

CANADA / JUDGMENT

Wlaswich v. Rezansoff

2020 BCSC 1901

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Supreme Court of British Columbia

DECIDED

3 December 2020

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2020 BCSC 1901 Wlaswich v. Rezansoff

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Wlaswich v. Rezansoff,

2020 BCSC 1901

Date: 20201203

Docket: E96795

Registry: Kelowna

Between:

Sharon Lynn Wlaswich

Claimant

And

John George Rezansoff

Respondent

Before: The Honourable Madam Justice Lyster

Reasons for Judgment

Counsel for the Claimant:

A.J. Boland

Counsel for the Respondent:

C. Miller

Counsel for the Director of

Maintenance Enforcement:

R.E. Benwell

Place and Date of Trial/Hearing:

Kelowna, B.C.

September 22-24, 2020

Place and Date of Judgment:

Kelowna, B.C.

December 3, 2020

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Introduction

- [1] Ms. Sharon Wlaswich and Mr. John Rezansoff are the parents of a son, C., who is 11 years old. They were married on September 21, 2008, and separated in February 2010, when C. was one year old. Since their separation, C. has been primarily resident with Ms. Wlaswich, who lives in Kelowna. Mr. Rezansoff lives in Saskatchewan.
- [2] On September 4, 2019, the parties entered into Minutes of Settlement (the "Minutes"), which were intended to finally resolve all matters arising from the dissolution of their marriage, including the division of family assets, child support and parenting arrangements for C.

- [3] Of particular importance under the Minutes for the purposes of the applications before the Court was the sale of a property owned by Ms. Wlaswich located at 480 Royal Avenue (the "Property"): Ms. Wlaswich was to list it for sale and receive 80% of the net proceeds, and Mr. Rezansoff was to receive the remaining 20%. That sale occurred in July 2020, and what to do with the proceeds of that sale is at the heart of the applications before me.
- [4] This decision addresses three applications:
1. Parts of an application filed by Mr. Rezansoff on August 14, 2020, specifically, those parts seeking: to vary the quantum of child support payable by him under the Minutes; an order that Ms. Wlaswich pay damages for various alleged breaches of the Minutes; that funds from the sale of the Property remain in his solicitor's trust fund; and an order of divorce;
 2. An application filed by Ms. Wlaswich on March 13, 2020, seeking to vary the Minutes so that Mr. Rezansoff's share of the net proceeds of the sale of the Property be paid to her as lump sum child support or in the alternative be held by the Director of Family Maintenance Enforcement (the "Director") in trust to pay monthly child support; and
 3. An application filed by the Director on August 19, 2020, seeking that Mr. Rezansoff's share of the proceeds of the sale of the Property, or a portion of them, be paid to the Family Maintenance Enforcement Program ("FMEP") in trust, either to secure or to pay Mr. Rezansoff's future child support obligations.

Procedural Context

- [5] For clarity, it is important to situate the applications now before the Court within their procedural context.
- [6] In addition to the applications already mentioned, Ms. Wlaswich also filed an application on December 3, 2019. In it, she seeks a Hear the Child Report, counselling for C., and that Mr. Rezansoff's parenting time with C. be suspended pending preparation of the Hear the Child Report.
- [7] On August 31, 2020, Mr. Justice Wilson heard argument on other parts of Mr. Rezansoff's August 14, 2020 application. Justice Wilson ordered that Dr. Elterman prepare a report under s. 211 of the Family Law Act, S.B.C. 2011, c. 25, and made a number of orders ancillary to the preparation of that report, including that Mr. Rezansoff pay a portion of Dr. Elterman's retainer, with the majority of the retainer coming out of the funds held in trust from the sale of the Property.
- [8] The remainder of Mr. Rezansoff's application was set for hearing, together with the Director's application and Ms. Wlaswich's March 13, 2020 application, starting on September 22, 2020.

- [9] At the outset of that hearing, counsel for Mr. Rezansoff applied to adjourn the entirety of the hearing until a fixed date sometime after the anticipated date of receipt of the s. 211 report. The parties agreed that in any event of my decision on the adjournment application, the parts of the various applications seeking to vary parenting arrangements would not proceed at this time, but would be heard after receipt of the s. 211 report. That meant that Ms. Wlaswich's December 3, 2019 application would not be heard at this time.
- [10] After hearing full submissions from counsel, I gave oral reasons in which I declined to adjourn the Director's and Ms. Wlaswich's March 13, 2020 applications. I adjourned the remaining portions of Mr. Rezansoff's application that were bound up with the parenting issues, which will be heard together with Ms. Wlaswich's December 3, 2019 application, following receipt of the s. 211 report.
- [11] Essentially, this meant that the exclusively monetary issues would be heard now, and the parenting issues would be heard later. The parties also jointly asked me to make a divorce order, which I will do in this decision, as child support will have been addressed and decided, and the Court will be able to satisfy itself that reasonable arrangements have been made for the support of C.
- [12] I would also note that the parties agree that the wrong version of the Minutes was filed in court, and that the correct version of the Minutes are attached as Exhibit A to Mr. Rezansoff's 17th affidavit, made August 14, 2020. They have jointly requested that I order that the copy of the Minutes filed on November 22, 2019 be replaced by that version, and that I rely on that version for all purposes in these applications. I so order.

Application to Vary Child Support

- [13] Mr. Rezansoff applies to vary his quantum of child support, commencing October 1, 2019, on the basis of either his 2019 income or his current income. He says that his income for 2019 was in the neighbourhood of \$30,000. He says that the \$1,746 in monthly child support he agreed to in the Minutes was based upon his anticipated income of \$110,000.00 in 2019. He also says that his 2020 income has been sharply reduced due to the COVID-19 pandemic.
- [14] Mr. Rezansoff is self-employed as a compression mechanic through a sole proprietorship, "Scar Compression", which contracts out his services both in Canada and overseas. His sole client is a company called Ironline Compression ("Ironline").
- [15] Ms. Wlaswich says in response that the financial information submitted by Mr. Rezansoff in support of this application is unsatisfactory and insufficient to establish a material change of circumstance, which would be necessary in order to vary the child support agreed to by the parties in the Minutes.

