

CANADA / JUDGMENT

Shih v. Shih

2020 BCSC 1675

COURT

Supreme Court of British Columbia

DECIDED

23 October 2020

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2020 BCSC 1675 Shih v. Shih

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shih v. Shih,

2020 BCSC 1675

Date: 20201023

Docket: E141017

Registry: Vancouver

Between:

Rick Tzung-Hao Shih, also known as Rick Shih

Respondent

And

Vanya Karmalita Laurie Shih, also known as Karli Shih

Claimant

Corrected Judgement: The date of hearing was corrected on the front page on November 13, 2020

Before: The Honourable Mr. Justice Basran

Oral Reasons for Judgment

In Chambers

Counsel for Respondent (via teleconference):

J. Wong

Claimant appearing on her own behalf:

Vanya Shih

Place and Date of Hearing:

Vancouver, B.C.

October 9, 2020

Place and Date of Judgment:

Vancouver, B.C.

October 23, 2020

- [1] Karli Shih and Rick Shih married in 2006 and separated in January 2014. They are the parents of two children: J.S. born in August, 2007; and A.S. born in April, 2009.
- [2] In 2015, the parties entered into a consent order setting out the terms of their parenting agreement. It stipulates that the parents are to have equal parenting time with their children. Ms. Shih has not had parenting time with J.S. since April 16, 2020. For almost half of J.S.'s life, his parents have been involved in high conflict family litigation. Justice Donegan set out the history of this conflict at paras. 12- 31 of her reasons for judgment, indexed at *Shih v. Shih*, 2019 BCSC 1681.
- [3] The parties appeared before me in September, 2019 on an application that, among other things, sought the enforcement of parenting time of J.S. with Ms. Shih. At that time, the parties entered into a consent order whereby Ms. Shih resumed 50/50 parenting time with J.S., received additional parenting time to account for the period she had missed with him, and they agreed to family counselling.
- [4] On May 1st, 2020, Ms. Shih brought a further parenting time application in respect of J.S. Approximately two weeks earlier, on April 16, 2020, J.S. abruptly left her care during a five-day period that was to be her parenting time with both children. I concluded that Mr. Shih did not fulfill his parental obligations because he acquiesced to J.S.'s desire not to spend time with his mother. I ordered that Mr. Shih bring J.S. to Ms. Shih's residence by 6:00 p.m. on May 1, 2020. At the joint request of the parties, I included a police enforcement clause pursuant to s. 231(4) of the Family Law Act, S.B.C. 2011 c. 25 [FLA]. I told Mr. Shih that he was required to make his best efforts to ensure that he and J.S. complied with the order. I also warned Mr. Shih what if he failed to follow this order, he might be subject to a finding of contempt of court.
- [5] Ms. Shih brought this application because Mr. Shih did not return J.S. to her by 6:00 p.m. on May 1, 2020. She seeks the following orders:

- A. Mr. Shih be fined or committed for contempt of court for failing to comply with the May 1, 2020 order that J.S. return to her care and generally failing to comply with the parenting time orders that require 50/50 parenting time;
- B. appointment of a parenting coordinator pursuant to s. 15 of the FLA for a two-year period;
- C. Mr. Shih pay security into court to ensure future good behaviour;
- D. Mr. Shih be prevented from requesting or obtaining leave to request any further applications in these proceedings;
- E. Mr. Shih execute parenting coordinator retaining agreement; pay \$10,000 to the parenting coordinator as a retainer with the unused balance payable to Ms. Shih;
- F. Mr. Shih pay the full cost of counselling if it takes place, and his consent for such counselling to be dispensed with;
- G. Reinstatement of Ms. Shih's name on the children's RESP account; and
- H. Special costs payable forthwith.

Is Mr. Shih in contempt of court for failing to comply with court orders?

