
CANADA / JUDGMENT

Shih v. Shih

2016 BCSC 1890

COURT

Supreme Court of British Columbia

DECIDED

14 October 2016

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

2016 BCSC 1890 Shih v. Shih

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shih v. Shih,

2016 BCSC 1890

Date: 20161014

Docket: E141017

Registry: Vancouver

Between:

Vanya Karmalita Laurie Shih aka Karli Shih

Claimant

And

Rick Tzung-Hao Shih aka Rick Shih

Respondent

Before: The Honourable Mr. Justice Greyell

Reasons for Judgment

Counsel for the Claimant:

G.C. Allison

The Respondent, Rick Shih:

In Person

Place and Date of Trial/Hearing:

Vancouver, B.C.

October 5, 2016

Place and Date of Judgment:

Vancouver, B.C.

October 14, 2016

- [1] This is a family law case in which the claimant has brought an application for a declaration that the respondent is in contempt of the provisions of two orders made by Madam Justice Warren dated November 18, 2015 and April 27, 2016.
- [2] The claimant seeks an order that the respondent be fined or committed to jail for contempt.

Background

- [3] The parties were married in 2006 and separated in January, 2014. They have two children: Jack, born August 29, 2007 and Archer, born April 27, 2009.
- [4] The issues between the parties pertaining to the division of family property, whether certain assets were excluded property, whether income should be imputed to the respondent for the purpose of calculating child and spousal support, the amount of such income to be imputed for those purposes and the amount of child and spousal support came before Madam Justice Warren at a three week trial which commenced in April, 2015 and concluded September 25, 2015. Madam Justice Warren issued reasons for judgment on November 18, 2015 dealing with those issues.
- [5] The parties were unable to settle the terms of the November 18 order arising from the reasons for judgment and accordingly the terms of the order were settled by Madam Justice Warren and a final order entered. (I will refer to the order as the "Warren order").
- [6] The Warren order required the respondent to make various payments to the claimant which he has not paid, notwithstanding demand having been made for payment. I refer specifically to paragraphs 9, 11, 13, 14, 23, 26, 29, 30, 39 of the Warren order, each of which paragraphs require the respondent to pay (or to cooperate in the payment of) various sums to the claimant. The sums referred to in the above paragraphs are intended to equalize various family assets and are not inconsequential in amount. For example, paragraph 9 provides the respondent shall pay to the claimant the sum of \$63,428.75; paragraph 11 provides he shall pay the claimant the sum of \$29,081.95. I will not review all the amounts as they are clearly set out in the November 18 order.

- [7] The material discloses the claimant has done everything she can do to comply with the terms of the order. The provisions she has not complied with require the cooperation and/or consent of the respondent which he has not provided.
- [8] The Warren order also provides that, commencing October 1, 2015 and monthly thereafter for a period of five years, the respondent shall pay the claimant \$1300 monthly for spousal support and is to pay the sum of \$1643 monthly as child support for the two children of the marriage. In addition, paragraph 39 of the Warren order requires the respondent to pay retroactive child support in the amount of \$35,482.
- [9] In addition to the above provisions, the Warren order directed that a parenting coordinator be appointed, to be selected by the parties to fulfill the role contemplated by Division 3 of Part 2 of the Family Law Act, S.B.C. 2011, c. 25 [FLA], and that the parties had leave to apply to her in the event they were unable to agree on the identity of the parenting coordinator or on the language required to define the coordinator's role. She ordered the costs of the coordinator to be shared equally by the parties pursuant to section 224 of the FLA.
- [10] The respondent appealed the Warren order and applied, pursuant to s. 234 of the FLA to Warren J. to stay the execution of the order pending the hearing of his appeal.
- [11] The stay application was heard by Warren J. on April 27, 2016. In oral reasons issued the same day Warren J. dismissed the application, relying on s. 234 of the FLA and applying the factors set out by Madam Justice Martinson in *R.S.M. v. M.S.M.*, 2005 BCSC 1578. Madam Justice Warren considered the fact that one of the issues was child support and arrears of child support and concluded the respondent had failed to establish he would suffer irreparable harm if the order was not stayed.
- [12] While the respondent has filed a notice of appeal of the Warren order, he has not filed an appeal from her decision not to grant a stay.
- [13] The respondent represented himself at the hearing of this contempt application. He has counsel representing him on the appeal but advised the court he had paid counsel a retainer some number of months ago and now has no funds left to retain counsel because of ongoing financial obligations to his mother and sister.
- [14] The respondent's position is that he did not receive a copy of the Warren order and accordingly did not have notice of the terms order; he is financially broke and requires what income he earns to support his aging mother and handicapped sister. The respondent also says he has been ready and able to comply with the provisions of the Warren order, but he expected there would be a meeting at which various transfers ordered by Warren J. would be offset against one another. The respondent also raised numerous issues pertaining to the past history of the parties, including allegations made against him by the claimant relating to the children as well as matters relating to the claimant's family's wealth.

