SUPREME COURT OF NOVA SCOTIA
Citation: Mason v. Lavers, 2011 NSSC 63

Date: 20110209
Docket: Hfx 311778
Registry: Halifax

Between:

Donna Ann Mason and Pamela Bernadette Mason

Applicants/Respondents

v.

Lisa Michelle Lavers and Dolorosa Theresa Mason

Respondents/ Applicants

Judge:	The Honourable Justice Patrick J. Duncan
Heard:	January 11 and 20, 2011 in Chambers in Halifax, Nova Scotia
Counsel:	Michael I. King, for the Applicants Richard A. Bureau, for the Respondents

By the Court:

Background

[1] Dolorosa Theresa Mason (Mrs. Mason) is the now 83 year old mother of Angela Busche, Brenda Mason, Carol Rafuse, Donna Mason, Pamela Mason and Lisa Michelle Lavers.

[2] On January 4, 2006, Mrs. Mason executed an Enduring Power of Attorney that appointed Brenda Mason as her attorney, with Ms. Lavers as the alternate. Later in that year, Brenda Mason decided that she did not want to act as Attorney and so on October 17, 2006 Mrs. Mason executed a new Power of Attorney that appointed Angela Busche as her Attorney, with Ms. Lavers named as the alternate Attorney.

[3] The October 17 document provides a broad authority to the attorney. Of particular relevance to this proceeding are the following paragraphs:

> 8. In accordance with the *Medical Consent Act* [sic] of Nova Scotia, I expressly authorize my attorney to consent to medical treatment or give directions respecting medical treatment on my behalf, in the event that I subsequently become incapable of giving such consent or directions.

...

> 10. In the event that, due to my mental or physical condition. I require nursing services and/or medical services and /or housekeeping/homemaking services at a senior citizens home, nursing home, hospital, medical clinic, or other facility providing any of the aforementioned services, then my attorney is authorized to admit me to any of the aforementioned facilities and to sign all documentation required from my admittance to and continued stay at any of the aforementioned facilities and authorize my use of any of the aforementioned services. My attorney's decision, with respect to the aforementioned matters, shall be honoured by my family and physician(s).

[4] After receiving medical advice that Mrs. Mason was no longer competent to manage her own affairs, Ms. Busche initiated a search for a suitable nursing home for her mother. A placement was made in the Melville Lodge Nursing Home on April 10, 2008.

[5] Counsel retained by Pamela and Donna Mason attended on Mrs. Mason on June 5, 2008, for the execution of a new Power of Attorney that purported to name Pamela Mason as Mrs. Mason's Attorney. This was done without notice to Ms. Busche or Ms. Lavers.

[6] On the same day, Pamela and Donna Mason removed Mrs. Mason from Melville Lodge and returned her to her residence at 39 Wedgewood Avenue,

Halifax, Nova Scotia. Donna, her husband, and their children moved in as well, and have continued to reside in the house since that day.

[7] In consequence of a dispute over the exercise of the competing Powers of Attorney, Ms. Busche withdrew as the attorney for Mrs. Mason in favour of Ms. Lavers assuming the position.

[8] Ms. Lavers initiated proceedings intended to set aside the June 5, 2008 Power of Attorney. The application was resolved by a Consent Order issued by Justice Wright of this Court, on November 20, 2009. That Order conclusively resolved that Lisa Michelle Lavers properly discharged her duties as Attorney for Dolorosa Theresa Mason to the date of the Order, and that Ms. Lavers would continue to have authority as Attorney for her mother.

[9] The further effect of the Order was to permit Mrs. Mason to remain in her home with Donna Mason and her family. Ms. Lavers retained oversight of the finances and medical care of Mrs. Mason with provisions for Donna Mason to contribute to some of the costs of operating the home, and to be reimbursed for certain expenses she might incur on behalf of Mrs. Mason. When the time

ultimately came for Mrs. Mason to be removed from her home, then the Order required Donna and her family to vacate the house. At that point the house is to be sold and the money applied to Mrs. Mason's needs.

[10] On June 14, 2010 Mrs. Mason was removed from her home on the direction of Ms. Lavers. Mrs. Mason was admitted at Parkland Retirement Living, a group of privately owned and operated assisted care living facilities that provide for varying levels of care according to the needs of the resident. This was done over the strong objections of Donna Mason.

[11] Donna Mason feels that it was not in her mother's best interests to be removed from her Wedgewood Avenue residence. If she vacates as the Order directs, then the house will be sold and the opportunity to have her mother spend her last days in her own house will be gone. As a result, Donna Mason and her family have refused to leave Mrs. Mason's house despite having been served notice to do so.

