

CANADA / JUDGMENT

Mirsayah v. Pajouh

2023 BCSC 2294

COURT

Supreme Court of British Columbia

DECIDED

7 December 2023

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2023 BCSC 2294 Mirsayah v. Pajouh

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mirsayah v. Pajouh,

2023 BCSC 2294

Date: 20231207

Docket: E58160

Registry: New Westminster

Between:

Amirali Mirsayah

Claimant

And

Somayeh Pajouh

Respondent

Corrected Judgment: The front page of the judgment was corrected on January 2, 2024.

Before: Master Bilawich

Oral Reasons for Judgment

In Chambers

Counsel for the Claimant:

F. Arbabi

Counsel for the Respondent:

C. Lewis

Place and Date of Hearing:

New Westminster, B.C.

November 17, 2023

Place and Date of Judgment:

New Westminster, B.C.

December 7, 2023

Introduction

- [1] THE COURT (by videoconference): This is a high-conflict family action. There are two applications before me.
- [2] The claimant seeks an order granting the respondent liberty to file an amended counterclaim which only amends Schedules 4 [Property] and 5 [Other Orders] of her counterclaim, as set out in her amended counterclaim filed August 1, 2023, with the exception of one particular paragraph in Schedule 4(1)(A) which adds a new claim against a property at 2000 Panorama Drive in Port Moody which is registered in the name of the claimant's sister. The claim is on the basis that it was purchased "by family income". The claimant says this paragraph should be deleted because the property in question was purchased in March 2020, after the parties separated.
- [3] The claimant originally sought a variety of other relief, but the parties were able to resolve many of those issues by consent.
- [4] The respondent applies for the following:
- a) Pursuant to Rule 8-1 of the Supreme Court Family Rules, B.C. Reg. 169/2009 ("SCFR"), an order allowing her to discontinue a counterclaim which was not properly filed on August 1, 2023, and to amend and file a new one; and
 - b) Alternatively, pursuant to Rule 21-3(8) and (8.1) of the SCFR and 194(3)(c) of the Family Law Act, SBC 2011, c 25 ("FLA"), an order consolidating her Provincial Court action with this action.
- [5] On November 15, 2023, the parties entered into a consent order before Master Krentz which provided that the respondent would discontinue her amended counterclaim filed August 1, 2023. Accordingly, it is not necessary to address that aspect of the respondent's application.

Background

- [6] The parties began living together in February 2012. They were married on April 19, 2014. They have one child of their marriage, S., who is age nine.
- [7] On July 8, 2015, the parties moved from Iran to Vancouver. The claimant has been a Canadian citizen since 2000. The respondent has permanent resident status in Canada.
- [8] During the marriage, the respondent worked with the claimant's business, Kanata Immigration Consultants. The respondent alleges the claimant was abusive towards her throughout the marriage. He denies this.
- [9] On June 8, 2018, the respondent decided to separate from the claimant. On October 1, 2018, the claimant moved out of the family home and the respondent stopped working for Kanata.
- [10] On June 11, 2019, the respondent started BC Provincial Court, Port Coquitlam Registry Action F-18655, seeking orders regarding parenting, child and spousal support and a protection order.
- [11] August 19, 2019, the claimant started the present action in BC Supreme Court seeking division of property and debt and related relief. The primary properties in dispute include:
- a) [address redacted] Hawthorne Drive, Port Moody, B.C. (the "Family Home");
 - b) Two properties in Tehran, Iran, which the claimant says he owned prior to the parties' relationship; and
 - c) Three properties in St. John, N.B., which the claimant says he owned prior to the parties' relationship.
- [12] On February 5, 2020, the respondent filed a blank response to family claim and counterclaim in this action. She was self-represented at the time and says she did not know how to complete the forms.
- [13] On May 12, 2021, the claimant made an application in this action to consolidate it with the Provincial Court action. The respondent opposed the application. At the time the Provincial Court trial was scheduled to start on May 17, 2021 and was set for 2 days. Master Robertson dismissed the claimant's application.
- [14] The parties both represented themselves during the Provincial Court trial. It took place over 5 days, including May 17-18, August 11-12, and October 18, 2021. On November 26, 2021, a final order was issued dealing with parental responsibilities, parenting time, child support and spousal support. The trial judge imputed an income of \$100,000 to the claimant and ordered that he pay the respondent child support of \$946 per month and spousal support of \$2,175 per month. There were other orders made which are not relevant to this application.

