

CANADA / JUDGMENT

## Smith v. Bennett

2020 BCCA 389

COURT

British Columbia Court of Appeal

DECIDED

8 June 2020

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

2020 BCCA 389 Smith v. Bennett

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Smith v. Bennett,

2020 BCCA 389

Date: 20200608

Docket: CA46224

Between:

Miki Diana Smith

Respondent

(Claimant)

And

Dean William Gerard Bennett

Appellant

(Respondent)

Before:

The Honourable Madam Justice Fisher

The Honourable Madam Justice Griffin

The Honourable Mr. Justice Abrioux

On appeal from: An order of the Supreme Court of British Columbia, dated

June 12, 2019 (Smith v. Bennett, Vancouver Docket E142119).

Oral Reasons for Judgment

The Appellant, appearing in person

(via teleconference):

D.W.G. Bennett

The Respondent, appearing in person

(via teleconference):

M.D. Smith

Counsel for the Director of Maintenance Enforcement

(via videoconference):

V.A.M. Kerenyi

Place and Date of Hearing:

Vancouver, British Columbia

June 8, 2020

Place and Date of Judgment:

Vancouver, British Columbia

June 8, 2020

Summary:

The appellant who was a payor owing maintenance obligations to his former spouse, appeals from the dismissal of his application brought against the Director of Maintenance Enforcement of the Family Maintenance Enforcement Program. The application claimed that the Director had taken enforcement measures improperly and sought a broad range of relief. Held: Appeal dismissed. The appellant has a valid complaint that he did not obtain a fair hearing of his application, but he was not entitled to the relief he sought. There were no current enforcement measures being taken by the Director against him and the appeal was moot.

[1] GRIFFIN J.A.: Mr. Bennett appeals an order of the Supreme Court of British Columbia, pronounced on June 12, 2019, and entered on July 25, 2019 (the "order under appeal"), dismissing a notice of application he brought seeking relief against the Director of Maintenance Enforcement ("the Director") of the Family Maintenance Enforcement Program ("FMEP"). His notice of application in the court below was filed on March 27, 2019 (the "2019 application").

- [2] The relief Mr. Bennett sought arose out of steps taken by FMEP to enforce family maintenance obligations owed by Mr. Bennett pursuant to a Supreme Court of British Columbia court order made May 1, 2017, in a family law proceeding brought by his former spouse against him. Although the order made on May 1, 2017, was not the first or last order in the family proceeding, it is convenient to adopt the definition of this order as the "Final Order".
- [3] Mr. Bennett challenges the order under appeal on a number of grounds and seeks a broad range of relief.

## BACKGROUND

- [4] All of the parties on this appeal refer to the substantial litigation history in the proceeding in the court below, but unfortunately they have not in all instances put forward the record in support of their submissions. My recitation of the background will therefore not be complete.
- [5] Mr. Bennett and his former spouse, Ms. Smith, separated in 2012. They have three children, born in 2005, 2007, and 2010. In accordance with a 2014 consent order, Mr. Bennett agreed to pay interim child support of \$1,000 per month, spousal support of \$500 per month, and arrears of \$1,500.
- [6] Mr. Bennett did not meet all of his support payment obligations. Ms. Smith enrolled with FMEP in October 2014.
- [7] After repeated failures by Mr. Bennett to pay support obligations and related disputes, the parties entered into the Final Order by consent, wherein Mr. Bennett agreed to pay \$1,408 per month in child support, \$750 per month in spousal support (from May 2017 to May 2020, dropping to \$651 per month from June 2020 to May 2022 and terminating after that), plus \$20,000 in retroactive support (spousal and child) payable by instalments of \$200 per month commencing on January 21, 2018.
- [8] Over time, Mr. Bennett failed to make all of the required support payments under the Final Order and FMEP has taken enforcement steps. Mr. Bennett has been unhappy with the enforcement steps taken by FMEP.
- [9] It appears that one of Mr. Bennett's historic complaints relates to FMEP's account statements treating the \$20,000 in retroactive support ordered within the Final Order under the terminology "arrears", even before he was required to make monthly instalment payments. However this may be a question of terminology, because the amount represented retroactive support related to his past obligations. FMEP states that it did not take any enforcement action or charge interest on the \$20,000 until Mr. Bennett was required to and failed to make instalment payments as of January 21, 2018.