[12] In consequence of Mrs. Mason's relocation to Parkland, charges of contempt have been filed by Pamela Mason and Donna Mason as against Ms.

Lavers, and by Ms. Lavers and Mrs. Mason against Donna Mason. The charges allege breaches of the Consent Order of November 2009.

Principles of Contempt

[13] The elements of contempt were discussed by Cromwell J.A. (as then was) in *TG Industries Ltd. v. Williams* 2001 NSCA 105:

> 13 Civil and criminal contempt, although they are not mutually exclusive categories, have different elements and purposes. The core element of civil contempt is failure to obey a court order of which the alleged contemnor is aware. In *Poje v. British Columbia (Attorney General)*, [1953] 1 S.C.R. 516 at 522, Kellock, J. approved a definition of civil contempt as "...disregarding orders or judgments of a Civil Court, or in not doing something ordered to be done in a cause ... ". To similar effect, McLachlin, J. (as she then was) in *United Nurses of Alberta v. Alberta (Attorney General)*, [1992] 1 S.C.R. 901 at 931 stated that "[a] person who simply breaches a court order ... is viewed as having committed civil contempt. " See also *Baxter Travenol Laboratories v. Cutter (Canada) Ltd.*, [1983] 2 S.C.R. 388 at 396 - 397 and *Bhatnager v. Canada (Minister of Employment and Immigration)*, [1990] 2 S.C.R. 217 at 224 - 227. The primary objective of exercising the civil contempt power is to secure compliance with the order. As Kellock, J. said in Poje at 517, in the case of civil contempt, "... the requirements of the situation from the standpoint of enforcement of the rights of the opposite party constitute the criterion upon which the court acts." (See also *Sunnyside Shopping Plaza v. Sunnyside Transmission* (1981), 46 N.S.R. (2d) 156 (S.C.T.D.) at para. 16 and *Leger v. Dunbar Estate*, [1983] N.S.J. No. 209 (S.C.T.D.) at para. 31).
>
> ...
>
> 16 The second difficulty in the authorities arises from the use of terms such as "intent" and "intentional" in different senses. In some cases, it is clear that the

intention required for civil contempt is the intention to commit an act which is, in fact, prohibited (see, for example, *Re Sheppard v. Sheppard* (1975), 62 D.L.R. (3d) 35 (Ont. C.A.) at 595. In other cases, the language appears to suggest that the required intention is that the alleged contemnor meant to disobey it in the sense that he or she knew the act was prohibited and deliberately chose to do it anyway: see, for example, *Morrow, Power v. Newfoundland Telephone Co. et al.* (1994), 121 Nfld. & P.E.I.R. 334 (Nfld. S.C.A.D.) at para. 19. In my view, civil contempt requires intention in the former but not the latter sense of the word.

...

19 There is a long line of authority for the view that intention to disobey is not an element of civil contempt. I will briefly review what, to my mind, are the four leading cases.

31 There is authority for the view that contempt should not be found where the defendant has exercised due diligence and done everything possible to comply with the terms of the order: see e.g. *Morrow, Power v. Newfoundland Telephone Co. et al., supra* at para. 20. While I am attracted by this view, which, if adopted, might provide an answer to a Charter challenge to the civil contempt power, there is no evidence of such diligence on the respondent's part in the record. I would prefer to leave this question open for fuller consideration in a case which raises the issue concretely. I have no doubt, however, that the diligence of the alleged contemnor's attempts to comply is relevant to the discretion of the court in making an order after a finding of contempt.

32 ... I do not intend to depart in any way from the general principles that the elements of contempt must be proved beyond a reasonable doubt and that the contempt power should be used cautiously and with great restraint. I also recognize that there are numerous subtleties in the relevant law, particularly relating to the relevance to the issue of contempt of the clarity of the order and of the alleged contemnor's reasonable efforts to comply with it. However, it is not necessary to address them further in this case.

(Emphasis added)

See also, *Soper v. Gaudet* 2011 NSCA 11, at paras. 22, 47 and 48.

[14] An earlier decision of the Nova Scotia Court of Appeal is consistent with these statements, but speaks further as to the need for clarity in the order. In *Skipper Fisheries Ltd. v. Thorbourne* (1997), 157 N.S.R.(2d) 241, Hallett J.A. writing on behalf of the majority held:

> 77 The jurisdiction of the Court to make a finding of contempt should be exercised with scrupulous care and only when the contempt is clear (*Rawlinson v. Rawlinson* (1986), 52 Sask. R. 191 (Q.B.)).
>
> 78 A citation for contempt must be defined with particularity *(Northwest Territories Public Service Association v. Commissioner of the Northwest Territories* (1979), 107 D.L.R. (3d) 458 (NWT. C.A.) at p. 479).
>
> 79 The terms of an order which it is alleged that a party has disobeyed and ought to be found in contempt must be clear and unambiguous (Borrie and Lowe, *The Law of Contempt*, 1973 at p. 315. It must be proven beyond a reasonable doubt that the court order was breached; *Filipovic v. Glusica* (1995), 174 A.R. 356 (Alta. C.A.)).

