SUPREME COURT OF NOVA SCOTIA
FAMILY DIVISION

Citation: *Armoyan v. Armoyan*, 2015 NSSC 188

Date: 2015-06-26
Docket: *Halifax* SFHISOA 080027
Registry: Halifax

Between:

Lisa Armoyan

Applicant

v.

Vrege Armoyan

Respondent

Judge: The Honourable Justice Theresa Forgeron

Heard: June 26, 2015, in Halifax, Nova Scotia

Oral Decision: June 26, 2015

Written Decision: June 29, 2015

Counsel: Harold Niman and Leigh Davis for the Applicant
Vrege Armoyan, Self-represented and not present

By the Court:

Introduction

[1] Verge and Lisa Armoyan are former spouses who are engaged in protracted and acrimonious litigation. Many applications and motions were heard since the parties' 2009 separation; numerous orders have issued.

[2] In an attempt to secure enforcement of one of the court orders, Ms. Armoyan successfully argued that a contempt finding should be entered against Mr. Armoyan. Because Mr. Armoyan did not purge the contempt, Ms. Armoyan seeks a period of incarceration, a substantial fine, an abuse of process remedy, and costs. Mr. Armoyan did not advance a position.

Issue

[3] What penalty should be imposed?

Background

[4] Mr. Armoyan was found guilty of contempt for failing to obey the terms of a maintenance order for reasons stated in the decision dated June 15, 2015, and reported at **Armoyan v. Armoyan**, 2015 NSSC 174. At para 82 of the decision, this court scheduled the penalty hearing for June 26, 2015 at 2:30 pm; ordered Mr. Armoyan to purge the contempt by paying the outstanding maintenance arrears; and directed Mr. Armoyan to personally attend at the penalty hearing.

[5] Mr. Armoyan did not comply with these orders. Mr. Armoyan did not purge the contempt. To the contrary, the maintenance arrears actually increased to $1,714,684.04 as of June 23, 2015. In addition, Mr. Armoyan failed to appear before the Supreme Court of Nova Scotia at the penalty hearing.

[6] The court finds that Mr. Armoyan was aware of his obligation to purge the contempt and to attend at today's hearing for two reasons. First, a copy of the decision was sent to Mr. Armoyan at his designated street and email addresses. Second, on June 16, 2015, in response to an email sent from a judicial assistant concerning the faxing of the contempt decision, Mr. Armoyan wrote an email, in which he stated as follows:

> I have no fax #, the only method of communication i have is email, mailing to my regular address would not reach me, I would appreciate getting it by email.

[7] The email address which Mr. Armoyan provided on June 16 was the same as the designated email address. Mr. Armoyan was, therefore, aware of his legal obligation to pay the maintenance arrears and to attend at today's hearing. Mr. Armoyan chose to ignore the court's order. Consequences, in the form of penalties, must be imposed.

[8] A second email was received from Mr. Armoyan on June 16, 2015, which provided as follows:

> I omitted to mention that I don't have a Nova Scotia, or a candian address as I'm not a resident and have not been a resident since April 25, 2015.

Analysis

[9] What penalty should be imposed?

Position of the Parties

[10] Ms. Armoyan states that a period of incarceration, a substantial fine, an abuse of process remedy, and costs are appropriate penalties, for a number of reasons, including the following:

- Mr. Armoyan's defiance was egregious, planned and deliberate.
- Mr. Armoyan's defiance spanned many months, and resulted in Ms. Armoyan and the children experiencing prolonged emotional and financial hardship.
- Mr. Armoyan abused the legal process in an attempt to avoid the payment of child and spousal support.
- Justice requires that this court should, and must, impose significant penalties.

[11] Mr. Armoyan did not advocate a position on the appropriate contempt penalty.

