

CANADA / JUDGMENT

## Nott v. Nott

2020 BCSC 1962

### COURT

Supreme Court of British Columbia

### DECIDED

13 November 2020

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2020 BCSC 1962 Nott v. Nott

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Nott v. Nott,

2020 BCSC 1962

Date: 20201113

Docket: E121751

Registry: Vancouver

Between:

Juanita Kaye Nott

Claimant

And

Gregory Gordon Neal Nott and 0877440 B.C. Ltd.

Respondents

Before: The Honourable Mr. Justice Macintosh

Oral Reasons for Judgment

In Chambers

The Claimant, appearing via teleconference:

J.K. Nott

Counsel for the Respondents, appearing via teleconference:

M. Katsionis

Place and Date of Hearing:

Vancouver, B.C.

November 13, 2020

Place and Date of Judgment:

Vancouver, B.C.

### **November 13, 2020**

- [1] For this hearing, set for one day, Ms. Nott sought 33 orders in her notice of application filed October 14, 2020. Mr. Nott also brought an application. His notice of application was filed on November 2, 2020. He sought six orders.
- [2] It was obvious in the hearing that the issues could not all be addressed in the one day available. After discussion, I determined that it would probably be productive to address as the first issue whether the consent order of May 28, 2013 should be set aside, in whole or in part, on the basis that it was obtained through Mr. Nott misrepresenting his income in 2012 and 2013, or on the basis that Ms. Nott did not understand the terms of the agreement leading to the order, and, had she done so, she would not have consented to it. The consent order does not provide for spousal support, but Ms. Nott is now seeking spousal support.
- [3] The Notts began living common law in 1994. They married in 2002, and separated in 2011, and were later divorced. The children of the marriage, a boy aged 16, and a girl almost 14, live with Ms. Nott. Ms. Nott, now 51, has been a bookkeeper through much of her working life. Mr. Nott, now 54 or 55, is a painter.
- [4] Both parties were represented by capable counsel during the time the consent order was negotiated. The parties did some of the negotiating themselves, and the lawyers oversaw that, and dealt with one another in the usual course while the agreement was being worked out. The negotiations were not rushed, and there is no evidence of duress, coercion, or undue influence. An affidavit was filed, sworn to by the lawyer who represented Mr. Nott at the time. I quote here the last two paragraphs of his affidavit:
16. In the first settlement proposal sent by the Claimant [Ms. Nott], she proposed that no spousal support be paid by either party. That was agreed to by the Respondent in his first response to the Claimant during the negotiations. Afterwards, the parties focused primarily on the support for the children and property issues.
17. There are numerous claims in the notice of claim and counterclaim, including the Claimant's claim for spousal support. All of the outstanding claims in both the notice of claim and counterclaim were agreed to be dismissed. By definition, this includes the Claimant's claim for spousal support.

