

CANADA / JUDGMENT

Shapiro v. Shapiro

2023 BCSC 1249

COURT

Supreme Court of British Columbia

DECIDED

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2023 BCSC 1249 Shapiro v. Shapiro

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shapiro v. Shapiro,

2023 BCSC 1249

Date: 20230721

Docket: E141289

Registry: Vancouver

Between:

Norman Nier Shapiro

Claimant

And

Lisa Michelle Shapiro

Respondent

Before: The Honourable Madam Justice Murray

Reasons for Judgment

Counsel for the Claimant:

M.G. Perry

Counsel for the Respondent:

S. Jamal

Place and Date of Hearing:

Vancouver, B.C.

June 14, 2023

Place and Date of Judgment:

Vancouver, B.C.

July 21, 2023

INTRODUCTION

- [1] The claimant, Mr. Shapiro, seeks to have the respondent, Ms. Shapiro, found in contempt of court as a result of what he describes as "her wilful and deliberate defiance" of the order of Justice Mayer pronounced August 16, 2019 (the "Mayer Order"). Mr. Shapiro alleges two instances of alleged contempt, which occurred on April 5 and May 19, 2023, when he was unable to pick up the parties' nine-year-old daughter, D, for his parenting time.
- [2] Mr. Shapiro additionally seeks an order that police apprehend D and deliver her to him if she is wrongfully withheld by Ms. Shapiro in the future, and a corresponding order permitting police to enter any place he believes the child to be in order to facilitate the apprehension.
- [3] Further, Mr. Shapiro seeks to have a fine imposed on Ms. Shapiro, as well as an order for special costs, in lump sum, payable forthwith.
- [4] Finally, Mr. Shapiro seeks compensatory parenting time of five days to be added to his summer parenting time.
- [5] If I do not find Ms. Shapiro in contempt of the Mayer Order, I need not continue to consider the other applications, as they flow from a finding that Ms. Shapiro is wrongfully withholding D.

Issue 1: Was Ms. Shapiro in Contempt of the Mayer Order?

- [6] As articulated by the Supreme Court of Canada in *Carey v. Laiken*, 2015 SCC 17 at paras. 33-35, the test for civil contempt requires that the following three elements be proved beyond a reasonable doubt:
 - 1) The order states clearly and unequivocally what should have been done;
 - 2) The party alleged to be in contempt has actual knowledge of the order; and
 - 3) The party alleged to be in contempt must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels.

- [7] Contempt of court is an issue between a party and the court. It is not concerned with the merits of the underlying dispute that brings the parties before the court: *Frith v. Frith*, 2008 BCCA 2 at para. 36.
- [8] Contempt of court is a "heavy, blunt tool" that ought not to be invoked routinely: *Hokhold v. Gerbrandt*, 2016 BCCA 6 at para. 31. For this reason, the alleged contempt must be clearly identified and then proven beyond a reasonable doubt: *Bassett v. Magee*, 2015 BCCA 422 at paras. 33-34, applying *Peel Financial Holdings Ltd. v. Western Delta Lands Partnership*, 2003 BCCA 551 (Chambers) and *Jackson v. Honey*, 2009 BCCA 112 at para. 12.
- [9] Pursuant to Rule 21-7(1) of the Supreme Court Family Rules, the power to punish contempt of court is exercised by an order of committal or by imposition of a fine, or both.
- [10] Mr. Shapiro alleges that Ms. Shapiro is in contempt of the following two clauses of the Mayer Order, which pertain to parenting time:
3. Mr. Shapiro will have D from 3 p.m. on Friday afternoons on the assumption that Mr. Shapiro will pick D up from school
 6. .

With respect to Jewish holidays as requested by Mr. Shapiro, including Passover, Rosh Hashanah, Yom Kippur and Hanukkah, Mr. Shapiro will have parenting time with [D] on the first of each of those holidays regardless of where [D] will otherwise be at that time.