Analysis

[15] The accused parties agree that they were aware of, and understood the terms of Justice Wright's order. I take this knowledge to be proven in relation to each contempt allegation.

Complaints against Lisa Michelle Lavers

Allegation 1:

That Lisa Michelle Lavers wrongfully removed Dolorosa Theresa Mason from her home at 39 Wedgewood Avenue, Halifax Regional Municipality, without first consulting Dr. Angela Morash and obtaining a medical opinion to decide if it was in Dolorosa Theresa Mason's best interest that she be removed from her own home, contrary to the provisions of the Consent Order of the Honorable Justice Robert W. Wright granted on the 20th day of November 2009.

[16] The relevant paragraph of the Order states:

> Dolorosa Theresa Mason shall continue to reside in her own home (39 Wedgewood Avenue, Halifax Regional Municipality, Nova Scotia) with her daughter, Donna Mason, Donna's husband, Robert, and their children until such time as Lisa Michelle Lavers, in consultation with Dr. Angela Morash, from whom Lisa Michelle Lavers shall request a medical opinion, decides it is in Dolorosa Theresa Mason's best interest that she be removed from her own home;

[17] Mrs. Mason was removed from her home on the direction of Ms. Lavers. This was authorized by Paragraph 10 of the Power of Attorney. The Consent Order also confirms that it is Ms. Lavers who has the authority to make the ultimate decision as to when it is in Mrs. Mason's "best interest that she be

removed from her home". However, the Order modified the authority of the Power of Attorney by setting two preconditions to making that decision:

1. Ms. Lavers was required to consult with Dr. Morash;

2. Ms. Lavers was required to request Dr. Morash's medical opinion.

[18] Dr. Morash confirms that she met with Ms. Lavers on April 14, 2010 during which they discussed the status of Mrs. Mason's health and her treatment. There was also two phone calls between them, but I have little information about what was discussed. Ms. Lavers provided a form to Dr. Morash in early May 2010, which was intended to provide medical information to the administrators of Parkland.

[19] Was there a consultation with Dr. Morash? The word "consultation" is defined by the *Merriam Webster Dictionary* as:

> transitive verb
>
> 1: to have regard to : consider

> 2a : to ask the advice or opinion of <consult a doctor> b : to refer to <consult a dictionary>
>
> intransitive verb
>
> 1: to consult an individual
>
> 2: to deliberate together : confer
>
> 3: to serve as a consultant

[20] I find that Ms. Lavers did consult Dr. Morash prior to removing Mrs. Mason to Parkland.

[21] However, by her own admission, Ms. Lavers did not "request a medical opinion" from Dr. Morash, before moving Mrs. Mason to Parkland in June, 2010. She knew of the obligation created by the order and disobeyed it. In doing so, I find that she is guilty of contempt.

Remedy

[22] The penalties for a finding of contempt are set out in **Civil Procedure Rule 89:**

> Penalties for contempt
>
> 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.
>
> **Discharge and variation of contempt order**
>
> 89.14 A judge may discharge or vary a contempt order.

[23] Ms. Lavers offers an explanation for her decision. It must be measured against the following principles, also enunciated in *TG Industries Ltd. v. Williams*:

> [35] In civil contempt, the primary purpose of the sanction is to coerce compliance with the order: see. e.g. *Sharpe, supra* at § 6.100 and *Skipper, supra* at § 73. So, for example, contempt based on disobedience to an order may, in the Court's discretion, be purged by subsequent compliance with it. The judge in fashioning an order after a finding of civil contempt is 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. The result is that the party in whose favour the order is made receives a remedy.
>
> [38] It was within the judge's discretion in this case, if persuaded that it was appropriate and in the interests of justice in all of the circumstances to do so, to fashion an order whose object was to secure for *TG* what Clarke ought to have paid to the sheriff in compliance with the execution order. The discretion is a broad one. Without in any way attempting to be exhaustive (and assuming without deciding that contempt is established here), there are several relevant considerations. These include the diligence of the alleged contemnor in attempting to comply with the order, whether there was room for reasonable disagreement about what the order required, the fact that the alleged contemnor did not benefit from the breach of the order, the extent of the resulting prejudice to the appellant and, of course, the importance of execution orders being taken seriously by all affected by them.
>
> (Emphasis added)

[24] After Ms. Lavers moved her mother to Parkland, Donna and Pamela Mason initiated this contempt application. There were settlement discussions and arising therefrom the parties agreed that Dr. Morash's opinion would be obtained. On July 22, 2010, the opinion was requested and it was produced under date of September 9, 2010. The report has been filed with the court. In doing so, one could say that Ms. Lavers purged the contempt, but by her actions she defeated the purpose underlying the requirement - to only make the decision to move Mrs. Mason after receipt of the report. Not only did that not happen, it cannot happen now in the manner required by the Order.