Rules

[12] Rule 89.13 provides this court with the authority to impose a number of penalties following a contempt finding. Rule 89.13 reads as follows:

> 89.13 (1) A contempt order must record a finding of guilt on each allegation of contempt for which guilt is found and it may impose a conditional or absolute discharge, a penalty similar to a remedy for an abuse of process, or any other lawful penalty including any of the following:
>
> (a) an order that the person must abide by stated penal terms, such as for house arrest, community service, or reparations;
>
> (b) a suspended penalty, such as imprisonment, sequestration, or a fine suspended during performance of stated conditions;
>
> (c) a fine payable, immediately or on terms, to a person named in the order;
>
> (d) sequestration of some or all of the person's assets;
>
> (e) imprisonment for less than five years, if the person is an individual.
>
> (2) A contempt order may provide that a penalty ceases to be in effect when the person in contempt causes contemptuous behavior to cease, or when the person otherwise purges the contempt.
>
> (3) A contempt order may provide for, or a judge may make a further order for, the arrest and imprisonment of an individual, or sequestration of the assets of a corporation, for failure to abide by penal terms, fulfill conditions of a suspended penalty, or comply with terms for payment of a fine.

Factors Relevant to Penalty

[13] In **TG Industries Ltd. v. Williams**, 2001 NSCA 105, Cromwell JA, as he then was, noted that in fashioning a penalty order, the court was "entitled to do so in a way that will obtain compliance with the order so that the party entitled to the benefit of the order, in fact, receives it": para 35. Cromwell JA, at para 38, also supplied the following non-exhaustive list of factors to consider at the penalty stage:

- Whether the contemnor was diligent in attempting to comply with the order.
- Whether there was room for a reasonable disagreement about what the order required.
- Whether the contemnor benefited from the breach of the order.
- What was the extent of the prejudice resulting from the contempt.
- Whether the order was being taken seriously.

[14] In **Larkin v. Glase**, 2009 BCCA 321, Chiasson, JA reviewed the following principles relevant to the penalty stage at paras 48 - 53:

- The primary objective of the civil law sanction of contempt is one of compliance, rather than punishment: para 49.
- Deterrence and rehabilitation are factors relevant to securing compliance with court orders: para 50.
- Remorse is relevant to deterrence. A party who recognizes the error of disobedience and acts on it signals to society at large respect for court orders. Lack of remorse conveys the opposite message: para 51.
- Incarceration is reserved for the more serious contempt of court. The sanction of imprisonment is a power that ought to be used sparingly: paras 52 - 53.

[15] In **Carroll v. Richardson**, 2013 NSSC 187, Jollimore, J stated the following sentencing principles at paras 20 and 21:

- Punishment must relate to the specific offences of which the contemnor was convicted.
- Penalties are to coerce compliance.
- Penalties must be proportional to the breaches.
- Mitigating and aggravating circumstances must be considered.
- Penalties are to deter people from breaching orders in the future and to denounce those who fail to obey court orders.

[16] To these principles, I would add the following:

- Penalties should not reflect a marked departure from those imposed in similar circumstances.

Incarceration and the Collection Act

[17] It is occasionally argued that imprisonment is not an available penalty for contempt associated with the nonpayment of maintenance because of s 4 of the *Collection Act*, RSNS 1989, c 76, which provides that "[s]ubject to this *Act*, no person shall be arrested or imprisoned for default in payment of any judgment ordering or adjudging the payment of money". A judgment includes an order for alimony or maintenance pursuant to s 2(f) of the *Act*.

[18] I reject this argument because of the express wording of Rule 89 and judicial commentary. Rule 89.02 (a) makes it clear that contempt is available for a violation of an order to pay maintenance. Further, once a contempt finding has been entered, imprisonment is an optional penalty as specifically stated in Rule 89.13 (1) (e). The Rules do not limit or restrict the full range of contempt penalties, including that of imprisonment. Accordingly, on its face, Rule 89 contemplates imprisonment as a potential penalty for contempt based on the failure to follow the provisions of a maintenance order. It is also noted that the Rules are not subordinate legislation; they have the "the force of law": **National Bank Financial Ltd. v. Barthe Estate**, 2015 NSCA 47, paras 172 – 175.

