

CANADA / JUDGMENT

Wang v. Sullivan

2023 BCSC 2233

COURT

Supreme Court of British Columbia

DECIDED

27 July 2023

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2023 BCSC 2233 Wang v. Sullivan

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wang v. Sullivan,

2023 BCSC 2233

Date: 20230727

Docket: E180535

Registry: Vancouver

Between:

Julia Wei Hua Winnie Wang

Claimant

And

Kevin Wayne Sullivan

Respondent

Corrected Judgment: The text of the judgment was corrected to anonymize the Child's name for publication purposes on December 18, 2023

Before: The Honourable Justice Fitzpatrick

Oral Reasons for Judgment

In Chambers

The Claimant, appearing in person:

J. Wang

The Respondent, appearing in person:

K. Sullivan

Place and Date of Hearing:

Vancouver, B.C.

July 27, 2023

Place and Date of Judgment:

Vancouver, B.C.

July 27, 2023

- [1] THE COURT: This is a high conflict family matter between the claimant, Julia Wang, and the respondent, Kevin Sullivan. Much of the conflict relates to their son who is almost 12 years old (the "Child").
- [2] There have been a number of court appearances in this proceeding and those court appearances are relevant to the application before me today. Those proceedings include the final order granted by Justice Hughes on May 30, 2022 (the "Final Order") and the May 17, 2023 order arising from the application that was heard by Justice Sharma on that date (the "Sharma Order").
- [3] Ms. Wang applies for a number of orders in items 1-8. I will deal with them sequentially, essentially as she has set forth in her notice of application ("NOA").
- [4] In para. 1, Ms. Wang seeks an order setting aside paras. 2-4, 7 and 11 of the Sharma Order. I will deal with those provisions in that order, as follows:
- a) Paragraph 2: This paragraph deals with a RESP account. In para. 5 of the Final Order, the parties agreed that the RESP account that had been established for the Child was to be maintained and that neither party should take any funds from the RESP account without the written consent of the other party. The Final Order contemplated that Mr. Sullivan would be added to the RESP since it was held in Ms. Wang's name alone.

On May 17, 2023, the evidence before Sharma J. was that Ms. Wang had been unable to add Mr. Sullivan as a signatory to the RESP account. Accordingly, para. 2 of the Sharma Order provided that Ms. Wang was to transfer the funds to Mr. Sullivan's account and that all other conditions set out in para. 5 of the Final Order were to continue to apply, including the provision that both parties were to have equal say in terms of whether there would be any withdrawals from the account.

The present situation is that Ms. Wang continues to assert that she is unable to add Mr. Sullivan's name to the account. Accordingly, Mr. Sullivan advises me today that he is in the process of effecting a transfer of those funds from the Royal Bank of Canada to TD Bank, where he has established a replacement RESP account for the benefit of the Child.

Ms. Wang's submissions on this matter have been fairly wide ranging. Initially she advised that she wanted to maintain the account in her name only. When she was questioned about that, she indicated that she wanted to essentially split the RESP account in half, with half to be provided to Mr. Sullivan and half to be maintained in her name.

I am not convinced that there is any reason to change the Sharma Order in relation to the RESP account. In fact, as Mr. Sullivan states, the funds may already in fact have been transferred into the TD Bank RESP account. It appears to be the case that the intention under the Final Order and the Sharma Order was that the RESP funds would be maintained and that, given the difficulties encountered by Ms. Wang, it was best to place the funds in Mr. Sullivan's hands for safekeeping, which he has indicated he is prepared to do.

Accordingly, I see no reason to set aside para. 2 of the Sharma Order. I will have further comments to make in respect of the RESP account as I address Ms. Wang's submissions in terms of the relief sought.

- b) Paragraphs 3-4: These provisions of the Sharma Order relate to parenting of the Child. I am advised that there are substantial parenting issues that relate to the Child. Both parties have referred to certain proceedings in the Provincial Court in which the Ministry of Children and Family Development is involved. It appears that once those issues are resolved, and failing agreement of the parties (which appears likely as far as I can discern), the matter of parenting will be brought back before this Court for a final determination.

