

CANADA / JUDGMENT

Yautzoglu v. Tselios

2020 BCSC 1931

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Supreme Court of British Columbia

DECIDED

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2020 BCSC 1931 Yautzoglu v. Tselios

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Yautzoglu v. Tselios,

2020 BCSC 1931

Date: 20201207

Docket: E58915

Registry: New Westminster

Between:

Stavrula Yautzoglu also known as Stavroula Giaoutzoglou

Claimant

And

Emmanouil Tselios also known as Emmanuel Tselios

Respondent

Before: The Honourable Mr. Justice Sewell

Via teleconference

Reasons for Judgment

Counsel for the Claimant:

R. L. Aldana

Counsel for the Respondent:

I. Phillips

Place and Date of Hearing:

New Westminster, B.C.

November 18, 2020

Place and Date of Judgment:

New Westminster, B.C.

December 7, 2020

Introduction

- [1] The parties to this family law proceeding bring cross-applications.
- [2] The claimant applies for interim child and spousal support based on the table amount set out in the Federal Child Support Guidelines, SOR/97-175 [CSG], and the Spousal Support Advisory Guidelines [SSAG]. The claimant submits that this determination should be based on total annual incomes of \$1,615,154 for the respondent and \$73,846 for the claimant. The claimant also seeks an order that funds held in trust by Panorama Legal, the solicitors for Valley Master Mason Marble and Granite Ltd. ("VMM"), be paid to MRM Management Group Ltd. ("MRM").
- [3] The respondent applies for an order that 11 properties owned by MRM be sold by private sale on the terms set out in his notice of application, with the net proceeds held in trust by his family or corporate solicitor until further order of the court.
- [4] The respondent opposes the application for interim spousal support and argues that interim child support should be based on his 2020 total income, which he estimates will be \$130,000.

Background

- [5] As these are applications, I will set out only those facts essential to determine the issues argued before me. Any findings I make in these reasons are of course only interim and do not constitute final determinations.
- [6] The circumstances of the parties are somewhat unusual.
- [7] The parties were married on July 17, 1993 and separated on October 25, 2019. They have two children. The younger child is school-aged, while the older child is currently enrolled in post-secondary education. The respondent acknowledges that although the older child will turn 19 in 2021, she continues to be a child of the marriage for purposes of child support.
- [8] For most of the period of cohabitation the parties had a "traditional marriage". The claimant maintained the family home and had primary responsibility for child care. The respondent operated VMM, a business that supplies marble and other building stones, which provided

the income that supported the family's lifestyle. The respondent has also received large consulting fees, which at times significantly exceeded the income he received from VMM. In addition, from 2013 to 2019 the respondent and MRM purportedly borrowed some \$4,400,000 from business associates which were used to acquire properties owned by MRM.

- [9] Prior to separation the claimant was paid a salary of \$50,000 per year by VMM.
- [10] The family also owned and operated MRM, which was incorporated in 2009. The claimant is the sole shareholder and director of MRM, but the respondent exercised de facto control over that company prior to separation. Soon after the parties separated the claimant took control of the affairs of MRM and has been operating that company since about November 2019.
- [11] MRM owns 11 properties. VMM operates its business from one of those properties pursuant to a lease from MRM. There is no dispute that the shares of VMM and MRM are family property under the Family Law Act, S.B.C. 2011, c. 25. The funds to acquire the properties owned by MRM came largely from the respondent's income from consulting and the proceeds of the loans described above.
- [12] The parties' accumulation of property during cohabitation appears to have been assisted by aggressive tax avoidance measures undertaken by the respondent in the years preceding the separation. These measures have attracted the attention of the Canada Revenue Agency ("CRA"), which has issued notices of reassessment against the respondent for the 2013 to 2018 taxation years in an amount of approximately \$11,000,000. Many of these reassessments relate to the loans described in paragraph 8 above.
- [13] It is apparent from the material filed in these applications that the affairs of the respondent are complex and that is very difficult to impute guideline income to him with any degree of certainty.
- [14] The family has had three sources of income in the past five years;
1. Income from VMM;
 2. Rental income from the properties owned by MRM; and
 3. Consulting fees earned by the respondent.

