

SUPREME COURT OF NOVA SCOTIA
(Family Division)

Citation: Delgado v. Kelly, 2013 NSSC 182

Date: 20130613

Docket: 1207-002368

Registry: Halifax

Between:

Veronica Louise Delgado

Applicant

and

John William Kelly

Respondent

Revised Decision: The text of the original decision has been corrected according to the appended erratum dated June 26, 2013. This decision replaces the previously released decision.

Judge: Associate Chief Justice Lawrence I. O’Neil

Date of Hearing: May 6, 2013

Counsel: Veronica L. Delgado, Self Represented
Kay L. Rhodenizer, counsel for Mr. Kelly

By the Court:

Introduction

[1] The matter before the Court is an application for a finding of contempt, filed by Ms. Delgado on March 4, 2013. In her notice, Ms. Delgado (Kelly) alleges that Mr. Kelly breached the separation agreement (incorporated into the parties’ Corollary Relief Judgment dated June 16, 2003) as follows:

It is alleged that you breached the separation agreement dated December 16, 2002 between John Kelly and Veronica Kelly by failing to pay Veronica Kelly the remaining \$9,800 owing on the Matrimonial Property Division.

Preliminary Matter

[2] At the conclusion of the parties' appearance on May 6, 2013, the Court asked the parties to provide written submissions on the issue of the Court's jurisdiction and costs on or before May 21, 2013. Both parties did so. The Court also directed that any request to make oral submissions on costs also be communicated by May 21, 2013.

[3] The Court acknowledged receipt of the parties' submissions by letter dated May 30, 2013. The Court reminded the parties that neither had requested an opportunity to make oral submissions.

[4] Subsequent to this May 30, 2013 letter, Ms. Delgado requested an opportunity to make oral submissions on the issue of costs. I am not prepared to schedule oral submissions on costs given I view this offer as having already been declined. Given the need to move matters to a conclusion, it is not in the public interest for the Court to delay concluding this proceeding by months.

Issues

[5] Ms. Rhodenizer, on behalf of Mr. Kelly argues that the Court does not have jurisdiction to consider the application because it is an application for a contempt order to punish a failure to pay money and the application does not fall within one of the exceptions provided by Rule 89.02.

[6] Ms. Rhodenizer also seeks costs of \$750.

Discussion

[7] Rule 89.02 provides:

Contempt and order for payment of money

89.02 A contempt order may not be granted to punish a failure to pay money, unless the failure is in violation of either of the following kinds of orders:

(a) an order for family maintenance or support;

(b) an order for recovery of money that expressly provides that a failure to turn over, or pay, funds may be punished as contempt.

[8] Paragraph 10 of Ms. Delgado's affidavit filed March 4, 2013 states:

10. I am asking the Court to order John Kelly to pay to me the balance owing of \$9,800.00 for the Matrimonial Property Division under the terms of the Separation Agreement dated December 16, 2002, and \$4,679.06 annual compound interest at the rate of 5% for the eight years since the last payment was due in 2004. I am also seeking my Court cost.

[9] Clause 7 of the parties' Corollary Relief Judgment dated June 16, 2003 states:

Property Division

The following relief pursuant to the *Matrimonial Property Act* is hereby ordered:

7. The division of property shall be in accordance with the Separation Agreement dated December 16, 2002, attached hereto and incorporated in so far as the jurisdiction of the Court allows.

[10] Clause 8(a) of the parties' separation agreement made December 16, 2002 reads:

8. Property Division

(a) Matrimonial Property

The husband shall pay to the wife as full and final settlement of the division of matrimonial property \$16,000.00. \$4,000.00 of the said amount has been duly paid to the wife prior to the signing of this Agreement. The remaining \$12,000.00 shall be dispersed to the wife as follows:

- (i) \$4,000.00 shall be paid on or before December 31, 2002;
- (ii) \$6,000.00 shall be paid on or before July 31, 2003;
- (iii) \$2,000.00 shall be paid on or before December 31, 2004.

All other matrimonial property has been previously divided to the mutual satisfaction of the parties. Even if an unequal division has occurred, the parties consent to this division of property within the meaning of the Matrimonial Property Act of Nova Scotia or any successor legislation.

[11] Justice Beryl MacDonald, in *MacLellan v. Giovannetti*, 2012 NSSC 212 discussed the availability of a contempt order as a possible remedy when there is an alleged failure to pay money. The decision is a helpful discussion of the state of the law and recent changes to it. More recently, I was called upon to rule on the jurisdiction of the Court to consider a contempt application and concluded that it did not, given the pleadings. (See *Johnson v. Johnson*, 2013 NSSC 181).

Conclusion

[12] I am satisfied that the Court does not have jurisdiction to consider the application before it. Ms. Delgado is seeking a contempt order to punish a failure to pay money and the alleged failure is not for a violation of an order for family maintenance or support, nor is it pursuant to an order for recovery of money that expressly provides that a failure to turn over, or pay funds may be punished as contempt.

[13] Persons such as Ms. Delgado are not left without a remedy in these circumstances. The Rules of Court and our body of law provide for ‘other’ civil remedies should an applicant wish to utilize a less onerous proceeding when seeking a remedy.

[14] A contempt proceeding is a quasi criminal proceeding with incarceration as a potential penalty. Notice to the alleged contemnor of the particulars of the conduct or omission complained of is essential. For a discussion of the formal requirements to be met prior to entering a finding of contempt, see the decision in *Godin v. Godin*, 2012 NSCA 54.

[15] In addition, special rules have long existed and governed whether contempt is an available proceeding when non payment of a debt is alleged. (*McMillan v. McMillan*, 2012 NBQB 195).

[16] I have considered the decision of our Court of Appeal in *Crewe v. Crewe* [2008] N.S.J. 568 which provides helpful guidance to a Judge called upon to assess costs when self represented persons are involved.

[17] Rule 75.05(1) requires the Court to follow Tariff C unless I rule otherwise. I am satisfied that Tariff C is the appropriate Tariff. I am satisfied the matter

should be treated as less than one hour for which the range of costs are \$250 - \$500.

[18] The application is dismissed. Costs of \$300 are ordered payable by Ms. Delgado to Mr. Kelly, on or before September 1, 2013.

ACJ

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Heard: May 6, 2013

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Erratum:

Decision, para [13], second line, where it reads “Court and out body of law provide for ‘other’ civil remedies should an applicant wish to utilize a less onerous proceeding when seeking a remedy, it should read: “Court and our body of law provide for ‘other’ civil remedies should an applicant wish to utilize a less onerous proceeding when seeking a remedy.”