- [15] On December 13, 2021, the claimant filed an appeal of the support orders only in BC Supreme Court, Vancouver Action E213047. On July 26, 2022, Justice Majawa allowed the appeal. His reasons are indexed as *Mirsaya v. Pajouh*, 2022 BCSC 1269. He concluded that the trial judge had not provided sufficient reasons for his decision to impute the level of income he did to the claimant. He ordered that there be a new trial regarding the claimant's income and his resultant child and spousal support obligations.
- [16] Since the appeal was allowed, the respondent has not taken steps to schedule a new Provincial Court trial addressing support issues. She says this is because the claimant escalated his threats towards her, so she focused on dealing with protection issues as her priority. In January 2023, the respondent applied in Provincial Court for a protective order. In May and June of 2023, the claimant applied to cancel it.
- [17] On March 3, 2022, the respondent retained her previous counsel, Mr. Hamilton, to assist her with this action. On July 27, 2022, the parties agreed to set a trial date and a notice of trial was filed setting the trial for January 15, 2024 for 10 hearing days.
- [18] On July 27, 2023, the claimant requested the respondent's consent to an amend his notice of family claim to include a claim for occupational rent. The respondent consented.
- [19] On August 1, 2023, the respondent filed an amended counterclaim. She had signed this herself, as opposed to having her counsel do so. This added new claims for child support [Schedule 2], spousal support [Schedule 3], additional property claims [Schedule 4], and under Other Orders [Schedule 5], a request that the court enforce an Iranian court order. The respondent had not sought or obtained the claimant's consent or leave of the court to file this amended counterclaim before she did so.
- [20] On August 4, 2023, Mr. Hamilton wrote to claimant's counsel advising the respondent had inadvertently filed the amended counterclaim. He acknowledged that because a trial date had been scheduled, it should not have been filed without consent or leave of the court. He proposed that a discontinuance be filed and then an amended counterclaim filed with the claimant's consent.
- [21] On August 8, 2023, claimant's counsel advised he did not agree to amendments to the counterclaim which added claims for child support and spousal support, but he would agree to amendments to property and other claims.
- [22] On August 11, 2023, Mr. Hamilton wrote to claimant's counsel advising he would file a notice of discontinuance of the amended counterclaim and then a new amended counterclaim which included amendments to Schedules 4 and 5 only.

- [23] On this application, the respondent says she never agreed to forego adding the support claims to her amended counterclaim. On or about August 26, 2023, she discharged Mr. Hamilton as her counsel. He communicated this to claimant's counsel on August 28, 2023. On August 29, 2023, the respondent filed a notice of intention to act in person. On September 26, 2023, the respondent's current counsel Ms. Lewis filed a notice of appointment or a change of lawyer.
- [24] The claimant's current application was filed September 26, 2023. The respondent's current application was filed October 23, 2023.
- [25] The respondent seeks an order permitting her to file an amended counterclaim which includes claims for child and spousal support, and there is a reference to her wanting to add a claim based on the tort of family violence as an additional claim. She says that between April 2019 and 2023, the total support paid by the claimant was \$22,822.82. This works out to an average of \$422.64 per month. The claimant has not paid any child or spousal support since October 2022. She says she is willing to have her claim for family violence heard at a later date, so the 10-day trial commencing on January 15, 2024 will be sufficient to address property and support issues.