[25] Ms. Lavers explained that she had several reasons for not obtaining the report earlier, the primary one being that she did not feel that Dr. Morash had the background to offer an opinion that would assist her in making the determination as to what was in Mrs. Mason's best interests. She also distrusted Dr. Morash, feeling that she was biased in favor of Donna Mason.

[26] Ms. Lavers relied on the medical opinions obtained from Dr. Susan Malloy, Dr. Glen Ginther MD FRCP and Sandra Duke RN, NP, MN. Her preference for the opinions of these professionals over that of Dr. Morash was reasonable.

[27] Sandra Duke is a Specialist Nurse Practitioner in Geriatrics at the QE Health Sciences Centre who assessed Mrs. Mason in her home in February 2006. Her report of that visit, and the testing results were provided to Dr. Ginther who authenticated her findings of mild mixed dementia. Dr. Ginther is a specialist in Gerontology at the Geriatric Ambulatory Care/ Memory Disability Clinic at Camp Hill site of the QE II Health Sciences Centre.

[28] Nurse Duke conducted a further assessment of Mrs. Mason, in her home, in November of 2007. Again her report and testing results were authenticated by Dr. Ginther. The conclusion was that the dementia had progressed and a referral would be made for Home Care.

[29] Dr. Malloy had been Mrs. Mason's family physician from 1992 until 2008. She first observed a deterioration of Mrs. Mason's mental condition in 2005, and

diagnosed Mrs. Mason with “mixed mild dementia” in February of 2006. By December of 2007, after consulting with Dr. Ginther and Sandra Duke, Dr. Molloy determined that Mrs. Mason was no longer competent to manage her health or financial affairs.

[30] After Donna and Pamela Mason removed Mrs. Mason from Melville Home in June 2008, they retained Dr. Morash to act as the physician. In doing so, they purported to act under the now admittedly invalid Power of Attorney executed in favor of Pamela Mason.

[31] Dr. Morash completed a residency in New Brunswick and became licenced to practice medicine in Nova Scotia in the summer of 2008. She has no specialized training in gerontology, although she has an interest in the area and at this point approximately 40% of her practice involves geriatric patients.

[32] Mrs. Mason met with Dr. Morash at the doctor’s office on six occasions between September 2008 and June of 2010. All appointments were made by Donna Mason. The first visit in September 2008 included a check up. This was very shortly after Dr. Morash became licenced as a medical practitioner.

[33] Future visits focused on physical ailments including blood pressure concerns, calluses on the feet, an infection and in May 2010 blood tests were ordered because of a suspected underactive thyroid. Dr. Morash testified that she had no concerns about Mrs. Mason's care during the time that she resided with Donna Mason.

[34] Dr. Morash never made a home visit, and relied on Donna Mason's reporting of Mrs. Mason's care and condition while at home. There is no evidence that Dr. Morash carried out an independent investigation of Mrs. Mason's previously diagnosed dementia.

[35] Objectively speaking, Dr. Morash did not have the specialized training in gerontology, or the clinical experience with Mrs. Mason, as did Dr. Malloy, Nurse Duke, and Dr. Ginther.

[36] Dr. Morash's observations made after Mrs. Mason's placement at Parkland further support these concerns. Her September 9, 2010 opinion letter concluded:

> If 24 hour care can be provided in the home then I feel that medically it would be in her best interests to live there until such a time that this care could not be provided or until her medical status changes.

[37] The opinion was provided without having had the benefit of observing Mrs. Mason in the home. Her understanding of the conditions of care at the house are based solely on the self reporting of Donna Mason.

[38] Dr. Morash did not indicate in her report why it would be in Mrs. Mason's best interests to live at home. She testified that being at her own home has the potential of extending Mrs. Mason's life, but Dr. Morash does not address the quality of that life. She made no comparative analysis of the advantages and disadvantages of Parkland with care at the house.

[39] There was no inquiry as to how Donna Mason and her family could offer 24 hour, 7 day a week care when she and her husband work outside the home and look after 3 children under the age of 16.

