Date: 05 08 2015
Docket: S-1-FM-2010-000164

IN THE SUPREME COURT OF THE NORTHWEST TERRITORIES

BETWEEN:

TROY DONALD GRESTY

Applicant

-and-

KRISTINA MARY THERESA WRIGHT

Respondent

MEMORANDUM OF JUDGMENT

A) BACKGROUND

[1] This matter was before me in Family Chambers on May 7, 2015.

[2] The litigation between these parties began in 2010 and went on for some time. Eventually, with the assistance of their counsel, and after the matter had been in case management for some time, they were able to reach an agreement. A Consent Order disposing of all the issues in the litigation issued on November 9, 2013 (the Consent Order).

[3] One of the terms of the Consent Order related to the matrimonial home and has given rise to problems. This led the Applicant to file a motion to bring the matter back before the Court.

[4] That motion was initially spoken to in Court on March 26, 2015. On that date, counsel for the Respondent indicated that she had had no contact with her client for some time and she applied to get off the record. That application was

granted. Counsel for the Applicant advised that he was in the process of closing his practice in the Northwest Territories and that he would also be getting off the record. The matter was adjourned to April 9, 2015.

[5] On April 9, the Applicant's counsel appeared. David Wright, the Respondent's father, was granted leave to appear by telephone and to speak on her behalf. The Applicant's counsel had not yet gotten off the record. He sought an adjournment to May 7 to complete the process to be removed from the record, and to enable the Applicant to appear personally. The matter was adjourned to May 7.

[6] On May 6 the Applicant filed a Notice of Change in Representation indicating that he would be from this point on representing himself. On the same date, the Court received an *ex-parte* application from the Respondent, seeking the following: that Mr. Wright be granted leave to appear on her behalf; that affidavits submitted on behalf of the Respondent be filed by facsimile; and that the Respondent be permitted to use her Edmonton address as her address for service. Mr. Wright also sent a letter asking for leave to appear by telephone at the May 7 hearing. That application was granted.

[7] At the May 7 hearing, I heard submissions on the Applicant's motion and addressed some of the issues raised in the Respondent's *ex parte* application. At the outset, I granted Mr. Wright leave to appear as agent for the Respondent and make representations on her behalf. I also directed that the two affidavits that had been submitted by facsimile be filed. I directed this despite the fact that the documents did not indicate an address for service in the Northwest Territories, despite the fact they were faxed copies, as opposed to originals, and despite the fact they had not been served on the Applicant. I gave these directions because having reviewed the materials, I was of the view that it was in the interest of all parties to have, if possible, the issues dealt with during the May 7 court appearance, as opposed to having to again adjourn matters to a later date.

[8] It became apparent to me early in the hearing that many of the matters raised in the Respondent's affidavits would not be relevant to the disposition of the motion, in light of the parties' respective positions. I advised the Applicant of the topics discussed in the two affidavits, read the one portion that was relevant to the main contentious issue, and advised him that we could take a recess to give him an opportunity to read the affidavits and attachments for himself if he wished. The Applicant was content with proceeding without reviewing the materials in detail.

B) ANALYSIS

[9] Three issues need to be addressed. The first issue has to do with the implementation of the term of the Consent Order that deals with the matrimonial home. The second issue, somewhat related to the first, has to do with the use of monies resulting from the sale of that home, should it in fact be sold. The third issue, raised in the *ex parte* application filed by the Respondent, is whether she should be permitted, from this point forward, to use her Edmonton address as her address for service with respect to these proceedings.

1. The matrimonial home

[10] Paragraph 18 of the Consent Order is the one that has proven problematic to implement. It reads as follows:

> 18. The Applicant shall take the necessary steps to remove the Respondent's name from the mortgage on the house and the Respondent shall sign the documents needed to transfer the title of the property to the Applicant.
>
> Consent Order dated November 9, 2013.

Clearly, the parties' intent was that the Applicant would assume sole ownership of the property and sole responsibility for the debt associated with it.

[11] In the affidavit he filed in support of his motion, the Applicant deposes that he has attempted to refinance the home in his name alone but that he has not been able to qualify for a mortgage on his own. He now wishes to sell the property. He deposes that the Respondent has refused to sign documents permitting him to proceed with listing and selling the property.

[12] In one of her affidavits, the Respondent expresses skepticism about the Applicant's inability to refinance the home. She attaches various email messages exchanged between her and the Applicant which, I take it, are intended to explain why she is skeptical. She also expresses concerns about having to bear any financial responsibility or general liability for anything arising from the sale of the home, given that her name is on the title.

[13] In my view, at this point, the reasons why the refinancing of the matrimonial home has not taken place is largely irrelevant, as is the evidence bearing on this topic. Given the intent reflected in the Consent Order about who would take over the matrimonial home, and the Applicant's clearly stated wish to sell the property, the most constructive approach now is to put in place a process that will allow this to happen.

[14] I am also of the view that given the level of animosity and distrust that still appears to exist between these parties, a solution that avoids the need for them to have to deal with each other to effect that sale is far preferable to one that requires them to both be involved in the processes related to the sale.

[15] In his submissions, Mr. Wright suggested that a term might be included giving the Respondent an opportunity to review any offer made before it is accepted. I see no point in doing so. The Respondent, under the terms of the Consent Order, was to have no interest in the property anymore once her name was off the mortgage. To give her any level of input or control over the sale of the property now would be counter-productive. It could well lead to further problems between these parties, require further involvement by the Court, and prolong matters further.

[16] The bottom line is the Applicant wants to sell the property and is prepared to assume full responsibility for that process and its outcome. There is no reason not to permit him to do so. At the same time, the Respondent's concern about being protected from any liability arising from the sale must also be addressed. It seems to me that a detailed Order issued by this Court can address both parties' needs and concerns.