[19] Further, the Nova Scotia Court of Appeal affirmed that incarceration is an available penalty for the nonpayment of maintenance, despite the *Collection Act* prohibition, in **MacNeil v. MacNeil,** [1975] NSJ No 439 (SCAD). The appellate analysis, although based on earlier versions of the *Collection Act* and the *Civil Procedure Rules*, nonetheless held that the *Rules* override the *Collection Act*, to the extent that any inconsistency or conflict exits, at para 25, wherein, MacKeigan, CJNS, said as follows:

> Rules 1 to 56 inclusive and Rule 62 and 63 were made by the Judges of the Supreme Court as "Civil Procedrue *[sic]* Rules" and were given the force of statute by s. 43(2) of the Judicature Act, Statutes of 1972, c. 2, which reads:
>
>> "43 (2) Notwithstanding the provisions of subsection (1), the Civil Procedure Rules made by the Judges of the Supreme Court on the

> second day of December, 1971, a copy of which is deposited in the Office of the Provincial Secretary are hereby ratified and confirmed and are declared to be the Civil Procedure Rules of the Supreme Court and shall have the force of law on and after the first day of March, 1972, until varied in accordance with the provisions of this Act."
>
> They thus overrule s. 3 of the Collection Act to the extent that any inconsistency or conflict exists.

[20] MacKeigan, CJNS further reasoned that the *Collection Act* could not shield the appellant from a committal order because the appellant had not only defaulted in an order to pay money, but had also defied the court "by manipulating, concealing and removing assets from the jurisdiction so as to make execution impossible": para 11. The Court of Appeal thus affirmed the trial judge's decision to imprison the former husband for his contemptuous conduct.

[21] In **Tucker v Jollimore**, [1978] NSJ No 60 (SCTD), Hallett, J, as he then was, cited **MacNeil** for the proposition that "[t]he court has the power pursuant to Civil Procedure Rules 52 and 55 … to imprison for contempt for failure of a party to pay money as required under a court order": para. 20.

[22] Such an interpretation is consistent with the *Maintenance Enforcement Act*, 1994-95 c 6, as amended, which contemplates incarceration for the nonpayment of support. The Armoyan maintenance order was registered in Nova Scotia pursuant to the *Interjurisdictional Support Orders Act*, SNS 2002 c 9, as amended. Section 19(6)(a) of the *ISOA* states that once an order is registered, the order is to be filed and enforced in accordance with the *MEA*. Section 37 of the *MEA* states that either the Director, or a recipient, may apply to court for a hearing when a payor defaults in the payment of maintenance. Imprisonment is one of the listed remedies available for default.

[23] Such an interpretation is also consistent with public policy, which favors the enforcement of maintenance orders to protect vulnerable payees, often women, and children. Regrettably, in some instances, only imprisonment will be a sufficient incentive for a select group of payors to comply and honor support obligations.

Decision on Penalty Factors

[24] I have reviewed the evidence, submissions, and law. I have reached my decision on penalty. The following factors are relevant to my determination:

- Mr. Armoyan undertook minimal efforts to comply with the court order. Mr. Armoyan's flagrant defiance spanned many months. The maintenance order, dated October 26, 2012, was registered in Nova Scotia on February 23, 2013. It was not until two years later, in February and March 2015, that Mr. Armoyan finally paid some support to the Maintenance Enforcement Program, and then only in an amount that represented approximately one-third of the monthly sum that was due. No other payments were deposited before or after.

- Mr. Armoyan did not contest that arrears in the shameful amount of $1,601,984.12 were, and are, outstanding. Neither did he seek an order to determine the amount of arrears, which is an option, should there be a dispute, under s 15(4) of the *MEA*. Nor did he file an application to vary. I thus find the statement of arrears to be correct. Therefore, any money which Mr. Armoyan paid directly to Ms. Armoyan, as opposed to a maintenance enforcement agency, and after the Florida court order issued, will form a credit against the $1,474,592.47 unpaid cost award granted by the Florida Circuit Court.