[40] Dr. Morash stated:

> There has been no evidence of aggressive or inappropriate behaviour, wandering or exit seeking which can be seen in patients with dementia.

[41] This would seem to be inaccurate as there were concerns as early as 2006 of Mrs. Mason leaving stove burners on high and burning pots. It was reported to Nurse Duke in 2006 that Mrs. Mason had fallen asleep in a bath of water. This apparently occurred again in 2008 while in Donna Mason's care. Mrs. Mason got up in the nighttime, ran a bath, got in the tub and went to sleep, before anyone awoke to discover her and remove her from this very dangerous situation. These events suggest that Mrs. Mason represents a danger to herself and to the other occupants of the house.

[42] Dr. Morash makes no assessment of the trauma that might occur in again moving this 83 year old lady who suffers from dementia.

[43] Her opinion was influenced by a Mini Mental State Exam (MMSE) score of 24/30 recorded by staff at Parkland in August 2010, suggesting a mild form of dementia. If this were so, then it would mean she was a better candidate for residing in her own home with Donna Mason.

[44] Dr. Morash agrees that dementia is a disease that grows progressively worse. Mrs. Mason's recorded MMSE scores were 26/30 in 2006; 19/30 in 2007 and 15/30 on June 22, 2010. While the last one (indicating moderate dementia) could, Dr. Morash testified, be influenced negatively by the trauma of the move a week before, she could offer no explanation for the sudden spiking of the MMSE score in August 2010, back to 2006 levels. It appears she accepted the result as valid without any further inquiry. Either it is inaccurate and it was unsafe to rely on the score to make an assessment of Mrs. Mason's mental state, or it was indicative of a very positive experience at Parkland that was, some might say surprisingly, restoring some of Mrs. Mason's mental capabilities. In either case it brings Dr. Morash's assessment into question.

[45] I have no doubt that Dr. Morash is a competent and caring doctor, but in this matter she has overreached.

[46] Justice Wright's order does not make it a pre-condition that Dr. Morash's opinion be in writing, or that it would be the only information relied upon in making the decision, nor even that an adverse opinion of Dr. Morash could operate to veto the decision of Ms. Lavers to remove her mother and place her at Parkland.

The determination of whether it was in Mrs. Mason's best interest to be removed from her home is solely that of Ms. Lavers, acting under the Power of Attorney. It is what Mrs. Mason wanted. The order does not take away that ultimate decision making power.

[47] I do not find the decision of Ms. Lavers to act without the opinion of Dr. Morash to be an egregious breach of the order. It was a decision made after consultation with Dr. Morash, and after having considered already available and credible information. Dr. Morash's written report, on which I would put little weight, serves as an *ex-post facto* confirmation of the correctness of Ms. Lavers' assessment of the value of such a report in making the decision.

[48] Ms. Lavers does not benefit personally from the decision to remove her mother to Parkland, except to the extent that she feels more comfortable in visiting with her mother there, as she can do so without the fear of personal clashes with Donna Mason. She says that her concerns about the unpleasantries that she expected to exchange when in the presence of Donna Mason kept her from visiting her mother while she was at the Wedgewood residence.

[49] The purpose of civil contempt is to secure compliance with the order. Donna Mason says that means ordering that Mrs. Mason be returned to her residence. She qualifies it by suggesting that it would only be done if a further medical report is obtained and supports such a result. That is not a practical result in this case, nor would the order justify such a conclusion as a means to purge the contempt.

[50] While Dr. Morash's report was obtained after, and not before the removal, as the order required, the report is in hand now. It has not changed Ms. Lavers' decision that her mother is best served by being in Parkland. That is a decision that she is authorized to make. Even if I were inclined to order Mrs. Mason returned to her home, which I am not, Ms. Lavers would be entitled to immediately remove her again.

[51] It is important to note that there is evidence that Mrs. Mason is being well cared for in Parkland. After an initial weight loss when she began to reside at Parkland that was quite concerning Mrs. Mason is now at a healthy weight. I accept evidence that she is provided with opportunities at Parkland to participate in activities that are appropriate to her age and mental capacity. She receives regular

visits from family members. There is full time staff on duty 24/7 who conduct regular rounds. All of her needs are being met.

[52] I find that it has been proven beyond a reasonable doubt that Lisa Lavers is in contempt by having failed to seek Dr. Morash's opinion prior to removing Mrs. Mason to Parkland. I reject the proposed sanction suggested by counsel for Donna Mason at the hearing. I will hear oral submissions as to penalty at the scheduled return to court of this matter on February 15.

Allegation 2:

That Lisa Michelle Lavers failed to provide Pamela Bernadette Mason with copies of all bank statements relating to the bank accounts of Dolorosa Theresa Mason on a quarterly basis commencing January 1st, 2010.

