

CANADA / JUDGMENT

Uppal v. Uppal

2024 BCSC 1640

COURT

Supreme Court of British Columbia

DECIDED

4 September 2024

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2024 BCSC 1640 Uppal v. Uppal

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Uppal v. Uppal,

2024 BCSC 1640

Date: 20240904

Docket: E65707

Registry: New Westminster

Between:

Jasvir Kaur Uppal

Claimant

And

Manjinder Kevin Uppal and Gurdev Kaur Uppal

Respondents

Before: Associate Judge Hughes

Reasons for Judgment

Counsel for Claimant:

P. Virk

Counsel for Respondent Manjinder Kevin Uppal:

D. Smith

Place and Date of Hearing:

New Westminster, B.C.

August 23, 2024

Place and Date of Judgment:

New Westminster, B.C.

September 4, 2024

- [1] In this family law case, there are cross-applications by the spouses with respect to document production. The non-spouse respondent, Gurdev Kaur Uppal, who is the mother of the other respondent and has separate counsel, did not attend the hearing as the relief sought against her was to be adjourned generally.
- [2] I will refer to the claimant Jasvir Kaur Uppal as either the claimant or Ms. Uppal. I will refer to Manjinder Kevin Uppal as either the respondent or Mr. Uppal.
- [3] The claimant and respondent were married on June 27, 1992. The spouses initially agreed that they separated on June 24, 2018, however the claimant filed an amended Notice of Family Claim on September 8, 2023 in which she now claims that they separated "in or about 2008". She pleads that the spouses continued to live in the same residence, albeit not in a marriage-like relationship, until the respondent left the matrimonial home on June 24, 2018. The respondent maintains that June 24, 2018 is the correct date of separation. The disagreement about the date of separation has significance in terms of the parties' respective positions on the scope of disclosure requested by each of them.
- [4] The spouses are the parents of three adult children, the youngest of whom is now 25. In this action, each of the spouses seeks spousal support from the other and division of family property and debt. Given the claimant's position that the date of separation was 2008, she also seeks retroactive child support and has a significant excluded property claim.
- [5] At a Judicial Case Conference ("JCC") held on May 31, 2023, Master Keighley ordered the parties to exchange lists of documents by July 31, 2023. Both respondents complied with that order, providing their initial lists of documents prior to the July 31, 2023 deadline. The claimant did not provide her list of documents until September 28, 2023, although no explanation has been provided for the claimant's late compliance with the JCC order.

The respondent's notice of application filed July 25, 2024

- [6] The claimant filed a financial statement in this action on May 30, 2023 wherein she apparently listed the specific assets and debts for which disclosure is now demanded. I say "apparently" because neither party saw a need to include that financial statement in the application record, which puts the court in the position of having to rely on counsel's submissions as to the contents of that document. The pleadings were similarly not included in the application record.
- [7] Despite the deficiencies in the record, both counsel were prepared to forge ahead with their applications.
- [8] It is trite law to say that there must be something, either by way of evidence or by way of the pleadings, to establish relevance of the requested documents: *Moukhine v. Collins*, 2010 BCSC 621 at para. 19. At the very least, there must be some "air of reality" between the documents and the issues in the action: *Edwards v. Ganzer*, 2012 BCSC 138 at para. 51, citing *Moukhine* at para. 22.
- [9] The evidence from the respondent in support of his application is that of his counsel's paralegal. The paralegal's affidavit attaches a letter from an articulated student to claimant's counsel dated January 11, 2024, requesting documentation that largely parallels that now sought in the notice of application. The letter refers to Rules 9-1(7) and (8) of the Supreme Court Family Rules (Rules), identifies the documents requested with reasonable specificity, and sets out a brief explanation of the reason why each class of documents should be disclosed.
- [10] The documents sought fall into six categories:
- In relation to real property located at 44 - 15778 - 85th Avenue, Surrey, BC, BC Assessment reports for the last 5 years, statement of property taxes and mortgage agreement and statements.
 - Account statements for 12 bank and investment accounts, many for the period 2008 to present;
 - Financial statements and corporate income tax returns for the period 2008 to present for 4 companies;
 - Pension and RRSP statements;
 - Account statements for eight different debts listed by the claimant;
 - Any insurance or other documentation showing estimate of value of jewelry held in TD safety deposit box.
- [11] The claimant opposes all of the disclosure sought. The only reasons articulated in the claimant's application response are that the claimant has made various disclosure requests of Mr. Uppal that have not yet been complied with (Factual Basis, para. 18, 19) and that the 85 Avenue property is beneficially owned by the claimant's brother and is not family property (para. 23). The fact that the claimant has made unanswered disclosure requests

does not negate her obligation to provide disclosure. The only affidavit relied on by the claimant in opposition to the respondent's application is her 2nd affidavit sworn on August 11, 2024. In that affidavit, the claimant does not provide any evidence with respect to the beneficial ownership of the 85 Avenue property. Even so, it is not uncommon in family law proceedings for parties to claim that certain assets are not family property as they are held in trust for someone else. It will ultimately be for the trial judge to decide whether the claimant has any beneficial ownership in the 85 Avenue property. For now, it is a live issue between the parties.

