Citation: Dhalla v Dhalla, 2020 MBCA 69 Date: 20200625
Docket: AF19-30-09372

IN THE COURT OF APPEAL OF MANITOBA

Coram: Madam Justice Barbara M. Hamilton
Madam Justice Holly C. Beard
Madam Justice Diana M. Cameron

B E T W E E N :

	)	***R. A. Horton***
ACHLA DHALLA	)	*for the Appellant*
	)	*(via videoconference)*
	)	
(Petitioner) Respondent	)	***L. D. M. Manaigre***
	)	*for the Respondent*
- and -	)	*(via videoconference)*
	)	
	)	*Appeal heard and*
SONNY SUREJ DHALLA	)	*Decision pronounced:*
	)	***June 15, 2020***
	)	
(Respondent) Appellant	)	*Written reasons:*
	)	***June 25, 2020***

COVID-19 NOTICE: As a result of the COVID-19 pandemic and pursuant to r 37.2 of the Manitoba, *Court of Appeal Rules*, Man Reg 555/88R, all appeals are heard remotely by videoconferencing until further notice.

CAMERON JA (for the Court):

[1] The respondent appeals an order granting summary judgment for spousal support in accordance with an interim agreement reached by the parties at a case conference. At the hearing of the appeal, we indicated that we were dismissing it with reasons to follow. These are those reasons.

[2] After nearly 21 years of marriage, the parties separated in 2011. In 2012, the petitioner filed for divorce, requesting spousal support. The

respondent filed an answer agreeing to spousal support on a time-limited basis. In or about July 2012, after an unsuccessful case conference, the parties met without counsel to discuss an interim agreement. They agreed that the respondent would pay the petitioner 21 per cent of his monthly billings as a doctor for spousal support. The respondent drafted an agreement which included the following terms of termination: i) if the petitioner's income were to exceed $200,000 after completion of her studies, the respondent would deduct that amount from her spousal support; ii) if the petitioner found a life partner the spousal support payments would terminate; and iii) the agreement to pay spousal support would terminate on June 30, 2022, following which no further spousal support would be paid.

[3] The petitioner maintains that she never agreed to any terms of termination. Neither party signed the agreement.

[4] On May 2, 2014, the parties participated in a case conference. The resulting case conference memorandum indicated that counsel for the respondent would prepare a draft agreement including, among other things, spousal support. The resulting draft contained terms of termination similar to those previously drafted by the respondent.

[5] A subsequent case conference held on June 19, 2015, before the same case conference judge, resulted in a confirmation of the agreement that the respondent was to pay 21 per cent of his billings and income from the University of Manitoba to the petitioner in spousal support. The memorandum prepared by the case conference judge stated:

> [The respondent's counsel] had prepared an agreement reflecting [the spousal support] terms and counsel will use that agreement

> but delete a termination date as this is simply an interim without prejudice arrangement.

[6] The respondent did not object to the case conference memorandum within 14 days, as provided for in the Manitoba, *Court of Queen's Bench Rules*, Man Reg 553/88, r 70.24(47), or at all.

[7] In 2015 and 2016, each of the parties brought a motion for summary judgment. The petitioner sought spousal support set out in the agreement reached at the June 19, 2015 case conference, while the respondent sought to enforce the agreement that he prepared in or about July 2012. Both motions were adjourned without a return date.

[8] While the respondent initially made the spousal support payments, he ceased making them after November 2017.

[9] On February 7, 2019, trial dates were set for December 2020.

[10] On February 8, 2019, the petitioner filed a notice of motion requesting: i) that the respondent pay the petitioner interim spousal support in an amount equivalent to 21 per cent of his gross billings from Manitoba Health and his income from the University of Manitoba; ii) in the alternative, that the respondent pay interim spousal support in an amount to be determined by the court; and iii) that summary judgment be granted in accordance with the agreement reached at the June 19, 2015 case conference.

