties refusing to hear various applications brought by the appellant. The appellant applies for extensions of time to appeal the 2018 and 2019 orders and seeks no fee status in relation to all three appeals.

Held: Applications allowed in part. No fee status granted for the appeal from the 2020 decision. Extensions for time and no fee status denied for the appeals of the 2018 and 2019 orders. The appeals of the 2018 and 2019 orders had no reasonable prospect of success. As the extensions of time were denied, there was no need to consider the applications for no fee status for those appeals. The appeal from the 2020 decision could not be said to have no reasonable prospect of success, even though whether the 2020 decision was an appealable order is a live issue. No fee status was appropriate in light of the appellant's financial situation and the scope of the direction banning contact with the registry.

Reasons for Judgment of the Honourable Madam Justice Fenlon:

Introduction

- [1] Jacqueline Mead seeks to appeal three decisions of the judge who has case managed this protracted proceeding in the court below for the past four years:
1. A January 29, 2018, order decreasing and terminating spousal support on a fixed date (the "Support Order"): reasons indexed at 2018 BCSC 134 (CA46847);
 2. A December 13, 2019, order cancelling arrears of support (the "Arrears Order"): reasons indexed at 2019 BCSC 2146 (CA46848); and
 3. A March 26, 2020, decision refusing to hear various applications Ms. Mead asked to have set before him for hearing for failing to meet the COVID-19 urgency protocol then in place (the "March Memorandum"), sent in a memorandum to the parties (CA46846).
- [2] Ms. Mead applies for an extension of time to appeal the first two orders and applies for no fee status in relation to all three appeals.
- [3] The respondent, Jon Mead, takes no position on the applications for no fee status. He opposes the granting of extensions of time to appeal the Support and Arrears Orders on the basis that Ms. Mead is long out of time and the appeals lack merit.

Issues on Appeal

1. Should extensions of time to appeal be granted for the Support and Arrears Orders?
- [4] The test for granting an extension of time is well-settled and set out in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259-260 (C.A.). It requires consideration of the following factors:
1. Was there a bona fide intention to appeal?
 2. When were the respondents informed of the intention?
 3. Would the respondents be unduly prejudiced by an extension?
 4. Is there merit in the appeal?
 5. Is it in the interest of justice that an extension be granted?

The fifth factor encompasses the first four and is "the decisive question": *Davies* at 260. The applicant, here Ms. Mead, bears the burden of establishing that an extension is warranted.

- [5] In this case, the applications to extend time turn on the fourth and fifth factors. I will therefore address only those factors in these reasons.
- [6] I begin by observing the time limit for commencing an appeal is 30 days after an order is made. Ms. Mead filed notices of appeal on May 7, 2020, seeking an extension of two years and four months in respect of the Support Order and approximately one and a half years in respect of the Arrears Order.