- [12] The claimant's application response suffers from the same deficiencies as does her notice of application, discussed below. In oral submissions, claimant's counsel raised a number of arguments not set out in the Application Response. Although the respondent rightly objects to this approach, I will address some of those arguments as they have no merit in any event.
- [13] First, counsel argues that some of the documents are available from sources other than the claimant, such as the BC Assessment Authority, financial institutions, pension plan administrators, or the claimant's other family members. The argument is that the respondent has not exhausted other avenues prior to bringing this application for production from the claimant. This argument completely ignores the obligation of parties to family litigation to disclose all documents that are or have been in the party's possession or control and that could be used to prove or disprove a material fact (Rule 9-1(1)). There is no obligation on a party to seek relevant documents from non-parties if the document sought is in the possession or control of another party.
- [14] With respect to the financial statements and corporate tax returns of the four companies in which the claimant apparently has an interest, I note the provisions of Rule 5-1(19) and (21):

Production of documents

- (19) If a party discloses business or corporate interests in a Form F8 financial statement served under this rule, the party receiving the Form F8 financial statement may, in writing, request the disclosing party to produce for inspection and copying specified documents or classes of documents in the disclosing party's possession or control that might reasonably be required to verify the valuation of the disclosing party's interest or to determine the disclosing party's income.

Request to corporation, partnership or proprietorship

- (21) If a party who makes a request under subrule (19) is not satisfied with the reply to the request, the requesting party may serve on the corporation, partnership or proprietorship in which the disclosing party has disclosed an interest a written request to produce for inspection all documents that are relevant to the valuation of the interest or the determination of the disclosing party's income.

[15] The claimant argues that the companies are not parties to this litigation, and any request for corporate records must be sought from the companies, not from the claimant. That is not what the Rule provides. If the claimant has disclosed corporate interests on her form F8 financial statement, it is her obligation to comply with a request under Rule 5-1(19). Only if the respondent is not satisfied with the claimant's reply can he then serve a request on the corporation.

[16] The claimant also argues that the request for records as far back as 2008 is an overly broad fishing expedition, akin to the "underwear drawer disclosure" that Master Young (as she then was) referred to in *Mossey v. Argue*, 2013 BCSC 2078 at para. 18. It is important to note that the actual quote is as follows:

18 However, gone are the days of the full underwear drawer disclosure, unless the demand is made with specificity and justification.

[Emphasis added.]

[17] In the case at bar, the demands have been made with specificity and justification. Although discovery of documents dating back to 2008 is a significant and unusual request, it is the claimant who has opened the figurative underwear drawer by pleading a 2008 separation date. Given her claims of retroactive child and spousal support, in addition to the parties' property claims (including claims of excluded property), the claimant's financial circumstances post-separation are relevant.

[18] The claimant relies on *Sarmadi v. Bagherzadeh*, 2021 BCSC 1967, in which the court summarized the applicable law before dismissing the application for document production as having been brought prematurely and without a proper foundation. In *Sarmadi*, the demand by the applicant did not comply with the Rules. The application respondent provided evidence as to the documents already provided and reasons why he was unable to produce other documents.

[19] In the case at bar, the respondent's demand does comply with the Rules and has not been answered. The claimant provides no evidence whatsoever as to any documents she has provided in response to the demand, her efforts to comply, or the reason why some documents may not be available.

[20] Accordingly, the orders sought in the respondent's notice of application filed July 25, 2024 are granted in their entirety. The claimant is to provide all of the listed documents that are in her possession or control within 14 days. If the claimant is unable to produce any of the documents ordered within 14 days, she shall, within those 14 days, provide an affidavit setting out her efforts to locate or obtain such documents.