Position of parties

Claimant

- [26] The claimant argues the respondent is bound by Mr. Hamilton's agreement to not include claims for child and spousal support in the new amended counterclaim. He says lawyers are presumed to have authority to bind their clients to terms of settlement. Other parties have no obligation to make inquiries regarding the solicitor's authority to act on their client's behalf.
- [27] The claimant also says there are a variety of barriers to the respondent adding child and spousal support claims to this action, including:
- a) Those same claims are made in the Provincial Court action and were dealt with substantively by that court in the previous trial;
 - b) The claimant's previous application to this court to consolidate actions was opposed by the respondent and dismissed;
 - c) In granting the appeal from the Provincial Court order regarding support, Justice Majawa ordered a new trial of support issues. The claimant argues this implies that the new trial be held in Provincial Court.
 - d) Counsel suggests there are numerous court decisions which hold that the same court that deals with parenting should also deal with support, to avoid the need for multiple hearings in different courts whenever an application is brought to vary parenting time.

- [28] The claimant expresses concern that the respondent is attempting to delay the trial of property and debt issues. Counsel estimates that adding support issues would mean an additional 4 hearing days would be required. He provided a rough estimate of 13 days for a trial of property and support issues combined. This would mean an adjournment of the current trial date would be unavoidable if support issues are added. The evidence relating to these issues is relatively distinct. If a new date has to be set, realistically the parties would be looking at a new trial date in February 2025 or subsequent.
- [29] Claimant's counsel indicated during argument that he had consulted the Port Coquitlam Provincial Court Registry and been informed that a 3 or 4-day trial of support issues only could be scheduled as early as March or April 2024.

Respondent

- [30] The respondent says it is appropriate to allow her to amend the counterclaim to include claims for child and spousal support pursuant to the Divorce Act, R.S.C. 1985, c 3 (2nd Supp). She is not asking the court to set aside a Provincial Court order. It is in the best interests of the parties and the child to determine support issues at the same time as property issues. It will be a lesser drain on her financial and emotional resources.
- [31] Under s. 194 of the FLA the Supreme Court can assume jurisdiction when making orders under federal legislation, even if there is an existing Provincial Court order. In this case, the child and spousal support orders previously made in Provincial Court have been set aside and there are no existing orders in place. As such, the Supreme Court does not have to exercise its jurisdiction to change, suspend or terminate a Provincial Court order. The Supreme Court is in as good a position to make support orders as Provincial Court. Counsel argues there is sufficient time between the date of the hearing before me and the January 15, 2024 trial date for the parties to carry out the discovery of documents and examination for discovery necessary to be prepared to address those issues on the current trial date. She also says there is adequate time reserved to add support issues to the trial.

Applicable law

Amendment of pleadings

- [32] Amendment of pleadings is addressed in Rule 8-1(1):

Rule 8-1 -- Amendment of Pleadings

When pleading may be amended

- (1) Subject to Rules 8-2 (7) and (9) and 9-6 (5), a party may amend the whole or any part of, including any Schedule to, a pleading filed by the party, other than by adding or changing parties or withdrawing an admission,
 - (a) once without leave of the court, at any time before service of the notice of trial, or

- (b) after a notice of trial is served, only with
- (i) leave of the court, or
- (ii) written consent of the parties.

[33] The principles applicable to amendment of pleadings are summarized in *Kwikwetlem First Nation v. British Columbia (Attorney General)*, 2021 BCCA 311 at para. 166:

- (a) amendments should be permitted as are necessary to determine the real question in issue between the parties.
- (b) the court will not give its sanction to amendments which violate the rules that govern pleadings, including the prohibition of pleadings which disclose no reasonable claim. In considering this question, the court will apply the same tests and considerations as applicable on an application to strike claims already pleaded
- (c) a party is not required to adduce evidence in support of a pleading before trial
- (d) on an application to amend the facts alleged are taken as established
- (e) the discretion is to be exercised judicially, in accordance with the evidence adduced and the guidelines of the authorities. Factors to be considered include: the extent of delay, the reasons for delay, any explanation put forward to account for the delay, the degree of prejudice caused by the delay, the extent of the connection between the existing claims and a proposed new cause of action. The over-riding consideration is what is just and convenient .