- [16] The Minutes were agreed to by the parties following a 13-hour mediation session on September 4, 2019. Both parties were represented by counsel. Mr. Rezansoff says, and I accept, that the Minutes were intended to finally resolve all issues in dispute between the parties. As a result of entering into them, the parties were able to avoid a ten-day trial that had been scheduled to commence November 25, 2019.
- [17] The Minutes address Mr. Rezansoff's child support obligations in some detail and must be the starting place for consideration of his application to vary the child support payable for C. They provide in paras. 39 and 40 that, save for \$8,715 to be paid to Ms. Wlaswich from the sale of another property, any claim for child support by Ms. Wlaswich or overpayment of child support by Mr. Rezansoff up to September 30, 2019 shall be dismissed.
- [18] Pursuant to para. 41, commencing October 1, 2019, and continuing until further written agreement or court order, Mr. Rezansoff agreed to pay Ms. Wlaswich child support in the amount of \$1,746 per month. The Minutes provided that:
42. The child support of \$1,746 per month payable by John to Sharon for C. shall include both basic child support and the [sic] John's proportionate share of any Section 7 special and extraordinary expenses for C., excluding, if applicable, post-secondary educational expenses for C. in the future.
- [19] The Minutes also contain a number of terms relating to any future application Mr. Rezansoff might make to vary child support. In para. 43, the parties agreed that in the event he applied to vary child support on the basis of a material change in circumstances, Ms. Wlaswich would be at liberty to seek his proportionate share of C.'s s. 7 special and extraordinary expenses in addition to child support pursuant to Mr. Rezansoff's Guideline income.
- [20] The Minutes also provide in para. 44 that if Mr. Rezansoff seeks to vary child support on the basis of a material change in circumstances, "child support shall be based upon John's Guideline income for the last completed fiscal year or years preceding the application." Nothing precludes Ms. Wlaswich from seeking to have Mr. Rezansoff's income calculated in accordance with the Guidelines, including averaging, imputation of income or adding back self-employment expenses, "but those arguments shall be made based upon disclosure from the last fiscal year or years and not the current fiscal year in which the application is made."
- [21] Finally on this point, the Minutes provide:
45. In the event that John seeks to vary the child support payable pursuant to paragraph 41 on the basis that there has been a material change in circumstances, any variation shall be effective upon the date of said application and there shall be no retroactive variation for the period preceding the application.

- [22] Taken together, the Minutes provide that Mr. Rezansoff must establish a material change in circumstances to vary his child support obligations. In determining his income, the last fiscal year or years, and not the current fiscal year, is to be used. Any variation can only be effective as of the date of the application, and cannot be retroactive prior to the date of application.
- [23] This means that the determination of Mr. Rezansoff's income must be based on his 2019 income, at the latest. It also means that any variation could only be effective as of the date of his application, August 14, 2020, and could not, as sought by him, be retroactive to October 1, 2019.
- [24] The test for a material change in circumstances is set out in s. 14 of the Federal Child Support Guidelines, which provides:

Circumstances for variation

14 For the purposes of subsection 17(4) of the Act, any one of the following constitutes a change of circumstances that gives rise to the making of a variation order in respect of a child support order:

- (a) in the case where the amount of child support includes a determination made in accordance with the applicable table, any change in circumstances that would result in a different child support order or any provision thereof;
- (b) in the case where the amount of child support does not include a determination made in accordance with a table, any change in the condition, means, needs or other circumstances of either spouse or of any child who is entitled to support .

- [25] The onus is on Mr. Rezansoff to establish a material change in circumstances. Any attempt to reduce child support must show that the reduction in income is long-lasting. The Court must be satisfied that it has been presented with accurate and reliable evidence in support of the application: *D.M.H.P. v. R.J.C.P.*, 2018 BCSC 1755 at paras. 57-63.
- [26] The financial information tendered by Mr. Rezansoff is wholly unsatisfactory, and does not allow the Court to assess his income with any degree of certainty. He has not attached any of the documents required by the Supreme Court Family Rules, R. 5-1 to his Form F8, including any tax returns, notices of assessment, or pay statements.
- [27] A significant factor that makes it impossible to determine Mr. Rezansoff's income is that he has not filed any income tax returns from 2015 to date. Mr. Rezansoff says that his tax lawyer has advised him not to file income tax returns for 2015 to date. In an attempt to substantiate this assertion, he provided a letter from his tax lawyer. In that letter, his lawyer confirms that he has been retained to deal with tax issues concerning Mr. Rezansoff's 2011, 2012, 2013, 2014 and 2015 taxation years, and that Mr. Rezansoff has not filed returns from 2015 onwards. However, his tax lawyer does not say that he has advised Mr. Rezansoff not to do so. While Mr. Rezansoff's counsel attempted to explain this gap on the basis of solicitor-

client privilege, I find that Mr. Rezansoff has waived privilege on this issue by asserting that his failure to file tax returns for the last five years is on the basis of his lawyer's advice. Whatever the reasons for that failure might be, the fact is that it leaves the Court without any reliable evidence upon which to determine Mr. Rezansoff's income.