- [5] The numerous emails attached to that affidavit serve to prove the reasonable and orderly way in which the negotiations leading to the consent order were conducted. That evidence includes that the proposal to remove any claim to spousal support, reflected in para. 27 of the consent order, originated with Ms. Nott.
- [6] No affidavit was presented from the lawyer who was representing Ms. Nott at the time of the negotiations. Specifically, there is no evidence from his perspective as to what information he requested from Mr. Nott or Mr. Nott's lawyer concerning Mr. Nott's income before agreeing to the consent order, or at least counselling his client to agree to it.
- [7] Regarding Ms. Nott's challenge that the consent order was entered into by her as the result of Mr. Nott misrepresenting his earnings in 2012 and 2013, the evidence, in my view, does not establish that allegation. An unusual aspect of the evidence in this case is that Ms. Nott was the sole bookkeeper for Mr. Nott, and his painting business, from 1993 to July of 2012. She probably knew more than anyone about the state of his financial affairs in that time.
- [8] Mr. Nott's accountant for the period from July 2012 to the present, a CPA, gave detailed evidence in her voluminous affidavit demonstrating to me that there was not an intentional misstatement by Mr. Nott to Ms. Nott or her lawyer concerning his 2012 and 2013 income, and no material misstatement by him at any stage.
- [9] Ms. Nott advises that she received from Mr. Nott or his CPA what she describes as his true income statement just days after the consent order was entered, but I do not infer impropriety on Mr. Nott's part from the circumstances Ms. Nott describes, particularly when read in the context of the affidavit from the CPA. Ms. Nott did nothing with whatever information she received at the end of May 2013 for at least four years, which at least suggests that her accusation of Mr. Nott having deliberately withheld income information is a matter of hindsight on her part.
- [10] Ms. Nott also complains that Mr. Nott has not complied with the consent order in certain respects, but the result of that, if true, is not that the order is vacated, but instead that an application can be brought to have the order enforced or to have Mr. Nott found in contempt.
- [11] Our Court of Appeal has said when a consent order will be set aside. In *Racz v. Mission (District)* (1988), 22 B.C.L.R. (2d) 70, adopted in *Pond v. Pond*, 2017 BCCA 243 at para. 2, the Court said this:

A court... has inherent jurisdiction to set aside a judgment or order:

- a) which has been obtained by fraud, collusion or perjury;
- b) which constitutes an abuse of process;
- c) on the ground that fresh evidence has been discovered; or

- d) which was obtained by consent on a ground which would invalidate a compromise not contained in a judgment or order.
- [12] None of those circumstances has been proved on the evidence before me.
- [13] Mr. Nott relies on decisions of this Court, including *Blair v. Stewart-Blair*, 2013 BCSC 927, which considered *Miglin v. Miglin*, 2003 SCC 24, addressing when a pre-existing agreement regarding spousal support will be discounted. Quoting from *Miglin*, at paras. 80, 87 and 91:
- [80] In an originating application for spousal support, where the parties have executed a pre-existing agreement, the court should first look to the circumstances in which the agreement was negotiated and executed to determine whether there is any reason to discount it.
- [87] Where negotiation of the agreement is not impugned on the basis set out above and the agreement was in substantial compliance with the general objectives of the Act at its time of creation, the court should defer to the wishes of the parties and afford the agreement great weight
- [91] Parties must take responsibility for the contract they execute as well as for their own lives. It is only where the current circumstances represent a significant departure from the range of reasonable outcomes anticipated by the parties, in a manner that puts them at odds with the objectives of the Act, that the court may be persuaded to give the agreement little weight
- [14] Ms. Nott points to her own circumstances as factors which should be taken into account for determining whether what is set out above from *Miglin* has application. However, her circumstances of depression, migraine, sleep apnea, and a degenerative disc condition were all known in 2012 and earlier. Only the diagnosis of anxiety is from after May 2013, when the consent order was made, and that was not until 2017.
- [15] *Miglin* was applied, again upholding an earlier agreement, in *E.J.M. v. W.V.T.*, 2003 BCSC 918, at paras. 48-56. To the same effect, see *K.M.H. v. P.S.W.*, 2018 BCSC 2022 at paras. 38-45.
- [16] In my respectful view, on these facts, *Miglin* is not authority to support the resurrection of a spousal support claim for Ms. Nott, which she negotiated away as part of the 2013 consent order.
- [17] To conclude, I am unable to find any basis for setting aside in some manner, or discounting, the May 2013 consent order in which Ms. Nott gave up a claim to spousal support. Ms. Nott, as I understand her submissions, says that she and Mr. Nott, sometime after May of 2013, may have reached a fresh agreement for spousal support. I have not addressed that possibility in these reasons, nor have I addressed the other issues which were raised in the many orders requested in the two notices of application I referred to at the beginning of these reasons.
- [18] The costs of today's application are payable by Ms. Nott in the amount of \$1,000 plus disbursements.

"Macintosh J."

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Prepared on 25 October 2026 · Esheria