[11] On May 27, 2019, the motion judge heard the petitioner's motion and granted summary judgment enforcing the agreement to pay interim spousal support without a termination date made at the June 19, 2015 case conference.

[12] In his factum, the respondent alleges that the motion judge made a number of errors. In oral argument, he focussed on the position that summary judgment is a trial tool that is not available to determine interim motions. See Queen's Bench r 20.03(1), which states:

> **Granting summary judgment**
> **20.03(1)** The judge must grant summary judgment if he or she is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence.

[13] Many of the respondent's arguments focus on the fact that a trial date has been set and that the issue of spousal support, including the termination of it, is to be heard and determined at the upcoming trial in December 2020.

[14] In *Dillon v Dillon*, 2016 MBCA 125, this Court repeated and explained why appeals of interim orders, especially in family matters, are to be discouraged (at para 3):

> This Court has consistently and for many years discouraged appeals of interim orders, particularly in family matters. For example, in *Gale v Gale*, 2008 MBCA 134, 231 ManR (2d) 188, this Court stated (at para 61):
>
> > Family law litigants, like all litigants, are entitled to their strict legal rights. However, given the highly discretionary nature of most family law interim orders, coupled with the financial cost of appeal, delay and, in most cases, limited impact in the event of trial, appealing interim family law orders does not practically benefit the parties. Most interim matters are capable of efficient review at trial, that is, unless delay operates to the benefit of one of the parties. I am not suggesting that is the case here, but I am suggesting that the parties would be better served by concluding disclosure issues and proceeding to trial.

> (See also *Vauclair v Vauclair* (1998), 126 ManR (2d) 136 at para 3 (CA); *Martin v Orris*, 2010 MBCA 59 at para 5, 255 ManR (2d) 126; and *Cottyn v Anderson*, 2014 MBCA 48 at para 7, 306 ManR (2d) 87.)

[15] This Court further explained that, because interim orders are often made without the benefit of a full record, they do not provide the best legal and evidentiary foundation, and that errors are better resolved on the more complete record that follows a trial (see paras 4-5).

[16] Firstly, while this case involves the appeal of a summary judgment, that judgment resulted in an interim spousal support order. Thus, in our view, the reasoning in *Dillon* applies to this appeal.

[17] Secondly, the decision to grant or deny a motion is a discretionary decision entitled to deferential review. An appellate court may only set it aside where there is a material error as to the law or the facts or unless the decision is so clearly wrong as to be unjust (see *Dillon* at para 6 regarding the high standard to be met for review of interim family orders).

[18] The simple issue on the motion, whatever the motion was called, was whether the interim spousal support agreement should be enforced. The trial will deal with the issue of final support and property division, including consideration of all of the allegations raised by the respondent against the petitioner in that regard.

[19] We disagree that the interim spousal support order should have included the termination terms from the July 2012 unsigned agreement. That would directly contradict the June 19, 2015 case conference memorandum.

The respondent did not object to the case conference memorandum as required by Queen's Bench r 70.24(47). Furthermore, the respondent did not proceed with the motion for summary judgment that he had filed to enforce the July 2012 agreement.

[20] Finally, the respondent's arguments regarding the spousal support factors in the *Divorce Act*, RSC 1985, c 3 (2nd Supp), fail to recognise that the motion was to enforce an agreement to provide interim support. Appropriately, the motion judge did not determine the motion for interim spousal support based on the *Divorce Act* because she enforced the interim agreement instead. Presumably, counsel accounted for any considerations required by the *Divorce Act* when the agreement was entered into.

[21] In the circumstances of this case, the motion judge stated, "if the agreements at case conferences are to mean anything, they have to be respected and honoured by the court and enforced by the court and a motion for summary judgment is one of the tools to do that" (see also *Hohl v Hohl*, 2018 MBQB 53 at paras 19-20). While there may be an issue as to whether summary judgment was appropriate, the interim order of spousal support was.

[22] For the above reasons, the appeal was dismissed with costs on the basis of Tariff C.

"Cameron JA"

"Hamilton JA"

"Beard JA"