
CANADA / JUDGMENT

Reid v. Reid

2014 BCSC 2324

COURT

Supreme Court of British Columbia

DECIDED

9 December 2014

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2014 BCSC 2324 Reid v. Reid

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Reid v. Reid,

2014 BCSC 2324

Date: 20141209

Docket: 83136

Registry: Kelowna

Between:

Roderick Royal Reid

Claimant

And

Heather Lee Reid

Respondent

Before: The Honourable Mr. Justice Betton

Reasons for Judgment

Counsel for the Claimant:

B.J. Hardwick

Counsel for the Respondent:

T. Moore

Place and Date of Hearing:

Kelowna, B.C.

September 16, 2014

Place and Date of Judgment:

Kelowna, B.C.

December 9, 2014

Introduction

[1] This decision relates to cross-applications filed by each of the parties in these family law proceedings. They seek resolution of continuing financial issues primarily related to child support. In addition, the respondent seeks to have the claimant found in contempt of previous orders of this Court dated October 15, 2010 and July 4, 2012.

Background

[2] As may be inferred from the inclusion of the contempt application, this case has some history.

[3] The claimant and the respondent were married July 29, 1995 and separated May 10, 2008. They were divorced in November of 2010. There are two children of the marriage, Parker Royal Reid, born September 6, 1999 and Brooklyn Riannon Reid, born July 16, 2002.

[4] Parker is hearing-impaired and has been diagnosed with Autism Spectrum Disorder. He is learning-disabled and is on a regime of medication.

[5] The claimant is employed as an independent courier operator/driver with UPS. He receives as part of his compensation package a fuel subsidy. The amount of that subsidy, the manner in which it is paid and how it is dealt with for tax purposes have been contentious matters.

[6] When the claimant is not available to drive it is his responsibility to have a replacement driver at his own expense which he records as a subcontracting expense for tax purposes.

[7] The claimant is associated with what he describes as a "social club". Members host functions at their residences. Fees are charged to attendees.

[8] The parties attended a judicial settlement conference that began on September 29, 2010 and continued on October 15, 2010, both times before Madam Justice Beames. Orders flowed from each of those appearances, which included the following terms:

September 29, 2010

1. The parties will share joint custody of the Children, whose primary residence shall be with the Respondent, Heather Lee Reid.

2. The parties will remain joint guardians of the Children.
4. Roderick Royal Reid, shall have generous access (specific provisions for access were then set out)

October 15, 2010

11. Roderick's income for child support purposes is to be calculated based on the following formula, such that his 2009 income is \$57,676.00:

Roderick's Line 150 income as showing on his Notice of Assessment, less union dues, plus \$4,000 in imputed income to add back a portion of his business expenses into his income (the "Formula");

14. The parties will recalculate Roderick's child support payments annually based on his annual income as determined using the Formula, subject to each party being at liberty to apply to the Court to have the Formula reviewed for a particular year based on reasonableness.
16. Based on their 2009 incomes, Roderick will reimburse Heather for 44% of the cost of the Special Expenses, for a total of \$154.00 per month, commencing November 1, 2010 and continuing on the 1st day of each month thereafter for so long as the Children remain "children of the marriage" as defined by the Divorce Act (Canada);
17. Each party will provide the other party with their complete filed Income Tax Return, Notice of Assessment, including Statement of Business Activities, details of any reimbursements, credits or benefits, and all attachments, all receipts confirming the actual cost of the Special Expenses and a statement of all tax credits, subsidies or other benefits received from any source in relation to the Special Expenses by no later than August 31st of each year such that child support and the parties' proportionate shares of the Special Expenses will be recalculated as of October 1st of each year;
18. By no later than October 1st of each year, the parties will review the actual cost of the Special Expenses for the preceding year based on the receipts provided and, if Roderick has paid more than the cost actually incurred, Heather will reimburse him for the difference or, if Roderick has paid less than the cost actually incurred, he will pay Heather the difference.

Note: "Special expenses" are defined in the order and include special or extraordinary expenses under the Federal Child Support Guidelines. I adopt this term and its definition in these reasons.

