
CANADA / JUDGMENT

Wesley v. Piccolo

2020 BCSC 984

COURT

Supreme Court of British Columbia

DECIDED

2 July 2020

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2020 BCSC 984 Wesley v. Piccolo

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wesley v. Piccolo,

2020 BCSC 984

Date: 20200702

Docket: E57425

Registry: New Westminster

Between:

Kristen Jean Wesley

Claimant

And

Claudio Dean Piccolo

Respondent

Before: The Honourable Mr. Justice Blok

Reasons for Judgment

Counsel for the Claimant:

J. Randall

Counsel for the Respondent:

J. Aucoin

Written Submissions Received:

June 29, 2020

Place and Date of Judgment:

New Westminster, B.C.

July 2, 2020

- [1] This family law application was brought by way of written submissions pursuant to the Court's COVID-19 Notice #14.
- [2] The substantive matter in issue resolved just prior to the notional hearing date of June 30, 2020, but the applicant has proceeded on the issue of costs only.
- [3] The brief background is this: the parties lived in a marriage-like relationship from March 5, 1999 until they separated on October 19, 2019. They have three children. One is an adult and the other two are 17 and 18 years old. They have a family home in Surrey. The materials indicate that both parties worked together in a family business, which operated through a company (the "Company").
- [4] The family law proceeding was commenced by Ms. Wesley in April 2019. Mr. Piccolo filed a response and counterclaim in December 2019. A trial date was set for November 23, 2020.
- [5] By order made on November 5, 2019, Ms. Wesley was granted exclusive occupancy of the family home on an interim basis. On January 6, 2020, the parties attended a judicial case conference, where a number of orders were made by consent, including orders that: (1) Mr. Piccolo (or the Company) arrange for a certified business valuation of the Company by Patti Daum, a business valuator; and (2) "Subsequent to the completion of the Business Valuation, the parties shall jointly retain Bakerview Appraisals to prepare an appraisal of the Family Home".
- [6] Ms. Daum completed a draft valuation report on February 12, 2020. Mr. Piccolo indicated his acceptance of Ms. Daum's report on February 28, 2020. He says Ms. Wesley has not stated her position on Ms. Daum's draft report, despite requests that she do so. More to the point at issue, he also says Ms. Wesley has refused to proceed with the appraisal of the family home.
- [7] The materials reveal a dialogue between counsel for the respective parties over the appraisal. On March 17, 2020, the government of British Columbia declared a state of emergency over the COVID-19 pandemic. Ms. Wesley said she was not willing to put herself or the children at risk by having a stranger (an appraiser) in their home, noting that "all three children have underlying health issues". She said the appraisal would have to wait until health authorities indicated "social distancing and self-isolating are no longer mandatory". Mr. Piccolo responded by suggesting the appraisal proceed by way of an exterior survey and review of interior photographs, which he said the appraisers were willing to do, but Ms. Wesley did not agree.

- [8] On June 11, 2020, Mr. Piccolo delivered a notice of application (the subject application) and supporting materials to Ms. Wesley's counsel. In his application he sought an order setting a deadline for the appraisal. He also sought costs.
- [9] Counsel apparently debated whether the province was in Phase 2 or Phase 3 of the recovery plan, with Mr. Piccolo's counsel asserting in early June the province had moved to Phase 3, and Ms. Wesley's counsel noting that the province was still in Phase 2. In fact, the government of British Columbia did not move to Phase 3 until June 24, 2020.
- [10] In any event, on June 18, 2020 Ms. Wesley agreed to have an appraiser attend, and arrangements were made for that attendance to take place on June 24. The appraiser did in fact attend on June 24.
- [11] On June 25, counsel for Mr. Piccolo filed a requisition stating that the appraisal issue was now resolved, but that Mr. Piccolo was proceeding with the application on the issue of costs.
- [12] Although the manner in which this application proceeded means that the Court does not have submissions from Mr. Piccolo that are specific to the costs issue alone, from his notice of application it is evident he considers that Ms. Wesley delayed the appraisal unreasonably. He alleges hardship as a result of this delay, noting that he has effectively been living out of a suitcase and under financial hardship while Ms. Wesley enjoyed the occupancy of the family home. In his requisition, he asserts that the matter "resolved as a result of filing this Application".
- [13] Ms. Wesley says there is no need for this application to proceed "in any aspect" as the substantive issue has been resolved, and that proceeding with the application for the sole purpose of seeking costs is inappropriate. Ms. Wesley also maintains she acted reasonably and out of well-founded health concerns.
- [14] I am not inclined to order costs here. Although Ms. Wesley might have acted with greater alacrity in responding to Ms. Daum's draft valuation prior to the March 17 declaration of emergency - which, according to the November 2019 order, would mean the appraisal was to proceed - I am unable to say that the time taken was unreasonable. It is only because the state of emergency has delayed matters by some months that this delay may appear unreasonable.
- [15] I am also unable to say Ms. Wesley's position on the appraisal was unreasonable. The children are described as having "underlying health issues" and particularly given the dearth of evidence about those issues I am unable to say that these should be discounted. I am also unable to say that it is unreasonable for a party to reject what could be seen as a lesser-quality appraisal and, instead, insist on a full and proper appraisal of what may be the most valuable asset the parties have.

- [16] Finally, I am not satisfied that it was the application, and only the application, that brought about the result, as the result also coincides with the easing of public health-related restrictions.
- [17] Ms. Wesley sought costs in her favour for having to respond to the application. I do not accept, as she contended, that it is always inappropriate to proceed with the costs portion of an application when the substantive application has been dismissed, although counsel should consider the matter carefully and should not proceed with an application just to argue costs unless there is very good reason to do so. Mr. Piccolo's application on costs was not so groundless as to "border on an abuse of process", as Ms. Wesley contended. I also note that the effort required of Ms. Wesley in responding to the application was minimal, consisting of just a brief application response and a letter from counsel.
- [18] For these reasons, the costs of the respondent's application will be costs in the cause.
- "Blok J."

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