

CANADA / JUDGMENT

Sawyer v. Sawyer

2025 BCSC 695

COURT

Supreme Court of British Columbia

DECIDED

27 March 2025

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2025 BCSC 695 Sawyer v. Sawyer

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Sawyer v. Sawyer,

2025 BCSC 695

Date: 20250327

Docket: E48308

Registry: Penticton

Between:

Oraphan Sawyer

Claimant

And

Michael Alan Sawyer

Respondent

Before: The Honourable Justice Hardwick

Oral Reasons for Judgment

In Chambers

Counsel for Claimant:

P. Boles

On own behalf:

M. Sawyer

Place and Date of Hearing:

Penticton, B.C.

March 27, 2025

Place and Date of Judgment:

Penticton, B.C.

March 27, 2025

[1] THE COURT: These are my very brief oral reasons for judgment in respect of the notice of application filed by the claimant on March 11th, 2025 (the "Application"), in this high-conflict family law action. The Application seeks the following orders:

1. Pursuant to section 89 of the Family Law Act, an interim distribution of \$100,000 in favour of the claimant from the sale proceeds held in trust from the sale of the former matrimonial home. Those proceeds, for reference, are approximately \$355,000 and are presently held in trust by counsel for the claimant.
2. The respondent shall forthwith:
 - i. Deposit all proceeds of the sale of the Quad, which was identified in the respondent's Form F8 Financial Statement herein (the "Quad"), to be held in trust with Pamela S. Boles Law Corp.;
 - ii. Provide an accounting of the disposition of the sale proceeds of the Quad; and
 - iii. Provide all documents relating to the transfer of title and those documents and communications relating to the purported listing and sale of the Quad.
3. The respondent shall forthwith pay a fine pursuant to section 230(2)(b) of the Family Law Act not exceeding \$5,000 for his breach(es) of the s. 91 restraining order pronounced by (then) Master Hughes on August 31, 2023, by selling the Quad, without the claimant's knowledge and consent, then concealing the sale of same including in his sworn October 2024 Form F8 Financial Statement;
4. In the alternative to paragraph 3, the respondent shall forthwith pay the sum of \$5,000 to the claimant for his breaches of the s. 91 restraining order pronounced by (then) Master Hughes on August 31, 2023, specifically by selling the Quad, without the claimant's knowledge and consent, then concealing the sale of same including in his sworn October 2024 Form F8 Financial Statement;

5. In the further alternative to paragraph 3, the respondent shall forthwith pay the expenses reasonably and necessarily incurred by the claimant as a result of the respondent's actions including but not limited to legal fees, taxes, and disbursements associated with the issue of the sale of the Quad, and for the drafting and serving and attending upon the application herein;
 6. An order that the respondent forthwith deliver to the claimant the passport belonging to the "child of the marriage" for her retention and use until further agreement or court order; and
 7. Costs including special costs payable forthwith by the respondent to the claimant.
- [2] The order sought at para. 6 is no longer necessary because the respondent has provided the passport. However, I note that the respondent did not courier it until March 14, 2025, when the Application was filed on March 11, 2025. I am further advised, and I accept, that in the application record materials is correspondence requesting the return of the child's passport, including the very reasonable suggestion that it be brought in person by the respondent to the examinations for discovery in this matter, which took place on December 29 and December 30, 2024.
- [3] In terms of the status of the action, the trial of this matter is set in Kelowna for nine days on the assize commencing the week of Monday, June 2, 2025. It was previously set for January of this year but adjourned.
- [4] I shall now address the very core background facts relevant to the relief sought in the Application.
- [5] The claimant was born on June 17, 1984. The respondent was born on March 19, 1980.
- [6] The parties began a relationship in or about 2002. They began cohabitating in a marriage-like relationship in May of 2005.
- [7] The respondent has a child from a previous relationship. There was one biological "child of the marriage", a son, who was born in July of 2009. That child will be turning 16 this year.
- [8] The parties were married on June 30, 2012, in Penticton, British Columbia.
- [9] The parties separated, I find for the purposes of the Application, in August 2022 and that proceedings were commenced on January 16, 2023. I am not making a formal determination with respect to the date of separation as I gather this may be a triable issue. The specific separation date is not relevant to the relief sought as all material events take place after the s. 91 restraining order was made on August 31, 2023, by (then) Master Hughes.