- [15] I advised the respondent that this hearing was not concerned with revisiting issues decided by Warren J., but rather with whether he was in contempt of court for failing to comply with her order.

Applicable law

- [16] The principles underlying the law of civil contempt were recently discussed by the Supreme Court of Canada in *Carey v. Laiken*, 2015 SCC 17 where Mr. Justice Cromwell said at paras. 32 - 35:
- [32] Civil contempt has three elements which must be established beyond a reasonable doubt: *Prescott-Russell Services for Children and Adults v. G. (N.)* (2006), 82 O.R. (3d) 686 (C.A.), at para. 27; *College of Optometrists*, at para. 71; *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217, at pp. 224-25; *Jackson v. Honey*, 2009 BCCA 112, 267 B.C.A.C. 210, at paras. 12-13; *TG Industries Ltd. v. Williams*, 2001 NSCA 105, 196 N.S.R. (2d) 35, at paras. 17 and 32; *Godin v. Godin*, 2012 NSCA 54, 317 N.S.R. (2d) 204, at para. 47; *Soper v. Gaudet*, 2011 NSCA 11, 298 N.S.R. (2d) 303, at para. 23. These three elements, coupled with the heightened standard of proof, help to ensure that the potential penal consequences of a contempt finding ensue only in appropriate cases: *Bell ExpressVu*, at para. 22; *Chiang*, at paras. 10-11.
- [33] The first element is that the order alleged to have been breached "must state clearly and unequivocally what should and should not be done": *Prescott-Russell*, at para. 27; *Bell ExpressVu*, at para. 28, citing with approval *Jaskhs Enterprises Inc. v. Indus Corp.*, 2004 CanLII 32262 (Ont. S.C.J.), at para. 40. This requirement of clarity ensures that a party will not be found in contempt where an order is unclear: *Pro Swing*, at para. 24; *Bell ExpressVu*, at para. 22. An order may be found to be unclear if, for example, it is missing an essential detail about where, when or to whom it applies; if it incorporates overly broad language; or if external circumstances have obscured its meaning: *Culligan Canada Ltd. v. Fettes*, 2010 SKA 151, 326 D.L.R. (4th) 463, at para. 21.
- [34] The second element is that the party alleged to have breached the order must have had actual knowledge of it: *Bhatnager*, at p. 226; *College of Optometrists*, at para. 71. It may be possible to infer knowledge in the circumstances, or an alleged contemnor may attract liability on the basis of the wilful blindness doctrine (*ibid*).
- [35] Finally, the party allegedly in breach must have intentionally done the act that the order prohibits or intentionally failed to do the act that the order compels: *Sheppard v. Sheppard* (1976), 12 O.R. (2d) 4 (C.A.), at p. 8. The meaning of this element is one of the main points in contention on appeal and I will turn to consider it in more detail momentarily.
- [17] The decision in *Carey* was recently referred to by the Court of Appeal in *Langford (City) v. dos Reis*, 2016 BCCA 201: see also *Hansen v. Savignac*, 2011 BCCA 307 for the same factors.