- [7] Ms. Mead submits it is in the interest of justice to permit her to pursue these appeals because reinstatement of support is vital to her financial security and well-being. She points out that she is impecunious, surviving on social assistance, and without a home--at times living in her car and otherwise dependent on family and friends allowing her to stay with them for short periods. Ms. Mead stresses that unless she is allowed to appeal and overturn these orders, which have cut off her spousal support, she will continue in a state of poverty, homelessness, anxiety, and depression--all of which make it more difficult for her to find work and support herself.
- [8] Further, Ms. Mead submits it is in the interests of justice to permit late filing of her appeals because the delay in filing is explained by her personal circumstances. In an affidavit filed in July 2020, Ms. Mead detailed the mental health and physical ailments she experiences, describing anxiety, depression, and PTSD, primarily due to the loss of contact with her two children (now adults) and the stresses of this family litigation, which she describes as consisting of "court abuse" by Mr. Mead. Ms. Mead submits that her mental health issues, impecuniosity, and lack of familiarity with the Court of Appeal process, as well as the demands of simultaneously dealing with ongoing matters in the underlying litigation in the BC Supreme Court, all prevented her from filing notices of appeal before May 2020.
- [9] I have case managed the parties' appeals in this Court for over three years. I accept Ms. Mead is in a difficult financial situation, is highly anxious, and finds organizing materials, meeting deadlines, and appearing in court difficult. Although I accept Ms. Mead's health issues and financial circumstances explain some delay, I do not find that they adequately explain the significant amount of time that has passed between the orders and the filing of notices of appeal.
- [10] Nor do I accept that the delay is explained by lack of familiarity with procedures in this Court. Prior to the Support Order, Ms. Mead had filed seven appeals in this Court, all involving this family litigation. Four of those appeals were dismissed for want of prosecution, but one, CA39312, was allowed (2012 BCCA 324); one, CA42939, was dismissed (2016 BCCA 478); and for another, CA44952, leave to appeal was sought and refused.
- [11] In assessing the interests of justice, I must also consider the potential prejudice to Mr. Mead caused by allowing orders that have governed his financial affairs for several years to now be challenged.
- [12] As to the merits of the proposed appeals, the threshold question is whether the appeal is "doomed to fail" or, alternatively, whether "it can be said with confidence that the appeal has no merit": *Stewart v. Postnikoff*, 2014 BCCA 292 at para. 6 (Goepel J.A. in Chambers).
- [13] The proposed appeals' merits can only be assessed with an understanding of the parties' relationship and the litigation preceding the making of the Support and Arrears Orders.

- [14] The parties' relationship began in early 1998. They married in February 1999 and separated in August 2007--a relationship of about 9.5 years. When they separated, their children were eight and six years old.
- [15] Mr. Mead began paying spousal support in November 2007. In 2015, he sought an order terminating spousal support. Justice N. Brown, after extensively reviewing the parties' history, declined to terminate support. Instead, he reduced spousal support from \$3,022 per month to \$1,500 per month for two reasons: first, because Mr. Mead's income had decreased from \$130,000 to \$105,000 annually; and second, because Justice Brown found Ms. Mead was intentionally unemployed and should have income imputed to her. Justice Brown made an order gradually increasing the level of imputed income from \$15,000 in 2015 to \$36,000 by 2017.
- [16] Justice Brown also found that Ms. Mead owed Mr. Mead \$8,354 for overpayments of both spousal and child support between January 1, 2015, and June 1, 2015. Justice Brown ordered Ms. Mead to reimburse Mr. Mead by paying him \$721 per month, commencing August 1, 2015.
- [17] Ms. Mead appealed the order of Justice Brown, who stayed the reimbursement order pending the outcome of the appeal. That appeal was dismissed by this Court: 2016 BCCA 478. However, even after the reimbursement order was upheld, Ms. Mead did not comply with it. In contrast, Mr. Mead complied with the outstanding orders, making support payments for both Ms. Mead and one of their children even after the younger child began living with him in May 2016.
- [18] In January 2018, Mr. Mead renewed his application to terminate his obligation to pay spousal support to Ms. Mead.
- [19] At that point, the parties had been separated for 10.5 years. Justice Harvey, who had by then assumed the role of case management judge, in the Support Order reduced the spousal support award to \$731 per month to reflect Ms. Mead's level of imputed income under Justice Brown's order and terminated support as of November 1, 2018.
- [20] Because Ms. Mead was not complying with Justice Brown's order to repay Mr. Mead \$721 per month, Mr. Mead unilaterally reduced his monthly support payments by that amount, resulting in payments to Ms. Mead of the remaining \$9 monthly. (Even after withholding that amount, by November 2018, when support terminated, Ms. Mead still owed him about \$1,400.) Ms. Mead viewed Mr. Mead's decision to offset the amount she owed him as an unwarranted breach of the Support Order. She took the view that the full amount of withheld payments constituted outstanding arrears of spousal support and sought to collect these sums through the Family Maintenance Enforcement Program.
- [21] Accordingly, Mr. Mead applied in 2019 to cancel those arrears and offered to forgive the \$1,400 Ms. Mead continued to owe him. On that application, Justice Harvey concluded that Mr. Mead had not only met but exceeded all of his support obligations to Ms. Mead, noting

that in addition to doing so, he had paid support for each of the two children for brief periods while they lived with him alone and had supported the children since 2016 without contribution by Ms. Mead despite the notional income imputed to her. Justice Harvey concluded it would be grossly unfair not to cancel the arrears in these circumstances and made the Arrears Order, which wiped the slate clean for both parties.