Overlapping jurisdiction / Consolidation

[34] Sections 192 and 193 of the FLA set out jurisdiction of the Supreme Court and Provincial Court. Each indicates that it is subject to the Divorce Act. Section 194 addresses overlapping jurisdiction of the two courts with sub (3) in particular allowing consolidation:

Overlapping court jurisdiction

194 (1) If a proceeding respecting a family law dispute may be started in either the Supreme Court or the Provincial Court, the starting of a proceeding in one court does not prevent the starting of a second proceeding in the other court, unless the relief applied for in the second proceeding has already been granted or refused in the first proceeding.

- (2) If proceedings are started in both courts and each court may make an order for the same relief, the making of an order by one court does not prevent an application for an order in the other court unless the relief that is the subject of the application to the other court has already been granted or refused by the first court.

- (3) If proceedings are started in both courts, a court, on application and to the extent that the matter is within the court's jurisdiction under section 192 [Supreme Court jurisdiction] or 193 [Provincial Court jurisdiction], as applicable, may do one or more of the following:
- (a) decline to hear a matter;
 - (b) decline to hear a matter until another matter under this Act, or under any other law of British Columbia or Canada, has been heard in the other court;
 - (c) consolidate proceedings started in the other court with proceedings started in the court;
 - (d) hear a matter.
- (4) Despite subsection (2), the Supreme Court may change, suspend or terminate, under section 215 [changing, suspending or terminating orders generally], an order of the Provincial Court if
- (a) the Supreme Court is making an order that affects an order of the Provincial Court, and
 - (b) the parties would have to go back to the Provincial Court to have the Provincial Court's order changed, suspended or terminated as a result.
- (5) If the Supreme Court acts under subsection (4), the Supreme Court's order is deemed to be an order of the Provincial Court for all purposes.
- (6) Nothing in this section authorizes the Supreme Court to change, suspend or terminate an order of the Provincial Court if the Provincial Court has refused to change, suspend or terminate the order, except as provided under section 233 [appeals from Provincial Court orders].

[35] Rule 21-3(8) and (8.1) of the SCFR address consolidation:

Consolidation

- (8) Family law cases may be consolidated at any time by order of the court or may be ordered to be tried at the same time or on the same day.

Consolidation of proceedings with Provincial Court proceedings

(8.1) If, under section 194 (3) (c) of the Family Law Act, one or more Provincial Court proceedings are to be consolidated with one or more Supreme Court proceedings, the court may, in the order for consolidation, make any orders it considers will further one or both of the object of these Supreme Court Family Rules and the object of the Family Law Act, including, without limitation, orders respecting the following:

- (a) the amendment, filing and service of pleadings;
- (b) any matter in relation to which the court may make an order at a judicial case conference under Rule 7-1 or at a trial management conference under Rule 14-3.

[36] In *Auxi v. Menton*, [1994] B.C.J. No. 2442, 2 B.C.L.R. (3d) 307 (S.C.) at paras. 27-28:

27 Duplicity or multiplicity of actions in the various courts in British Columbia are not to be encouraged. It is an improper practice and probably an abuse of process to bring an action claiming relief under the Family Relations Act in this Court in circumstances in which identical or similar relief is claimed in Provincial Court. Some exceptions to this rule include instances in which:

1. there is a substantial time delay in the Provincial Court application and/order and the subsequent application in this Court;
2. the application has been brought in Provincial Court but no decision has been made nor hearing scheduled, or if scheduled, it is unlikely that the hearing will be or could be held within a reasonable time and it is in the best interest of the children or otherwise necessary to determine the issues more expediently;
3. the children's physical or emotional wellbeing are at risk or it is otherwise in their best interest to have the matter heard immediately;
4. additional relief is claimed in this Court over which the Provincial Court lacks jurisdiction.

28 In those, and possibly other instances, the proper application to make is to apply to join and hear the Provincial Court proceedings with the proceedings in this Court pursuant to s. 8(2) of the Family Relations Act. If that application is granted and the Provincial Court order is made in order of this Court, the court may then go on to consider the merits of the application to vary the order. The order to be varied, though, is the former order of the Provincial Court which is now as an order of this Court. Any variation in that order may occur in accomplished by this court not as an appellate tribunal but as a court of original jurisdiction varying its own order.