- [11] In order to find Ms. Shapiro in contempt, I must be satisfied beyond a reasonable doubt that the Mayer Order is clear and unambiguous, and that she wilfully disobeyed it. The Mayer Order will be strictly construed and all evidence, including Ms. Shapiro's explanation, will be considered.
- [12] I will consider the two alleged incidents of contempt in turn.

First Incident: April 5, 2023

- [13] The first allegation of contempt occurred on Passover, which began this year, according to the evidence filed by Mr. Shapiro, at sundown on April 5. On April 5, Mr. Shapiro attended D's school at 2:30 p.m. to pick her up, but D was nowhere to be found. At 2:38 p.m., Mr. Shapiro received a phone call from Ms. Shapiro advising that D had returned to her house, a two-minute drive from the school, and that D was upset and did not want to spend time with her father.
- [14] Mr. Shapiro demanded that Ms. Shapiro deliver D to the school in accordance with the Mayer Order. He followed that up with three emails stating, among other things, that if she failed to deliver D to the school she would be in contempt of the Mayer Order. After waiting approximately an hour, Mr. Shapiro left the school and went home, about an hour's drive.
- [15] At 6:16 p.m. Ms. Shapiro sent Mr. Shapiro an email that read:

Nier,

I am really, really sorry but she was so upset and crying hysterically and she is frightened to get into trouble and see you. I am encouraging her to go. She is really upset that you're not letting her go to the dance. She was really worked up yesterday and I am so surprised she did this. I told her how dangerous that can be if we don't know where she is. I will bring her tomorrow to West Vancouver once she has cooled down.

I am really sorry but she is really upset and I've never seen her like this and I don't want to force her to make matters worse for you and her. I want her to have a good relationship with you.

You have to promise me that you're not going to yell at her and treat her gently.

Thank you,

Lisa

[16] At 6:49 p.m. Mr. Shapiro responded via email:

Lisa,

You are in contempt of court for withholding our daughter.

You need to return her tonight no exceptions.

If you do not return her tonight to my family's place located at by 8:00 pm. I will proceed with a contempt charge and your deliberate attempt to withhold our daughter today. Your choice.

There are no exceptions to this.

Nier

[17] At 8:33 p.m. Ms. Shapiro replied:

Sorry she's getting ready for bed. I'm not withholding her. She came on her own and ran home. I was shocked that she did this and she was really upset.

[18] Ms. Shapiro attests that D is very involved in dance. She had been rehearsing for months with her school to perform at the Surrey Dance Festival on April 6, 2023. On April 3, D told her mother that Mr. Shapiro said that he was not going to drive her to her performance. Ms. Shapiro emailed Mr. Shapiro to confirm. He responded that "April 6, 2023 is the first day of Passover this year and [D] will be celebrating the festivities with my family on that day. Therefore, she will not be attending the dance performance that day."

[19] Further emails ensued in which Ms. Shapiro advised Mr. Shapiro how long D and her group had been practicing for the performance and how important it was to D. Ms. Shapiro offered to drive to West Vancouver to pick D up and drive her to the performance. Mr. Shapiro refused, taking the position that April 5 was the first night of Passover and April 6, the first day, so accordingly under the Mayer Order, his parenting time encompassed both dates.