[53] The relevant paragraph of the Order states:

> *Commencing January 1, 2010, on a quarterly basis, Lisa Michelle Lavers shall provide Pamela Mason with copies of all bank statements relating to the bank accounts of Dolorosa Theresa Mason and further agrees to reimburse Donna*

> *Mason for any reasonable expense attributable to Dolorosa Theresa Mason within 14 [days] (sic) from Donna Mason providing a receipt for same*;

[54] The bank statements for the first quarter were available in April of 2010. The statements for the period January through July 2010 were provided by Ms. Lavers to her counsel in or about July. Ms. Lavers' counsel accepts full responsibility for the failure to send them on to Donna Mason's counsel until November 2010 at which time he also provided bank statements from July through October 2010. Any contempt by Ms. Lavers could only relate to the delay in providing the first quarter bank statements for 2010 during the period April to July of 2010.

[55] The explanation offered by Ms. Lavers is that she had difficulties with Canada Revenue Agency in accepting her Power of Attorney document as valid. She also outlines other problems she was having, none of which, in my view explains the failure to provide the bank statements as required. This was an uncomplicated task that could and should have been performed in a timely manner.

[56] There was no such issue with providing the second quarter statements, and no complaint has been made about failure to comply since November of 2010.

[57] I find that it has been proven beyond a reasonable doubt that in failing to provide the first quarter statements in a timely manner that Ms. Lavers is guilty of contempt.

[58] I will hear oral submissions as to penalty at the scheduled return to court of this matter on February 15.

Allegation 3:

That Lisa Michelle Lavers failed to reimburse Donna Ann Mason for reasonable expenses attributable to Dolorosa Theresa Mason within 14 days from Donna Ann Mason providing a receipt for same.

[59] The relevant paragraph of the Order states:

> *Commencing January 1, 2010, on a quarterly basis, Lisa Michelle Lavers shall provide Pamela Mason with copies of all bank statements relating to the bank*

> *accounts of Dolorosa Theresa Mason and further agrees to reimburse Donna Mason for any reasonable expense attributable to Dolorosa Theresa Mason within 14 [days] (sic) from Donna Mason providing a receipt for same*;

[60] Donna Mason alleges that she personally paid for respite care workers, for food and personal items to be used by her mother and for her mother's prescription drugs. Ms. Lavers has refused to pay these amounts challenging whether those expenses where reasonable and/or proven by receipts.

Respite Care

[61] Donna Mason hired two friends, who had been known to Dolorosa Mason for a number of years, to provide respite care to Mrs. Mason at her home on Wedgewood. These individuals provided approximately 10 hours per week of respite care, and were paid $10/hr by Donna Mason. Receipts showing payment were submitted by Donna Mason to Lisa Lavers for payment. The total claimed is $1200, comprised of claims of $400 per month for December 2009, January 2010 and February 2010. These have not been paid.

[62] Ms. Lavers claimed that these expenses were not "reasonable" because:

1) the receipts did not include the Social Insurance numbers of the workers;

2) Ms. Lavers had no input to who was hired or on what terms;

3) Donna Mason had refused respite care offered by the province under an arrangement that would have resulted in a lower cost to Dolorosa Mason; and

4) she distrusted Ms. Mason because of questionable receipts provided in support of other expense claims.

[63] It is evident that respite care was necessary and in the best interests of Mrs. Mason. The order did not specify the form of receipts that needed to be provided and Ms. Lavers did not communicate to Donna Mason the reasons for refusing to pay. As such, she did not afford Ms. Mason an opportunity to answer any concerns that Ms. Lavers may have had.

[64] Requiring SINs to be recorded on the receipts was not a reason to refuse payment.

[65] It is true that Donna Mason did not respect the authority of Ms. Lavers by hiring respite care without consultation as to who would provide it, at what cost,

and for how long. That does not, however, impact on the reasonableness of the expense.

[66] Capital Health Care Coordinator Carol Sweet assessed home care availability for Mrs. Mason in 2008 and again in 2009. Each resulted in approval of provincially supplied respite care of (4) hours per week. The evidence indicates that Northwood Homecare also looked at providing home care.

[67] Donna Mason rejected these opportunities on the basis that the level of care was insufficient in quality and quantity of care. In her view, the friends were a better choice to provide this care. As to the amount of time, she points out that she was not receiving compensation for her care giving, except for the benefit of living in the house for the price of half of the utility costs.

[68] There are issues of deceptive receipting of other claimed expenses but it does not call into question the validity of these claims.