Ms. Shih's Position

- [6] Ms. Shih contends that Mr. Shih did not comply with the May 1, 2020, court order because he immediately contacted the RCMP instead of trying to persuade J.S. to go to his mother's residence for parenting time with her. On this day, Ms. Shih and Mr. Shih tried to speak to J.S. independently and together to persuade him to return to Ms. Shih's home, but J.S. refused.
- [7] Ms. Shih spoke to J.S. over the weekend following May 1, 2020. He threatened to create a disturbance or run away if he was required to go to her home. He also told her that he had been cleaning Mr. Shih's home constantly as punishment for not returning to her home.
- [8] After this weekend, communication between Ms. Shih and J.S. deteriorated further. He hung up on her when she tried to call him, blocked her from his phone to prevent further contact, and threatened to burn any handwritten letter she sent to him.
- [9] Ms. Shih tried to involve the police to enforce the parenting time order but they told her that absent a safety threat, they would not force a child to go where they did not want to go.
- [10] Ms. Shih is understandably devastated that she has not had contact with J.S. since June, 2020.

Mr. Shih's Position

- [11] Mr. Shih asserts that he has encouraged J.S. to resolve his issues with Ms. Shih. In particular, he suggests that he has worked tirelessly to persuade J.S. to communicate with her. Mr. Shih's evidence is that he told J.S. that he was required to go to Ms. Shih's place but J.S. refused and threatened to run away, to stay with friends, or in the wild. Mr. Shih is concerned that the conflict between Ms. Shih and J.S. has damaged his relationship with J.S. because he becomes angry and demonstrative whenever Mr. Shih tries to talk to him about seeing his mother.
- [12] On the events of May 1, 2020, Mr. Shih says that after the hearing he returned home and told J.S. that the Court ordered that he return to his mother's residence. Mr. Shih told J.S. that he expected him to comply with this order but J.S. refused and threatened to run away. Mr. Shih deposed that he became concerned about the consequences of failing to return J.S. to Ms. Shih so he decided to call the RCMP non-emergency line to seek their assistance. Two constables attended at his home and simultaneously their commanding officer met with Ms. Shih. One of the constables told J.S. he was required to go to his mother's home. J.S. burst into tears and refused to go. When told that Mr. Shih could get in trouble if J.S. did not go to his mother's home, J.S. indicated that he would leave his father's home and go elsewhere but he would not go to his mother's residence. Eventually the commanding officer came to Mr. Shih's home and tried to persuade J.S. to go to Ms. Shih's residence. J.S. steadfastly refused and the officers left.
- [13] The following day, Mr. Shih asked Mr. Pillsworth, a friend and police officer, to speak to J.S. Mr. Pillsworth apparently tried to persuade J.S. to go to his mother's place but again, he refused.
- [14] Mr. Shih thinks that he has done everything he can to encourage J.S. to repair his relationship with his mother and spend time with her. He believes that their conflict is causing his relationship with J.S. to deteriorate because J.S. believes that Mr. Shih is siding with Ms. Shih. Mr. Shih senses that there is a growing distance between him and J.S., and he is concerned that their relationship will worsen if he continues to try to encourage J.S. to see his mother.

Dr. Davidson's Counselling and Letter of Fact

- [15] The Shih family attended counselling sessions with Dr. Martin Davidson, a registered psychologist. J.S. threatened not to attend these telephone sessions and insisted that he would hang up during these calls. At Dr. Davidson's urging, J.S. eventually unblocked his phone so that Ms. Shih could speak with him. These calls were brief and sporadic. Shortly after these calls began, J.S. again blocked Ms. Shih's number and refused to speak with her. Ms. Shih tried to deliver care packages to J.S. but he refused to see her to collect them. On June 11, 2020, Ms. Shih saw J.S. while driving to pick up A.S. When she slowed to greet J.S., he turned and jogged away from her.

- [16] Dr. Davidson wrote a "Letter of Fact" to the Court in respect of his counselling sessions with the Shih family. He indicated that the primary focus of the counselling sessions he conducted was to improve the quality of the relationship between Ms. Shih and J.S. In a session on April 22, 2020, J.S. told him that he refused to go to his mother's home because during a recent stay she had lunged at him. Ms. Shih adamantly denies lunging at J.S. J.S. further explained to Dr. Davidson that he would not return to Ms. Shih's home under any circumstances and that if forced to go there, he would promptly run away and sleep in the forest if necessary. Dr. Davidson reports that Ms. Shih wanted to meet J.S. in a public place to give him a care package but J.S. refused to meet her.
- [17] During these counselling sessions, Dr. Davidson noted that Mr. Shih expressed a strong desire for J.S. to return to Ms. Shih's home. Mr. Shih had apparently tried to facilitate contact between J.S. and Ms. Shih by telephone but J.S. refused to cooperate with these efforts.
- [18] According to Dr. Davidson, there was no progress in addressing the conflict between Ms. Shih and J.S. so he was under an ethical obligation to terminate his services and refer the Shih family to alternative service providers. He recommended they use a parenting coordinator to manage the parenting time conflict between Ms. Shih and J.S. He also recommended further family therapy by other service providers.

