

CANADA / JUDGMENT

Partridge v. Partridge

2020 BCCA 55

COURT

British Columbia Court of Appeal

DECIDED

3 February 2020

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2020 BCCA 55 Partridge v. Partridge COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Partridge v. Partridge, 2020 BCCA 55 Date: 20200203 Docket: CA46455 Between: Tina Louise Partridge Respondent (Claimant) And Preston William Partridge Appellant (Respondent) Before: The Honourable Mr. Justice Abrioux (In Chambers) On appeal from: An order of the Supreme Court of British Columbia, dated September 24, 2019 (Partridge v. Partridge, Victoria Docket E170327). Oral Reasons for Judgment Counsel for the Appellant, appearing as agent for N. Carfra: L.R. LeBlanc The Respondent, appearing in person: T.L. Partridge Place and Date of Hearing: Victoria, British Columbia February 3, 2020 Place and Date of Judgment: Victoria, British Columbia February 3, 2020 Summary: The applicant seeks leave to appeal a contempt order made against him in a family law proceeding, or in the alternative, seeks an order that the notice of application for leave to appeal stand as the notice of appeal along with the necessary extensions of time. Held: Application granted. The applicant does not require leave to appeal the contempt order. Costs will be in the cause. ABRIOUX J.A.: NATURE OF APPLICATION

[1] The applicant, Mr. Partridge, seeks the following:

- a) an order granting leave to appeal the contempt order against him pronounced in chambers on September 24, 2019; or
- b) in the alternative, if leave is not required, that the notice of application for leave to appeal filed October 22, 2019, be converted into a notice of appeal, along with an order that the timelines in Part 5 of the Rules be extended to start from the date of the order made in this application; and
- c) costs be in the cause.

BACKGROUND

[2] This matter arises from acrimonious family law proceedings dating back to January 2017. Various orders have been made in the proceedings against the applicant in this court, Mr. Partridge, including:

- a) a consent order on November 9, 2017, which purported to settle all matters between the parties, including property and children;
 - b) an order of Gomery J. on October 1, 2018, which was essentially an accounting of the amounts owed by the applicant to the respondent, including over \$1,314,092 and imposes charges against six properties;
 - c) an order of Gomery J. on October 12, 2018, which related to spousal support and child support, including arrears of \$16,522, and imposed a number of disclosure obligations on the applicant; and
 - d) an order of Grauer J. (as he then was) on January 24, 2019, ordering the sale of the six properties, where the respondent would have exclusive conduct of the sale, and imposed a number of ancillary orders.
- [3] On September 24, 2019, Steeves J. heard an application by the respondent in this court to have the applicant held in contempt of the above orders: see *Partridge v. Partridge*, (September 24, 2019) Victoria Docket E170327. The judge found non-compliance on the applicant's part and held that he was in contempt of the four orders set out above. The judge determined that the appropriate remedy was a contempt order, with the opportunity for the applicant to purge his contempt. The conditions for purging the contempt order were as follows:
- a) on or before October 22, 2019, Mr. Partridge must pay \$1,000,000 to the opposing party's lawyer in trust;
 - b) Mr. Partridge must take all steps to facilitate the sale of the six properties; and
 - c) on or before October 22, 2019, Mr. Partridge must provide certain disclosure of his personal and corporate bank accounts from December 2017 to September 20, 2019.
- [4] During the contempt hearing, Mr. Partridge clarified to the chambers judge that he was unable to get third-party financing to pay the \$1,000,000 within 30 days, unless the respondent removed her charges against various land titles in order to enable him to secure an inter alia mortgage. The judge nevertheless held that he "must come up with some money" and ordered the payment of \$1,000,000 by October 22, 2019 (approximately a one-month period): at para. 32. POSITION OF THE PARTIES Applicant
- [5] The applicant seeks to appeal the contempt order made against him on September 24, 2019. He submits that the judge erred in conflating non-compliance with contempt, and failing to find that the requisite elements of contempt were proven beyond a reasonable doubt as required in the quasi-criminal context, relying on *Hama v. Werbes*, 2000 BCCA 367 at para. 8; *Palleson-Stallan v. Stallan*, 2014 BCCA 474 at para. 6; and *Schmidt v. Fraser Health Authority*, 2015 BCCA 72 at para. 15. The applicant submits that either leave to appeal should be granted, or in the alternative, if leave is not required, the notice of application for leave to appeal should be converted into a notice of appeal. Respondent