- [28] There are other grave difficulties with the financial information submitted by Mr. Rezansoff in support of his application to vary his child support. He swears that he has no personal bank account, but only an account operated through his sole proprietorship. A review of the bank records provided for that account raises more questions than it answers. For example, Mr. Rezansoff says in his Form F8 that he pays \$1,250 a month for rent, but no rental payments can be seen coming out of the bank account. He also says on his Form F8 that he received gross rental income of \$4,950 a year, but there is no indication of any rental deposits being made to the bank account. Similarly, he says that his net rental income is \$1,515 per year, but there is no indication of rental expenses coming out of his account.
- [29] Mr. Rezansoff attached annotated copies of his bank statements to his Form F8. There are numerous cash withdrawals, many of which are annotated as "business expenses", but no information is provided about their purpose, or to whom the money may have been given.
- [30] Mr. Rezansoff says he owns a 21-foot RV, but no other vehicle. He also says he has no transportation expenses. Given that he lives in Saskatchewan and travels frequently for work, this seems improbable.
- [31] Mr. Rezansoff owns a farm in Saskatchewan that he rents out, but he says he has no income from it. Once again, there are no records to indicate the rent received or expenses paid in respect of this farm.
- [32] Mr. Rezansoff swears that he has had no income since February 2020. Yet his March 2020 bank statement shows \$31,741 in deposits. He provided only one of seven pages of his April 2020 bank statement, and no bank statements for the rest of 2020.
- [33] The reliability of the financial records and other evidence provided by Mr. Rezansoff is questionable at best. He swears that he did not have the funds to pay child support for November and December 2019 and January 2020. Yet he was to receive \$233,146 from the sale of property under para. 20 of the Minutes. His bank records do not show a deposit being made to reflect this payment, which was presumably received by him. His bank records do show him receiving \$30,000 on September 17, 2019, \$30,000 on September 30, 2019, \$20,307 from Ironline on November 1, 2019, \$7,770 from Ironline on December 3, 2019, \$8,480 from Ironline on January 8, 2020, \$4,122 from Ironline on January 21, 2020, \$7,140 from Ironline on February 4, 2020, \$13,860 from Ironline on March 3, 2020, and \$12,131 from Ironline on March 17, 2020.
- [34] Throughout this same period, Mr. Rezansoff's bank records show significant amounts of money being spent at casinos, restaurants and bars, as well as substantial amounts of money being withdrawn for unspecified purposes.

- [35] I do not accept Mr. Rezansoff's evidence that he could not afford to pay child support in November and December 2019 or January 2020. He chose to spend his money on other things.
- [36] As discussed above, the Minutes provide that any variation application can only be based on Mr. Rezansoff's income in the previous fiscal year or years, and any variation cannot be retroactive from the date the application was made. The Minutes were entered into after a lengthy mediation, with the benefit of counsel. I am not prepared to undo the bargain the parties made, and therefore will only consider Mr. Rezansoff's income in 2019 or before. But the Minutes were only entered into on September 4, 2019. Mr. Rezansoff must be taken to have entered into them with full knowledge of his income and financial circumstances at that time.
- [37] Mr. Rezansoff relies, in large part, on events in Malaysia in October 2019 in support of his position that his child support obligations should be varied. Mr. Rezansoff swears that he travelled to Kuala Lumpur from Regina on October 3, 2019, where he was to work on an off-shore gas rig for Ironline for approximately two weeks. On his arrival, passport authorities arrested him because his Canadian passport had been cancelled. He blames Ms. Wlaswich for this, a matter I shall return to later in considering his application for damages. In any event, he says that he was in jail for about a day and a half before he was returned to Canada via Hong Kong. Mr. Rezansoff swears that as a result of being denied entry to Malaysia and being deported to Canada, he had a loss of income of \$26,944.61 and Ironline had a loss of \$25,701.95. He implies that he is liable to Ironline for their loss. He says that he made a payment of \$7,500 to Ironline in January 2020 towards his debt to them, and that he continues to owe them approximately \$18,200.
- [38] In support of his indebtedness to Ironline, Mr. Rezansoff submitted an April 2, 2020 letter "to whom it may concern" from Mike Hennessey, Ironline's Business Development Manager. The letter repeats most of the figures contained in Mr. Rezansoff's affidavit. It says that "SCAR Compression has been held liable for all losses to Ironline Compression. Scar Compression has made a payment in January 2020 of \$7,150. Ironline expects full payment by July 1, 2020." In response to concerns raised by me about the admissibility of this letter, Mr. Rezansoff submitted an affidavit from Mr. Hennessey in the midst of the hearing, essentially confirming the contents of his earlier letter.
- [39] Mr. Rezansoff's January 2020 bank records do not show any debit or payment from him that would correspond to either the \$7,500 payment he swears he made to Ironline sometime that month, or the \$7,150 Mr. Hennessey swears he paid Ironline on January 26, 2020. Mr. Hennessey refers to an invoice number in connection with this payment. That invoice, #000402, is attached to Mr. Rezansoff's Form F8. It appears to indicate that there was a \$7,500 flight cost that Mr. Rezansoff absorbed.
- [40] Finally, Mr. Rezansoff does not list any debt to Ironline on his Form F8 or refer to such a debt in the Schedule B attached to his Form F8 where he explains his finances.

- [41] Considering the evidence on this issue as a whole, Mr. Rezansoff has not established that he actually owes Ironline any money from the Malaysia incident. I accept that he likely absorbed the cost of his flight to Malaysia, and that he also likely suffered some loss of income due to being unable to work in Malaysia for the approximately two week period he was scheduled to be there. However, I am unable to quantify the amount of income he lost on the evidence he has provided.
- [42] The Malaysia incident was temporary, and in the larger picture of Mr. Rezansoff's financial situation, did not have a sufficient impact on him to lead to a material change in circumstances. Inadequate as the evidence provided by him is, there is nothing in Mr. Rezansoff's financial circumstances in the remainder of 2019 that would establish any material change in circumstances that would justify a variation of his agreed upon child support obligations.
- [43] Even if I were, despite the terms of the Minutes, to consider Mr. Rezansoff's financial circumstances in 2020, I would find that he has not established a material change in circumstances. I accept that his income may have been temporarily affected by the global COVID-19 pandemic. But the evidence provided by him, which it will be remembered does not include any bank records after March 2020 (beyond a single, uninformative page for April 2020), is insufficient for him to discharge his onus of establishing a material change of circumstances.
- [44] I therefore deny Mr. Rezansoff's application to vary the quantum of his child support payments.