- [9] The parties entered into a consent order without a hearing on March 16, 2011, which confirmed the orders of Madam Justice Beames of September 29 and October 15, 2010 referred to above but added some additional terms:

2. Neither party will contact the other or attend the other's residence except for access pick up and drop off of the Children, namely:

Parker Royal Reid, born September 6, 1999; and

Brooklyn Riannon Reid, born July 16, 2002

which will be done on the street side of the driveway of the Respondent's residence.

3. All contact regarding access of the Children will be between the parties, and will be by written E-mail only. Neither party will communicate with the other party through the Children.
4. A notebook will accompany the Children on each access visit to record all important parenting information, to be used by both parents to relay information regarding the Children.

6.. Both parties will use reasonable efforts to ensure the Children participate in their regularly scheduled extracurricular activities during their parenting time.

[10] The respondent filed an application in June of 2012, which came on before me on July 4, 2012. In that application, the respondent was asking that the claimant be found in contempt of the October 15, 2010 order and the March 16, 2011 consent order for alleged breaches of paragraphs 16, 17 and 18 of the October 15, 2010 order and paragraphs 3, 4 and 6 of the March 16, 2011 consent order. On that occasion, the claimant appeared without counsel and the respondent appeared with Mr. King as her counsel. The order that resulted included a requirement that the claimant provide the respondent's counsel with financial documents pursuant to the provisions of the Federal Child Support Guidelines, SOR/97-175:

2. "including but not limited to the following financial documents, but not limited to particulars of his gas/fuel subsidy, and the following:
 - c. his most recent statement of earnings indicating the total earnings paid in the year to date, including overtime, or, if such a statement is not provided by his employer, a letter from his employer setting out that information, including his rate of annual salary or remuneration and fuel subsidy information;
3. The Respondent's contempt application is adjourned generally.
4. The Claimant will administer the Children's medication as prescribed and on schedule when the Children are in his care, as directed by the Respondent in the Children's notebook, and he will record the time and confirmation of administered medication in the notebook.
9. The Claimant will forthwith pay to the Respondent costs of this application set at \$2,000.00.

[11] No variation of child support or the sharing of special expenses has been undertaken based on any change in income since the original order in October 2010.

[12] The claimant ceased making the payments of \$154.00 for special expenses in or about December 2011.

[13] The claimant paid the \$2,000.00 required by the July 4, 2012 order after the respondent filed her application giving rise to this hearing.

- [14] The children continue to live primarily with the respondent, but spend time with the claimant. The child, Parker, continues to have medications prescribed to him.

Issues and Positions of the Parties

- [15] At the outset of the hearing, some issues were either resolved or modified. I will endeavour to describe the issues as they were presented in argument.
- [16] Counsel for the director of the Family Maintenance Enforcement Program, Ms. Beier, was in attendance as a result of the claimant seeking to have a lien registered against his property removed. Ultimately the parties reached an agreement in that respect and Mr. Reid's application to have the lien removed was adjourned generally by consent. Counsel for the director was then excused from continuing attendance at the application.
- [17] Each of the parties, in their respective applications sought a recalculation of the claimant's child support obligations and his contribution to Special expenses.
- [18] The claimant argued that the addition of the \$4,000.00 as referenced in the "formula" defined by Beames J. should end.
- [19] The respondent argued that the \$4,000.00 amount should remain and that additional amounts should be added to increase the imputed income of the claimant. Specifically, she argued that an amount should be added in respect of a fuel subsidy received by the claimant through his employment. Further, she argued that he is operating a "party business" that generates revenue and some level of income should be imputed for that business. Last, she argued that some portion of the subcontracting expense claimed as a business expense to reduce the claimant's line 150 income should be added back.
- [20] During the course of the hearing, the claimant provided information regarding the fuel subsidy he received through his employment and in reference to his tax deductions for subcontracting expenses. This resulted in the respondent abandoning her arguments that the claimant's income should be increased as a result of those items.
- [21] The claimant says that the so-called "party business" is not an income-generating enterprise or business. He says that it is a means of arranging social gatherings and that any revenue is simply to offset at least some of the costs incurred in hosting the functions.
- [22] Although the respondent's notice of application sought some changes to the parenting time for the claimant, she did not pursue that with one exception. She sought an order that the claimant not consume alcohol during his parenting time. The claimant took the position that no such constraint was required or appropriate.
- [23] The respondent argues that the claimant should be held in contempt of the orders of October 15, 2010 and July 4, 2012. In her notice of application she referred to the following conduct by the claimant:

- (a) wrongfully misrepresenting his income at \$42,000.00 per year and wrongfully pleading hardship in statements made during the July 4, 2012 Justice Betton hearing for the purposes of concealing significant annual increases in net income yielding a net annual income between \$73,000.00 and \$80,400.00 for the taxation years 2010, 2011 and 2012, and a current net annual income in 2013 of \$84,494.00,
 - (b) refusing to provide fuel/gas reimbursement documentation for the purposes of concealing a \$6000.00 annual reimbursement pursuant to paragraph 2 of the Betton Order,
 - (c) refusing to provide updated financial disclosure pursuant to paragraphs 2c and 2d of the Betton Order for the purposes of concealing additional income and excessive sub - contracting claims from self-employment at DHL/Loomis, and additional income from a small party business run out of home and not filed with the Canada Revenue Agency,
 - (d) refusing to provide an updated property assessment notice pursuant to paragraph 2g of the Betton Order,
 - (e) failing and neglecting to contribute the Section 7 special and extraordinary expenses in the amount of \$154.00 per month since December 2011, as ordered in paragraph 16 of the Beames Order;
 - (f) refusing to use the children's notebook to document the children's medication pursuant to paragraph 4 of the Betton Order,
 - (g) refusing to provide travel information pursuant to paragraph 7a of the Betton Order,
 - (h) refusing to provide 48 hour notice to the Respondent pursuant to paragraph 6 of the Betton Order.
- [24] In argument not all allegations of contempt were pursued. In addition some were presented somewhat differently than set out above.
- [25] The respondent prior to the hearing had taken the position that the claimant was receiving a gas subsidy which was not incorporated into his line 150 income. She says that efforts had been ongoing for some time to obtain clarification of how that subsidy was paid and whether or not it was incorporated into his reported income. She says that despite the orders of October 15, 2010 and July 4, 2012, the claimant had not provided adequate information to explain whether his gas subsidy was incorporated into his income that had been reported or not. She points out that it was only during the course of this hearing that that information was provided. She says that although that finally resolved the uncertainty and satisfied her that no adjustment to his reported income was necessary, his failure to provide that information before the commencement of this hearing is contempt.

- [26] The claimant says that he had provided letters from his employer that explained the treatment of the fuel subsidy. He points out that in respect of this allegation of contempt as with each of them, it is necessary for the respondent to prove the specific allegations of contempt. In relation to the fuel subsidy, the allegation in subparagraph (b) quoted above has not been specifically established.
- [27] Similarly, the respondent says that it was only during the course of the hearing that adequate explanation of the subcontracting expenses claimed by the claimant in his tax returns was provided.
- [28] The claimant says that the expenses are legitimate expenses. In his work, if he takes time off, he must find a replacement driver. This generates a subcontracting expense. He says that the respondent's assertions require him to "prove a negative" and that his response to the orders is not contempt and, again, the specific allegations of contempt contained in the respondent's notice of application have again not been established.
- [29] In relation to income from the "party business" the respondent acknowledges that her allegations are speculative. She has made estimates of what income she thinks may have been generated based on information on the claimant's Facebook page, but has no specific knowledge or way to establish what actual income, if any, may be generated by those activities.
- [30] The claimant says that any revenue generated is simply to offset costs and that the functions are purely social and not a business enterprise. He says since there was nothing to report by way of income, there can be no contempt associated with that non-reporting.
- [31] The respondent refers to the claimant stopping payment of all Special expenses after December 2011 as a further foundation for a finding of contempt. She says that it was contrary to the court order and there is no basis for the termination of those payments.
- [32] The claimant says that he did stop making the payments because the respondent did not provide him with the receipts that were necessary to do the reconciliation. He acknowledges that "perhaps" he should have continued to pay the \$154.00 per month pending that reconciliation.
- [33] The respondent also points to the claimant's failure to record information in the notebook to be exchanged by the parties regarding the children. Specifically, she notes the claimant's failure to record information about the administration of Parker's medications as specifically required in the July 4, 2012 order. She then points to the fact that after this application was initiated and the claimant acknowledged in his affidavit that the July 4, 2012 order required him "to not just administer Parker's medication but also to record that in the parenting book" he continued to act in breach of those obligations.
- [34] The claimant acknowledges that he had not recorded that information following the July 4, 2012 order but says he did not understand the specific requirements. From the point in time that he says he appreciated what those requirements are, he has ensured that Parker takes