- [22] With that background, I return to the merits of the proposed appeals.
- [23] First, Ms. Mead contends that Justice Harvey erred in making both orders because he did not take into account new medical evidence and a work assessment that she asserts shows she could not work because litigation and other stresses have caused increased headaches and anxiety.
- [24] The medical reports appended to Ms. Mead's affidavit confirm migraine headaches and significant stress and anxiety, largely attributed to this litigation and her understandable distress at not having an active role in her children's lives. None of the medical evidence, however, states that Ms. Mead is incapable of employment. This Court addressed the same issue in the appeal from Justice Brown's order, saying:
- [17] Fourth, and last, J.L.M. strenuously contends the judge erred in imputing income to her. In considering this issue the judge recorded medical evidence showing that she suffered from anxiety and depression, insomnia, degenerative arthritis and severe headaches. He reviewed J.L.M.'s education, employment history and qualifications. He noted J.L.M. had a history of starting, then abandoning, home-based businesses in baking, home-staging and dog sitting. He observed that J.L.M., on previous occasions, had forecast significant earnings although those earnings had not materialized. After considering all of these aspects, he concluded that J.L.M. has been "intentionally under-employed", and imputed income to her.
- [18] J.L.M. says that the judge wrongly ignored or misunderstood medical evidence and that in saying persons with her problems held positions in the workplace, the judge wrongly took judicial notice of facts that were not in evidence.
- [19] I see no basis upon which to interfere. The medical evidence is not to the effect that J.L.M. is unable to seek or maintain employment. She has the advantage of qualifications in several areas of work, including qualifications recently attained in home-staging. The income stream imputed to her allows for gradual development of her income, is under estimates she previously provided to the court of her earning abilities, and allows for something less than full time work, particularly in the first years of imputed income. I cannot say the judge's exercise of judgment in this matter was unreasonable, that he applied an incorrect principle, or that he misunderstood the evidence and the record before him. The simple conclusion of the judge was that J.L.M.'s failure to make a start on earning income, after considerable latitude had been shown by the trial court to allow her to find her financial feet and after her obligation for self-support had been explained on more than one occasion, could not continue, and that income should be imputed on a trajectory that was not harsh. I cannot say that conclusion is in error.

[Underline emphasis added; italic emphasis in original.]

- [25] Ms. Mead says the work assessment she had prepared shows she cannot work with her various health challenges and that the judge did not even refer to this evidence. However, the judge was fully aware of Ms. Mead's unfortunate financial situation and the state of her health. He noted that those factors had in part justified the lengthy duration of support in this case--in excess of 11 years based on a nine-year relationship. Applying the Spousal Support Advisory Guidelines, the judge concluded the length of the marriage and the circumstances of the parties did not entitle Ms. Mead to indefinite or further support.
- [26] Second, Ms. Mead contends the judge erred in deciding that he could address Mr. Mead's application to cancel spousal support on a chambers application rather than after a full trial addressing all of the issues that she wanted to resolve. These included issues such as obtaining "protection orders from court abuse," by which Ms. Mead meant Mr. Mead's setting of applications and his attendant communications with the court registry when she considered such applications to be in breach of judge-imposed restrictions and cooling-off periods or improper for already being addressed by another judge. She also wanted the court to address Mr. Mead's contempt, which Ms. Mead said was demonstrated by Mr. Mead providing misinformation to the court and his refusal to comply with orders restricting the setting of applications.
- [27] I note that Ms. Mead's concerns about Mr. Mead proceeding despite some judges on earlier applications having barred further applications ignores the exceptions for applications compelled by a material change in circumstances or applications brought with leave of the court, both of which applied to Mr. Mead's application to reduce or end support.
- [28] Justice Harvey squarely addressed the issue of whether a trial was necessary, saying:
- [55] The simple answer is yes, the matter is suitable for a summary determination. These proceedings have dragged on for far too long. While triable issues may remain, such may, after a determination of whether L.'s current parenting situation requires review, be summarily determined. The facts underlying the application before me are not in dispute save for allegations of [Mr. Mead] under-reporting his income.
- [56] I am satisfied I can determine the necessary facts from the material before me.
- [64] As such, a full trial on this issue would [be] unwarranted. The issue concerning the quantum and duration of spousal support is discrete from the issues asserted by the respondent as requiring a full trial.
- [65] The respondent's assertion that L.'s decision to reside solely with [Mr. Mead] is as a result of parental alienation is [a] matter distinct from the issue of spousal support and, if pursued, may require a full trial as opposed to a summary proceeding.