Applications to Use Proceeds from Sale of Property for Child Support

- [45] Ms. Wlaswich applies for an order varying the Minutes such that Mr. Rezansoff's share of the net proceeds of the sale of the Property be paid to her as lump-sum child support. In the alternative, she seeks an order varying the Minutes such that his share of the net proceeds be held in trust and used to pay monthly child support to her.
- [46] The Director applies for an order that Mr. Rezansoff's full net share of the proceeds of the sale of the Property be paid to FMEP to secure his future child support obligations. In the alternative, the Director seeks an order that out of Mr. Rezansoff's net share of the proceeds of sale of the Property, the sum of \$41,904, representing two years future support at the rate of \$1,745 per month, be paid as True Security to the FMEP to secure his future child support payments. Under this alternative order, the FMEP would be at liberty to access the True Security at its sole discretion should Mr. Rezansoff default on future child support payments as they become due.
- [47] Mr. Rezansoff opposes these orders, but would consent to an order that one year of child support be held by the FMEP to secure child support payable by him. At the end of one year, if there are no arrears in child support, then the entire amount held by FMEP would be paid to him. If there were any arrears, they would be paid out to Ms. Wlaswich and the balance

would be held in trust by FMEP on the same terms for another year. He would further consent to an order that FMEP pay ongoing child support to Ms. Wlaswich from the funds if he has failed to pay child support by the 3rd day of the month in which child support is due.

- [48] All of these sought after orders are intended to address past difficulties with the timely payment of child support by Mr. Rezansoff. From the parties' positions, it is clear that some order using at least some of Mr. Rezansoff's share of the proceeds of the sale of the Property to secure payments is appropriate. The question is what form of order should be granted.
- [49] The Property was sold at the end of July 2020 for a total of approximately \$569,762. There are issues with respect to how much should be held back from the total for potential capital gains liability or other purposes, which I will address below.
- [50] I will begin by setting out the history of the payment of child support by Mr. Rezansoff.
- [51] FMEP records and other evidence show the following with respect to child support payments by Mr. Rezansoff:
- a) No payments between July 1 and September 1, 2015;
 - b) Irregular payments between September 12, 2015 and July 22, 2016;
 - c) No payments between August 1, 2016 and June 1, 2017;
 - d) Payments made from funds held in trust by Mr. Rezansoff's lawyer from the sale of a property between July 2017 and June 27, 2018;
 - e) No payments between July 1, 2018 and January 2019;
 - f) On January 15, 2019, a payment of \$8,715 was paid from funds held in trust by Mr. Rezansoff's lawyer from the sale of another property;
 - g) No payments made between January 15, 2019 and September 2019;
 - h) In September 2019, upon conclusion of the mediation, \$8,715 was paid from funds held in trust by Mr. Rezansoff's lawyer;
 - i) Agreed amount of \$1,746 paid on October 1, 2019;
 - j) No payments made between November 2019 and April 2020;
 - k) Two payments of \$500 made in May 2020;
 - l) One payment of \$400 made in June 2020;
 - m) No payments made in July 2020;
 - n) In August 2020, the arrears then owing, in the amount of \$16,060, were, by agreement, paid out of the proceeds from the sale of the Property; and

- o) One payment made on September 18, 2020 (not September 1, as required under the Minutes) of the agreed upon amount of \$1,746.
- [52] An affidavit was filed from an Enforcement Officer with FMEP who has been the Case Manager for the parties since March 2019. She swears that Mr. Rezansoff has indicated to her and other FMEP staff that he will not pay support through the FMEP.
- [53] FMEP records show that on multiple occasions they have taken enforcement action against Mr. Rezansoff. For example, in June 2016, FMEP issued a notice of attachment to his bank. At the time, FMEP was unaware that Mr. Rezansoff had made payments directly to Ms. Wlaswich at various times and in various amounts and was not in arrears. Upon learning of this, the notice of attachment was withdrawn. FMEP's actions were upsetting to Mr. Rezansoff, but he continued to refuse to make payments directly to FMEP, despite the fact that doing so would prevent a recurrence of a similar event.
- [54] In December 2016, FMEP issued a notice of attachment to a company with whom Mr. Rezansoff had contracted services. At the same time, they issued a federal license denial warning letter advising him that a federal license denial application would be made. Such a denial has the effect of interfering with passport privileges. The denial took effect February 1, 2017, and was withdrawn upon Mr. Rezansoff's counsel advising FMEP that the issue of Mr. Rezansoff's alleged overpayment of child support would be litigated in May 2017. That did not occur. No funds were received as a result of the attachment and no payments were made. The federal license denial was reissued on June 7, 2017. Thereafter, in July and August 2017, Mr. Rezansoff again made payments directly to Ms. Wlaswich.
- [55] No payments were made after August 2017. After telephone calls demanding payment, in November 2017, Mr. Rezansoff said he would make child support payments out of funds being held in trust. Ms. Wlaswich reported a payment of \$4,980 made to her directly on February 1, 2018, to be credited to October - December 2017 and January 2018.
- [56] A similar pattern continued thereafter. Mr. Rezansoff would fail to make monthly payments to FMEP or Ms. Wlaswich, and would periodically make payment out of trust funds directly to Ms. Wlaswich. He would go into arrears, and FMEP would issue notices of attachment and federal licence denials. He continued to refuse to make payments directly to FMEP.
- [57] Most recently, in June 2019, FMEP issued a notice of attachment and a federal licence denial. On September 25, 2019, Mr. Rezansoff's counsel contacted FMEP and advised them of the Minutes, and that \$8,715 had been paid directly to Ms. Wlaswich. FMEP credited that payment on September 29, 2019. The notice of attachment was withdrawn on September 26, 2019, and the licence denial was withdrawn on September 27, 2019. The evidence shows that despite the licence denial being withdrawn, Mr. Rezansoff was detained in Malaysia on October 4, 2019, likely because his passport had already been cancelled.
- [58] Payment difficulties, as summarized above, continued through to the payment of \$16,060, out of the proceeds of the sale of the Property, which was credited on August 4, 2020.

