SUPREME COURT OF NOVA SCOTIA
(FAMILY DIVISION)

Citation: *Charapovich v. Charapovich*, 2022 NSSC 124

Date: 20220211
Docket: No.1201-073530; SFHD - 122606
Registry: Halifax

Between:

Hanna Charapovich

Petitioner

v.

Vitali Charapovich

Respondent

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Judge:	The Honourable Justice Elizabeth Jollimore
Heard:	January 24, 2022, in Halifax, Nova Scotia
Final Written Submissions:	January 31, 2022, by Cassandra Armsworthy February 28, 2022, by Pavel Boubnov
Written Decision:	May 5, 2022
Key words:	Corollary relief, inherent jurisdiction, legislative gap, proof of foreign law, recognition of foreign divorce, public policy
Summary:	Recognition of a foreign (Belarusian) divorce was denied on public policy grounds where recognizing the divorce would preclude the wife from a division of matrimonial property.
Legislation:	*Civil Procedure Rule* 54.04(2) *Divorce Act*, R.S.C. (2nd Supp.), c. 3, subsection 2(1) and section 22 *Parenting and Support Act*, R.S.N.S. 1989, c. 160 *Matrimonial Property Act*, R.S.N.S. 1989, c. 275, subsection 2(g) and section 12

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Judge:	The Honourable Justice Elizabeth Jollimore
Heard:	January 24, 2022, in Halifax, Nova Scotia
Oral Decision:	February 11, 2022, in Halifax, Nova Scotia
Written Release:	May 6, 2022
Counsel:	Pavel Boubnov, for Hanna Charapovich Cassandra Armsworthy and Anne-Marie Campbell, for Vitali Charapovich Stanislav Orlov, Russian Interpreter

By the Court:

Introduction

[1] Ms. Charapovich has filed a petition for divorce and corollary relief. She has joined with this, claims under the *Matrimonial Property Act* and pension division legislation.

[2] Mr. Charapovich responded to her petition, saying that the parties are already divorced in Belarus. Ms. Charapovich asks me to determine that the divorce granted in Belarus should not be recognized in Canada.

[3] The parties agree that the only basis on which I can recognize the Belarusian divorce is subsection 22(3) of the *Divorce Act*. This subsection allows that the common law rules about respecting foreign divorces are not affected by subsections 22(1) and 22(2).

[4] The common law rule for recognizing a foreign divorce was outlined by Professor Payne in "Payne on Divorce" (4th ed.). Professor Payne's summary of the law was accepted by our Court of Appeal in *Orabi v. Qaoud*, 2005 NSCA 28 at paragraph 14.

[5] There are six reasons why a foreign divorce would be recognized at common law. Of the six reasons, the parties agree the only basis that is possibly applicable here is because "either the petitioner or respondent had a real and substantial connection with the foreign jurisdiction where the foreign divorce was granted."

[6] The parties disagree whether Mr. Charapovich had a real and substantial connection with Belarus.

[7] Even when the common law allows me to recognize a foreign divorce, there may be reasons not to do so. Justice Martinson summarized these reasons in *Pitre v. Nguyen*, 2007 BCSC 1161 at paragraph 15. In that case, she said one circumstance where recognition of a foreign divorce should be denied, or can be denied, is where the divorce is contrary to public policy.

[8] I don't need to decide whether Mr. Charapovich had a real or substantial connection with Belarus. I don't need to do this because even if he did have such a

connection, I find that it is contrary to public policy to recognize the Byelorussian divorce. To understand why I conclude this, I need to consider the law and the circumstances of the Charapovich's marriage.

[9] First, I have no evidence about the law of Belarus. Proof of foreign law can be provided through foreign legislation, judicial decisions, authoritative sources, or an expert witness.

[10] Under *Civil Procedure Rule* 54.04(2), the law of a foreign state is presumed to be the same as the law of Nova Scotia, unless a party gives notice by a pleading that the foreign law is in issue and proves that the foreign law is not the same.

[11] Second, the *Matrimonial Property Act*, R.S.N.S. 1989, c. 275, applies to spouses. The definition of spouses in subsection 2(g) of the *Matrimonial Property Act* doesn't include divorced spouses.

[12] Section 12 of the *Matrimonial Property Act* specifies the circumstances where a spouse can apply for a division of property. Those circumstances do not include after spouses have been divorced. Section 12 makes clear that when a petition for divorce is filed (i.e., when the spouses are still married), they may join their application for a property division with their claims under the *Divorce Act*.

[13] Without proof of Byelorussian law, I must assume that the law about property division at the end of a marriage in Belarus is the same as the law about property division at the end of a marriage in Nova Scotia. Therefore, recognizing the Belarusian divorce would deprive Ms. Charapovich of the ability to claim a division of property. She would still be able to make claims for parenting, child support and spousal support under the *Parenting and Support Act*, R.S.N.S. 1989, c. 160 because those claims aren't dependent on marital status.

[14] That is the legal context I need to consider when deciding if there are public policy reasons to refuse to recognize the Belarusian divorce.