his medication but acknowledges that Parker has been recording the information in the communication book. He says, however, that Parker, despite his disabilities, is a 15-year-old who functions reasonably well. He says that the spirit of the order is being complied with since the medication is being taken and it is being recorded in the book.

Analysis

Recalculation of Child Support and Special and Extraordinary Expenses

- [35] I will first address whether or not the "formula" as articulated by Beames J. should be varied. Her order of October 15, 2010 at para. 14 permitted application to have the "formula reviewed for a particular year based on reasonableness". The claimant argues that that amount should be removed from his income not for any particular year but generally. In my view, no evidentiary basis has been established to vary that amount. The claimant is self-employed and claims a variety of expenses against his income. It would appear that the formula was created to recognize that generally some personal benefit is derived from some of the expenses claimed. It is my impression that the claimant's position is not based on the reasonableness of applying the formula in a particular year but rather is a challenge to the general proposition which is the foundation for the formula. I am not satisfied that his challenge is what was contemplated by the order nor that the formula should be altered.
- [36] In respect of the respondent's assertions that amounts should be imputed to the claimant's income there remains only one consideration, the "party business". The issues of the fuel subsidy and subcontracting expense were acknowledged by counsel for the respondent to have been addressed during the course of the hearing. In relation to the party business, I am not satisfied that the respondent has established that income is generated by those activities. Her assertions are speculative and the claimant specifically denies any income. I am simply not satisfied on the evidence presented that there is a basis to impute let alone calculate any income from that activity.
- [37] The parties confirmed they were in agreement as to the calculation of the arrears of child support and special expenses if no adjustments to the claimant's income were to be made. They are \$2,412 and \$7,576.45 respectively. I accept those calculations.

Parenting Time

- [38] Throughout the process of the hearing the respondent indicated that the only issue with respect to parenting time is whether there should be a requirement that the claimant not consume alcohol while the children are in his care. While there are some assertions that the claimant has made inappropriate decisions by having the children assist in preparing for his social functions and specifically the preparation of pre-made drinks, there is no indication that the claimant has been intoxicated or consumed alcohol in such a way as to have it affect his parenting and I decline to make that order.

Contempt

[39] In argument the respondent's submissions were directed to three specific concerns:

- a) failure to record information in the notebook;
- b) failure to pay Special expenses;
- c) failure to provide income information including information about the gas subsidy, subcontracting expenses and the party business.

[40] The law in this area is well settled. I will simply reference a summary of it from *T.T. v C.G.*, 2014 BCSC 1279 where Jenkins J. said this:

[19] The Court has inherent jurisdiction to punish a party to a family law proceeding for contempt. In *Swann v. Swann*, 2009 BCCA 335, the Court of Appeal discussed the four elements that must be proven to establish a finding of civil contempt, at para. 10:

... There are four elements that must be established: that the debtor had notice of the order, that he or she did not comply with the order, that the non-compliance was "wilful" (i.e., deliberate, as opposed to accidental or unintentional), and that the debtor was, in fact, capable of complying with the order (i.e., that he or she had the means to make the required payments).

[20] In civil contempt applications, the burden of proof is on the applicant who must prove the essential elements of contempt beyond a reasonable doubt: *Swann* at para. 14; *Frith v. Frith*, 2008 BCCA 2 at para. 22.