Relevant Legal Principles of Civil Contempt

- [19] The contempt power is discretionary and should be used "cautiously and with great restraint": *Carey v. Laiken*, 2015 SCC 17 at para. 36.
- [20] "Civil contempt has three elements which must be established beyond a reasonable doubt. The first element is that the order alleged to have been breached must state clearly and unequivocally what should and should not be done. The second element is that the party alleged to have breached the order must have actual knowledge of it. 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": *Carey* at paras. 32-35.
- [21] Civil contempt proceedings are quasi-criminal in nature. The evidence supporting the motion must conform to the rules of admissibility at trial; therefore, no hearsay, opinion, or conclusions are receivable: *Jackson v. Honey*, 2009 BCCA 112 at para. 12.
- [22] If the allegedly breached order is ambiguous, the alleged contemnor is entitled to the most favourable construction: *Jackson* at para. 12.
- [23] "[T]he court must ensure no one is found to have transgressed without a full consideration of all the relevant information including any explanations for the conduct of persons accused of violating court orders.": *Larkin v. Glase*, 2009 BCCA 321 at para. 9.

Contempt of Court Analysis

- [24] I am satisfied that the May 1, 2020, order was clear and unequivocal. Mr. Shih knew that this order required him to do whatever he could to ensure J.S. resumed equal parenting time with his mother. The first two elements of the three-part test are satisfied.
- [25] I do not agree with Ms. Shih's submission that Mr. Shih intentionally disobeyed this order. I accept Mr. Shih's evidence that on May 1, 2020, he tried to convince J.S. to return to his mother's care but J.S. refused. I do not agree that he prematurely involved the police. Mr. Shih knew that the order contained a police enforcement clause. He also knew that he could face consequences if he failed to comply with this order. Seeking the assistance of the RCMP by contacting their non-emergency line after J.S. steadfastly refused to comply with the May 1, 2020, order, left Mr. Shih with few alternatives. I do not accept that he lurched to involving the RCMP without first trying to convince J.S. to comply with the order.
- [26] The Letter of Fact written by Dr. Davidson supports my finding that J.S. is refusing to see his mother. Dr. Davidson worked with the Shih family from September 26, 2019, to approximately June 19, 2020, the date of his letter. On April 22, 2020, J.S. told Dr. Davidson that he refused to go to his mother's home and would run away if forced to go there. Dr. Davidson also noted that J.S. refused to meet his mother in a public place for a short visit. He also stated that Mr. Shih expressed a strong desire that J.S. return to Ms. Shih's home to resume their parenting schedule.
- [27] Ms. Shih believes that J.S. has become emboldened by what she characterizes as Mr. Shih's failure to insist that J.S. resume parenting time with his mother. Aside from Ms. Shih's speculation, there is no evidence to support this contention. I note that A.S. continues to spend equal time with both of his parents.
- [28] Ms. Shih has not established beyond a reasonable doubt that Mr. Shih wilfully and deliberately disobeyed the May 1, 2020 court order. I have considered his explanations in evaluating all the relevant information on this application. In my view, the efforts he undertook to ensure J.S. would go to his mother's place on this date are plausible.

Should a parenting coordinator be appointed?

- [29] Over the past four years, three different parenting coordinators have worked with the parties. Dr. Colby withdrew after one session because Mr. Shih accused him of bias. Dr. Elterman stopped providing his services to the parties after one year of a two-year appointment because he was unable to continue working with Mr. Shih. Next, Mr. Shih refused to pay an outstanding invoice and retainer to Linda Bonnell so she withdrew. I am satisfied that Mr. Shih undermined and impaired the work of each of these parenting coordinators.
- [30] In September, 2019, the parties agreed to family counselling in lieu of the appointment of another parenting coordinator. Dr. Davidson provided these services to the Shih family until June, 2020. At that time, he declined to continue providing these services to them because of

a lack of progress. He concluded that he was under an ethical obligation to terminate his services and instead referred them to other services. He recommended the appointment of a parenting coordinator to manage the conflict between the parties and advise them on issues involving parenting time. He also referred the parties for further family therapy.