- [59] The Enforcement Officer indicates that her experience enforcing support payments for C. leads her to believe there is a high likelihood of future default by Mr. Rezansoff. I agree.
- [60] Ms. Wlaswich expresses the concern that the payments on account of arrears she has received have largely been paid out of funds held in trust from the sale of the parties' properties. The Property now in issue is the last of the parties' properties to be sold. She is concerned that if Mr. Rezansoff's share of the net proceeds of the sale of the Property is not used to secure his future child support obligations, she may not receive child support in the future. I agree.
- [61] Some order securing future child support obligations is necessary if C.'s support is to be assured. The question is: which form of order is appropriate? The options presented by the parties take three basic forms. All or a portion of Mr. Rezansoff's share of the proceeds of the sale of the Property be either: (1) paid to Ms. Wlaswich as lump sum child support; (2) paid to FMEP, with FMEP paying Ms. Wlaswich monthly child support; or (3) paid to FMEP to hold as True Security, with FMEP being at liberty to access the True Security should Mr. Rezansoff default in future.
- [62] For the following reasons, I am of the opinion that the most appropriate option is the second, with the funds being paid to the FMEP to pay monthly child support to Ms. Wlaswich.
- [63] The Director's application is made pursuant to s. 30.1 of the Family Maintenance Enforcement Act, R.S.B.C. 1996, c. 127, which provides as follows:

Order requiring security for maintenance payments

- 30.1 (1) Whether maintenance is in arrears or not, the director, or if an order is not filed with the director, the creditor, on notice to the debtor, may apply to a court for an order under subsection (2).
- (2) On hearing an application under subsection (1), the court may order that, as security for payments in arrears or subsequent payments, the debtor provide security for maintenance payments in any form that the court directs.
- (3) If the court makes or has made an order under subsection (2), the court may issue a warrant of execution, on application by the creditor or the director without notice to any other person.
- (4) Section 27 (2) applies to a warrant of execution under subsection (3).
- (5) Money realized when an order for security for maintenance payments is enforced under this section is not subject to distribution under the Creditor Assistance Act.
- [64] There are a limited number of authorities interpreting s. 30.1. In *Kjosness v. Kjosness*, 2019 BCCA 214 [Kjosness], a spousal support payor appealed an order from a chambers judge that had granted security for future support payments. The case bears some factual similarity to

the present one, in that the payor had applied to vary his support obligations, but failed to meet his onus to provide sufficient financial disclosure to satisfy the court that there had been a change in circumstances that was significant, long-lasting and not the result of choice of lack of effort: Kjosness at paras. 11,13.

- [65] The Court of Appeal upheld the chambers judge's decision ordering security. In doing so, the court referred, at para. 19, to *D.M.B. v. D.W.A.L.*, 2018 BCSC 1254 in which Mr. Justice Punnett said the following about inadequate financial disclosure in family matters:
- [48] This court has repeatedly noted the negative effects of inadequate and delayed disclosure. It increases expense, discourages settlement, prolongs the stress of litigation and, where children are involved, negatively affects them (see *Cunha v. Cunha* (1994), 99 B.C.L.R. (2d) 93 at para. 9 and *Sebok v. Batis*, 2018 BCSC 585 at paras. 13-15).
- [66] At para. 26 of *Kjosness*, the court referred to *D.S.W. v. J.A.K.*, 2012 BCSC 1977 [D.S.W.] in which Mr. Justice Barrow reviewed the principles applicable to ordering security for maintenance payments:
- [15] The principles that are to guide an application made under s. 26(10) were set out in *D.(B.) v. B. (L.D.)*, 2003 BCCA 189. In that case *Newbury J.A.* held that generally security should not be ordered, at least not in every case. If there has been either a history of deliberate refusal to honour a support obligation or if it is likely there will be a refusal to do so in the future, then alternative security under s. 26(12) may be ordered. The onus is on the applicant to show that alternate security is no longer necessary to protect the interests of the child.
- [67] The court commented that the reasoning in *D.S.W.* should apply to s. 30.1: *Kjosness* at para. 27.
- [68] In *B.D. v. L.D.B.*, 2003 BCCA 189 [B.D.], the case cited in *D.S.W.*, the Court of Appeal dismissed an appeal of a chambers judge's decision ordering that the sum of \$45,000 be held as security for future payments. The factual background was as follows:
- [5] Turning to the facts before him, the Chambers judge noted that there was "a history, albeit not a particularly egregious history, of disobedience with the spirit, if not the letter, of court orders." He was referring to the fact that in 1996, an error had been made in the text of a maintenance order which had specified maintenance for N. of \$600 per month payable by Mr. B. The order wrongly specified the year in which payments were to commence. It was later corrected, but at some cost to Ms. D., and until it was corrected, Mr. B. paid only \$400 per month. (Once the correction was made, he paid the shortfall.) As well, Mr. B. had failed to pay maintenance between January and April 1998, when the parties' custody and access dispute over N. was particularly intense. The Chambers judge below observed:

I accept that [Mr. B.] allowed his emotions to overwhelm his judgment leading to that hiatus in maintenance payments. I also note that he brought the payments back into good standing reasonably promptly thereafter. The reason this latter circumstance is of some significance is that there remains the prospect for future intense litigation in this unfortunate matter. One hopes that that is unlikely, but past history does not give this court confidence that that is the case. [para. 11]

[69] I would note that the payor's support payment history in B.D. was not nearly as egregious as Mr. Rezansoff's.