[21] Also of note are the principles governing contempt as described in the Court of Appeal decision of *Peel Financial Holdings Ltd. v. Western Delta Lands Partnership*, 2003 BCCA 551 at para. 18:

[18] The principles governing a motion of contempt are uncontroversial. I would summarize the principles relevant to this case in this way:

1. The proceedings are quasi-criminal in nature and the rules of *strictissimi juris* apply, meaning, for example that the evidence supporting the motion must conform to the rules of admissibility at a trial; so no hearsay, opinion, conclusions and the like are receivable: *Glazer v. Union Contractors Ltd. and Thornton* (1960), 33 W.W.R. 145 (B.C.S.C.) at 151.
2. The applicants bear the onus of proving the elements of contempt on the criminal standard, viz. beyond a reasonable doubt: *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217 at 229.
3. If the order said to be breached is ambiguous, the alleged contemnor is entitled to the most favourable construction: *Melville. v. Beauregard*, [1996] O.J. No. 1085 (Gen. Div.) at para 13; see also *Berge v. Hughes Properties Ltd.* (1988), 24 B.C.L.R. (2d) 1 (C.A.) at p. 8, cited in *Hama v. Werbes* (2000), 76 B.C.L.R. (3d) 271 (C.A.) at para. 8 where the need for clarity and precision in the order to be enforced was discussed.

- [41] In *Pringle v Pringle*, 2009 BCSC 1446 [Pringle], Schultes J. said:
- [27] A person should not [be] found in contempt of an order unless the terms of an order are precise and the facts in support of wilful disobedience constitute proof beyond a reasonable doubt: *Hama v. Werbes*, 2000 BCCA 367.
- [28] The expression "wilful" as applicable to contempt of orders of the court is intended to exclude only casual, or accidental and unintentional, acts of disobedience: *Glazer v. Union Contractors Ltd. and Thornton* (1960), 25 D.L.R. (2d) 653 (B.C.C.A.).
- [42] Claimant's counsel argued that the specific allegations of contempt must be proved. I took her position to be that unless the respondent proved the allegations as set out in the notice of application there could be no finding of contempt. An example is subpara. (b) of the notice of application where the respondent says it was "for the purposes of concealing a \$6,000.00 annual reimbursement pursuant to para. 2 of the Betton Order", meaning the July 2012 order. While I agree that specificity in the application is important a notice of application should not be equated to an information or indictment in criminal proceedings. The issue in contempt proceedings is the wilful non-compliance with a court order and if the application sufficiently identifies the alleged contempt that is sufficient. In this case the July 2012 order required specific disclosure.
- [43] In this case there are two particular allegations that are clearer than the remainder. They are the claimant's dealing with the children's notebook and the payment of special expenses.
- [44] In respect of the notebook, the order of July 4, 2012 is very clear. In addition, at the time that order was made the claimant was appearing without counsel, so for the benefit of the claimant I made a number of observations and comments about the order that included the following:

Court: (In respect of disclosure of financial/income information) What I'm going to do I think Mr. King is ultimately adjourn generally the application for the finding of contempt and I'm going to seize myself of that for the matters that are raised in this application. Mr. Reid, just so you are abundantly clear what my intention is in that respect it is that if you don't provide that information by that date and fully comply with the previous court orders in that respect, Mr. King is at liberty to bring that issue of contempt back before me and I will deal with my findings and deal with the application. If I ultimately reach the conclusion that there has been contempt I will decide what penalty might flow from that. So if there is any illusion, it's not going to be some other judge, you're not going to get a chance to start fresh. It's going to back in front of me. I'm going to know the history. I'm going to know what you promised. That you said you could do it within that timeframe and if you don't, Mr. King is not going to have to do a whole lot of convincing to get me to find that there has been contempt and that there ought to be a consequence. Crystal clear?

Claimant: Yes your honour.

Court: Insofar as the medications are concerned and the use of the notebook, the order that's in place will continue. I'm not varying that, but I am going to add sir that in that notebook Ms. Reid is going to record if she hasn't done already, what medications there are, the schedule on which they are to be administered and you are to administer them.

Claimant: Yes your Honour.