In any event, the present situation is that Mr. Sullivan has the only parenting time with the Child. Ms. Wang has not had any parenting time with the Child for some time. In paras. 3-4 of the Sharma Order, the Court ordered that the Child was to primarily reside with Mr. Sullivan on an interim and without prejudice basis. Paragraph 4 provides that Mr. Sullivan was to have final decision-making authority for the Child and Ms. Wang objects to that provision on the basis that it does not similarly state that it is on an interim basis. However, as I read paras. 3-4 of the Sharma Order in the context of the entirety of the Sharma Order, both provisions were essentially on an interim basis in the sense that decision-making is tied to Mr. Sullivan having the primary parenting and residency of the Child. If there are any future changes in respect of the parenting or residency of the Child, the final decision-making authority for the Child will be a consideration for the Court at that time. Accordingly, I do not see any need to disturb paras. 3-4 of the Sharma Order because I view those provisions as having been made on an interim basis.

- c) Paragraph 7: This provision of the Sharma Order allows Mr. Sullivan to travel with the Child to the U.S. without Ms. Wang's consent. I understand from Mr. Sullivan's submissions that the genesis of that application and order was that the Child, who plays hockey, was due to travel to the U.S. for a hockey tournament in Nevada. However, the Child did not attend that trip because Ms. Wang did not provide the necessary authorizations for that trip to occur.

It occurs to me that, given the conflict between the parties and that the parenting and final decision-making currently rests with Mr. Sullivan, Mr. Sullivan should be allowed to travel to the U.S. with the Child without Ms. Wang's consent. It appears that any consents are likely to be withheld by her. She has not raised any legitimate reason or concern with respect to such travel that could be addressed by the Court. Accordingly, there is no basis upon which I might disturb para. 7 of the Sharma Order.

- d) Paragraph 11: This is a bit of a confusing situation because para. 11 of the Sharma Order simply dismisses paras. 1 of Ms. Wang's NOA filed May 8, 2023. Ms. Wang's application at para. 1 simply states, "The claimant is rejecting 'the updated s. 211 report' as it was not requested by the Court on May 3, 2022." Ms. Wang now describes that this was simply a statement or a position by her, which appears to be the case. I can only presume that this was the basis upon which Sharma J. dismissed that relief, although it is not, as I said, truly relief. Accordingly, I see no basis upon which to disturb that aspect of the Sharma Order.
- [5] In para. 2, Ms. Wang applies for an order that Mr. Sullivan has not complied with the Final Order as it relates to the RESP account and that his share will be to her credit. Again, I am not disturbing any orders as they relate to the RESP account on this application, leaving aside the fact that I frankly do not understand what this relief was meant to accomplish. Accordingly, in addition to dismissing para. 1 of the NOA, para. 2 is also dismissed.
- [6] In para. 3, Ms. Wang seeks an order that she be allowed to withdraw her share of the RESP funds due to what she describes as "financial hardship". Mr. Sullivan is opposed to that provision and, as I said above, this ties in with his position in relation to the previous relief and his intention to safeguard the entirety of the RESP. Unfortunately, Ms. Wang has not provided any financial information on this application that could be considered by this Court towards determining that she is suffering financial hardship. She acknowledged that she is gainfully employed at a financial firm and earning approximately \$60,000 annually. The substance of Ms. Wang's submission appears to be that she requires the RESP money to pay down her debt. I have no reason to question that Ms. Wang has significant debt, although Mr. Sullivan in turn asserts that he has also accumulated substantial debt, principally as a result of these very involved proceedings.
- [7] In addition, Ms. Wang is not paying any child support. When I questioned Ms. Wang as to why she was not paying child support, she provided an entirely unsatisfactory explanation. In any event, that various financial issues between the parties relating to child support, and perhaps other matters, are to be dealt with at a one-day hearing scheduled to take place on August 11, 2023. I have no doubt that the outcome of that application will allow the financial

picture of the parties and Ms. Wang's financial obligations to be more fully both understood and considered by the Court in terms of an appropriate disposition of these issues.