[70] In upholding the chambers judge's order, the court stated:

[13] Applying these principles to the facts before us, it seems to me the Chambers judge was right to focus on N.'s needs and to take a cautious approach to ensuring that his future support is secured. Mr. B. acknowledged that he had failed at least once before to comply with his obligations, and his insistence on paying only \$400 when he knew the Court had fixed N.'s support at \$600 per month does not do him any credit. More importantly, the degree of animosity between the parents obviously continues undiminished, notwithstanding all the court orders they have obtained. Mr. B. also acknowledged that N.'s interest must be paramount. The Chambers judge's order clearly reflected that principle. On the whole, I would not disturb the order that security in the amount of \$45,000 be held, subject to payments out in accordance with the Chambers judge's order.

[71] The authorities establish that security should not be ordered in every case. However, security is appropriate in this case because: (1) there is a significant history of periods of default by Mr. Rezansoff; (2) there is a high level of animosity between the parties and continuing litigation; (3) this is the last certain pool of funds that can be used as security; and (4) ordering security focuses on C.'s needs and takes a cautious approach that ensures that his future support is secured, and paid regularly and on time.

[72] In preferring the first form of order proposed by the Director, I have focussed on the need to ensure that support payments are received regularly and on time. It would place an unfair financial burden on Ms. Wlaswich and be contrary to C.'s best interests for them to have to wait and see each month if Mr. Rezansoff pays child support on time, with FMEP only paying out of the True Security if he has not done so by the 3rd of the month. Further, Mr. Rezansoff has made it clear that he does not want to pay child support through FMEP, so entrusting him with the initial obligation to pay through FMEP is likely only to lead to further delays and administrative problems of the kinds the parties and FMEP have experienced for the past number of years. Mr. Rezansoff's finances remain obscure, but it appears that he does not receive a consistent income. Support payments for C. are very likely to be irregular if Mr. Rezansoff is left with the initial obligation to pay.

[73] I have considered Mr. Rezansoff's proposal that one year of child support be held by FMEP as security, with those funds being paid to him if there are no arrears, and if there are arrears that they be paid out of the funds, and the balance be held for another year on the

same terms. In my view, that proposal is inadequate. As I understand it, it would provide no security after, at the most, two years. Like the Director's second form of order, it would have the potential to leave Ms. Wlaswich and C. without child support for the first part of each month, waiting to see if Mr. Rezansoff pays. As such, it is not in C.'s best interests.

- [74] I note that Ms. Wlaswich, while applying for the funds to be paid directly to her as lump sum child support, submitted that she was content for them to be paid to the Director as a reasonable middle ground. I agree with that submission. It is also a form of order that stays as close as possible to the parties' own agreement as reflected in the Minutes, by having her receive monthly child support in the amount agreed to by the parties, rather than lump sum support.
- [75] I therefore order that Mr. Rezansoff's full net share of the proceeds of sale of the Property be paid to FMEP to secure his future child support obligations. FMEP is to hold the funds in an interest bearing trust account. FMEP is to pay the ongoing child support due from Mr. Rezansoff from the funds until the funds are fully depleted, at which time Mr. Rezansoff will be responsible to pay the ongoing child support payments as they become due through FMEP. Upon an agreement being reached between the parties or upon a court order determining that no further child support payments are due, any funds being held by FMEP are to be returned to Mr. Rezansoff, subject to the terms of such agreement or order.

Holdbacks from Proceeds of Sale of the Property

- [76] There is an issue between the parties with respect to how much should be held back from the proceeds of the sale of the Property to pay capital gains tax. Ms. Wlaswich says it should be \$116,000. Mr. Rezansoff says he has retained an accountant to provide him with a written opinion about how to minimize capital gains payable on the sale, and that that accountant has told him there ought to be none payable. At the time of swearing his affidavit on September 21, 2020, Mr. Rezansoff anticipated receiving the opinion in the next week or two.
- [77] The court is in no position to assess what capital gains may be payable on the sale. The more cautious approach needs to be taken until such time as the capital gains payable have been ascertained. I therefore order that \$116,000 of the proceeds of the sale of the Property continue to be held back in Mr. Rezansoff's counsel's trust account, pending the final determination of the capital gains payable. If the capital gains payable prove to be less than the holdback amount, the remaining funds are to be divided between the parties in accordance with their agreed upon 80/20 split.
- [78] It is also necessary to hold back sufficient funds to pay for the s. 211 report being prepared by Dr. Elterman, in accordance with the order of Wilson J. made August 31, 2020. That order specified how the initial \$12,000 retainer would be paid, with \$2,500 to come from Mr. Rezansoff, and \$9,500 from the proceeds of the sale of the Property. The remainder of the cost of Dr. Elterman's report is also to be paid out of those proceeds. Dr. Elterman indicated to Mr. Rezansoff's counsel that the total cost would be between \$12,000 and \$20,000. I

therefore order that \$8,000 continue be held back in Mr. Rezansoff's counsel's trust account, to be used to pay Dr. Elterman. Should Dr. Elterman's fees prove to be less than \$20,000 in total, the remaining funds are to be divided between the parties in accordance with their agreed upon 80/20 split.

