

SUPREME COURT OF YUKON

Citation: *B.S.T. v. E.R.*, 2011 YKSC 68

Date: 20110902
Docket S.C. No.: 10-D4253
Registry: Whitehorse

BETWEEN:

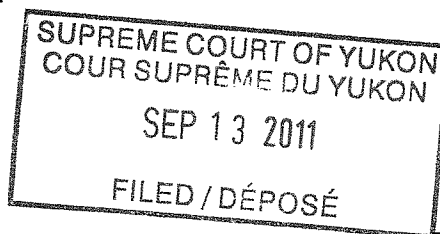
B.S.T.

Plaintiff

AND:

E.R.

Defendant



Before: Mr. Justice L.F. Gower

Appearances:
Norah Mooney
Carrie Burbidge

Counsel for the Plaintiff
Counsel for the Defendant

RULING ON APPLICATION FOR ADJOURNMENT DELIVERED FROM THE BENCH

[1] GOWER J. (Oral): This is an application for an adjournment of the trial by Ms. R. She gives two principal reasons for seeking an adjournment:

[2] Firstly, that she has been unable to obtain the pension division information from the Yukon Government, notwithstanding some efforts to obtain that. She says it may not be available in time for the trial, and so she will be prejudiced as a result of not having that information.

[3] Secondly, that she will likely not have her 2010 tax return done in time for the trial because of some delays by her accountant, that that will prejudice her, and that her delay in obtaining this information has been due, in part, because of the emotional

stress that she has been suffering throughout these proceedings and some occasional depression. That is also an issue which was touched on in earlier applications.

[4] The test for an adjournment in civil proceedings such as this is that the interests of justice require a balancing of the interests of the plaintiff and the defendant, and that I must exercise my discretion in such a way as to ensure that there will be a fair trial on the merits of the action. Ms. R.'s counsel concedes, in part, that the interests of justice include a consideration of certain equitable principles.

[5] Now, I have been involved with this matter since basically the outset. My recollection is that the original statement of claim that was filed, I think in August of 2010, put Ms. R. on notice that financial information pursuant to the *Family Property and Support Act*, RSY 2002, c. 83, would be sought. So, she has known about that since she was served.

[6] There were a few applications at the beginning of this litigation which were adjourned a number of times at Ms. R.'s request because she did not have counsel and she needed to get her affairs in order. In due course, an application was made by Ms. Mooney for Mr. T. which resulted in an order that I made March 15, 2011. That order specifically directed Ms. R. to provide certain financial disclosure to Ms. Mooney by April 15th, including a pension division statement from the Yukon Government pertaining to the pension that she earned between 1994 and 2010. That order has not been complied with.

[7] Later, Ms. R. filed an affidavit on April 26, 2011, complaining that she had been experiencing some delays with her accountant, Ms. Edzerza. She nevertheless

continued to retain Ms. Edzerza.

[8] It is also significant to me, as pointed out by Ms. Mooney, that Ms. R. filed a financial statement October 15, 2010, which required her to state her pension income, which she did on page 6, at \$11,064 annually. However, at page 12 of that same document, and this was when she was represented by former counsel, Ms. McKay, she is required to record the name of the institution where the accounts are held, the name and address of the pension plan and pension details. She sets out the Yukon Government Pension at that line item, but then states the same annual amount of \$11,064. Obviously, that is the income amount but not the actual value of the pension. So, she has known, again, since October 15, 2010, that this information would be required of her, and it appears that she has done little, or at least there is no evidence that she has taken regular and diligent steps, to procure that information.

[9] She claims that she was misled by a form provided to her from the Court Registry that referred to the Canada Pension Plan, and provided a phone number which her lawyer says that she tried to call a number of times. However, that information is not actually sworn to by Ms. R. She does not say when she went to the Registry to get that information; she does not say that she called that phone number a number of times by mistake; she does not say when those efforts were made; she does not say when she had a conversation with Ms. Burbidge where that error was apparently discussed and corrected by Ms. Burbidge. She does say that she had a meeting with a Victim Services officer on August 26th just past, where the officer called a phone number, without specifying whether it was the Yukon Government Pension Authority or the Federal Government one. Ms. R. says she was told that the information, at least in terms of the

total value of her pension, would be sent out by mail and would arrive in about ten days time. So, again, there is no evidence before me that Ms. R. has taken diligent steps to obtain this information prior to August 26th, or in the recent days when she met with her lawyer to discuss the problems that she was having in this regard.

