

SUPREME COURT OF YUKON

Citation: *Coyne v. Coyne*, 2013 YKSC 123

Date: 20131216
S.C. No. 06-D3902
Registry: Whitehorse

Between:

JAMES ALLAN COYNE

Petitioner

And

VIRGINIA RUTH COYNE

Respondent

Before: Mr. Justice R.S. Veale

Appearances:

Debbie Hoffman
F. Ean Maxwell, Q.C. and Angela Dunn

Counsel for the Petitioner
Counsel for the Respondent

REASONS FOR JUDGMENT (Application for Exhibit)

INTRODUCTION

[1] Under Rule 63(48) of the *Rules of Court*, counsel for Ms. Coyne applies to obtain a copy of an expert business valuation report of Douglas Welsh of Clark Valuation Group Ltd. (the “Expert Report”) filed in the trial of *Holmes v. Matkovich*, which took place on January 8, 2007.

[2] The application is opposed by counsel for Mr. Coyne who applies under Rule 42(59)(b) for the destruction of the Expert Report.

BACKGROUND

[3] In the case at bar, Mr. Coyne retained Douglas Welsh, a Charter Business Valuator, to prepare and present a Business Valuation of Mr. Coyne's business interests.

[4] A major issue in this case is the relationship between shareholders' equity, which may be increasing, and fair market value. Mr. Welsh has taken the position that an increase in shareholders' equity does not necessarily result in an increase in fair market value.

[5] Mr. Welsh's examination-in-chief and cross-examination have been completed subject to further disclosure of his file.

[6] The trial proceeded from November 20 – 29, 2013, and has been adjourned to be completed during the week of January 6 – 10, 2014.

[7] Counsel for Ms. Coyne is now applying to have a copy of the Expert Report prepared by Douglas Welsh in the matter of *Holmes v. Matkovitch*, which was heard January 8, 2007, in this Court.

[8] I confirm that there is a report entitled "Fair Market Value of Share Interests Held by Mr. Vern Matkovitch, in 19651 Yukon Inc." as at November 30, 2006.

ANALYSIS

[9] The Divorce and Family Law Rule in the *Rules of Court* provide as follows:

Search of files

63(47) Unless the court otherwise orders,

(a) no person, other than the following, may search a registry file in respect of a family law proceeding or an Interjurisdictional Support Orders Act proceeding:

- (i) a lawyer of a party;
- (ii) a party;
- (iii) a person authorized by a party; or
- (iv) a person authorized by a party's lawyer.

Search of exhibits

(48) The exhibits produced at the trial or hearing of a proceeding referred to in subrule (47), but not including exhibits attached to affidavits, must be sealed by the clerk in a secure manner and, unless the court otherwise orders, no person other than a party's lawyer, a party or a person authorized by a party or by a party's lawyer, may search the exhibits.

...

[10] Rule 63A, entitled "Family Law Proceeding Financial Disclosure" provides as follows:

Confidentiality

63A(36) Any person who has access to documents obtained under this rule must keep the documents and any information contained in them in confidence and must not disclose the documents or information to anyone other than

- (a) for the purposes of a valuation of an asset,
- (b) for a determination of the disclosing party's income, or
- (c) in the course of permitting the documents to be introduced into evidence during the proceeding.

Sealing of financial information

(37) If the court considers that public disclosure of any information filed in a family law proceeding to which this rule applies would be a hardship on the person in respect of whom the information is filed,

(a) the court may order that the whole or any part of the document in which the information is contained, and the whole or any part of the transcript of the cross-examination on the document, must promptly be sealed in an envelope, and

(b) if an order is made under paragraph (a), no person may search the sealed documents without an order of the court.

[11] In *Edmonton Journal v. Alberta (Attorney General)*, [1989] 2 S.C.R. 1326, the Supreme Court of Canada, citing the importance of the principles of openness and judicial accountability, struck down a rule in the Alberta *Judicature Act*, which restricted access to family law proceedings and the right to publish information relating to the proceeding on the basis of a violation of s. 2(b) of the *Charter of Rights and Freedom*.

[12] The present application does not make a constitutional challenge to Rule 63(47) and (48) or Rule 63A(36) and (37).

[13] The *Edmonton Journal* judgment relied upon the decision of Dickson J. in *Nova Scotia (Attorney General) v. MacIntyre*, [1982] 1 S.C.R. 175, at p. 189, where he said:

Undoubtedly every court has a supervisory and protecting power over its own records. Access can be denied when the ends of justice would be subverted by disclosure or the judicial documents might be used for an improper purpose. The presumption, however, is in favour of public access and the burden of contrary proof lies upon the person who would deny the exercise of the right.

[14] In the case of *K.V. v. T.E.* (1998), 56 B.C.L.R. (3d) 344 (S.C.), where a publication ban had been consented to by the parties in a child access and support case, Loo J. ordered the publication ban be set aside on the following principles:

It therefore appears that notwithstanding Rule 60(22), parties do not have a right to insist that the proceedings remain private, or that information contained in the files not be disclosed to persons other than the parties, or any solicitor in

all circumstances. If a third party seeks access to a matrimonial file, a general desire to keep matters private or to avoid publicity is not sufficient to deny access. It appears that a significant risk that significant harm will otherwise occur must be demonstrated in order to overcome the openness principle and the majority decision in *Edmonton Journal*.

[15] The British Columbia Court of Appeal reached a similar decision in *Michie v. Michie*, 2010 BCCA 232, where the husband sought to restrain his former wife from disseminating affidavits containing the husband's current financial information to former business associates with whom he was in an acrimonious dispute.

[16] The Court of Appeal, citing rules similar or identical to Rules 63(47), (48) and 63A(36) and (37) of this Court concluded, at para. 17, that the limits of protection stated in the *Rules* do not lead to the inference of a general right of privacy.

[17] The Court rejected the husband's contention under Rule 60D(36), which is identical to Yukon Rule 63A(37) that the dissemination of his financial information "would be a hardship."

[18] In the case at bar, the application is not for dissemination of financial information. It is an application for a copy of the Expert Report, for use restricted to this proceeding. There is no allegation that a significant risk of harm will occur nor any suggestion that this limited use of the report would cause a hardship to anyone.

[19] I order that a copy of the Expert Report be delivered to both counsel on the condition that the document and any information contained in it be kept in confidence and not disclosed to anyone other than for the purpose of the valuation of the assets at issue in the case before me. For clarity, access to the report may be given to Douglas Welsh and Chris Goodburn, who are the experts in this trial, and the document may be

introduced into evidence in this proceeding (subject to the limits on access prescribed by Rule 63). As confidentiality of the Expert Report has been maintained, and from my reading of the report, I do not consider it necessary to give notice to Ms. Holmes or Mr. Matkovitch.

VEALE J.