- [10] With respect to the request for an interim distribution under s. 89 of the FLA, the claimant has not provided a comprehensive litigation budget in the application materials. The claimant has, however, provided evidence that she owes her counsel approximately \$10,000 in disbursements alone. Counsel also has not billed the claimant for a number of months, including for the preparation and attendance at two days of examinations for discovery and the herein application, which does have considerable supporting materials.
- [11] The claimant has no meaningful assets, apart from her interest in the net proceeds from the sale of the former family home, beyond an older model vehicle and an RRSP with a present value of less than \$20,000. The claimant has considerable credit card/consumer debt which she is servicing on a relatively modest income supplemented by interim child and spousal support payable based upon imputed income determined by (then) Master Schwartz which interim support I accept the respondent does not pay on time, in accordance with the order, on a fairly regular basis.
- [12] In the circumstances, I am satisfied that an interim distribution under s. 89 of the FLA is appropriate. Counsel for the claimant has accurately laid out the legal test in her application materials, and I am not, in the interests of brevity for the reasons I discussed before I stood down to draft these reasons for judgment, going to read the test into the record. I have however considered it and applied it in determining that an interim distribution is appropriate in the circumstances.
- [13] I am not, however, satisfied that the basis for a \$100,000 advance has been established, even taking into consideration the deferred billing by counsel and the challenges that may arise in preparing for and conducting the trial if the respondent continues to play fast and loose with both the truth and his disclosure obligations.
- [14] I am going to instead order that there be an interim distribution pursuant to s. 89 of the FLA in the amount of \$75,000 to the claimant.
- [15] The respondent is at liberty to bring on his own application for an interim distribution pursuant to s. 89 of the FLA, provided such application is brought in accordance with the Supreme Court Family Law Rules [Rules] on proper notice to the claimant's counsel. I am not prepared to accede to the respondent's request for an equal distribution to the parties in the absence of a cross-application and especially on the basis of the evidence before me at this time.
- [16] With respect to the sale of the Quad in breach of the s. 91 property restraining order, I do not accept the respondent's explanation of this being inadvertent. I could spend considerable time outlining as to why, but I will simply say that the respondent was on notice of the property restraining order as he was present when it was made in August of 2023; he had counsel when he sold the quad in April of 2024; his version of events of the sale at discovery are not the same as his version of events given for the purposes of the Application; and the respondent still, to present date, has not provided a legible copy of the bill of sale despite request(s).

- [17] On the basis of the respondent's own evidence that the Quad sold for \$2,500, I am ordering that the sum of \$1,250 be paid out of the trust funds presently held by Ms. Boles to the benefit of the claimant. This amount shall be deducted from the respondent's entitlement to family property as determined by the trial judge or by written agreement of the parties.
- [18] I am expressly not finding that the Quad sold for \$2,500 or determining whether that was fair market value in April of 2024. That remains an issue for trial. At minimum, though, I accept that the Quad sold for at least \$2,500 and the claimant is entitled to \$1,250 representing one half of \$2,500 as the Quad was family property subject to presumptive equal division under s. 81 of the FLA.
- [19] As a sanction for the breach of the property restraining order, I am ordering that the respondent pay a fine of \$1,250 pursuant to section 230(2) of the FLA. This shall be payable forthwith from the funds held in trust by Ms. Boles and shall be deducted from the respondent's entitlement to family property as determined by the trial judge or by written agreement of the parties.
- [20] Costs are always awardable at the discretion of the chambers judge.
- [21] Pursuant to Rule 16-1(7) of the Rules entitled "Costs Follow the Event," the general principle is that costs are awarded to the successful party.
- [22] The claimant has been successful and is entitled to costs of the Application.
- [23] Moreover, the conduct of the respondent vis-a-vis the timing of the delivery of the responding materials, and more significantly the court's concerns about the truth and accuracy of their contents, cannot simply be explained by the recent withdrawal of counsel.
- [24] I am not, however, going to order special costs at this juncture, even though the respondent has left me woefully unimpressed with his conduct as a litigant. I am instead going to exercise my discretion under the Rules to award the claimant costs fixed in the amount of \$2,250 inclusive of disbursements and order that those be payable in any event of the cause. I am further ordering that they be payable forthwith from the funds held in trust by Ms. Boles and shall be deducted from Mr. Sawyer's entitlement to family property as determined by the trial judge or by written agreement of the parties.
- [25] With respect to the disclosure orders, the only one that remains is order sought, which is 2(iii), which is to provide all documents relating to the transfers of title and all documents and communications related to the purported listing and sale of the Quad. I appreciate there has been some disclosure, but as indicated, the most important document, being the bill of sale, has still not been provided in a legible quality. I am accordingly making that order and specifically ordering that legible copies of those documents be provided within seven days.
- [26] As a final matter, I am going to dispense with the signature of the respondent, Mr. Sawyer, with respect to my form of order.

[27] That deals with all the relief sought in the Application.

"Hardwick J."

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