Court: Period end of story. If you've got a problem with her decision in that respect you have one course of action and that's in keeping with the joint guardianship order that's in place that entitles you to come back to court to say "Gee I think this medication's a bad idea here's why" and the court can be the ultimate arbiter as to whether or not the medication should be administered.

Claimant: I don't disagree with that at all.

Court: Well then no excuses, no exceptions, no "I forgot" ..and you're going to in that notebook you are going to record the time, the specific time and confirmation of administration of that medication. In the book .. Write it down.

Claimant: Yes your Honour.

Court: .. No reason not to .. No exceptions.

Claimant: Yes your Honour.

[45] Despite the clarity of the terms of the order aided by my comments which the claimant unequivocally indicated he understood, he says in his affidavit:

In reviewing the order of Mr. Justice Betton made July 4, 2012 in relation to this application I realized that the order required me to not just administer Parker's medication but also to record that in the parenting book. I have been very consistent in ensuring that Parker takes his medication so there [have] been no issues in that regard. Going forward, however, I will now write down the administration of that medication in the parenting book.

[46] Still further and despite those assurances in his affidavit he continued to fail to record the information in the parenting book, choosing instead to leave that task to Parker. Counsel's submissions on his behalf were to the effect that the real objective was to have the matters recorded.

[47] It is apparent that Parker was not recording the information contemporaneously with the taking of the medication but was only recording it sometime after the fact. In some circumstances Parker only did so after asking the respondent whether or not the claimant was required to continue to record that information.

- [48] In the context of this specific case, the claimant's actions constitute contempt. The claimant was facing contempt allegations in July of 2012. The claimant's obligations were clearly set out in the terms of the order, and those terms were clarified by comments from this Court. Despite these facts, the claimant made the decision to continue not to comply with the terms of a court order for multiple years. This conduct is, in my view, clearly contempt.
- [49] I turn next to the failure to pay Special expenses.
- [50] The October 15, 2010 order required the payment of \$154 on an ongoing basis (para. 16). It also required that the parties exchange relevant information by August 31 of each year (para. 17) and that any adjustments appropriate to the actual expenses be made by October 1 of each year (para. 18).
- [51] Calculations in respect of Special expenses are obviously based on what those expenses are and the parties' respective incomes. Nowhere in the affidavit evidence of the claimant filed in response to this application is there a reference to any failure on the part of the respondent to provide receipts or details regarding special or extraordinary expenses. All of the relevant evidence relates to issues regarding the income that should be attributed to the claimant. In sum there is no evidence from the claimant or otherwise to indicate any dispute regarding the disclosure of Special expense information or receipts. In addition the claimant gave no evidence to indicate that he had stopped making the payments because of the absence of adequate receipts.
- [52] When the issue was before me in July of 2012, the claimant had provided no evidence whatsoever and orders were made with respect to the disclosure of income information.
- [53] In the oral argument on behalf of the claimant it was indicated that "complete receipts for s. 7 expenses" were only provided in "the context of these applications".
- [54] There is certainly no evidence of any effort whatsoever on the part of the claimant to have the issue addressed by way of demands for information. He unilaterally stopped making the payments. There is no evidence, either before or after he stopped making these payments, that he requested receipts from the respondent. In my view his conduct in respect of the payment of Special expenses ordered in October 15, 2010 is contempt.
- [55] In respect of information regarding the fuel subsidy, the language of the July 4, 2012 order is somewhat confusing but, in my view, the intention was clear. The goal was to determine whether or not any fuel subsidy received by the claimant was part of the income that he had recorded and claimed for tax purposes, which formed his line 150 income. It is true that the claimant provided correspondence from his employer but that correspondence is ambiguous as to the key information. The September 24, 2008 letter indicated that he received "a fuel escalation rate of \$25.00 a day" but had no indication of how that was treated for tax purposes. A letter of June 18, 2012 indicates "Rod's fuel subsidy is included in his daily invoice; Rod does not receive any more money at the end of the year for fuel".