- [10] Mr. Bennett filed various notices of application and proceedings regarding the Final Order, including complaining about enforcement steps taken by FMEP which he felt were inconsistent with the Final Order. The complete history of those applications is unclear on the record before us.
- [11] In June 2017, Mr. Bennett filed a notice of application seeking to enforce the terms of the Final Order (the "June 2017 application"). The June 2017 application was dismissed by order made July 11, 2017, by Justice Morellato. We do not have before us a transcript of the hearing before Morellato J., or any reasons for judgment. However, the thrust of the June 2017 application appeared to be founded on complaints about enforcement steps taken by FMEP which he felt were inconsistent with the Final Order, which he framed as an application to enforce the Final Order.
- [12] In November 2017, Mr. Bennett was in default of his obligations to make the monthly support payments required by the Final Order and FMEP sent him a letter stating its intention to take steps to have his driver's licence withheld.
- [13] Mr. Bennett responded to this enforcement action by letter dated December 19, 2017. The day before, he submitted a payment proposal to FMEP. He offered to make available an amount he expected he would receive on the filing of his income tax return, in the amount of \$11,000. He stated that withholding his driver's licence would impede his ability to earn an income. The payment proposal he submitted was his agreement to pay \$2,558 per month beginning January 21, 2018.
- [14] As of that date, January 21, 2018, Mr. Bennett's obligation under the Final Order was to begin making the \$200 monthly instalment payments on the \$20,000 award of retroactive support. This would bring his total monthly support obligations to \$2,358. His proposal in December 2017 was to pay \$200 more per month than required under the Final Order. It appears the extra \$200 would go towards his arrears (that is exclusive of the \$20,000) that had accumulated since the Final Order.
- [15] FMEP agreed with Mr. Bennett's proposal by letter to him dated January 19, 2018. The letter also stated that the "arrears" as of that date were \$30,519.77. That figure included the retroactive support of \$20,000 that the Final Order allowed to be paid by way of monthly instalments. The letter stated that the \$2,558 payments starting on January 21, 2018, were to be received "in full and on time or this agreement will be void and the Program may commence enforcement action to collect the arrears outstanding" (emphasis added). Further, the letter cautioned that "[t]here may be current enforcement actions that will remain in place or enforcement actions that may be issued, such as a Notice of Federal Interception or credit reporting."
- [16] The January 19, 2018 letter appears to be premature in including the \$20,000 in retroactive support under the Final Order in the description of "arrears", since no payments were due in respect of that amount until January 21, 2018. As I have mentioned, Mr. Bennett had disputed earlier account statements from FMEP using the term "arrears" for this amount.

FMEP created considerable distrust on the part of Mr. Bennett by describing this amount as arrears. But be that as it may, FMEP insists nothing turns on this because it did not truly treat the \$20,000 as arrears in terms of charging interest or penalties, until after Mr. Bennett defaulted in making payment on January 21, 2018.

- [17] FMEP claims that Mr. Bennett did not make the agreed payment that was due on January 21, 2018. He also did not make the agreed payment due on February 21, 2018.
- [18] Mr. Bennett claims that FMEP should have been more understanding of his failure to make payments in January and February 2018, because at that time he was unemployed and in a dispute with his former employer, but was expecting a settlement.
- [19] However, that does not give rise to a remedy this Court can give him, as he has confirmed to us that he did not bring an application to vary his support obligations.
- [20] FMEP is entitled to take enforcement action when payments due under court order are missed, and Mr. Bennett had a long history of missing payments.
- [21] FMEP did receive some modest amounts on account of Mr. Bennett's support obligations in January 2018: a direct payment of \$238, the source of which is unclear; and \$484 by intercepting portions of federal employment insurance benefit amounts due to Mr. Bennett. But FMEP's accounting records for Mr. Bennett, that have not been disputed, show that as of January 31, 2018, Mr. Bennett was just over roughly \$12,200 in arrears in relation to his past support obligations due under the Final Order. This entitled FMEP to take enforcement steps regardless of its treatment of the \$20,000 in retroactive support.
- [22] FMEP took the position before the judge in the court below that Mr. Bennett's failure to make the instalment payment under the Final Order on January 21, 2018, and also the following month, had the legal effect of making the entire \$20,000 in retroactive support under the Final Order due and payable, pursuant to R. 15-4(32) of the Supreme Court Family Rules.
- [23] Rules 15-4(31) and (32) of the Supreme Court Family Rules provide:

#### Stay of execution

- (31) The court may, at or after the time of making an order,
- (a) stay the execution of the order until such time as it thinks fit, or
- (b) provide that an order for the payment of money be payable by instalments.

#### Balance becomes payable if instalment not paid when due

- (32) Unless the court in an order under subrule (31) (b) otherwise provides, if an instalment is not paid by the time fixed for payment, the balance of the money remaining unpaid under the order is, at that time, due and payable without notice being given to the judgment debtor.

- [24] Rule 15-4(33) of the Supreme Court Family Rules also provides that a party against whom an order has been made may apply to the court for a stay of execution.
- [25] On February 16, 2018, FMEP issued an "URGENT NOTICE" letter to Mr. Bennett, advising him that he had fallen behind on ongoing maintenance payments and was more than \$3,000 in arrears. FMEP gave Mr. Bennett notice that it intended to instruct the federal government to refuse to issue him a new passport, or to suspend his current passport. Three thousand dollars was the threshold amount of arrears that must be met in order for FMEP to take this type of action. The letter stated that to avoid that action, Mr. Bennett needed to contact FMEP within 40 days to pay the arrears or make arrangements for paying them over time in addition to making his ongoing maintenance payments.
- [26] As of the February 16, 2018 letter, Mr. Bennett was over \$12,000 in arrears under the Final Order, even if the \$20,000 lump sum of retroactive support was not treated as owing; and by February 21, 2018, he was over \$14,000 in arrears on the same basis.
- [27] FMEP received a lump sum of \$15,200 on March 20, 2018, on account of Mr. Bennett's support obligations, as funds arising from his employment settlement.
- [28] On March 26, 2018, Mr. Bennett wrote to FMEP stating that all of his financial obligations under the Final Order were in good standing. He stated that no funds were due until April 21, 2018, for which the amount of \$2,358 was due in accordance with the Final Order. He asked FMEP to cease and desist all enforcement action.
- [29] I note that this letter is important for two reasons. First, it was clear notice that Mr. Bennett did not consider himself in default, or that the \$20,000 in retroactive support under the Final Order became due as a lump sum because of any missed payments. He took the position that he had caught up on his payments. Second, based on the position in that letter, it cannot be said by Mr. Bennett that he did not think he was required to continue making the monthly support payments in the amount of \$2,358 in accordance with the Final Order. He clearly understood he had an obligation to continue those payments. However, he in fact stopped making his full payments after July 2018.
- [30] FMEP received the additional amount of \$10,020 on Mr. Bennett's behalf on April 4, 2018, again related to the settlement of his employment dispute.
- [31] Mr. Bennett wrote a letter dated April 25, 2018, to the federal authorities regarding his passport denial, challenging the denial and stating that his account with FMEP was not in arrears but was in a surplus status.
- [32] FMEP took the position that despite the above payments in 2018, Mr. Bennett was still in arrears, and was charging him interest on the arrears. The correctness of this position turns on FMEP's assertion that the entire amount of the \$20,000 in retroactive support ordered in the Final Order, as payable by \$200 monthly instalment payments, became due once Mr. Bennett missed making instalment payments starting in January 2018. Mr. Bennett takes the position that the entire \$20,000 in retroactive support did not become due, and that he was

therefore not in arrears once FMEP received the \$15,200 lump sum amount in March 2018.