- [8] In any event, I am not convinced that Ms. Wang should be entitled to withdraw the RESP monies. In May 2022, the parties agreed those monies were to be held for the benefit of the Child and safeguarded for the Child. I am not convinced that there is any reason to allow Ms. Wang to access about \$25,000 from that account to pay down her debts. Paragraph 3 of Ms. Wang's application is also dismissed.
- [9] In para. 4, Ms. Wang seeks an order to set aside or dismiss what she describes as an updated s. 211 report by Dr. Krywaniuk dated November 12, 2022. I do understand such a report to have been prepared, although it is unclear to me when and where that report will be presented to the Court for consideration. It may be the case that the report has already been before the Court and it may be the case that the report will be before the Court at the August 11, 2023 hearing.
- [10] In any event, there is simply no reason to set aside or dismiss any such report. If Ms. Wang has issues with respect to Dr. Krywaniuk's report, as she clearly appears to have, she can object to that report when it may be presented to the Court for consideration. Therefore, I do not see any reason to address that matter now. Accordingly, para. 4 of Ms. Wang's application is dismissed.
- [11] In para. 5 of Ms. Wang's application, she seeks the enforcement or compliance of para. 9 of the Final Order. Paragraph 9 is a provision that addressed the parties' joint ownership interest in two properties, namely: a timeshare and a Colorado property. Paragraph 9 is quite clear in terms of setting out that the parties can agree to list those properties for sale and divide the proceeds equally. Alternatively, the provision allows for either party to initiate a shotgun offer to force a sale to one party or the other in accordance with the usual terms. Further, para. 9 provides that, if there is no sale of the properties, either by agreement or under the shotgun provisions, the parties are to divide the monthly costs equally.
- [12] Mr. Sullivan advises that Ms. Wang has not been paying her half of the costs and I understand that that might be an issue for consideration at the August 11, 2023 hearing. In any event, the terms of the provisions are clear, including that Ms. Wang has the ability to initiate a shotgun offer under the terms of the Final Order. Accordingly, there is no basis upon which to "enforce" the Final Order. Ms. Wang has these options available to her and she has not yet undertaken any shotgun offer that might in fact force the issue from her perspective. Accordingly, para. 5 of Ms. Wang's application is dismissed.

- [13] In para. 6 of Ms. Wang's application, she seeks relief in relation to the August 11, 2023 hearing. Ms. Wang has expressed some dissatisfaction with Sharma J.'s handling of the case. Ms. Wang states that she is scared to communicate with Sharma J. again. Ms. Wang expresses concerns about the potential consequences of not explaining herself fully, as well as her lack of trust of Sharma J. It is clear that Ms. Wang disagreed with Sharma J.'s conclusions in the Sharma Order in many if not all respects.
- [14] It would be in a very unusual situation for me, as a chambers judge, to order that another judge of this Court may not hear a matter. I am not convinced that these circumstances provide any basis or reason for me to do so.
- [15] Having said that, I would note that there are some very practical considerations that might alleviate any concerns of Ms. Wang. The first is that Sharma J. is only one of a hundred plus judges on this Court and the chances of Sharma J. being available for this hearing on August 11, 2023 are 1/100+, very low in other words. Secondly, I can advise Ms. Wang that I have checked Sharma J.'s rota and she is on holidays during the week of August 11, 2023. As such, there appears to a very low possibility of Sharma J. hearing the matter. Thirdly, if Sharma J. is the judge who gets assigned to hear the August 11, 2023 applications, Ms. Wang will have an opportunity to apply to have Sharma J. recuse herself for the reasons that she has stated. Any decision in that respect will, of course, be up to Sharma J. in terms of what is appropriate in the circumstances. Accordingly, I decline to grant any order that Sharma J. not hear the matter either on August 11, 2023 or any later time, say for example, if the application is adjourned to a later date.
- [16] The above discussion also addresses the relief sought in paras. 6-8 of Ms. Wang's application, which are all dismissed.
- [17] In summary, the entirety of the relief sought in Ms. Wang's application is dismissed.
- [SUBMISSIONS ON COSTS]
- [18] THE COURT: My decision on costs is that lump sum costs will be awarded against Ms. Wang at \$1,000, inclusive of taxes and disbursements, payable in any event of the cause.
- [19] JULIA WANG: So you penalize me to pay \$1,000?
- [20] THE COURT: Yes. Thank you. We are adjourned.
- [21] JULIA WANG: That is not fair.
- [22] THE CLERK: Order in chambers.
- [23] JULIA WANG: That is totally not fair.
- "Fitzpatrick J."

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