- [66] Such is not, in my view, "litigation in slices" given the litigation history of these parties. The resolution of the respondent's spousal support entitlement will, in my view, go a long way to the resolution of the entire outstanding dispute between the parties.
- [29] Justice Harvey was also entitled to take into account Ms. Mead's failure to move the case toward trial. As Ms. Mead acknowledges, she had trial dates set but asked the registry to cancel them because she wanted to obtain further information and expert reports before proceeding.
- [30] The decision to proceed summarily rather than by way of a full trial is a discretionary one reviewed on a deferential standard. Given the judge's view of the information available on the record, the discrete nature of the support issue, and the need to reach a decision given the delays that had occurred in addressing Mr. Mead's application to end support, I see no prospect of success on appeal in this regard.
- [31] Third, Ms. Mead says the judge erred in assessing Mr. Mead's true financial circumstances and did not realize that Mr. Mead had not provided full disclosure. By way of example, she says the judge did not consider that Mr. Mead had not produced his tax re-assessment for 2014, showing a refund of \$24,000, which she says would have increased his total income to \$149,000 for 2014.
- [32] As Mr. Mead pointed out in response, a tax refund does not increase a taxpayer's annual income. Rather, it means that the taxpayer overpaid tax on that income. Nor was Mr. Mead's 2014 income in issue before Justice Harvey in January 2018.
- [33] Concerning Ms. Mead's broader allegations of inadequate disclosure of financial information by Mr. Mead, the judge found that Ms. Mead had not put forward any evidence to support her contention that Mr. Mead had not fully disclosed his financial situation, saying:
- [51] As to the suggestion [Mr. Mead] has been and continues to be less than forthright in his disclosure, the respondent relies on what she referred to as "basic sense" rather than any evidence which would establish dishonesty on [his] part.
- [52] I note [Mr. Mead] self-reported an increase in his income in 2015 in excess of that found by N. Brown J. with a resultant adjusting payment as provided for in the reasons. Such, I find, is hardly consistent with the respondent's suggestion of ongoing under-reporting of his income to the detriment of her and the children.
- [34] Having considered these and other arguments raised by Ms. Mead to support her position that there is merit to the appeal she wishes to bring from the Support Order, I conclude that an appeal is bound to fail.
- [35] I am of the same opinion regarding the grounds of appeal Ms. Mead raises concerning the Arrears Order. In the circumstances of this case, the decision to offset an overpayment of spousal support against outstanding spousal support was a principled one. Ms. Mead's

grounds of appeal relate primarily to procedural matters, such as why Mr. Mead was permitted to proceed with applications before Justice Harvey when Justice Brown had made the original orders for repayment of spousal support and the parties had requested clarification from him concerning those orders. Although Justice Brown was at one point dealing with the parties' questions, he determined that the case management judge should address them once that judge was assigned.