- [56] During the course of these proceedings that issue was addressed with claimant's counsel and it was suggested that what was needed was clear information of how any fuel subsidy was treated and how it related to the line 150 income. Over the course of the lunch break, the claimant was able to attend upon his employer and acquire that very information. It raises the obvious question of why, if such information was available so easily, it would simply not have been provided at an earlier time.
- [57] In the circumstances and given the language of the order I am not, however, prepared to categorize this conduct as contempt.
- [58] In a similar vein I must make a comment on the claimant's failure or refusal to pay the \$2,000 ordered in July 2012 by me. At that time I was very clear in my criticism of the claimant. In respect of payment of that amount the claimant in his affidavit of November 21, 2013 acknowledged that he had not at that time paid those funds. He explained his reasons for not doing so as follows:

On the basis that at the outset of the hearing, it was my understanding that if the matter was adjourned to allow me to obtain, produce a sworn affidavit I would be penalized in costs but that would not occur if the application proceeded on the basis of my not having sworn evidence to rely upon. I chose to proceed with the application to avoid costs and costs were ultimately ordered anyway. I now understand that this view was misguided and that I must pay those costs.

- [59] Such an interpretation of the terms of the order is entirely unreasonable. The claimant has, however, paid the amount prior to the commencement of this hearing and it is not a basis for a finding of contempt.
- [60] In terms of the appropriate penalty for the findings of contempt that I have made, the authorities make it clear that fines and/or imprisonment are available. Some courts have been creative and suspended penalties pending subsequent conduct of the contemnor.
- [61] I am mindful of comments made on the subject by Chiasson J.A. in *Firth v Firth*, 2008 BCCA 2 which included:

[33] As Dubin C.J.O. observed in *Ontario (Attorney General) v. Paul Magder Furs Ltd.* (1992), 10 O.R. (3d) 46, [1992] O.J. No. 1693 (C.A.), at p. 53 O.R.: "... we are dealing with a finding of contempt of court. Such a finding transcends the dispute between the parties; it is one which strikes at the very heart of the administration of justice in this country and in this province". His comments were followed in *Dickie v. Dickie* (2006), 78 O.R. (3d) 1 at para. 23, reversed on other grounds [2007] S.C.J. No. 8; 2007 SCC 8, which was a matrimonial dispute.

- [34] In my view, judges should make the necessary specific factual findings to support a conclusion there has been contempt, provide an opportunity for the contempt to be purged and address penalty in the context of the degree of affront to the court. Merely finally obeying a court order after there has been a finding of contempt is insufficient. Relevant to the disposition of a contempt proceeding is a contemnor's acknowledgment that it was an error to disobey the court's order and a commitment to obey in the future
- [62] I am not inclined to imprison the claimant. A fine takes money from where it would be most beneficial. My final determination, however, of how to address this requires my hearing from the claimant or counsel on his behalf at a disposition hearing which is to be scheduled before me.

Costs

- [63] The respondent had asked for an order for special costs. As I understand the respondent's argument the position in support of special costs was in part, at least, an alternative to the contempt findings.
- [64] In *Pringle*, Schultes J. noted that "It is the longstanding practice of the court to order special costs to the successful applicant in a civil contempt proceeding" (at para. 44). I see no reason to depart from that practice here.
- [65] In addition, the claimant acknowledged that he had not complied with certain parts of the prior orders (for example the payment of \$2,000 required by the July 2012 order) but argued that any contempt had been purged when the issue was resolved in response to the respondent's application. While this is accurate it remains relevant to the costs of the application, since increased costs were required to deal with these issues because of the claimant's conduct. Even without the findings of contempt I would have been inclined to order special costs.

Conclusions

1. Arrears of child support are \$2,412.
2. Arrears of Special expenses are \$7,576.45.
3. The claimant is found in contempt of para. 4 of the order of July 4, 2012.
4. The claimant is found in contempt of para. 16 of the order of October 15, 2010.
5. A penalty hearing is to be scheduled regarding the findings of contempt.
6. The respondent is entitled to special costs of this application.
7. If there are remaining issues arising out of the parties' applications that have not been addressed by these reasons they are at liberty to apply before me to deal with those.

"A. Betton J."

The Honourable Mr. Justice Betton

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/SC/14/23/2014BCSC2324.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/reid-v-reid-2014>

Prepared on 29 October 2026 · Esheria