- Mr. Armoyan had, and has, the ability to pay the arrears. As noted at para 38 of the contempt decision, Mr. Armoyan accessed, possessed and controlled over $6.3 million from the time the order was registered in Nova Scotia on February 23, 2013 until the contempt hearing was held on April 29, 2015. This money was in addition to the $23 million which Mr. Armoyan previously transferred to the Middle East. Thus, despite having the financial resources to pay support, Mr. Armoyan chose to ignore the order. Mr. Armoyan did not act in good faith; to the contrary, his actions were an egregious, planned and deliberate scheme to avoid the payment of child and spousal support.

- Mr. Armoyan benefited from the breach of the order. He used his time to "manipulate, conceal and remove assets from the jurisdiction so as to make execution impossible," in a manner reminiscent of that described in **MacNeil v. MacNeil,** ***supra***.

- There are many aggravating features. Mr. Armoyan refuses to pay maintenance. Mr. Armoyan strategically transferred millions of dollars out of the country, and then encumbered his remaining assets to avoid execution.

To exacerbate the situation, Mr. Armoyan left Canada to avoid the personal consequences arising from his contemptuous conduct. Mr. Armoyan advised in his June 16 email that he was no longer a resident of Nova Scotia or Canada effective April 25, 2015. The contempt hearing was held on April 29. The inference to be drawn from Mr. Armoyan's decision to leave the country is unmistakeable.

- There is no room for a reasonable disagreement about what the order required. Mr. Armoyan was ordered to pay $29,612 US in monthly child and spousal support, together with arrears. He did not. Mr. Armoyan disagreed with the decisions of the courts. He therefore disregarded a court order. Mr. Armoyan conducted himself as if he was above the law, as if the law was of no consequence. Such an attitude cannot be condoned as noted in **Surgeoner v. Surgeoner**, [1992] OJ No 299 (Ct J), wherein Blair, J stated at para 5 as follows:

  > 5 Today, I, too, echo those sentiments. No society which believes in a system of even-handed justice can permit its members to ignore, disobey, or defy its laws and its courts' orders at their whim because in their own particular view, it is right to do so. A society which countenances such conduct is a society tottering on the precipice of disorder and injustice.

- Significant prejudice has arisen from Mr. Armoyan's contemptuous conduct. In **Armoyan v. Armoyan**, 2013 NSCA 99, Fichaud, JA described Mr. Armoyan as "[h]aving bled Ms. Armoyan financially with his litigious shenanigans:" at para 288. Mr. Armoyan's approach has not changed. Ms. Armoyan and the children struggle to survive, while Mr. Armoyan, a father with millions of dollars, unabashedly ignores the court order and his legal responsibilities. Ms. Armoyan, with the assistance of her dedicated legal team, is left to navigate an international legal labyrinth in an attempt to enforce child and spousal support orders. This outcome cannot be tolerated.

- Mr. Armoyan's contemptuous conduct also obstructs access to justice and frustrates the efficient use of judicial resources.

- It is imperative that orders be taken seriously by all affected by them, especially in the family law context, as noted by Blair, J in **Surgeoner v. Surgeoner,** ***supra***, at para 6 which states as follows;

  > 6 The need for the sanction of contempt proceedings is of significant

> importance in the field of family law. There is an undertow of bitterness and sense of betrayal which often threatens to drown the process and the parties themselves in a sea of anger and "self-rightness." In this environment it is all too easy for a spouse to believe that he or she "knows what is right," even after a matter has been determined by the court, and to decide to ignore, disobey or defy that determination.

- Mr. Armoyan has shown no remorse. There has been no apology and no effort to comply.

- Mr. Armoyan' egregious conduct deteriorated further by his failure to attend at the contempt and penalty hearings in direct defiance of the court's direction to appear.