[69] I conclude that these expenses were “reasonable” and properly receipted. There was no basis upon which to deny payment. I find Ms. Lavers guilty of contempt in relation to the non payment for respite care. I will hear oral submissions as to penalty at the scheduled return to court of this matter on February 15.

Personal Care Needs

[70] Donna Mason submits that she is entitled to be reimbursed $310 for Personal Care Needs of which $180 relates to the purchase of “Depends” and the balance of $130 for hair care for Mrs. Mason.

[71] Ms. Lavers has refused to pay claims for these expenses on the basis that they have not been properly receipted. Donna Mason admitted under cross examination that she had not saved most of her receipts and so submitted duplicate receipts for “Depends” without admitting this to Ms. Lavers. Her rationale is that she knows that the items were purchased on a regular basis and that they were necessary and so the receipts that she did provide were legitimate as examples of a recurring cost.

[72] This deception undermines Ms. Mason's credibility in relation to those claims that were not properly receipted and makes it unsafe to conclude that Ms. Lavers should be found guilty of contempt. To the contrary, she was within her rights to refuse payment where the receipts that the order required were not provided.

[73] There were no receipts submitted in evidence to support the hair care and incomplete receipting for personal care products.

[74] I am not satisfied beyond a reasonable doubt that Lisa Lavers was in contempt of the order as it relates to the claim of $310 for "Personal Care Needs".

Prescriptions

[75] Donna Mason claims for payment of $268.31 expended by her on prescriptions for Dolorosa Mason. Ms. Lavers has not paid them.

[76] This claim is supported by receipts and are reasonable. No explanation has been offered for the non-payment of these expenses.

[77] I find that Lisa Lavers is guilty of contempt for her failure to pay the amount of $268.31 to Donna Mason to reimburse the reasonable and receipted expenses for prescription drugs.

Food

[78] Donna Mason claims the amount of $200 per month for December 2009-May 2010 inclusive for food purchased for Dolorosa Mason. The total claim is for $1200. There are no receipts submitted that are specific to these costs, though undoubtedly they were incurred. The same might be said about items for personal care items that Mrs. Mason would have needed.

[79] Ms. Lavers defends on the basis of the requirement in the Order for receipts. It is not entirely unfair that she does so. If she spends her mother's money and

cannot show receipts then there may be some who would argue that she is not properly fulfilling her fiduciary responsibilities as attorney.

[80] This claim, in particular, exemplifies the shortcomings of trying to resolve disputes over Mrs. Mason's care and cost of care by way of contempt proceedings. There are other forums, using different legal bases that may provide the parties, especially Donna Mason, with a broader assessment of how Ms. Lavers has met the responsibilities she has as attorney for Dolorosa Mason.

[81] I am not satisfied beyond a reasonable doubt that Ms. Lavers is in contempt for failing to pay the claim for food expenses, as the order required receipts and no, or inadequate, receipts have been provided in support.

Summary as to Allegation #3

[82] In summary I conclude that Lisa Lavers is in contempt by reason of her failure to pay the sum of $1468.31, being the reasonable and receipted amounts paid by Donna Mason for respite care and prescription medications for Dolorosa Mason. I dismiss the allegations of contempt as they relate to claims for $1510 for food and personal care needs as they were not properly receipted as required by the terms of the Order.

[83] I will hear oral submissions as to penalty at the scheduled return to court of this matter on February 15.

Complaints against Donna Mason

Allegation 1:

That Donna Mason has not vacated the home of Dolorosa Theresa Mason within the sixty (60) days of Dolorosa Theresa Mason's removal from the home as required by the Consent Order.

[84] The relevant paragraph of the Order states:

> Donna Mason and her husband Robert and their children shall vacate Dolorosa Theresa Mason's home within 60 days from Dolorosa Theresa Mason's removal from the home;

[85] After Mrs. Mason moved to Parkland in June 2010, notice was served on Donna Mason that she and her family must vacate the Wedgewood residence within 60 days. They have not done so, although Ms. Mason acknowledges that by failing to do so she is in breach of the order.

[86] I am satisfied beyond a reasonable doubt that Donna Mason is in contempt by breaching her obligations under the order to vacate Dolorosa Mason's home within 60 days of her removal to Parkland.

[87] I will hear oral submissions as to penalty at the scheduled return to court of this matter on February 15.

Allegation 2

That Donna Mason has not reimbursed Dolorosa Theresa Mason for Donna Mason's portion of utilities that she is required to pay for under the Consent Order.

[88] The relevant paragraph of the Order states:

> *Commencing December 1, 2009, Donna Mason and her husband Robert and her children shall contribute 50% of utilities (including, but not limited to, power, heat, hot water, cable, telephone, etc.) during their occupancy of Dolorosa Theresa Mason's home*;

[89] Donna Mason agrees that she understood the obligation created by this paragraph and that it was always her intention to pay that which she owed.