Claimant's notice of application filed August 12, 2024

- [21] A list of 29 separate documents or categories of documents are requested from Mr. Uppal. Some of those requests are for bank and credit card statements going back to January 1, 2008. Ironically, this is the same time period for which the claimant resisted production of her own documents.
- [22] The respondent invites me to dismiss the notice of application outright on the basis that it has a deficient Legal Basis and does not comply with the Rules. In *Hamel v. Dumville*, 2023 BCSC 1805, this Court did just that, saying at paras. 8-11:
- [8] The respondent's notice of application does not comply with the Family Rules. The Family Rules require the notice of application to include, in the "Legal Basis", a summary or concise statement of the arguments in favour of the applicant's position. It is not sufficient to simply list the enactments and rules relied upon without any analysis of how those provisions relate to the facts and how they lead to the conclusion the applicant wishes the court to reach. *Dupre v. Patterson*, 2013 BCSC 1561 [Dupre]; *Crossan v. Crossan*, 2016 BCSC 2102.
- [9] In this case, the respondent simply lists various provisions of the FLA, the Court Order Interest Act, R.S.B.C. 1996, c. 79, the Family Rules and the Supreme Court Civil Rules, B.C. Reg. 168/2009 under the heading "Legal Basis". The notice of application contains no analysis of the factual basis for the application in the context of those provisions listed and contains no roadmap from the factual basis, through the legal analysis to the conclusion.
- [10] In fact, even the provisions listed in the notice of application is incomplete. As I indicated earlier, the respondent relies on Rule 11-3 but does not list that particular Rule under the Legal Basis for the application.
- [11] As will be seen in these reasons, the respondent's failure to comply with the Family Rules will have a significant bearing on the final result of this application. As stated by Justice Adair in *Dupre*:
- [55] When counsel come to court with inadequate materials, which fail to comply with the Rules, judges and masters are placed in a very difficult position. What often happens is that, to avoid the inconvenience and expense of an adjournment, matters proceed despite the inadequate materials, and judges and masters do the best they can in the circumstances. But inadequate motion materials, which fail to comply with the Rules, are incompatible with the efficient and timely disposition of applications.
- [56] If counsel are coming to court with inadequate material that clearly fails to comply with the Rules, and counting on being heard, they are misguided. Judges and masters are entitled to expect that counsel will prepare application materials (including affidavits) that comply with the Rules, and do no less than this. Counsel who come to court with application materials that do not comply risk having their applications at least adjourned, with potential cost consequences, until proper materials are filed.

- [23] In the case at bar, the claimant's notice of application does not provide a proper legal basis for the application. The claimant simply lists various Rules, sections of the Family Law Act S.B.C. 2011, c. 25 [FLA], and case citations, with no analysis as to how they apply to the application. Some of the references appear to have no bearing on this application, such as the reference to FLA s. 222 (conduct orders). The respondent is entitled to know the case he has to meet, and should not have to guess at what the applicant's legal argument will be.
- [24] Given the deficiencies in the notice of application, which are unfortunately a common occurrence in this Court, I am dismissing the claimant's application in its entirety.
- [25] Even if I were not dismissing the application on this basis, I would dismiss paragraph 1 of the orders sought for the following reasons.
- [26] No evidence or argument is provided as to the relevance of some of the requested documents. Such documents include:
- (k) Copies of any and all cell phone records and statements for all cell phones held in the name of the Respondent or jointly with others from 2008 to the present;
 - (l) Copies of all Passports in the Respondent's name whether they are British Passports, Canadian Passports or Indian Passports from 2008 to the present;
 - (m) A copy of the Respondent's original birth certificate; and
 - (n) A copy of the Respondent's social security number from the United Kingdom.
- [27] This Court has held that Rule 7-1 of the Supreme Court Civil Rules concerns the obligation of parties to disclose and produce documents that exist and are in a party's possession or control. It does not obligate a party to create a document: *Natural Trade Ltd. v. MYL Trading Ltd.*, 2019 BCSC 1368 at para. 25. The same analysis applies in respect of Supreme Court Family Rule 9-1. Some of the claimant's requests would require the respondent to create a document that does not currently exist, such as:
- (o) a detailed statement of all earnings whether in cash or other means earned annually by the Respondent in his occupation as a football/soccer referee for all leagues from January 1, 2008 to the present;
 - (q) a detailed statement from the Respondent listing all contributions he has made towards family and matrimonial expenses from January 1, 2008 to the present; and
 - (r) a detailed statement from the Respondent of all of the contributions and payments made towards the children's special and extraordinary expenses under s. 7 of the Federal Child Support Guidelines from January 1, 2008 to the present.

[28] Finally, Mr. Uppal has provided evidence, by way of his 2nd affidavit filed on August 19, 2024, that he has already provided the requested documents to the extent that they are in his possession or control. That same affidavit provides explanations as to the respondent's inability to provide certain documents.

Result

[29] The orders sought in the respondent's notice of application filed July 25, 2024 are granted in their entirety. The claimant is to provide all of the listed documents that are in her possession or control within 14 days. If the claimant is unable to produce any of the documents ordered within 14 days, she shall, within those 14 days, provide an affidavit setting out her efforts to locate or obtain such documents.

[30] The claimant's notice of application filed on August 12, 2024 is dismissed.

[31] As the successful party, Mr. Uppal is entitled to his costs in the cause with respect to both applications.

"Associate Judge Hughes"

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