- [36] Ms. Mead also contends Justice Harvey did not have materials that she had sent to him in front of him, that he should have known that she was not capable of earning the income imputed to her because of her health, and that he did not deal with the new evidence she had presented on the application. Ms. Mead also points out that her lawyer was difficult to reach during this period and had effectively gone "AWOL," although she did appear at the hearing.
- [37] Even if the judge did not have all of the material before him that Ms. Mead wished him to consider, I see no prospect that it could have affected his decision to offset the two spousal support debts.
- [38] Ms. Mead filed voluminous materials on these applications for leave and no fee status. They are not always easy to follow, but her submissions in the hearing before me were thorough and clear. The errors Ms. Mead identifies are largely challenges to the judge's findings of fact and inferences about her ability to work and challenges to exercises of his discretion with respect to the appropriate duration of support based on his findings and earlier orders made and upheld on appeal. Those findings, and the exercise of his discretion to proceed with a particular application ahead of others and outside of a trial, would be reviewed on a deferential standard. As I have already observed, the judge's decisions were well-supported and reasonable and, in my view, have no prospect of being overturned by a division of this Court.
- [39] In assessing whether it is in the interests of justice to grant extensions of time to permit the proposed appeals to proceed, I also take into account the need for family litigation to come to an end at some point. The parties have been separated for almost 14 years. During that long period, they have been constantly before either the BC Supreme Court or the Court of Appeal--and often both at the same time. Although Ms. Mead asserts that Mr. Mead has inflicted "court abuse" on her by constantly bringing applications, that is not borne out by the record. Justice Brown observed in 2015 that, at that point, the parties were on their 34th application and Ms. Mead had initiated 27 of them, "some in close succession": 2015 BCSC 1016 at para. 2.
- [40] I have considerable sympathy for Ms. Mead's personal and financial circumstances, but permitting these appeals to proceed would be futile and will not remedy the difficulties she faces.

- [41] I would accordingly deny the application to extend the time to appeal the Support Order and the Arrears Order. Having reached that conclusion, I need not address the application for no fee status in relation to those appeals.
2. Should no fee status be granted in the appeal from the March Memorandum?
- [42] Ms. Mead filed her appeal from the March Memorandum on time and does not require an extension of time to appeal. Her application in relation to this appeal is restricted to no fee status.
- [43] There are two considerations for granting such an order: BH v. JH, 2015 BCCA 475 (Garson J.A. in Chambers):
1. The financial position of the applicant; and
 2. The likelihood of success of the appeal.
- [44] Ms. Mead has filed an affidavit attesting to her financial circumstances. I accept that she is a person who cannot afford to pay the fees without undue hardship. Accordingly, this application, like the preceding ones, turns on whether the appeal has merit. An appeal lacks merit if it has no reasonable prospect of success.
- [45] The March Memorandum followed numerous requests by Ms. Mead to set hearings before the case management judge to address reunification with her daughter (which, for Ms. Mead, was an urgent matter because her daughter was soon to turn 19), to have the judge recuse himself, to address difficulties dealing with Supreme Court scheduling, and to reconsider support orders. Justice Harvey noted that reunification had already been addressed and would not be re-entertained; that a recusal application had already been heard, rejected, and appealed unsuccessfully and would not be addressed; and that all other matters raised did not support the need for a hearing. As a result, the judge said:
- Finally, Ms. Mead is to cease communicating with Supreme Court Scheduling, either by telephone or email until the current COVID-19 crisis is at an end. Requests for an urgent hearing have been entertained and denied.
- [46] On the record before me, I conclude that it is unlikely that a division of this Court would find that the case management judge erred in refusing to hear, as urgent, the matters raised by Ms. Mead. Having said that, and recognizing that there is a live issue as to whether the March Memorandum is an appealable order, I am not prepared to determine that the appeal from the decision barring her from any further communication with the court registry for an indefinite period has no reasonable prospect of success. I would accordingly grant Ms. Mead no fee status in relation to CA46846.

Disposition

[47] The applications for extensions of time and no fee status with respect to CA46847 and CA46848 are denied. No fee status is granted with respect to CA46846.

"The Honourable Madam Justice Fenlon"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/21/00/2021BCCA0066.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/mead-v-mead-2021-bcca-66>

Prepared on 26 October 2026 · Esheria