[37] See also *K.M.P. v. A.E.J.*, 2020 BCSC 1916 at paras 17-19:

[17] On the question of which court has jurisdiction, the parties have highlighted the following cases: *Kane v. Proffitt*, 2018 BCCA 106, *Kelly v. Sidhu*, 2020 BCSC 393, *Power v. Spadafora*, 2015 BCSC 1399, *C.R.J. v. L.S.J.*, 2013 BCSC 1781, and *G.B. v. D.B.*, 2019 BCPC 69.

[18] I have reviewed the principles from each of these cases. I have also reviewed the Continuing Legal Education Society of British Columbia's ("CLE") chapter on changing parenting orders where there is a jurisdictional issue. I will cite the summary of relevant principles from the CLE (British Columbia Family Practice Manual (online), "Jurisdiction of the Supreme Court to Change, Suspend, or Terminate an Order under the Family Law Act", at §16.3 (2020 Update)):

For an analysis of the law on the concurrent jurisdiction of the Provincial Court and the Supreme Court under the Family Law Act, see *Turner v. Turner*, 2013 BCSC 1988 (Master), and *Power v. Spadafora*, 2015 BCSC 1399.

In *Turner*, the court concluded that in the common situation where property issues arise after the commencement of provincial proceedings for other corollary relief, the changes under the Family Law Act did not significantly alter the law as it was under the Family Relations Act. When the Provincial Court has already embarked upon a consideration of issues on which the Supreme Court and Provincial Court have concurrent jurisdiction, then except in those enumerated circumstances under the statute, the Supreme Court will not assume jurisdiction. Mere preference for the procedures in the Supreme Court will not suffice to convince that court to assume jurisdiction.

In *Power v. Spadafora*, although the issues of custody, guardianship, access, parenting time, and contact had already been determined under the Family Relations Act and the Family Law Act in Provincial Court, a party subsequently commenced an action in Supreme Court for custody and access under the Divorce Act. The court concluded that, although neither provincial statute limited the Supreme Court's jurisdiction over issues under the Divorce Act, it was appropriate for the court to decline jurisdiction in light of the principle of judicial comity.

Similarly, in *Song v. Zhang*, 2016 BCSC 1438, Hinkson C.J.S.C. held that the Supreme Court did not have jurisdiction to deal with the issue of access because the Provincial Court had pronounced on that subject in a consent order. The court therefore dismissed the claimant's application to have the Provincial Court proceedings transferred to, and consolidated with, proceedings she had commenced in the Supreme Court.

[19] As noted in *Power v. Spadafora*, the overarching principle at play is that of judicial comity. Thompson Reuters' Practical Law glossary defines judicial comity:

The legal doctrine under which courts recognize and enforce each others' legal decisions as a matter of courtesy, or based on the need for reciprocity, but not necessarily as a matter of law. Courts observing comity usually defer considering a case if the same issues are being considered in a court in another jurisdiction.

[38] And in *M.A.B. v. J.A.B.*, 2023 BCSC 1276 at paras. 167-170, Justice Hughes summarized as follows, in the context of contemplating whether to make a relocation order where there was an existing 4-year-old Provincial Court non-removal order:

[167] The Non-Removal Order specifies that the children are not to be permanently removed from the Lower Mainland of British Columbia without written consent or further court order. Pursuant to s. 194 of the FLA, this Court has the jurisdiction to change, suspend, or terminate a Provincial Court order when making an order that affects the Provincial Court order or if the parties would need to return to the Provincial Court to have the order changed, suspended or terminated.

[168] This Court can also assume jurisdiction when making orders under s. 16 of the Divorce Act, despite existing Provincial Court orders: *D.A.F. v. R.D.F.*, 2017 BCSC 873 at para. 21. Put differently, s. 194 of the FLA does not prevent this Court from making orders under s. 16 of the Divorce Act: *D.A.F.* at para. 18, citing *Power v. Spadafora*, 2015 BCSC 1399 at paras.

30-33.