In addition, CRA takes the position that the \$4,400,000 in loans should be considered to be the respondent's income.

- [15] Before reassessment by CRA the respondent's declared total income for 2016 to 2018 was as follows:

1. 2016

\$50,077

2. 2017

\$130,059

3. 2018

\$1,615,000

[16] The respondent deposes that his total income for 2019 was \$180,000 and estimates that it will be \$130,000 in 2020.

[17] CRA has reassessed the respondent's income for each of the years from 2013 to 2018. The amount of income that CRA proposes to add to the respondent's income for 2016 to 2018 inclusive is approximately \$6,800,000 before interest and penalties. The respondent disputes the proposed reassessments. Therefore, at this stage of the proceedings it is impossible to determine what the respondent's actual income has been in the years leading up to the present. However, it is likely that his actual income exceeded the amounts he reported to CRA.

[18] VMM's unaudited financial statements show income from 2016 to 2018, after deducting management fees and rent paid to MRM, from a high of \$480,000 in 2017 to the low of a loss of \$87,000 in 2019. However, in each year VMM paid rent of approximately \$200,000 to MRM and management salaries in excess of \$200,000, except in 2016 when they were \$100,000.

[19] The financial statements for MRM show net income before amortization of approximately \$130,000 in 2018, including the rental income of approximately \$200,000 from VMM.

[20] Since separation, the claimant has been drawing \$6,154 per month from MRM. This income is largely dependant on VMM's payment of rent for the property on which its plant is located. In addition, in 2020 the respondent paid the claimant \$39,000 directly and the taxes on the family home in the amount of \$15,000. He also paid \$68,000 in child support from February to September 2020.

[21] The claimant's Form 8 financial statement states that her monthly expenses are \$29,128.

Interim Support

Legal Principles

[22] The principles applicable to interim awards of child and spousal support were reviewed by Justice Butler in *Jalalian-Ghayoumpour v. Mobargha*, 2018 BCSC 684 at para. 21:

The principles that apply to interim support are not controversial. On an interim application, the applicant need only make out a prima facie case for entitlement to interim support: *Newson v. Newson* (1998), 65 B.C.L.R. (3d) 22 (C.A.). Where the marriage is admitted and need is established, interim spousal support should be ordered. In *Robles v. Kuhn*, 2009 BCSC 1163, Master Keighley, at para. 12, set out "established considerations" relevant to interim support applications. The considerations relevant to the present application include:

1. On applications for interim support the applicant's needs and the respondent's ability to pay assume greater significance: *Gibb v. Gibb*, [2005] B.C.J. No. 2730 (S.C.);
2. An interim support order should be sufficient to allow the applicant to continue living at the same standard of living enjoyed prior to separation if the payor's ability to pay warrants it: *Grossi v. Grossi*, [1993] B.C.J. No. 878 (S.C.);
3. On interim support applications the court does not embark on an in-depth analysis of the parties' circumstances which is better left to trial. The court achieves rough justice at best: *Randhawa v. Randhawa*, [1999] B.C.J. No. 1082; *Newson v. Newson*, [1998] B.C.J. No. 2906, 65 B.C.L.R. (3d) 22 (C.A.);

...

6. Interim support should be ordered within the range suggested by the Spousal Support Advisory Guidelines unless exceptional circumstances indicate otherwise: *Ladd v. Ladd*, [2006] B.C.J. No. 1930, 2006 BCSC 1280 (S.C.);
7. Interim support should only be ordered where it can be said a prima facie case for entitlement has been made out: *L.G.B. v. M.A.C.M.*, [2005] B.C.J. No. 2966, 2005 BCSC 1786 (S.C.);
8. Where there is a need to resolve contested issues of fact, especially those connected with a threshold issue, such as entitlement, it becomes less advisable to order interim support: *L.G.B.*

[23] In these reasons I will follow the same general analysis set out by Justice Butler.

