

CANADA / JUDGMENT

Otte v. Otte

2020 BCSC 1408**COURT**

Supreme Court of British Columbia

DECIDED

21 September 2020

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2020 BCSC 1408 Otte v. Otte IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Otte v. Otte, 2020 BCSC 1408 Date: 20200921 Docket: E19823 Registry: Duncan Between: Karen Nadine Otte Claimant And: Gary Dieter Otte Respondent Before: The Honourable Mr. Justice Steeves Reasons for Judgment Counsel for the Claimant: B. Read-Greenan Counsel for the Respondent: K. A. Cantelon Place and Date Notice of Application Filed: Duncan, B.C. August 11, 2020 Date Written Submissions Received: September 14, 2020 Place and Date of Judgment: Duncan, B.C. September 21, 2020

- [1] This application is brought by way of written submissions pursuant to the court's procedures during the COVID-19 pandemic (COVID-19 Notice No. 14, July 20, 2020).
- [2] In an application filed August 11, 2020 the claimant seeks an order to enforce "an agreement to engage [name of mediator-arbitrator] to facilitate a mediation-arbitration process, arrived at between the parties through counsel, and an Order releasing the parties from the obligation to participate in a Judicial Case Conference" ("JCC") and costs. She also provided a written submission dated September 10, 2020. There is an affidavit on the court file from the claimant filed on July 30, 2020.
- [3] I also have an application response from the respondent. It is dated August 17, 2020 and it does not appear to have been filed. He says he has not received an evaluation of the family home or any of the family assets. He remains willing to participate in mediation-arbitration but he says that he cannot do so without that information.
- [4] The factual background can be briefly stated. The parties were married in April 1985 and separated in February 2020. There are no children of the marriage. The family home is in Cobble Hill. To their credit, in June 2020 the parties apparently agreed to mediation-arbitration and to the name of a mediator-arbitrator.
- [5] The mediator-arbitrator appears to have been appointed by agreement. That is, the evidence does not describe her appointment as being under the Family Law Act, S.B.C. 2011, c. 25 or other statute or law.

- [6] As a first issue, the claimant applies to be released from the requirement of a JCC under Family Rule 7-1. The July 20, 2020 version of COVID-19 Notice No. 14 states that, effective July 13, 2020, the Chief Justice has ordered that the requirement in Rule 7-1(2) of the Supreme Court Family Rules that a JCC must be held before a party can serve another party a notice of application or affidavit in support is no longer waived. Exceptions to this are in Rule 7-1(3) to 7-1(6).
- [7] The claimant relies on Family Rule 7-1(4)(a) as an exception and says it is premature to have a JCC because the parties have already agreed to arbitration-mediation. I am not sure this is an issue of prematurity. In any event, the claimant is obviously optimistic that the arbitration-mediation will work out. However, that remains to be seen and things are not going well at this moment (after the success of agreeing on an arbitrator-mediator).
- [8] I am reluctant to eliminate an alternate and free procedure, a JCC, since it may well be needed. The parties can use both, either or neither of arbitration-mediation or a JCC. That is, I do not agree that it is premature to have a JCC. If the objective is to put pressure on the respondent to participate in arbitration-mediation that is not an issue that is included in the exceptions in Rule 7-1. The claimant's application under Family Rule 7-1(4) is dismissed.
- [9] Under the current procedures only one disputed issue can be made in a written submission so I am unable to consider the claimant's application to order the respondent to participate in mediation-arbitration. I do note that mediation-arbitration is a consensual process and, generally, a party cannot be forced to mediate. It is the courts who make orders without the approval or even co-operation of all the parties.
- [10] The claimant's application is dismissed. "J. J. Steeves, J." The Honourable Mr. Justice Steeves

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