[169] The overarching consideration is one of judicial comity: *K.M.P. v. A.E.J.*, 2020 BCSC 1916 at para. 19, citing *Power*. Accordingly, once it is established that this Court can exercise jurisdiction, the next question is whether it should. In *Power*, Justice Watchuk declined to do so on the basis of judicial comity because the Provincial Court proceedings were ongoing and outstanding: paras. 41-42. No such concerns arise here. Rather, and similar to the circumstances in *D.A.F.*, the Non-Removal Order is almost four years old and the parties both agree that this Court ought to exercise its jurisdiction in determining the claimant's relocation application.

[170] In the result, I find that if I determine that relocation is in the children's best interests, I have jurisdiction to make an order permitting relocation despite the existence of the Non-Removal Order.

Analysis

[39] The parties agree that the amended counterclaim filed August 1, 2023 was filed improperly. There is a consent order that it be discontinued and as such it is not necessary for me to deal with that aspect.

[40] There has been a previous application for consolidation that was considered by Master Robertson. That application was opposed by the respondent, understandably so considering that a trial was scheduled to start in Provincial Court within days of the application. The Provincial Court went on to consider parenting and support issues over the course of a 5-day trial, during which the parties were both self-represented. The resulting support orders were subsequently set aside on appeal, meaning there is currently no Provincial Court orders in place for child or spousal support.

[41] Arguably, while the Provincial Court did at one point occupy child and spousal support relief categories with the order after trial, that ceased to be the case after the appeal was granted. This is not a case where the respondent is asking the Supreme Court to make support orders which would conflict with an existing Provincial Court order.

[42] Neither party addressed in their material what form a re-trial in Provincial Court would take and whether there are any efficiencies available in that court by virtue of the proceedings which had previously taken place there.

[43] The question on this application is whether there is a good reason to insist that support issues remain with the Provincial Court for re-trial or whether there is persuasive reason to join support issues with the pending Supreme Court proceeding.

[44] It was the respondent who originally chose to pursue parenting, protection, and support issues in Provincial Court. She was self-represented through much of that process, so that choice made sense at the time. The rules and procedures in Provincial Court tend to be somewhat easier for self-represented litigants to navigate. There have clearly been

substantial proceedings pursued in Provincial Court by both parties and orders addressing parenting and protection issues. It is conceivable that some findings made in earlier proceedings may have some impact on certain support issues.

- [45] The Supreme Court action has been scheduled for trial of property and debt issues since July 2022. The time estimate was arrived at based on the parties only dealing with those issues. The parties have presumably invested considerable time and resources into preparing to resolve those issues. I do note there have been substantial efforts to arrange appraisal evidence of various properties around the time of the hearing before me. Both parties have invested considerable financial and legal resources into preparing for the January 15, 2024 trial. There are numerous properties in three different jurisdictions in issue, enforceability of an Iranian judgment and it is my understanding that the respondent will need the assistance of an interpreter to testify.
- [46] At this point, it appears unavoidable that if support issues were to be joined with the Supreme Court action, this will generate an adjournment of the January 15, 2024 trial. The parties agree that support issues occupied a significant portion of the 5-day Provincial Court trial. The claimant indicated during submissions that he intends to raise issues relating to his appropriate level of Guideline income from his business. He complains he was effectively detained in Iran for a period of time due to proceedings the respondent initiated against him there. He was unable to work for a period of time and wishes to argue that this ought to be factored into support considerations.
- [47] Also relevant, there has been no document discovery or examination for discovery conducted in relation to support issues in the Supreme Court action. There may be some efficiencies available due to the fact the parties have previously been through a five-day trial in Provincial Court, and thus know something about each other's past circumstances. However, it has been several years since that trial completed and additional discovery is necessary to address subsequent years. Respondent's counsel argues that if the parties work efficiently and cooperatively, it would be possible to complete the necessary discoveries prior to the current trial date. Frankly, I do not think that is a realistic expectation considering the high level of conflict evident from the proceedings to date.
- [48] Adjournment of January 2024 trial and the need to schedule a substantially longer trial would reasonably mean that the trial of property, debt and support issues would likely not be rescheduled until early to mid 2025. Presumably, updated appraisals would be necessary and this would involve significant additional expense.
- [49] One apparent benefit to the respondent of a delayed trial of property issues would be her continued ability to occupy the Family Home. It is my understanding that the claimant seeks to have the home sold and proceeds divided as part of this proceeding. Granted the respondent would have the option of applying for some level of interim child and spousal support pending trial. That does not appear to be an option in Provincial Court, albeit a trial could be arranged within a relatively short timeframe. Claimant's counsel suggested this

could occur as early as March or April 2024, counsel's schedules permitting.