[10] I will credit Ms. R. deposing that she has spent the last month attempting to contact her accountant, Ms. Edzerza, to get a report on the completion of the 2010 income tax return preparation, and to date Ms. Edzerza has not been returning her calls. However, if Ms. R. finds herself in this position now with respect to the 2010 tax issue, that is something that she should have been alerted to when she was experiencing problems back in April or March of this year, and could well have decided to take her financial information to another accountant and get it processed on a more expeditious basis. Ms. R. may well be able to do that before the trial starts, because she has a full week in which to make that effort. It may also be that the pension information, which is apparently en route, may arrive in time for the trial. If the worst happens and none of that information, or some of it, is not available for trial, yes, that will cause Ms. R. some prejudice, but it is prejudice, in my view, that results from her own failures and her own inaction.

[11] As Ms. Mooney, I think, quite correctly points out, it would be unjust to allow an adjournment based on grounds which arise from Ms. R.'s own failure to abide by previous court orders. I am referring here specifically to my order of March 15, 2011. In addition to that, Ms. R. has failed, as far as I am aware, to pay spousal support pursuant to that same order. I am told that she made one payment of \$1,000 following the order, but has not made any subsequent payments since.

[12] There was also an order made on June 10, 2011, for payment of court costs in a lump sum of \$1,500, which Ms. R. has failed to pay. In an interview with a reporter from the *Yukon News*, in an article which was published June 24, 2011, she is recorded as saying that she would rather die or go to jail than pay those court costs. So, that is some indication of her attitude towards the justice system and this Court in general.

[13] In my view, she does not come to court with clean hands in seeking this adjournment.

[14] On the other side of the equation, in terms of balancing the interests of both parties, Ms. R. made a report to the federal immigration authorities in the fall of 2010 that Mr. T. entered the country illegally, I gather, by lying about a previous marriage in the Philippines. That has resulted in the federal authorities taking an interest in Mr. T.'s case. He has filed a letter dated July 7, 2011, from Canada Border Services Agency indicating that he is under investigation and that a decision to allow him to remain in Canada or to seek to have a removal order issued against him will be made in the "near future." It is not clear whether that means that Mr. T. is in any imminent danger of being deported over the next, say, six to 12 months. There is some indication that he may have some appeal remedies, even if such an order was made. However, there is, at least on its face, a risk that he could be deported before this trial is held, if it is adjourned.

[15] I can also say for the record that the court calendar this fall and into next spring is heavily booked because of a mega-trial that will take place between January and June of next year. The matter is now on a single-booked basis set for September 12 to 14

next. If it is adjourned, there is a very good likelihood that it could not be re-scheduled until next fall. Much could happen in terms of the investigation of Mr. T. in the intervening months. Obviously, if he is ordered deported prior to the trial, then that will pose a significant disadvantage to him and would be a significant and strategic advantage for Ms. R.

[16] Ms. R. complains of having been disadvantaged by depression and emotional stress as a result of these proceedings. However, that is, to a large extent, offset by information provided by Mr. T. that Ms. R. had the wherewithal and the strength to run in a contest as a potential candidate for the Yukon Party in her riding for the upcoming territorial election this fall. That is also reflected in a newspaper article dated August 3, 2011. So, some time in the last month or so she made that decision to run. If she is well enough to do that, one wonders why she is not well enough to prepare for and proceed with this trial.

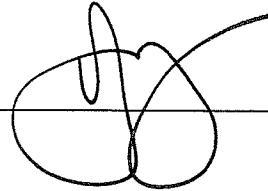
[17] In all of the circumstances, I find that the interests of justice dictate that the application should be dismissed, and I so order.

[Submissions re costs]

[18] If Ms. R. had "reasonable" arguments to put forward for her adjournment application, then she very likely would have succeeded. I thought I had made it clear in my reasons just now that her arguments are not reasonable. They indicate a lack of diligence on her part in properly preparing for this trial, notwithstanding that she has had two counsel to assist her, and her most recent counsel she has retained since April of this year. There is also the context of the history of previous adjournments, previous

foot dragging in terms of providing financial disclosure, previous failures to abide by court orders. All of those circumstances dictate to me that Mr. T. should have his costs for this application in any event of the cause, and I fix them at \$750 payable forthwith.

GOWER J.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke extending to the right, positioned above a horizontal line.