

CANADA / JUDGMENT

Mother 1 v. Solus Trust Company Limited

2020 BCCA 60

COURT

British Columbia Court of Appeal

DECIDED

12 February 2020

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2020 BCCA 60 Mother 1 v. Solus Trust Company Limited COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Mother 1 v. Solus Trust Company Limited, 2020 BCCA 60 Date: 20200212 Docket: CA45956 Between: Mother 1 Appellant (Plaintiff) And Solus Trust Company Limited and Christopher Scott Johnson as Administrators of the Estate of Gang Yuan, Deceased, Child 1, Child 2, Child 3, Child 4, Child 5 Respondents (Defendants) Restriction on Publication: There is a non-statutory publication ban in this case, prohibiting the publication, broadcast or transmission, in any way, of information that could identify various persons, defined in the ban. Before: The Honourable Mr. Justice Fitch The Honourable Mr. Justice Butler The Honourable Madam Justice DeWitt-Van Oosten On an application to vary: An order of the Court of Appeal for British Columbia, dated May 15, 2019 (Mother 1 v. Solus Trust Company, Vancouver Docket CA45956). Oral Reasons for Judgment Counsel for the Appellant: E. Hatch No one appearing on behalf of the Respondents Place and Date of Hearing: Vancouver, British Columbia February 12, 2020 Place and Date of Judgment: Vancouver, British Columbia February 12, 2020 Summary: The appellant's application for an extension of time to post security for costs of the appeal is granted, on the basis of unforeseen circumstances that arose after the order was made. The application for a sealing order is dismissed.

- [1] DEWITT-VAN OOSTEN J.A.: In February 2019, a judge of the British Columbia Supreme Court dismissed the appellant's claim against an estate and the children of the deceased: Mother 1 v. Solus Trust Company, 2019 BCSC 200.
- [2] The appellant filed an appeal from the dismissal in March 2019. The respondents subsequently brought an application for security for costs of the appeal. On May 15, 2019, Justice Willcock (in Chambers) granted that application and the appellant was given 30 days in which to post \$21,219.60 in security. She did not meet the deadline.
- [3] The appellant lives in China. She does not speak, read or write in English and required a translator at trial. The appellant deposes that legal counsel who represented her on the application for security did not provide her with a copy of Justice Willcock's order. As a result, she did not know the specifics of the order, including the 30-day timeline for posting security.

- [4] The appellant was in Canada in June 2019 and attended the Court's registry to determine the status of her appeal. She no longer had legal counsel. The appellant brought someone with her to assist with translation. From her various conversations with registry staff, she understood there was no deadline for posting the security. She returned to China.
- [5] The next month, the appellant was back in Canada. She deposes that she again attended the registry and learned the amount of the security. She obtained a bank draft for that amount and returned to post the security. It was then that she became aware the deadline for posting had passed. The bank draft was declined and the appellant was told she required an extension of the payment date.
- [6] The appellant retained new counsel, who then filed an application to vary the May 2019 order and extend the 30-day deadline for posting. The appellant says she is ready to comply with the order. Her counsel has advised that the respondents are not opposed to an extension and, in fact, no one has appeared on their behalf.
- [7] After considering the appellant's affidavit material, which is not contested, I am satisfied it is in the interests of justice to vary Justice Willcock's order pursuant to s. 9(6) of the Court of Appeal Act, R.S.B.C. 1996, c. 77, and extend the deadline for posting the security.
- [8] Generally, a division will not set aside or vary an order by a single justice unless the chambers judge was wrong in law, was wrong in principle, or misconceived the facts: *On Call Internet Services Ltd. v. Telus Communications Company*, 2012 BCCA 362 at para. 8, citing *Haldorson v. Coquitlam (City)*, 2000 BCCA 672. However, this Court has held that orders for security for costs may be varied where problems have arisen after the fact that were not anticipated when the terms of the posting were established: *Hawkeye Power Corporation v. Sigma Engineering Ltd.*, 2018 BCCA 69 at paras. 21-22. See also, *Ellis v. Denman Island Local Trust Committee*, 2016 BCCA 385 at para. 12; *Liao v. Vandepol*, 2014 BCCA 57 at para. 35.
- [9] Here, there is no suggestion that Justice Willcock erred in law or principle, or that he misconceived the facts as they stood at the time the order for security issued. However, in setting the 30-day deadline for posting, he would not have known that the appellant would not learn of the order, its specifics and the 30-day deadline. Nor could he anticipate the administrative difficulties she would experience in attempting to post security once she knew the correct status of the order. The appellant is able to post the security and made bona fide efforts to comply with Justice Willcock's order once she knew of it.
- [10] Accordingly, it is my view that an extension should be granted and the appellant given seven days from the date of this judgment to post the \$21,219.60. Sealing Order

- [11] The trial judge granted a non-statutory publication ban at trial (dated December 5, 2018). The ban prohibits the publication or broadcast of any information that could identify: (1) the five claimed descendants of the deceased; (2) the mothers of those children (including the appellant); (3) the names of other members of the children's immediate families; and (4) the names of members of the immediate family of the deceased.
- [12] As noted in *N.E.T. v. British Columbia*, 2018 BCCA 22 (Chambers), a "permanent publication ban made in a lower court generally endures until varied by a court with jurisdiction to do so" (at para. 37). As such, any materials filed in this appeal should be drafted and filed in a manner consistent with the publication ban, including initializing the names of the affected persons.
- [13] In addition to her application for a variation of the order for security, the appellant filed a motion for a sealing order. Upon questioning from the Court, she clarified that what she actually seeks, is to exchange redacted materials in support of the variation application for documents that were inadvertently filed with full names. I would have been disinclined, in the absence of a sufficient evidentiary foundation, to grant a sealing order. However, in light of the publication ban, I consider the appellant's clarified request to be appropriate.

Disposition

- [14] For the reasons provided, I would extend the 30-day deadline for posting security to seven days from the date of this judgment.
- [15] I would dismiss the application for a permanent sealing order and grant the appellant leave to exchange the materials in support of her variation application with redacted versions.
- [16] FITCH J.A.: I agree.
- [17] BUTLER J.A.: I agree.
- [18] FITCH J.A.: The appellant's application to vary the order of Justice Willcock made on May 15, 2019, is allowed. The 30-day deadline for posting security for appellate costs is extended to seven days from the date of this judgment. The appellant's application for a permanent sealing order is dismissed. The appellant shall, however, be permitted to exchange for the materials filed on the variation application redacted versions of those materials in a form that complies with the publication ban made in the court below. "The Honourable Madam Justice DeWitt-Van Oosten"

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Prepared on 29 October 2026 · Esheria