- [31] Ms. Shih seeks the appointment of a parenting coordinator for two years pursuant to s. 15 of the FLA. Mr. Shih opposes the appointment of a fourth parenting coordinator.
- [32] J.S.'s refusal to see his mother is damaging to their relationship and his development. I accept Mr. Shih's evidence that the conflict between J.S. and his mother is causing problems with his relationship with J.S. It is also likely that J.S.'s refusal to accompany A.S. for parenting time with their mother is harmful to A.S. and their sibling relationship. This status quo must not continue. The mere passage of time combined with the faint hope that J.S. will eventually change his mind on parenting time with his mother is insufficient.
- [33] I concur with Dr. Davidson's advice that further professional assistance is required. I accept his recommendation that a parenting coordinator be appointed to help the parties establish a framework for J.S. to resume 50 percent parenting time with Ms. Shih, and resolve other parenting time issues.
- [34] Both parties submitted lists of potential parenting coordinators. Having reviewed these lists, I order that Ms. Shih contact the following parenting coordinators in descending order to determine their availability to provide services to the Shih family:
- A. Mark Smith;
 - B. Laurence Scott;
 - C. Kathleen Ouellette;
 - D. G.C. (Scottie) Scott; and
 - E. Nancy Matechuk.
- [35] Mr. Shih is responsible for the departure of the three previous parenting coordinators. This conduct must stop. He is required to cooperate and support the work of the next parenting coordinator to enable this person to assist the parties and their children.
- [36] Given Mr. Shih's past conduct with parenting coordinators, I am satisfied that it is necessary to compel him to pay for the initiation of a new parenting coordinator's work. Within 30 days of Ms. Shih notifying Mr. Shih in writing of the name of the available parenting coordinator, Mr. Shih will sign a two-year retainer agreement with the appointed parenting coordinator and pay for the first \$7,500 in fees in respect of those services. Once this amount has been exhausted, the parties will divide the cost of further parenting coordinator services on the 65/35 ratio ordered for their s. 7 expenses.

- [37] If the services of the new parenting coordinator are terminated and there is a remaining balance of the initial \$7,500 paid by Mr. Shih, that amount shall be paid into court, not returned to Mr. Shih. Return of the unused balance to Mr. Shih, or application of the outstanding amount to further parenting coordinator services or family therapy, shall be either by consent of the parties or further order of this Court.

Other Orders Sought

- [38] On the other order sought, the evidence does not establish the need for Mr. Shih to pay security into court to encourage his future good behaviour.
- [39] Similarly, I am denying the order by Ms. Shih preventing Mr. Shih from filing or seeking leave to file an application. During the hearing, Ms. Shih also sought an order preventing him from responding to future applications. This order is also denied. In my view, these requests are not necessary because there was no evidence that Mr. Shih brought frivolous or vexatious proceedings against Ms. Shih. Accordingly, there are no grounds on which his access to initiate or respond to court proceedings should be restricted.
- [40] On the issue of the cost of future family counselling, there is no current request for such counselling so I will not make an order for its payment other than to note that it should be treated as a s. 7 expense, and its cost divided on that basis.
- [41] I am also declining to make an order dispensing with the need for Mr. Shih's consent for future counselling because there is no recent evidence to support the need for such an order.
- [42] As of the date of their separation, Mr. Shih and Ms. Shih jointly held an RESP account at the National Bank. I am satisfied that Ms. Shih is entitled to the National Bank RESP statements and the statements of any subsequent RESP account to which the proceeds from the National Bank RESP were transferred or deposited. Mr. Shih will provide these statements to Ms. Shih within 30 days of this judgment.
- [43] Counsel capably represents Mr. Shih so I will not dispense with the respondent's signature on the order. However, any unnecessary delay in signing this order will not be tolerated.
- [44] I shall remain seized on parenting time applications for a further period of six months from today's date.
- [45] Success on this matter was divided so each party shall bear their own costs.

"Basran J."

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