- [20] Ms. Shapiro attests that she was surprised when D ran to her house after school on April 5. D was crying hysterically and was bleeding from her knees and elbows as she had fallen along the way. D told her mother that she was afraid of how her father would react to her running away from him. Ms. Shapiro states that she contacted Mr. Shapiro to let him know where D was and asked him to come to her house to talk to D. He refused, demanding that she deliver D to the school.
- [21] On the morning of April 6, Ms. Shapiro reached out to Mr. Shapiro to organize for D to spend time with him for Passover after her performance. Arrangements were then made for Mr. Shapiro's mother and stepfather to pick D up from school that day.
- [22] Ms. Shapiro argues that Mr. Shapiro has failed to prove contempt for two reasons: first, the Mayer Order with respect to Jewish holidays is equivocal; and, second, she did not intentionally fail to comply with the order. Rather, she tried to make D spend time with her father but D refused.
- [23] I agree that the Mayer Order is ambiguous. The Mayer Order specifies that Mr. Shapiro shall have parenting time on the "first" of each Jewish holiday. Given that Passover started at sundown on April 5, 2023, it is unclear whether the Order means the first night or the first day. The Order is further ambiguous as to how long the "first" is and whether, if the "first" is a school day, the child is to miss school.
- [24] I further agree that Ms. Shapiro did not intentionally withhold the child.
- [25] In *K.R. v. J.W.*, 2016 BCSC 225, Justice Betton dealt with a situation similar to this, where the child refused to go to her father's for parenting time. Although the application before Betton J. was pursuant to s. 61 of the Family Law Act, S.B.C. 2011, c. 25, rather than contempt as before me, his analysis regarding wrongful denial of parenting is instructive:
- [60] When a child is resisting the parenting time accorded a parent by the order or agreement, it is appropriate to view the origins of that resistance. A parent who encourages that resistance by words and/or actions can, in my view, be said to be denying parenting time and, depending on the circumstances, it may be a wrongful denial.
- [61] In circumstances such as this case, an assessment of the parent's response to that resistance can be critical. If the response is situationally appropriate but ultimately unsuccessful in overcoming the resistance, the parent should not be found to have wrongfully denied parenting time.
- .
- [65] In summary, the three questions I pose above should not be considered in isolation. With that proviso, I would answer them as follows:

1. The sections are not limited to discreet events of wrongful denial. While available in such circumstances, they are also available to address more nuanced circumstances where cumulative effect of a pattern of conduct, including words or actions, results in a loss of parenting time.
2. Where a child is resistant to scheduled parenting time, the source of that resistance must be examined to determine if the parent has fostered it. Further, that parent's response to the resistance must be examined to determine if it is situationally appropriate so as to avoid the result being characterized as a denial of parenting time.
3. Where a parent entitled to parenting time agrees or acquiesces to forgoing scheduled parenting time, the circumstances must again be reviewed to determine whether there was, in fact, a denial by the other parent. For example, a parent who agrees or otherwise does not compel the child or the other parent to accommodate the parenting time may have had little practical choice in the face of the actions or words of the other parent. The fact of an agreement or acquiescence alone does not absolve the other parent of potential responsibility for wrongful denial.

[Emphasis added.]

[26] Based on the evidence before me, it is clear that the relationship between Mr. Shapiro and his daughter is at a turning point. D is getting older and is developing her own interests. Mr. Shapiro is having difficulty when D's wishes and activities conflict with what he wants her to do during his parenting time. An example of this is found in an email Mr. Shapiro sent Ms. Shapiro on April 13, 2023, in which he agreed that D could go to her dance rehearsal during his parenting time, but demanded parenting time in lieu for "lost hours":

You are welcome to pick up D. from the on May 6th and return her to a few hours later when her rehearsal ends as she would like to go to that event. But the "few hours" that D is away from me on my parenting time that day is in fact lost and I would like a credit from you for the amount of lost hours that day being the time you pick her up to the time you bring her back. And in the future you agree that I can get these "lost hours" back from you on a day of your parenting time of my choice.

[27] When he did not receive a response, Mr. Shapiro sent to Ms. Shapiro another email on April 21, 2023:

Lisa,

I never received an agreement from you that you will credit me the hours lost from my parenting time by making it up in total hours for an added days/s of my choice on a Summer holiday of your parenting time as a result of your request for parenting time on May 6, June 10 and June 25, 2023.

If you don't agree to credit me the lost hours as mentioned above due to your simply selfish behaviour then it will be on your account that D will miss those 3 dates above.

I am done with your games.