[15] Then, there is the factual context. The parties were married in September 2007, in Belarus after living together for 1 year. They separated after 12 years of marriage. During the marriage they had 2 children. Ms. Charapovich took a maternity leave of approximately 3 years with each baby, so, for almost half of the marriage (from 2011-2013, and from 2015-2018), she didn't work. She worked

during the early and middle years of the marriage. Her work history was not continuous: it was interrupted. Ms. Charapovich was the children's primary caregiver. Mr. Charapovich was the main breadwinner and he had minimal involvement with the children.

[16] Ms. Charapovich has a doctorate in linguistics. In Belarus, she was a forensic examiner in communication. Mr. Charapovich is an IT professional and was director of his own company in Belarus. When the couple separated, Ms. Charapovich was a stay-at home mother and Mr. Charapovich had opened his own IT company. Mr. Charapovich's current lifestyle suggests he has a comfortable income. He has not disclosed his income.

[17] It appears the only assets the parties have are bank accounts and an apartment in Belarus.

[18] The preamble to the *Matrimonial Property Act* identifies the *Act*'s purposes. It seeks to provide for mutual obligations in family relationships, recognizing that childcare, household management and financial support are spouses' joint responsibilities.

[19] The circumstances of the marriage are such that it would be contrary to public policy to deprive Ms. Charapovich of a claim to the matrimonial property.

[20] Similar conclusions have been reached by the Alberta Court of Queen's Bench in *Zhang v. Lin*, 2010 ABQB 420, and by the British Columbia Supreme Court in *Marzara*, 2011 BCSC 408. In *Zhang v. Lin*, recognizing the Texas divorce would negatively impact the wife's claim spousal and child support. In *Marzara*, recognizing the Iranian divorce would preclude claims to spousal support and a property division.

[21] Mr. Charapovich suggests that I can solve the public policy problem by using my inherent jurisdiction to allow a post-divorce division of property between non-spouses. He says this would be allowed in Belarus. I do not accept that I can do this for 4 reasons.

[22] The first 3 reasons I cannot do as Mr. Charapovich asks relate to the nature of inherent jurisdiction. I do not accept that inherent jurisdiction gives me the power to do what Mr. Charapovich asks me to do.

[23] First, the Nova Scotia Court of Appeal in *Halifax Regional Municipality v. Ofume*, 2003 NSCA 110, says that inherent jurisdiction is that which enables a court to fulfill itself as a court of law. The Court of Appeal gave the examples: contempt proceedings, directing closed hearings, and varying its own orders to correctly express its intention. In each of these examples, the court is fulfilling itself as a court. The court is not fulfilling the intention of a different court.

[24] Fulfilling the intention of another court is what Mr. Charapovich is asking me to do when he says that "arguably the Byelorussian court intended to divide property later." A review of the cases Mr. Charapovich cited shows that in each case, the court was exercising its inherent jurisdiction over itself, not a foreign court - a court in another jurisdiction. Inherent jurisdiction doesn't enable me to fulfil another court's process.

[25] Second, the Nova Scotia Court of Appeal in *Goodwin v. Rodgerson*, 2002 NSCA 137 at paragraph 17, says that inherent jurisdiction is a procedural concept and courts must be cautious in exercising the power which should not be used to effect changes in substantive law. It would be a change to substantive law, as explained at paragraph 30 below, if the *Matrimonial Property Act* was extended as Mr. Charapovich proposes.

[26] Third, Mr. Charapovich argues that I should use my inherent jurisdiction to vary the foreign divorce order to clearly provide that the parties would continue to have the right to have the property division determined. He says there is a legislative gap in the *Divorce Act*, and I should use my inherent jurisdiction to fill that legislative gap so a property division can proceed. I reject this argument.

[27] To start at the basics, divorce is a matter of exclusively federal jurisdiction. Property and civil rights in the province are matters of exclusively provincial jurisdiction. There can be no legislative gap in the *Divorce Act*'s failure to deal with property division because the federal government doesn't have jurisdiction over property. This is not a legislative gap in the *Divorce Act*, this is a fundamental feature of the federal/provincial division of powers contained in the constitution. To be clear, while *Matrimonial Property Act* applications are joined with divorces, they are not corollary relief. The *Divorce Act* defines what corollary relief is, in subsection 2(1).

[28] The final reason this problem can't be solved through my inherent jurisdiction relates to the law that Mr. Charapovich wants me to incorporate.

[29] There is no proof that Belarusian law permits a division of property between non-spouses (or spouses after they have divorced). In the absence of proof of Belarusian law, I must assume Byelorussian law is same as Nova Scotian law under Civil Procedure Rule 54.04(2).

[30] Justice Gruchy's decision in *Newman v. Seaman*, 1994 CanLII 4210 (NSSC) makes clear a divorce can be granted, with a delayed property division, where the property division application is joined in the Petition. Practically, this means that when the divorce is filed *and while the parties are still married*, one of the parties claimed a property division. I have no evidence that a property division was claimed in Mr. Charapovich's Belarusian divorce.

[31] So, I grant Ms. Charapovich's request, and find that there are public policy reasons to refuse to recognize the Belarusian divorce. Ms. Charapovich's divorce petition in Nova Scotia may proceed.

Elizabeth Jollimore, S.C.J.(F.D.)

Halifax, Nova Scotia