Imprisonment

[25] In light of the above, I have determined that a period of incarceration of four years is a necessary penalty, proportional to the gravity of the offence, and will hopefully coerce compliance. In setting this period, I have reviewed the cases submitted by Ms. Armoyan's counsel, which show imprisonment ranges from seven days to six months, and in **MacNeil v. MacNeil**, a case affirmed by the Nova Scotia Court of Appeal, incarceration was imposed until the contempt was purged, or the court further ordered.

[26] The Rules authorize imprisonment for a period less than five years. I infer that the outermost range is reserved for the most flagrant and deliberate of violations. Given this court's factual findings, it is clear that Mr. Armoyan fits within the category of cases reserved for the most egregious of contemptuous conduct. His sentence must be proportional to the breaches. A committal order of four years achieves that objective and realizes the sentencing principles previously articulated.

[27] Given, however, that the purpose of contempt is to coerce compliance, and not to punish, this period of incarceration will be vacated once Mr. Armoyan purges the contempt and complies with all other penalties imposed by the contempt order.

[28] A warrant must also issue for Mr. Armoyan's arrest and imprisonment given his nonappearance at the penalty hearing.

Fine

[29] I have further determined that a fine of $384,000 is appropriate and proportional to the gravity of the offence. This fine, in conjunction with the committal order, will hopefully coerce compliance. In so doing, I adopt the method of calculation provided by Ms. Armoyan's counsel as providing an objective measure upon which to calculate a fine, given the context of this case. The calculation is based on s 37 (3)(d) of the *MEA*, which states that where there is a failure to make a maintenance payment by a date specified in an order, a payor can be fined in an amount not exceeding $3,000 for each default.

[30] The support order compels Mr. Armoyan to pay four separate orders: retroactive spousal support of $261,962; retroactive child support of $441,105; monthly spousal support of $14,612 and monthly child support of $15,000. Mr. Armoyan's default in making these four separate payments spanned 32 months. The multiplication of the $3,000 penalty by 32 months yields a product of $384,000.

[31] The maximum penalty of $3,000 per month for each default is appropriate in the context of this case. Such a penalty represents a small percentage of the financial toll which the nonpayment of maintenance has exacted on Ms. Armoyan and the children. For example, they have been forced to move to inferior residences on several occasions because Ms. Armoyan can no longer afford the rent. Ms. Armoyan has been forced to use credit, with inherent high interest rates, to meet living expenses. Ms. Armoyan has been forced to reduce expenses to bare necessities; her family's lifestyle has plummeted. In contrast, Mr. Armoyan's capacity to sustain the marital standard of living has not changed.

[32] Despite these findings, I will not, however, order that a fine be payable for potential future breaches which have not been proven beyond a reasonable doubt. Another application can be filed if there are future breaches.

Abuse of Process

[33] I will not grant an abuse of process remedy. The contempt application is a separate proceeding from the *Matrimonial Property Act* application. It is not appropriate for this court to strike Mr. Armoyan's *MPA* pleadings as a remedy in the contempt proceeding, especially in light of the fact that this court has a reserve decision pending on this very issue in the *MPA* application.

Costs

[34] Costs, based on Tariff A, and as calculated by Ms. Armoyan's counsel are approved. The amount involved was $1,601,984.12. Applying the basic scale, produces an award of $104,128.97, plus $2,000 for each day of trial. The contempt hearing was scheduled for a day; the penalty phase for a half day. Tariff A is often applied to applications which have assumed trial like features. Total costs of $107,128.97 are payable forthwith. Such an order will ensure justice is done between the parties and will comply with Rule 77.

Conclusion

[35] To coerce compliance, and not to punish, and to achieve the various sentencing principles, this court imposed the following penalties on Mr. Armoyan for his contemptuous conduct:

- Imprisonment of four years, which term can be vacated once Mr. Armoyan has purged his contempt and complied with the penalty provisions of the contempt order.
- A fine payable to Ms. Armoyan in the amount of $384,000, payable forthwith.
- Costs payable to Ms. Armoyan in the amount of $107,128.97, payable forthwith.

[36] Mr. Niman is to prepare the order. The court will draft the warrant.

Forgeron, J.