- [79] Mr. Rezansoff has outstanding claims for expenses in the amount of \$5,069.25 incurred by him to travel to Kelowna to visit C. on occasions he says Ms. Wlaswich improperly denied him parenting time, and an unspecified amount of damages for each denial of parenting time. Those claims are not before me, as they are to be heard together with the parenting issues following receipt of the s. 211 report. I accept Ms. Wlaswich's submission that it is appropriate to hold back \$5,000 of Ms. Wlaswich's share of the proceeds of sale in Mr. Rezansoff's counsel's trust account, to be used to pay any expenses or damages he might ultimately be successful in having ordered against Ms. Wlaswich on his pending application. Should no damages be ordered on that application, those funds, or any remaining following payment of any damages ordered, are to be paid out to Ms. Wlaswich.
- [80] For clarity, a total of \$129,000 is to be held back in Mr. Rezansoff's lawyer's trust account for potential capital gains, s. 211 report fees, and potential damage claims against Ms. Wlaswich. The remaining funds are to be paid out, with 80% to be paid to Ms. Wlaswich, and 20% to be paid to FMEP, on the terms set out above.
- [81] Should the parties require further direction with respect to the treatment of the proceeds of the sale of the Property, they are at liberty to appear before me.

Application for Damages

- [82] Mr. Rezansoff applies for damages from Ms. Wlaswich in the amount of \$52,626.54 for:
- a) breaching para. 39 of the Minutes;
 - b) failing or refusing to accept \$8,715 in child support authorized by Mr. Rezansoff on June 27, 2019 before August 1, 2019 or September 4, 2019; and
 - c) failing or refusing to notify FMEP of her having access to \$8,715 in child support for the months of March to September 2019 prior to August 1, 2019 or September 4, 2019.
- [83] He also applies for damages in the amount of \$12,000 for Ms. Wlaswich's alleged breach of para. 25 of the Minutes.
- [84] I will deal with each of these claims separately. Before doing so, I note Ms. Wlaswich's submission that Mr. Rezansoff has put forward an insufficient legal basis for these claims in his notice of application. She argues that as a result his applications should be dismissed or adjourned. While there is substantial merit to Ms. Wlaswich's submissions that the notice of application failed to provide a sufficient legal basis, contrary to the Rules, Ms. Wlaswich was nonetheless able to respond fully to these claims. It is just and expedient to deal with these claims now, rather than adjourning them to be dealt with in the future.

Breach of Paragraph 25 of the Minutes

[85] Paragraph 25 of the Minutes provides:

Sharon shall have the right to select the realtor for the Royal Avenue Property and determine the list price for the Royal Avenue Property. In the event that Sharon receives an offer to purchase the Royal Avenue Property, John shall have the right to approve the offer prior to Sharon accepting the offer. In the event that John and Sharon do not agree as to accepting an offer on the Royal Avenue Property, Sharon shall have the right to apply to Court for court approval of the sale.

[86] Mr. Rezansoff says that Ms. Wlaswich failed to seek his approval prior to accepting the May 17, 2020 offer to purchase the Property for \$610,000. He is correct in this assertion. However, a review of the facts related to the sale explains why that occurred, and shows that Mr. Rezansoff has failed to prove any damages arising from Ms. Wlaswich not seeking his approval prior to accepting the offer.

[87] Ms. Wlaswich was the sole legal owner of the Property. The most recent appraisal was dated October 26, 2017, for a value of \$480,000. It was assessed in 2020 as having a value of \$509,000.

[88] In accordance with the Minutes, Ms. Wlaswich listed the Property for sale on September 11, 2019, with an asking price of \$725,000. The list price was reduced to \$699,000 on November 20, 2019. There was little interest in the Property, which was a bare lot, the building that was on it previously having burned to the ground. On or about February 25, 2020, Ms. Wlaswich entered into a contract for purchase and sale with Simple Pursuits Inc. for a price of \$670,000. There were several conditions on the sale, and a closing date of May 15, 2020.

[89] Ms. Wlaswich did not seek Mr. Rezansoff's approval of that offer before accepting it. She applied for court approval, and Mr. Rezansoff ultimately agreed to the sale. The sale did not complete, however, as Simple Pursuits Inc. did not remove the subjects.

[90] On or around May 17, 2020, a Sunday, Simple Pursuits Inc. made another offer, this time for \$610,000. There were no conditions. Ms. Wlaswich was given only 30 minutes to decide whether to accept the offer. She accepted the offer, again without seeking Mr. Rezansoff's consent.

[91] Upon being notified of the sale, Mr. Rezansoff's counsel advised that while Mr. Rezansoff did not agree with the sale price, he did not intend to frustrate completion of the sale. The sale completed in July 2020, and the proceeds are being held in trust by Mr. Rezansoff's counsel.

[92] Mr. Rezansoff provided no legal basis for the claimed damages of \$12,000. I understand the basis of the claim to be that he accepted that \$670,000 was a reasonable price, and 20% of the \$60,000 difference between that and the ultimate sale price of \$610,000 is \$12,000.

[93] I agree with Mr. Rezansoff that Ms. Wlaswich did not comply with para. 25 of the Minutes. Given the circumstances, in which she had 30 minutes to decide whether to accept the offer on a Sunday, her failure to seek his prior approval might be seen as understandable. The

insurmountable difficulty Mr. Rezansoff faces on this part of his application, however, is that he has failed to prove that he has suffered any damages as a result. The Property was on the market for approximately eight months. In that time the only offers received were the two from Simple Pursuits Inc. Mr. Rezansoff has not shown that the \$610,000 actually received for the Property did not represent fair market value or that a higher price could have been obtained.

[94] I therefore dismiss the claim for damages resulting from Ms. Wlaswich's failure to comply with para. 25 of the Minutes.