- [33] On February 4, 2019, FMEP sent a letter to Mr. Bennett with the subject line "URGENT NOTICE: Driver's Licence Cancellation coming into effect Spring 2019", notifying him that where arrears are more than \$3,000, FMEP could take action to cancel the payor's driver's licence.
- [34] By letter dated March 15, 2019, FMEP sent a letter to Mr. Bennett with the subject line "URGENT NOTICE: You Are In Arrears - We Intend To Instruct ICBC To Cancel Your Driver's Licence", notifying him that it would take this step regarding his driver's licence, based on its assertion that he was more than \$3,000 in arrears, unless he contacted them within 30 days to pay the arrears or make an arrangement to pay them over time in addition to making his ongoing maintenance payments.
- [35] Mr. Bennett then filed the 2019 application that is the subject of this appeal. He sought, amongst other things, an order that FMEP adhere to the Final Order; that it cease and desist all enforcement actions against him; that it return his passport, and interest collected on arrears; and that it pay him damages.
- [36] From January to June 2019, Mr. Bennett made no support payments. However, a \$6,117.13 payment was received by FMEP on March 1, 2019, from the federal government on Mr. Bennett's behalf (there is a suggestion it was his income tax refund).
- [37] From January to June 2019, he should have been making payments of \$2,358 per month, or a total of \$14,148.
- [38] While the evidence before us is unclear, there is some basis to conclude that as of March 2019 Mr. Bennett was not more than \$3,000 in arrears unless the entire \$20,000 retroactive support amount ordered in the Final Order was considered due and payable and no longer payable by monthly instalments.
- [39] I should add that in respect of the above background facts regarding payments made by Mr. Bennett, I rely on the FMEP account statement as of June 1, 2019, attached to Affidavit #2 of Brian Moore filed June 10, 2019. Mr. Moore is an enforcement officer with FMEP.
- [40] An initial hearing of the 2019 application took place on April 23, 2019, before Justice Marzari. At that hearing it became apparent that the dispute between the parties focused on whether or not the \$20,000 in retroactive support that was payable by monthly instalments under the Final Order was "accelerated" and became due on January 21, 2018, based on Mr. Bennett missing the instalment payment due that month. The judge made it clear that the evidence and law needed to be marshalled for that issue to be determined. The matter was adjourned to June 12, 2019.
- [41] An additional matter raised by Mr. Bennett on the 2019 application was a dispute with respect to the special expenses (s. 7 of the Federal Child Support Guidelines, SOR/97-175) that he was required to pay under the Final Order, and FMEP's enforcement of the same.

- [42] Justice Marzari made some directions as part of the adjournment: Mr. Bennett was to provide any additional affidavit evidence by May 17 and FMEP was to provide its response affidavit by June 7, 2019.

#### CHAMBERS JUDGMENT

- [43] The 2019 application then came on for hearing on June 12, 2019, before a different judge, resulting in the order under appeal.
- [44] Mr. Bennett first made a procedural complaint about FMEP not filing a response affidavit until June 10, 2019, not June 7, 2019, as directed. However, he did not outline any prejudice arising from that delay or seek an adjournment. Nothing turned on this complaint. I see no merit to Mr. Bennett's ground of appeal based on this issue and will spend no more time on it.
- [45] Mr. Bennett explained to the judge that he was not proceeding that day with his application concerning special expenses.
- [46] The focus of the 2019 application was Mr. Bennett's complaint about enforcement action taken by FMEP in 2018 and following, due to his position that ultimately in March and April 2018 he had overpaid the monthly payments required by the Final Order.
- [47] Mr. Bennett complained about FMEP's enforcement actions which resulted in the denial of his passport and a hold of his driver's licence. The latter enforcement action occurred after the filing of the 2019 application, although he had notice of this possibility occurring beforehand and had included that notice in his application materials.
- [48] Counsel for FMEP took the position before the judge that the 2019 application duplicated the June 2017 application brought before Morellato J., which had been dismissed.
- [49] Counsel for FMEP also argued that the retroactive support in the amount of \$20,000 that Mr. Bennett was required by the Final Order to pay by monthly instalments became immediately payable upon Mr. Bennett missing payments in January and February 2018, and could be treated as arrears by FMEP, entitling it to take enforcement steps based on R. 15-4(32) of the Supreme Court Family Rules.
- [50] Counsel for FMEP further argued that any challenge to the denial of the passport had to be brought by way of judicial review, citing *G.B.I. v. British Columbia (Maintenance Enforcement, Director)*, 2005 BCSC 1145.
- [51] Counsel for FMEP further submitted that the Director is willing to return a driver's licence when someone needs it to earn a living. But she submitted that unless there was a material error in the issuance of a hold on a driver's licence, the court could not interfere in the Director's decision to give notice to the Insurance Corporation of British Columbia (ICBC) of the arrears, relying on s. 29.2 of the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127. It provides:

## Withdrawing the director's notice

29.2 (1) The director must direct the Insurance Corporation of British Columbia to disregard a notice given under section 29.1 if the debtor satisfies the director that

- (a) the notice is based on a material error,
  - (b) the lack of anything referred to in section 29.1 (3) or (3.1) will significantly reduce the debtor's ability to pay under the maintenance order and the debtor has entered into an arrangement that is satisfactory to the director to report the debtor's financial circumstances from time to time, or
  - (c) the debtor has entered into a payment arrangement that is satisfactory to the director.
- (2) If the director refuses to act under subsection (1), the court, on application by the debtor, may summarily determine whether the refusal was unreasonable and, if the refusal is found to be unreasonable, may order the director to act under subsection (1).
- (3) If a debtor's driver's licence is cancelled as a result of a notice given under section 29.1 and
- (a) the director directs the Insurance Corporation of British Columbia under subsection (1) of this section to disregard that notice, or
  - (b) the director advises that corporation that the maintenance order has been withdrawn under section 6 or is no longer in arrears,

the director must also direct that corporation to issue a driver's licence to the debtor.

- (4) If so directed under subsection (3), the Insurance Corporation of British Columbia must, subject to the Motor Vehicle Act and its regulations, issue to the debtor a driver's licence, which may have a term of less than 5 years despite section 60 (4) of that Act.

[52] The judge dismissed the 2019 application.

[53] Based on submissions by counsel for FMEP, the judge found in part that the matter was no different than the June 2017 application that had been dismissed by Morellato J. and could not be relitigated.

[54] The judge was also very critical of the fact that Mr. Bennett was, at the time of the hearing of the 2019 application, behind in making his support payments, having not made any such payments in 2019 other than the roughly \$6,000 attached from the federal government.

[55] The judge also found that Mr. Bennett had not made out the test to allow the court to vary the FMEP determination that his driver's licence should be withheld.

## THE ISSUES

[56] Mr. Bennett submits that the chambers judge erred in dismissing the 2019 application by:

1. Failing to hold FMEP to the conditions for adjournment set out by Marzari J. at the April 23, 2019 hearing;
2. Allowing FMEP to speak on "verbally fabricated" materials not contained in their materials to be relied upon;
3. Failing to provide him with procedural fairness, by refusing him time to speak on the new material from FMEP;
4. Allowing FMEP to mislead the court and disrespect the court process; and
5. Permitting a miscarriage of justice to occur.

[57] If successful on appeal, Mr. Bennett seeks an order that:

1. FMEP halt all enforcement action against him;
2. FMEP be prohibited from enforcing any future orders against him;
3. Sanctions on his passport, credit reporting requirements, and "notice[s] of attachments to financial [institutions]" or otherwise be removed;
4. All arrears be cancelled;
5. \$2.8 million in damages be awarded against FMEP for their conduct; and
6. He receive \$18,000 in costs.

[58] The respondent Ms. Smith submits she is not a proper party to this appeal.

[59] FMEP repeats the arguments it made in the court below.

[60] FMEP submits that there are currently no enforcement measures against Mr. Bennett dealing with his passport denial and driver's licence hold, and further, that he entered into a voluntary payment arrangement with FMEP on July 3, 2019.