[24] I am satisfied that the claimant has established a prima facie entitlement to spousal support based on compensatory principles. I am also satisfied that her present income is not sufficient to permit her to continue to live in a manner reasonably similar to her pre-separation lifestyle, and she is therefore entitled to spousal support on that basis.

[25] In this case, it is particularly difficult to assess the respondent's ability to pay support. The extent of the claimant's needs are in turn complicated by the extent to which the financial affairs of the parties continue to be intertwined.

[26] The claimant submits that the amount of her child support and spousal support entitlements should be based on the respondent's 2018 income of \$1,615,154. In oral submissions, the complainant's counsel submitted that interim support should be fixed at the table amounts of \$19,448 per month for child support and \$33,192 for spousal support. The claimant deposes that the respondent earns a large proportion of his income from

consulting fees he receives in Europe and that these fees are not disclosed in his tax filings in Canada. She also deposes that as recently as the time of the judicial case conference in this matter, the respondent was engaged in some form of consulting work in Europe which resulted in him attending by telephone. However, the respondent denies that he was doing any business in Europe at the time and there is no documentary evidence relating to any such income.

[27] The respondent submits that I should base any award on the \$180,000 in total income claimed in his 2019 T1 tax form. He submits that his earnings have been greatly reduced by the allegations made against him by the claimant and by the adverse economic impact of the COVID-19 pandemic.

[28] I find that basing interim support on the table amount for the respondent's Guideline 2018 income of \$1,615,154 would be excessive in this case.

[29] Section 4 of the CSG provides as follows:

Where the income of the spouse against whom a child support order is sought is over \$150,000, the amount of a child support order is

- (a) the amount determined under section 3; or
- (b) if the court considers that amount to be inappropriate,
 - (i) in respect of the first \$150,000 of the spouse's income, the amount set out in the applicable table for the number of children under the age of majority to whom the order relates;
 - (ii) in respect of the balance of the spouse's income, the amount that the court considers appropriate, having regard to the condition, means, needs and other circumstances of the children who are entitled to support and the financial ability of each spouse to contribute to the support of the children;

[30] With respect to spousal support, the law is well settled that when the payor's income exceeds \$350,000 per year the formula amounts under the SSAG are no longer presumptively payable.

[31] However, I have very little reliable evidence as to the respondent's actual income. If one includes the \$4,400,000 that he alleges he received as loans in his income, as CRA appears to have done, he clearly has earned considerably more than the amounts he declared as his total income on his T1 tax filings in previous years. Based on the assets the parties have been able to accumulate over the last decade and the lifestyle they have enjoyed without accumulating large amounts of debt, I have concluded that the respondent has the ability to earn at least \$350,000 per year and that it is reasonable to impute that income to him for the purposes of determining interim child and spousal support. In arriving at that conclusion I do give some weight to the respondent's evidence of reduced earnings and the obvious distractions he faces as a result of the CRA audit.