Breach of Paragraph 39 of the Minutes

[95] Paragraph 39 of the Minutes provides:

Save for the sum of \$8,715 to be paid to Sharon from the Curlew Road Property net sale proceeds, any claim for child support for the period up to and including September 30, 2019, including basic child support or special and extraordinary expenses or arrears of child support, shall be dismissed. Sharon shall advise FMEP of this agreement.

[Emphasis added.]

[96] Mr. Rezansoff says that Ms. Wlaswich breached this paragraph by not advising FMEP of the settlement until September 28, 2019. He says that her delay in advising FMEP led to his detention in Malaysia due to not having a valid Canadian passport, as the federal licence denial issued by FMEP on August 13, 2019 was still in place when he travelled to Malaysia. He seeks damages equivalent to the financial losses he says he suffered as a result of not being able to remain and work in Malaysia.

[97] I do not agree with Mr. Rezansoff that Ms. Wlaswich breached para. 39, or that she caused his detention and any losses he may have suffered as a result.

[98] Unlike some other paragraphs in the Minutes, such as para. 22, which required Mr. Rezansoff to remove his certificate of pending litigation from the Property "forthwith", para. 39 did not require Ms. Wlaswich to advise FMEP of the agreement "forthwith". Approximately three weeks passed between the Minutes being entered into and Ms. Wlaswich advising FMEP. In the absence of anything in the Minutes indicating Ms. Wlaswich was required to advise FMEP within a specific period of time or forthwith or that time was of the essence, I do not accept that advising FMEP after three weeks was a breach of Ms. Wlaswich's obligation under this paragraph.

[99] In any event, I do not accept that Ms. Wlaswich's actions or inactions were the cause of Mr. Rezansoff's detention or any resulting losses he suffered. Mr. Rezansoff's passport was cancelled before the Minutes were entered into. Regardless of when Ms. Wlaswich advised FMEP of the agreement, it was going to be Mr. Rezansoff's obligation to reapply and obtain a new passport. Further, the only reason Mr. Rezansoff's passport was ever cancelled was his failure to pay his child support obligations on time. He cannot hold Ms. Wlaswich

responsible for whatever losses he suffered as a result of his own failure to comply with his child support obligations.

[100] I therefore dismiss this claim for damages.

Failure to Have \$8,715 Paid to Her Sooner

[101] I will deal with the last two bases upon which Mr. Rezansoff claims damages together. Mr. Rezansoff says that in a letter dated June 27, 2019, he provided his written authorization to Ms. Wlaswich's lawyer for \$8,715 held in trust by his real estate lawyer to be paid to Ms. Wlaswich. This was to pay child support payable in March through September 2019. He says that Ms. Wlaswich failed to take any steps to accept that payment or advise FMEP of it prior to September 3, 2019. Once again, he relates this to the cancellation of his passport, and his detention in Malaysia.

[102] It is not alleged, nor could it be, that Ms. Wlaswich thereby breached the Minutes. It is not clear on Mr. Rezansoff's application or submissions what legal duty he says Ms. Wlaswich breached. There is no reference to any statutory, contractual or fiduciary duty Ms. Wlaswich owed to accept and report the receipt of the funds. Mr. Rezansoff does not allege that Ms. Wlaswich was negligent.

[103] Ms. Wlaswich accepts that her former lawyer did not forward Mr. Rezansoff's lawyer's request that child support be paid out of the funds held in trust by his real estate lawyer. She believes this was an unintentional error on her lawyer's part, which also prejudiced her as she did not receive the child support in question as a result.

[104] Mr. Rezansoff has not established that Ms. Wlaswich breached any legal duty in not taking steps to have her lawyer forward the request or advise FMEP of it before September 3, 2019. Further, this claim suffers from the same causation problem as the one based upon para. 39 of the Minutes. It was Mr. Rezansoff's legal obligation to pay child support on time. He failed to fulfill that obligation, which resulted in FMEP taking the steps it did. That is not Ms. Wlaswich's responsibility.

[105] I therefore dismiss these claims for damages.

Application for Divorce

[106] Mr. Rezansoff and Ms. Wlaswich both asked that I grant a final order for divorce. Ms. Wlaswich had filed for a desk order divorce on March 17, 2020, but it was rejected on April 3, 2020, due to a lack of information about how the proposed child support related to the Guidelines or Mr. Rezansoff's income. The court was also concerned about the divorce being granted prior to a child support application being heard.

[107] A new clearance certificate was filed on March 30, 2020, which is valid until March 20, 2026. I am satisfied that all requirements of the Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.) have been met, and in particular that reasonable arrangements for the support of C. have been made. I therefore grant an order of divorce, to take effect on the 31st day after the date of this judgment.

Conclusion

[108] In summary, I have dismissed Mr. Rezansoff's application to vary his child support obligations for C., as well as his application for damages against Ms. Wlaswich. I have granted the Director's application for Mr. Rezansoff's portion of the net proceeds of sale of the Property to be paid to FMFP to pay Mr. Rezansoff's future child support obligations. I have made ancillary orders with respect to holdbacks required to ensure that sufficient funds remain in trust to pay any capital gains tax that might be payable on the sale of the Property, the remaining cost of the pending s. 211 report, and other potential damages sought against Ms. Wlaswich. I have also granted the parties' joint request for a divorce.

[109] Ms. Wlaswich and the Director have both been successful on these applications, and are entitled to their costs. If the parties are unable to agree on costs, they may appear before me.

[110] All matters raised in Ms. Wlaswich's December 3, 2019 application, and the remaining matters raised in Mr. Rezansoff's August 14, 2020 application, all of which relate to parenting issues for C., are to be heard together following receipt of the s. 211 report. I am not seized of those applications.

"Lyster J."

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Prepared on 26 October 2026 · Esheria