[61] Because of the latter submission, the parties were directed in earlier proceedings by this Court to file further submissions addressing whether or not the appeal is moot.

## ANALYSIS

[62] I will begin with the mootness issue.

[63] One key issue on the application before the judge in the court below, was whether the judge had a factual and legal basis for interfering with the FMEP enforcement steps which affected Mr. Bennett's passport and driver's licence.

- [64] FMEP submits that the issues are now moot because after the hearing of the 2019 application, Mr. Bennett entered into a voluntary payment arrangement with the Director on July 3, 2019, whereby he agreed to maintain payments of \$2,358 per month. On that basis, we are advised that the enforcement actions taken which resulted in a denial of his passport and a hold on his driver's licence were withdrawn.
- [65] FMEP advises orally on appeal that Mr. Bennett is currently in default of his payment obligations. Mr. Bennett seems to acknowledge this, but claims that this is due to the COVID-19 pandemic, and that he intends to bring a court application seeking a variation of his support obligations due to a material change in circumstances.
- [66] Mr. Bennett asserts that he entered into the July 3, 2019 payment agreement under duress. I am not sure how this helps him as it only requires him to make the support payments he was required to make under the Final Order, as though he had not defaulted in payment. The relevant point is that the enforcement measures taken in 2018 and 2019, with respect to his passport and driver's licence, were withdrawn and are no longer active.
- [67] There are no current FMEP enforcement measures against Mr. Bennett, other than credit bureau reporting.
- [68] Given that the enforcement measures taken in 2018 and 2019 in respect of Mr. Bennett's passport and driver's licence have been withdrawn or lifted, I would decline to hear any appeal from those measures on the ground of mootness. There is no live controversy between the parties regarding those expired enforcement measures. I would dismiss this aspect of the appeal.
- [69] Nevertheless, I have some sympathy for Mr. Bennett's complaints about the procedural fairness of the hearing in the court below.
- [70] The parties' materials were not easy to understand, and the transcript reads as though the judge was trying to "cut to the chase". Be that as it may, it appears from the transcript that the judge mistakenly did not allow Mr. Bennett time to complete his submissions, or give him an opportunity to fully reply to the submissions of FMEP.
- [71] It also appears that the judge simply accepted the submission of counsel for FMEP that the matter had already been adjudicated, without any evidence of what occurred before Morellato J. almost two years earlier.
- [72] It is possible that a legal issue was determined by Morellato J. that made an issue on the 2019 application subject to issue estoppel. However, it is difficult to understand how this could be so. While there might have been some duplication in the general relief sought in the two notices of application (the June 2017 application and the 2019 application), these applications were filed by someone without legal training. It was clear that the facts of FMEP's enforcement actions, that were the subject of Mr. Bennett's complaint in the 2019 application, occurred in 2018 and 2019, well after the June 2017 application was heard and decided. Further, it was only beginning in January 2018 that Mr. Bennett was responsible to

make instalment payments on the \$20,000 awarded as retroactive support in the Final Order. It was only then that FMEP says it treated the entire \$20,000 as due and payable, upon Mr. Bennett missing an instalment payment.