- [28] The three dates mentioned above - May 6, June 10 and June 25 - were D's dance rehearsals or performances.
- [29] The emails above clearly demonstrate that Mr. Shapiro does not see taking D to her activities as parenting. Instead, he views D's dance as Ms. Shapiro's activity, rather than D's. It was evident from submissions that Mr. Shapiro expects D to do only the activities he wants her to do during his parenting time.
- [30] The origin of D's resistance to spending time with her father is evident: he is taking her away from activities that are important to her and he fails to appreciate all the work she puts into getting ready for the performances. I am satisfied that Ms. Shapiro has nothing to do with D's resistance. I am further satisfied that Ms. Shapiro's response to D's resistance was appropriate. She tried to get Mr. Shapiro to see how important the performance was to D, and when that failed, she facilitated parenting time with him after the performance. I agree with Ms. Shapiro that to force D to go with Mr. Shapiro would harm their relationship.
- [31] Having regard to all of the evidence, I do not find that Ms. Shapiro was in contempt of the Mayer Order on Passover for two reasons:
- a) The Mayer Order with respect to Jewish holidays is unclear and equivocal, and
 - b) Ms. Shapiro neither wrongfully withheld D nor did she foster resistance.

Second Incident: May 19, 2023

- [32] I turn now to the second alleged contempt, which occurred on Friday, May 19, 2023. Again, D ran away from school to her mother's home to avoid being picked up by her father. When Ms. Shapiro called Mr. Shapiro to tell him that D was at her house very upset, Mr. Shapiro told Ms. Shapiro that it was her obligation to deliver the child to the school by 3 p.m. Two minutes later, Mr. Shapiro received a voice message from D which he transcribed:

D: Hello um Dad. I don't really feel like going today because I don't really feel safe and I just really miss my Mom so I want to stay with her for at least this week because I just don't really to go with you because um I don't want to be with you.

Ms. Shapiro: It's okay D. it's okay.

D: okay.

- [33] Mr. Shapiro then sent an email to Ms. Shapiro giving her 15 more minutes to deliver D to the school and threatening police enforcement if she failed to do so. Ms. Shapiro did not respond. D was not delivered to the school.

- [34] In emails the next day, Ms. Shapiro acknowledged how upsetting it is for Mr. Shapiro that D does not wish to spend time with him, expressed her concern with what was happening, and suggested that they go for family counselling with whomever Mr. Shapiro chooses. Mr. Shapiro rejected this suggestion, stating that D has already been seeing a counsellor.
- [35] On May 25, 2023, he filed this application.
- [36] I do not find that Ms. Shapiro fostered D's resistance. Nor am I satisfied that her response was inappropriate. Rather, I am satisfied that Ms. Shapiro was trying to coordinate a solution to the issues between D and Mr. Shapiro. In coming to this conclusion I reject Mr. Shapiro's argument that the voicemail indicates that Ms. Shapiro is fostering resistance. I find it to be Ms. Shapiro attempting to calm her upset daughter.
- [37] I do not find that Ms. Shapiro was in contempt of the Mayer Order on May 19, 2023.

Conclusion

- [38] In conclusion, I am not satisfied that Ms. Shapiro was in contempt of the Mayer Order on either occasion. Rather, I find that she was attempting to calm D and mediate between D and Mr. Shapiro. There is no evidence that Ms. Shapiro is attempting to deny Mr. Shapiro parenting time.
- [39] As stated above, the relationship between Mr. Shapiro and D is at a crisis point. The emails show clearly that Ms. Shapiro recognizes this and is attempting to resolve the issues before the relationship is damaged.
- [40] I do not find the previous history from 2015, relied on by Mr. Shapiro to show a pattern of Ms. Shapiro withholding D from him, to be relevant as it is dated. D was just one year old at the time. Circumstances are entirely different now.
- [41] As I have not found that Ms. Shapiro has wrongfully withheld D from Mr. Shapiro, I need not continue on to consider the other applications.
- [42] Mr. Shapiro's applications are dismissed.
- [43] Ms. Shapiro is entitled to the costs of this application. If counsel wish to seek costs higher than ordinary scale they may arrange time to do so through scheduling.

"The Honourable Madam Justice Murray"

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