- [32] I also base this imputation partially on the financial statements of VMM appended to the respondent's Form 8 Financial Statement. I also take into account the rent that VMM pays to MRM. I also think it is likely that the respondent continues to receive some consulting fee income despite his evidence to the contrary.
- [33] For the purposes of determining interim spousal support, I accept that the claimant's income is \$6,154 per month, which equates to \$73,848 per year, although I note that the income statement for MRM does contain amortization expenses of approximately \$45,000 per year.
- [34] I am also of the view that the claimant's needs may be overstated in her Form 8 Financial Statement. I note that her food bills are stated to be \$10,000 per month for three people, including \$6,000 per month for meals delivered to the family home. In addition, she asserted that she pays \$1,000 per month for property taxes, although the evidence is that the respondent has paid the property taxes on the family home this year. I also question whether it is reasonable for the claimant to be spending \$74,460 per year on vacations, particularly at a time when travel is significantly restricted, as it will likely be up to the time of trial.
- [35] Additionally, the respondent compares his present accommodation of living in a rented apartment to those of the claimant, who continues to live in the family home with the children. He points out that the family home has 7,850 square feet and eight bedrooms.
- [36] It is likely that both parties will be adversely affected by the proposed reassessments from CRA, which will obviously affect the respondent's ability to pay spousal support. I therefore consider it to be reasonable for the claimant to moderate her expenditures by a reasonable amount.
- [37] Based on my best estimate of the amount the respondent can reasonably be expected to earn, and on my view that the claimant has overstated her actual annual expenses, I order that the respondent pay monthly child and spousal support based on a total income of \$350,000 for the respondent and \$73,848 for the claimant.
- [38] Based on the CSG and the SSAG calculated at the mid-range, the respondent should be paying \$4,519 in child support and \$5,573 in spousal support monthly. After examining the claimant's monthly expenses and taking into account the likelihood that some funds will become available from the sale of some of the properties that I will order in the balance of these reasons, I consider that these payments will permit the claimant to continue to maintain a standard of living which approximates the one she enjoyed pre-separation. I also find that the respondent has the ability to pay these amounts, but that it would create a hardship for him to pay significantly more given his tax difficulties.
- [39] I therefore order that the respondent pay interim child support of \$4,519 per month and interim spousal support of \$5,573 per month from September 1, 2020 until further order of this court.

Sale of Property

- [40] The respondent seeks an order that the 11 properties owned by MRM be listed for sale on the terms set out in his notice of application.
- [41] These properties include the family home and the property on which VMM operates its business.
- [42] An order directing sale of property that is the subject matter of a family law case is a form of prejudgment execution. Though the subject properties are owned by MRM, the claimant did not argue that this fact affects the court's jurisdiction to order a sale of them. However, the claimant argues that the respondent has not established grounds for justifying a sale of any of them, with the exception of a single property that she agrees should be sold.
- [43] The jurisdiction to order a sale before trial is found in Rule 15-8 of the Supreme Court Family Rules, B.C. Reg. 169/2009, which provides that the court may order a sale of property if it appears necessary or expedient to do so. Section 97(2)(d) of the Family Law Act also empowers the court to require partition or sale of property.
- [44] In *G.J.U. v. J.L.U.* 2017 BCSC 1352 at para. 57, Master Bouck summarized factors that may be considered in determining whether it is necessary or expedient to order sale of property prior to trial:

Factors to consider in the exercise of the court's discretion under this Rule include whether the sale will promote early settlement, whether the sale will defeat a spouse's claim for reapportionment, whether the sale is inevitable or whether a spouse might be able to retain the property on a division of assets. An interim sale will be considered expedient if it is advantageous to both parties: *N.N.N. v. D.E.B.* 2016 BCSC 1778 at para. 21.

- [45] These factors were set out in more detail in *Kapoor v. Makkar*, 2020 BCCA 132. In *Kapoor* at para. 46, the Court cited with approval the statement contained in *A.B. v. C.D.*, 2015 BCSC 2134, that any doubt about whether an order should be made should be resolved in favour of the status quo.
- [46] In this case, the onus is on the respondent as the moving party to establish one or other of the grounds which would justify a sale prior to trial.
- [47] I am not satisfied that the respondent has not shown that it is necessary to sell all of the properties.
- [48] In his notice of application, the respondent acknowledges that the claimant is the sole shareholder of MRM. He states that until separation, he was the operator of the company and made all day-to-day decisions with respect to its affairs. After separation, the claimant took over control of the company, though the respondent says the complainant has little practical experience in operating a company and that she has been making unilateral decisions with respect to its operations, including a decision to start drawing a salary from it, without consulting with him. In essence, he is suggesting that the claimant lacks the

ability to manage the properties.