[90] A part of the dispute leading to this allegation was a result of a failure to exchange timely and accurate billing and payment information. This was resolved at the hearing of the application.

[91] Another part of the dispute was generated by Donna Mason's request, conveyed by letter to Ms. Lavers, that they offset the utilities amount payable by

amounts Ms. Mason claimed to be owed as expenses she incurred for Dolorosa Mason. Ms. Lavers disputed those claims, which are addressed separately.

[92] Donna Mason should have made the necessary payments on an ongoing basis. She did not have an express agreement from Ms. Lavers that she accepted the amounts Ms. Mason was claiming and she had no agreement that Ms. Lavers was prepared to accept a set-off payment plan. She knew that utilities were in use and being paid by Ms. Lavers for Dolorosa Mason, a portion of which was her responsibility.

[93] The information adduced at the hearing demonstrates that Donna Mason owes $893.49 for oil and $98.12 for water.

[94] Ms. Lavers claims $105.90, being 50% of alarm monitoring charges totaling $211.80. There is no dispute offered to that claim by Donna Mason.

[95] Dolorosa Mason's phone and cable bill prior to Donna Mason and her family moving in was $90.40 per month. This is the amount I find should have been shared at 50/50 to comply with the order. Donna Mason arranged additional

services which Mrs. Mason did not need or use. e.g. internet access. Donna Mason paid the entire amount for the period of December 2009 until May of 2010. During that time Dolorosa Mason's 50% of the phone utility would have been $45.20 per month. In the result, Mrs. Mason owes Donna Mason $271.20, being 50% of $542.40 (6 months @ $90.40 per month).

[96] Donna Mason overpaid her share of the power bill by $18.87

[97] The reasons as to why these bills were not paid by Donna Mason may be relevant to the sanction, but do not create a legal excuse for non payment. I conclude that Donna Mason is in contempt of the order requiring that she pay 50% of the utilities. The net calculation suggests that she owes Dolorosa Mason $807.44.

[98] I will hear oral submissions as to penalty at the scheduled return to court of this matter on February 15.

Allegation 3

That Donna Mason took Dolorosa Theresa Mason to medical appointments and changed her medical care without consulting with Lisa Michelle Lavers as required by the Consent Order.

[99] The relevant paragraph of the Order states:

> *During Dolorosa Theresa Mason's occupancy of the home, Donna Mason shall have authority to obtain necessary medical care for Dolorosa Theresa Mason in consultation with Lisa Michelle Lavers;*

[100] As discussed above, after assuming control of her mother's care in June 2008, Donna Mason arranged for her mother to begin seeing Dr. Morash. This was done without the consent of Ms. Lavers.

[101] Shortly after the consent order was issued, Donna Mason attended at Dr. Morash's office and provided her with a copy of the Order. Dr. Morash testified, and I accept, that she phoned Ms. Lavers to discuss her continuing care and treatment of Mrs. Mason. She says that Ms. Lavers authorized her to continue care and that she only needed to be informed when it was a serious matter, not for routine health matters.

[102] From the perspective of both Dr. Morash and Donna Mason this set the parameters of the “consultation” that Ms. Lavers herself established. They intended to honor Ms. Lavers’ instructions.

[103] Ms. Lavers argues that this did not comply with the order as there was no direct consultation by Donna Mason with her. I do not agree with this submission. The evidence is clear that after the fall of 2008 Ms. Lavers would not respond to any contacts initiated directly by Donna Mason. Letters from Ms. Mason to Ms. Lavers went unanswered and no attempts were made by Ms. Lavers to contact her sister. The only means of communicating was through lawyers which would be expensive and inefficient.

[104] Confronted with this communication problem Donna Mason used Dr. Morash as her agent to consult with Ms. Lavers. In doing so the spirit of the order was certainly complied with. It was, arguably, better for Mrs. Mason in that it ensured that the medical caregiver’s advice went directly to Ms. Lavers, unfiltered by Donna Mason.

[105] I am not convinced beyond a reasonable doubt that Donna Mason failed to comply with the Order of Justice Wright and I dismiss this allegation.

Conclusion

[106] I find Lisa Lavers guilty of contempt in relation to all three allegations, however in relation to the third allegation I find her guilty of contempt only as it relates to some of the claimed expenses.

[107] I find Donna Mason guilty of contempt in relation to allegations 1 and 2 and dismiss allegation 3.

[108] I will hear submissions of counsel as to penalties and costs when this matter returns to court on February 15, 2010.

Duncan, J.