In the Court of Appeal of Alberta

Citation: Henderson v Henderson, 2016 ABCA 256

Date: 20160909
Docket: 1603-0111-AC
Registry: Edmonton

2016 ABCA 256 (CanLII)

Between:

Robyn Sarah Henderson

Respondent
(Plaintiff)

- and -

Miles Andrew Henderson

Appellant
(Defendant)

The Court:

The Honourable Mr. Justice Frans Slatter
The Honourable Mr. Justice J.D. Bruce McDonald
The Honourable Madam Justice Sheila Greckol

Memorandum of Judgment
Delivered from the Bench

Appeal from the Order by
The Honourable Mr. Justice D. Lee
Dated the 23rd day of March, 2016
Filed the 24th day of May, 2016
(Docket: 4803 163419)

Memorandum of Judgment
Delivered from the Bench

2016 ABCA 256 (CanLII)

McDonald, J.A. (for the Court):

[1] The parties reached a mediated settlement of their matrimonial issues and a written Settlement Agreement was signed on November 11, 2013. After lengthy discussions, the form of Divorce Judgment and Corollary Relief Order (which had been prepared by counsel for the respondent) was approved by counsel for the appellant on January 21, 2015. New counsel for the respondent, however, declined to file the application for a desk divorce on the basis that the respondent was having second thoughts about the settlement, and that circumstances had changed.

[2] The appellant applied for an order that the desk divorce application be filed based on the form of Divorce Judgment and Corollary Relief Order that had been agreed to. The chambers judge declined to grant the order and did not provide any reasons for his refusal.

[3] It is in the interests of all participants in the family law system that settlements be reached, and when reached that these settlements be enforced. The respondent has failed to provide any acceptable reason why the desk divorce application has not been made. If circumstances have truly changed, the proper approach would be to apply for a variation after the Divorce Judgment and Corollary Relief Order are granted.

[4] The Settlement Agreement also provided that the parties would mediate any disputes before applying to the court. The chambers judge dispensed with this requirement, on the basis that the respondent no longer wishes to mediate, and mediation might well be unsuccessful. Having agreed to this requirement, the respondent cannot simply ignore it, and there was no basis for the chambers judge to dispense with mediation. Dispensing with mediation merely rewards the respondent for breaching the provisions of the Settlement Agreement

[5] Accordingly, the appeal is allowed. Counsel for the respondent is directed to apply forthwith for the Divorce Judgment and the Corollary Relief Order previously consented to by counsel for the appellant. Both parties are required to attend mediation in good faith before bringing any further applications before the Court. This latter directive does not apply to any applications pertaining to the mobility application that is currently scheduled to be heard in the spring of 2017.

Appeal heard on September 6, 2016

Memorandum filed at Edmonton, Alberta
this 9th day of September 2016

McDonald J.A.

Appearances:

L.R. Hawkeye
for the Appellant

L.H. Bruyer
for the Respondent

2016 ABCA 256 (CanLII)