- [49] The respondent also refers to the reassessments he has received from CRA and deposes that he requires funds to retain legal and accounting advisors to represent him in challenging those reassessments. The respondent has not provided any estimate or budget with respect to these costs, but I accept that they will be substantial. It is clearly in the interests of both parties for the respondent to have the best possible representation in his dealings with CRA. Both will likely suffer financial hardship if the reassessments are upheld.
- [50] The respondent's submissions place considerable importance on the \$4,400,000 in third-party debt he says MRM has incurred to finance the purchase of the properties. However, there is reason to view these arguments sceptically. The notes are from known business associates of the respondent and, more importantly, are not payable until January 2029. No interest is payable on them before that date. This casts considerable doubt on any assertion that they will have any adverse impact on MRM prior to trial. I cannot resolve that issue on this application. However, I take these circumstances into account in determining what weight should be given to those obligations in deciding the issues before me.
- [51] It has often been repeated that a court hearing an interim application under the Family Law Act should not engage in an analysis of the merits of the claims and that, at best, the court can only dispense rough justice at this stage.
- [52] In all of the circumstances, I am satisfied that it is in the interest of both parties to realize some of the value of the real estate owned by MRM, and that it is therefore expedient to order a sale of some of the properties. However, I am not satisfied that it is necessary or expedient to order a sale of the family home or the property on which VMM operates. The claimant has expressed a desire to retain ownership of the home and I cannot say at this time that a sale of that specific property is inevitable. In addition, the sale of the property on which VMM operates would reduce the monthly cash flow available to the parties.
- [53] I therefore order that the following properties be listed for sale:
1. #210-30610 Progressive Way, Abbotsford
 2. #203-30610 Progressive Way, Abbotsford
 3. #406-19936 56th Ave, Langley
 4. 2469 McCallum Road, Abbotsford
 5. #506-6063 Iona Drive, Vancouver
- [54] In addition, as I have indicated above, the parties are agreed that 3960 Stewart Road, Chilliwack should be listed for sale. If the parties are unable to facilitate a sale of that property by agreement, the terms of paragraphs 53 and 58 will apply to it as well.

- [55] I have chosen these five properties to be sold principally because they are not generating any income for MRM and because the claimant has deposed that the two Progressive Way properties are not being used by MRM for any purpose. In addition, it appears that the Iona Drive property, which was acquired as a place for the parties' eldest child to reside while attending university, is not currently being used for that purpose due to the suspension of in-person classes.
- [56] I am also of the view that the sale of these properties will have the smallest impact on the relative position of the parties.
- [57] These circumstances lead me to conclude that it is advantageous to both parties that these properties be sold and it is therefore expedient to do so.
- [58] I consider the terms of sale proposed by the respondent to be reasonable with the following exceptions;
1. There should only be one realtor retained for each property. If the parties cannot agree on a suitable realtor for any property, they must make a further application to appoint a single realtor;
 2. Any sale must be approved by the court; and
 3. The manner in which any net proceeds of the sale of any of the properties are to be held will be determined by the court on the application to approve the sale.

Funds Held in Trust

- [59] The claimant seeks an order that the sum of \$204,362.48 held in trust by Panorama Legal be paid to MRM. The respondent opposes this payment but did not address it directly in his application response. The respondent did however criticize the manner in which the claimant has been managing the affairs of MRM since she took control of it.
- [60] I have concluded that the funds held in trust should be transferred to MRM. MRM was the owner of the property that was sold to generate the funds. The evidence is that MRM has a substantial amount owing on a line of credit, part of which was used to pay income taxes on behalf of the respondent. I can see no good reason why the funds in issue should remain frozen when they could be used to pay down MRM's debts.
- [61] I acknowledge that the respondent is opposed to MRM spending funds to renovate one of its properties, which was damaged by a fire. However, there is no application before with respect to the management and control of MRM, and it would be inappropriate for me to make any orders with respect to that issue.
- [62] I will, however, direct that the funds transferred be used in the first instance to pay down MRM's line of credit. I make no further order with respect to MRM's affairs.

Costs

[63] Success has been divided on this application. The costs will therefore be in the cause.

"Sewell J."

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