Discussion

- [18] I find the respondent clearly had notice of the Warren order and its terms. I reach this conclusion for what I consider to be several obvious reasons. The first is he applied to Warren J. to settle the terms of her order. I conclude he must have been aware of the terms of the order as he instructed counsel to bring the application. Second, he represented himself on the hearing before Warren J. to stay the execution of the order. I must presume he had knowledge of the terms of the order when he applied to stay the execution of those terms. Third, Ms. Allison, counsel for the complainant, specifically advised him of the terms of the order and of those provisions he was not in compliance with in a letter to him of August 9, 2016. Fourth, in a letter dated September 29, 2015, Mr. Ranspot, the respondent's current counsel for the appeal, wrote to Ms. Allison specifically referring to the various paragraphs of the Warren order setting out the respondent's position with reference to those paragraphs. Lastly, in his oral presentation to the court the respondent acknowledged being fully aware of the terms of the order.
- [19] I find the respondent has willfully disobeyed the terms of the Warren Order because he disagrees with Warren J.'s conclusions. He is also in breach of her order refusing his application to stay the terms of the order pending appeal. I do not accept the respondent has been ready and willing to comply with the terms of the order. He has known of the terms of the order since the order was made and taken no steps to implement most of the financial terms contained in the Order. Accordingly, I find the respondent to be in contempt of court.
- [20] Willful disobedience of this court's orders is a serious matter, the penalty for which can range from community service, a fine, imprisonment or a combination of the three. In civil matters imprisonment is a penalty that should be exercised sparingly and as a last resort.
- [21] The principles underlying sentencing for contempt of court were reviewed by Chiasson J.A. in *Larkin v. Glase*, 2009 BCCA 321 at paras. 48 - 54. At paras. 50-51 he stated:
- [50] While concern for the administration of justice is not, per se, a factor in sentencing for civil contempt (*Interfor v. Simm*, 2000 BCCA 500, at para. 17; *Continuing Care Employers' Bargaining Association v. A.U.P.E.*, 2002 ABCA 148, at para. 113), deterrence and rehabilitation are factors relevant to securing compliance with court orders.
- [51] In my view, deterrence is of more importance than rehabilitation, although the latter must not be ignored. Remorse is relevant to deterrence. A party who recognizes the error of disobedience and acts on it signals to society at large respect for court orders. Lack of remorse conveys the opposite message.

Sentence

- [22] In my view the respondent should be given an opportunity to purge his contempt before I impose a sentence on him.
- [23] I order the respondent to do the following within 14 days of this order being pronounced:

1. The respondent will comply with the provisions of clauses 9, 11, 13, 14, 23, 29, 30, and 39;
 2. The respondent will cooperate with the claimant's counsel and will provide his consent, where necessary, to put into effect the balance of the terms of the Warren order including those terms which require him to consent to the transfer of funds as set out in the terms of the Warren order; and
 3. To pay the respondent the arrears of both spousal and child support as determined in the Warren order.
- [24] I order the respondent to forthwith commence regular monthly payments of spousal support and child support as set out in the Warren order and to keep such payments current until such time as they may be changed by this court or by the Court of Appeal after hearing the respondent's appeal.
- [25] I order the respondent to forthwith comply with the terms of the Warren order concerning the appointment of a parenting coordinator and to pay one half the cost of such parenting coordinator. I order the respondent to deposit the sum of \$5,000 with the parenting coordinator as security for the parenting coordinators fees and pay \$315 to the claimant who paid his portion of the fees of Mr. Colby, the former parenting coordinator.
- [26] Within seven days of the date of this order, the respondent shall execute and deliver to the claimant, through counsel, a notarized original travel authorization, effective for one year, permitting the children of the marriage to travel outside Canada with the claimant.
- [27] I order the sums of \$96,199.58 and \$1,428.27 paid into court as a result of garnishee orders issued August 8, 2016 be paid out of court to the claimant in partial satisfaction of her financial claims against the respondent.
- [28] The claimant will recover her costs of this application as special costs. I award special costs against the respondent because he has deliberately chosen to disobey the Warren order: see *Pringle v. Pringle*, 2009 BCSC 1446 at para. 44 or *North Vancouver (District) v. Sorrenti*, 2004 BCCA 316 at para. 20.
- [29] Obeying court orders is an essential ingredient of the maintenance of a civil society and is inherent to the proper administration of justice. I consider the respondent's conduct in disobeying the order to be egregious conduct deserving the rebuke of the court.
- [30] The claimant is at liberty to make an application to any judge of this Court to bring on this application again should the respondent not comply with the terms hereof.

"Greyell J."

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/16/18/2016BCSC1890.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/shih-v-shih-2016>

Prepared on 29 October 2026 · Esheria