2. Use of sales proceeds in the event that the matrimonial home is sold

[17] Paragraph 16 of the Consent Order requires the Applicant to pay a total of $15,000.00 in retroactive child support and childcare expenses. The Order provides that this amount is payable within 90 days of the entry of the Order. The Order was entered on December 9, 2013.

[18] The Statement of Account from the Maintenance Enforcement Program shows a balance owing of 14,847.00 as of May 5, 2015. The Respondent asks that what remains owing be paid out of the proceeds from the sale of the matrimonial home.

[19] The Applicant opposes this for a number of reasons. First, he points out that he has reached an agreement with the Maintenance Enforcement Program administrators about a payment plan to satisfy the arrears, which takes into account his financial situation and his other obligations. Under that agreement he is paying $100.00 per month towards the arrears. Second, he would like to be able to use the sales proceeds to set himself up in a new house with his current family. Third, he explained that his step-son suffers from a medical condition and that a certain type of medication that could be of benefit to him is expensive and is not covered by

insurance. This, he says, adds to the financial pressures he is facing. The Applicant also indicated that he is expecting a tax return in the range of $4,000.00, and has been told this amount will be garnished in full and go towards his arrears.

[20] I understand the Applicant's wish to have money available to reinvest in another home, and his concerns about other financial pressures that he faces. But the law is well established: child support obligations must be given priority over other things. It is important to remember that we are not at a stage in these proceedings where the issue is whether retroactive child support should be ordered, or in what amount, or when it should be payable. Those matters were discussed, agreed to by the parties, and included in the Consent Order back in November 2013. This Court must uphold its own process and enforce its orders. As I explained to the Applicant during the hearing, this is not about the Respondent being entitled to share in the proceeds of the sale of the matrimonial home; it is about his obligation to satisfy an existing debt which has, under the Consent Order, been owing for more than a year already.

3. Request to use an address for service outside the Northwest Territories

[21] The third matter to be addressed is the Respondent's request to use an address for service outside the Northwest Territories.

[22] The need for parties in litigation to have an address for service stems from the need to ensure that parties are able to serve one another with documents. The term "address for service" is defined in Rule 1 of the *Rules of Court*:

> "Address for service" means the street and mailing address of a residence or of an office or another place of business in the Northwest Territories;
>
> *Rules of the Supreme Court of the Northwest Territories*, R-010-96, as amended.

[23] As noted above at Paragraph 7, I permitted that the Respondent's affidavits be filed notwithstanding their lack of compliance with this requirement, and even though they had not been served on the Applicant, because I felt that everyone's best interests would be better served if a further adjournment was avoided.

[24] Having said that, the requirement that parties in litigation have an address for service in the Northwest Territories is a basic procedural requirement and it must be complied with. I understand it would be more convenient to the Respondent to use her Edmonton address as her address for service, but to allow

this would impose on the other party the burden and cost of service outside this jurisdiction, should the need arise to serve her with any further documents.

[25] For this reason, the application seeking leave to use an Edmonton address as the address for service in these proceedings is denied. The Respondent no longer has counsel, and she must therefore identify an address for service in the Northwest Territories, just as any other litigant would. Until she does, she will not be permitted to file any further materials with this Court. Similarly, absent an exceptionally urgent situation, any document filed with the Court that she wishes to rely on must be served on the Applicant in accordance with the *Rules of Court*.

C) CONCLUSION

[26] For the reasons given above, the following Order will issue:

> 1. If the process contemplated in Paragraph 18 of the Order issued by this Court on November 9 2013 is not completed by June 15 2015, the Applicant shall take steps to put the property located at 162 Demelt Crescent (the matrimonial home), up for sale. If the Applicant does not wish to attempt to refinance the matrimonial home, he has leave to take steps to list the property for sale immediately.
>
> 2. Any requirement for the Respondent to endorse the listing agreement, offer to purchase, offer acceptance and any and all other documents required to perfect the sale of the matrimonial home is hereby removed.
>
> 3. The Applicant will have sole authority to arrange for, and negotiate the sale of the matrimonial home.
>
> 4. The Applicant will bear all costs and liabilities arising from the sale of the matrimonial home.
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> 5. Upon completion of the sale, and upon other legal requirements being met for the transfer of the title of the property, the Registrar of Land Titles is hereby authorized to cancel the existing title and issue a new title in the name of the purchaser, without the need for any signature or endorsement by the Respondent.
>
> 6. After the sale is completed and all encumbrances, legal fees, taxes, and any other cost arising from the sale have been paid, the net sales proceeds shall be transferred to the Court, in trust.

7. The funds in trust shall be distributed as follows:

a) Any child support and child care arrears owed, as of the date of receipt of the trust monies by the Court, shall be paid by transfer of the required amount by the Clerk of the Court to the Maintenance Enforcement Program of the Northwest Territories.

b) Upon the transfer referred to in Paragraph 7(a) having been effected, the balance of the funds shall be immediately released to the Applicant.

8. The Respondent's application to have leave to use an address for service located outside the Northwest Territories is dismissed.

[27] I direct the Clerk of the Court to prepare a Formal Order to this effect. I also direct that a copy of the filed Order, and of this Memorandum of Judgment, be forwarded to the Maintenance Enforcement Office.

L.A. Charbonneau
J.S.C.

Dated in Yellowknife, NT this
8th day of May, 2015

Counsel for the Applicant:	The Applicant represented himself
Counsel for Respondent:	David Wright appeared as the Respondent's agent, with leave of the Court

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