- [6] The respondent was represented by counsel until approximately one week ago. She has not filed materials as of the date of the hearing of this application. A consent order was made by Harris J.A. on December 16, 2019, extending the time for the appellant to file and serve the notice of motion for leave to appeal and motion book to December 3, 2019. The consent order was received by the registry of this court on October 2, 2019, and an affidavit of service was filed on October 31, 2019. LAW & ANALYSIS Is Leave to Appeal Required?
- [7] Section 7 of the Court of Appeal Act, R.S.B.C. 1996, c. 77 [Act] provides that an appeal does not lie to the court from a limited appeal order without leave being granted by a justice. Rule 2.1 of the Court of Appeal Rules, B.C. Reg. 297/2001 [Rules] sets out the list of limited appeal orders, where leave to appeal is required. Only those orders specifically provided for in each subrule of Rule 2.1 are limited appeal orders: *Yao v. Li*, 2012 BCCA 315 at para. 27.
- [8] In my view, leave is not required to appeal a contempt order. Under Rule 2.1(c), an order granting or refusing interim relief under the Family Law Act, S.B.C. 2011, c. 25 is a limited appeal order. Interim relief involves "something short of permanent relief and something short of the entire relief sought in a proceeding": *S.H.F.N. v. A.B.N.*, 2015 BCCA 314 at para. 8 (Saunders J.A. in Chambers). Contempt of court is a discrete issue, independent from the relief sought in the proceeding and the underlying court orders giving rise to the issue of contempt: *Breberin v. Santos*, 2013 BCCA 385 at para. 20. In my view, a contempt order does not constitute an interim order in a family law proceeding because, absent purging the contempt by the required date, the order has permanent effect and potentially significant consequences, irrespective of the results of the underlying proceedings.
- [9] In *Jackson v. Honey*, 2009 BCCA 112, a division of this court set aside a contempt order. The applicant had sought directions as to whether leave to appeal was required, and Finch C.J.B.C. (in Chambers) held that leave was not required. Similarly, in *Paradise Lakes Country Club v. Ahmed*, 2005 BCCA 207 at para. 4, Saunders J.A. (in Chambers) took the view that an order finding a party in contempt was a final order from which leave was not required. While these two cases were decided before the 2012 amendment to s. 7 of the Act, which now requires leave to appeal a limited appeal order, these cases still stand for the proposition that a contempt order is a final order, rather than "interim relief" under the Family Law Act, requiring leave to appeal under Rule 2.1(c). Furthermore, subsequent appeals against contempt orders in family proceedings in this court have been brought by way of a notice of appeal, rather than seeking leave to appeal: see e.g., *Bassett v. Magee*, 2015 BCCA 422; *Hokhold v. Gerbrandt*, 2016 BCCA 6. Should the Notice of Motion for Leave to Appeal be Converted into a Notice of Appeal?
- [10] In my view, since leave of a justice is not required to initiate this appeal, the notice of motion for leave to appeal should be converted into a notice of appeal.
- [11] The Civil Practice Directive entitled *Commencing an Appeal When Uncertain if Leave to Appeal is Required*, which went into effect on May 8, 2017 ("Practice Directive"), provides as follows: The Court will no longer entertain applications for directions as to whether leave to

appeal is required. If a party is unsure if leave to appeal is required, the party should file a Notice of Application for Leave to Appeal and seek leave to appeal. If leave to appeal is not required, the presiding justice may order that the Notice of Application for Leave to Appeal stand as a Notice of Appeal along with any necessary extension(s) of time.

- [12] Under this Practice Directive, if an applicant has filed a notice of application for leave to appeal within the prescribed time limit, yet has an appeal as of right, then the court should convert the notice of application for leave to appeal into a notice of appeal: *Gonzalez v. British Columbia (Attorney General)*, 2019 BCCA 88 at para. 39 (Bennett J.A. in Chambers), citing *Hiebert v. Miller*, 2018 BCCA 216.
- [13] While the court has some discretion to decline to order such a conversion, the merits of the proposed appeal is not a legitimate consideration: *Gonzalez* at para. 39, citing *Lindholm v. Hy-Wave Inc.* (1997), 31 B.C.L.R. (3d) 274 (Southin J.A. in Chambers); *Forjay Management Ltd. v. Peeverconn Properties Inc.*, 2018 BCCA 188 (Willcock J.A. in Chambers); *Arbutus Excavating Ltd. v. Homewood Constructors Ltd. et al.*, 2003 BCCA 236 (Low J.A. in Chambers).
- [14] Pursuant to s. 14(1) of the Act, the time limit for bringing an appeal or an application for leave to appeal is 30 days, commencing on the day after the order appealed from is pronounced. The contempt order was made on September 24, 2019, and the notice of application for leave to appeal was filed on time on October 22, 2019. Subsequently, the notice of motion and motion book were filed on December 3, 2019, well in advance of the filing deadline of 10 business days before the hearing of this application: Rule 7(2) of the Rules.

CONCLUSION

- [15] Accordingly, in these circumstances, I order that the notice of application for leave to appeal stand as the notice of appeal, and order that the timelines in Part 5 of the Rules be extended to start from the date of this order, with costs in the cause. [Discussion with counsel and respondent re: further clarification and dispensing with respondent's signature as to the form of the order]
- [16] ABRIOUX J.A.: Ms. Partridge's endorsement on the form of the order is dispensed with. "The Honourable Mr. Justice Abrioux"

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