- [50] In this case, the parties have chosen to pursue various claims in numerous forums. The respondent has pursued claims against the claimant in Iran, some of which she now seeks to enforce in BC. Early on, the respondent chose to pursue parenting, protection and support orders in Provincial Court and resisted the claimant's efforts at consolidation. For reasons which are not entirely clear, she did not schedule a re-trial of support issues after the appeal was granted. Had she done so, it appears a trial could have been concluded prior to the January 2024 trial date. She now seeks to rely to some extent on her own delay to justify reversing her earlier position on consolidation. With the timing of her raising this issue, this will result in significant delay in resolution of long-pending property issues.
- [51] Given the intentional manner in which both parties have chosen to pursue various issues arising from the breakdown of their marriage, it does not make sense to permit a belated re-election on the respondent's part to delay the longstanding trial date for resolution of property issues. The likely cost that would result from a substantial delay due to consolidation appears to outweigh the apparent benefits.
- [52] The respondent indicated she also wishes to amend the counterclaim to include a claim based in the tort of family violence. I note that in *Ahluwalia v. Ahluwalia*, 2023 ONCA 476, the Ontario Court of Appeal recently concluded that a newly-created tort of domestic violence or coercive control, as found by the lower court in that case, was not recognized and that normal tort remedies are adequate to address these types of claims. While it may be appropriate to include such claims in a notice of family claim or counterclaim, here the respondent has not provided a draft of the amendment she proposes in this application. In the circumstances, it is not appropriate to consider a late amendment of this type without specific draft language.
- [53] In all the circumstances, I exercise my discretion to dismiss the application for consolidation of support issues into this action. The respondent's proposed form of amended counterclaim should not include Parts 2 and 3, involving claims for child and spousal support.
- [54] With respect to the claimant's objection to amendments relating to the Panorama property, to the extent this relates to a claim between the parties, this can be included. To the extent the intention is to advance a claim against the claimant's sister, the form of the proposed claim is defective, considering that the sister is not a party to the action and no application has been made to add her as a respondent.
- [55] With respect to the respondent's proposed new claim based in the tort of family violence, to the extent this was intended to rely on earlier Ontario authority which recognized this as a new form of tort, this has been reversed on appeal and if she wishes to advance claims based on traditional torts, I am not in a position to consider it absent specific draft language being provided for proposed amendments.

[56] The balance of the amendments appear to be going by consent or unopposed by the claimant. Those are allowed.

Costs

[57] The claimant has had a greater measure of success on these applications and is entitled to costs against the respondent in the cause.

[58] CNSL F. ARBABI: Thank you, Your Honour. I just want to clarify one of the last points Your Honour made. It seems that the amendments that are allowed for Schedules 4 and 5 are to be, in essence, per the previously-filed amended counterclaim, as Your Honour said, that I did not take issue with.

[59] THE COURT: That is my understanding.

[60] CNSL F. ARBABI: Thank you, Your Honour.

[61] CNSL C. LEWIS: So I would just -- pardon me, I would just add that since I did not draft that, I may have some different kind of drafting conventions. But so long as the claims are as set out in the earlier draft, I take it that would be acceptable?

[62] THE COURT: If it is a question of form as opposed to substance, I expect your friend would go along with that. I think the key issue I was dealing with is the specific categories of claims. I do not think that some finessing of language would be objectionable.

[63] CNSL C. LEWIS: Right.

[64] THE COURT: But I -- it is hard for me to -- I cannot say anything specific without seeing actual language, but you have my general thoughts on that.

[65] CNSL C. LEWIS: All right, thank you.

[66] CNSL F. ARBABI: Thank you, Your Honour.

"Master Bilawich"

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