- [73] Respectfully, on the record before him, the judge could not determine what issue was or was not previously determined and subject to issue estoppel without a transcript or reasons for judgment related to the June 2017 application.
- [74] I appreciate that the judge below was in a difficult position. The 2019 application sought broad-ranging relief, including an order that FMEP cease and desist all enforcement action, that he "exit" the FMEP program, and for damages "caused by FMEP misconduct."
- [75] The 2019 application did not cite any legal authority that would support the relief Mr. Bennett sought, adding to the difficulties. For example, there was no basis for an order that the judge award him damages due to what Mr. Bennett describes as FMEP's misconduct. Mr. Bennett had not commenced a lawsuit against the Director seeking damages, and he could not be awarded damages on a notice of application challenging FMEP's enforcement actions in the family law proceeding. Further, the Director has available to it statutory immunity pursuant to s. 44 of the Family Maintenance Enforcement Act for anything done in good faith. Mr. Bennett had not met the substantial burden of showing a lack of good faith. I see no merit to any appeal from an order dismissing this aspect of the 2019 application.
- [76] I also see no merit to any argument by Mr. Bennett on appeal that the Director is not entitled to take steps in respect of credit reporting.
- [77] I also see no basis on appeal for ordering that the Director stay any and all enforcement action against Mr. Bennett. Section 4 of the Family Maintenance Enforcement Act provides the Director with the obligation to enforce a maintenance order filed with the Director, including taking whatever steps the Director considers advisable for enforcement. There is nothing arising on appeal of the order from the court below that would justify this Court limiting the enforcement action that might lawfully be taken by the Director in the future.
- [78] What remains a live issue, in my view, is the question of whether R. 15-4(32) of the Supreme Court Family Rules applied to make the entirety of the \$20,000 retroactive support payment under the Final Order due and payable upon Mr. Bennett's failure to make an instalment payment on January 21, 2018, starting the running of interest under the Family Maintenance Enforcement Act, and entitling the Director to take enforcement steps with respect to the whole of the \$20,000 after this date.
- [79] This issue was not adequately dealt with in the court below, in part because of the judge's reliance on FMEP's argument that the matter had already been dealt with in the June 2017 application and dismissed. The burden would be on FMEP to establish before the judge on the 2019 application that this issue had been raised and determined before, and I do not see FMEP as having met this burden.

- [80] The judge also exercised his discretion not to hear further from Mr. Bennett on that issue, because Mr. Bennett was behind in his support obligations. I do not consider that exercise of discretion to be reasonable in the circumstances. The matter had been adjourned by Marzari J. to allow the parties to address the issue of the proper treatment of the \$20,000 retroactive support amount ordered in the Final Order. Further, until the judge heard the parties on that issue, he would not know whether this impacted Mr. Bennett's ability to meet his other support obligations.
- [81] I agree with Mr. Bennett's submission that he did not obtain a fair hearing of that issue. However, in my view, it is an issue that can be determined by this Court on the record before us.
- [82] The record is clear that Mr. Bennett failed to make required instalment payments in relation to the \$20,000 in retroactive support owed under the Final Order when first due, on January 21, 2018, and again on February 21, 2018. Mr. Bennett has not provided any answer in this Court to the proposition that upon a missed instalment payment, R. 15-4(32) of the Supreme Court Family Rules would then apply to make the entire \$20,000 amount due and payable. He simply submits that FMEP should have been more cooperative in working with him because he had other financial pressures at the time. However, on the basis of this Rule, I am not persuaded that the Director was in legal error to treat the full amount of the \$20,000 as due and payable, and as accruing interest, once Mr. Bennett failed to make a required instalment payment.
- [83] Certainly, it would have been helpful for the Director to have given an explanation to Mr. Bennett that it was relying on R. 15-4(32) of the Supreme Court Family Rules when it treated the entire \$20,000 as due and payable after January 21, 2018. Not providing this explanation has probably contributed to the frustration felt by Mr. Bennett. However, Mr. Bennett should appreciate that FMEP is only able to take enforcement action against him because he has failed to comply with the Final Order.
- [84] The Director has some discretion to make payment arrangements with a debtor who has missed payments, and those efforts have been made here.
- [85] Mr. Bennett has not established that there is any basis for the relief he seeks on this appeal. While he did not receive a fair hearing in the court below, he was not entitled to the relief he sought in the court below. For that reason, I would dismiss the appeal.
- [86] I would also consider the ordinary rule as to costs to apply, meaning that both the respondent and the Director are entitled to their costs.
- [87] FISHER J.A.: I agree.
- [88] ABRIOUX J.A.: I agree.
- [89] FISHER J.A.: Thank you. The appeal is dismissed with costs to the respondent and the Director. Thank you everyone for your submissions and for your time today.

---

"The Honourable Madam Justice Griffin"

---

### 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/ca/20/03/2020BCCA0389.htm>

**CASE PAGE**              <https://chat.esheria.ai/case-law/canada/smith-v-bennett-2020>

Prepared on 26 October 2026 · Esheria