

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Pyper v. Schuetze*,
2024 BCCA 182

Date: 20240426
Docket: CA49596

Between:

John Pyper

Appellant

And

Katy Schuetze

Respondent

Before: The Honourable Madam Justice Fenlon
(In Chambers)

On an application to vary: An Order of the Court of Appeal for British Columbia,
dated March 1, 2024 (*Pyper v. Schuetze*, Vancouver Docket CA49596).

Oral Reasons for Judgment

No one appearing on behalf of the Appellant

Counsel for the Respondent:

B.T. Lepin

Place and Date of Hearing:

Vancouver, British Columbia
April 26, 2024

Place and Date of Judgment:

Vancouver, British Columbia
April 26, 2024

Summary:

The respondent applies to dismiss the appellant's application to vary or cancel the order of a justice denying him leave to appeal.

Held: Application allowed. The appellant has failed to comply with the filing deadlines with respect to his application to vary. His application has no merit, as there is no basis on which a division of this Court could interfere with the judge's decision to deny leave to appeal. The appellant has a long history of appealing every step and process, which has been described in other proceedings as a form of family violence. Finally, the delay in addressing the application to vary is causing prejudice to the respondent.

[1] **FENLON J.A.:** The respondent, Ms. Schuetze, applies to dismiss the appellant, Mr. Pyper's, application to vary or cancel the order of Justice Fitch denying him leave to appeal. She also seeks costs of the application.

Background

[2] The underlying dispute relates to the respondent's successful action against Mr. Pyper for battery. In reasons for judgment given on November 12, 2021, Justice Fleming found that the appellant, Mr. Pyper, had committed a serious battery of the respondent and awarded her approximately \$798,000 in damages.

[3] In reasons for judgment dated February 14, 2022, Justice Fleming awarded the respondent partial special costs for the whole of the pre-trial portion of the proceedings, to be assessed by the Registrar.

[4] The appellant appealed the orders of Justice Fleming, including the order granting the respondent partial special costs. The appeal was allowed, but only to the limited extent of varying the award of partial special costs to exclude those costs associated with three interlocutory applications for which costs orders had already been made.

[5] On August 24, 2023, in advance of the assessment of costs, respondent's counsel filed an amended bill of special costs. The contingency fee (both the percentage of the award upon which the fee is based and its amount) was disclosed

in the amended bill of special costs. The contingency fee agreement between the respondent and her counsel had already been disclosed to the appellant.

[6] On September 1, 2023, on the eve of the hearing before Master Muir (now Associate Judge Muir) to assess special costs, the appellant applied for an adjournment and made a wide-ranging application for the production of all documents, including privileged communications, regarding the contingency fee arrangement and other communications relevant to an assessment of the reasonableness and necessity of the pre-trial work performed by the respondent's counsel.

[7] Associate Judge Muir dismissed the document production application. She stated that a large part of the application was for production of privileged documents, and Ms. Schuetze was only required to produce or waive privilege over documents that supported the reasonableness, necessity, and quantum of the fee being claimed; Associate Judge Muir indicated that the Registrar would have to be persuaded that there was sufficient information to assess the costs as claimed.

[8] The appellant appealed the order of Associate Judge Muir. On December 18, 2023, Justice Whately dismissed the appeal on the basis that Mr. Pyper did not meet the onus of showing that Associate Judge Muir's decision was clearly wrong. Justice Whately commented that it is unclear how, where the respondent is relying on a contingency agreement, the privileged or other requested materials would assist the appellant in challenging the reasonableness of that agreement.

[9] Before Justice Fitch, Mr. Pyper sought leave to appeal the decision of Justice Whately. On March 1, 2024, Justice Fitch denied Mr. Pyper's application for leave, finding there was very little prospect that a division of this Court would intervene on grounds that Justice Whately was clearly wrong in her determination of the appeal. Justice Fitch agreed with Justice Whately that it was not clear how production of the privileged documents sought by the appellant would assist him in arguing that the contingency agreement was itself unreasonable.

[10] On March 8, 2024, Mr. Pyper applied to vary or cancel Justice Fitch’s order before a division of this Court. That filing was within the time set by Rule 62(2) of the *Court of Appeal Rules*, B.C. Reg. 120/2022 [*Rules*]. However, Mr. Pyper has not filed and served an application book which he was required to file by March 22, 2024, pursuant to Rule 62(3).

[11] On April 9, Ms. Schuetze applied to dismiss Mr. Pyper’s application to vary and set the matter for hearing today, April 26.

[12] Mr. Pyper, having received that application, did not take any steps in relation to either his application to vary the order of Justice Fitch or this application to dismiss his application, other than to write a letter to the Court on April 23, 2024 requesting the adjournment of the hearing of this application on the basis that he was not available on April 26. Counsel for Ms. Schuetze did not consent to an adjournment. Mr. Pyper was accordingly informed by the Registry that he would have to apply to adjourn the application. He chose not to appear and confirmed that intention, in writing, to the Registry. He also contacted counsel for Ms. Schuetze in the afternoon of the day before this hearing to ask her to inform the Court that he was willing to abandon his application to vary if each side agreed or was ordered to bear their own costs in the entire appeal proceeding—including costs of the application before Justice Fitch which were awarded to Ms. Schuetze.

[13] This application was properly served and Mr. Pyper has chosen not to appear or to apply to adjourn. I am therefore prepared to proceed with the application.

[14] In my view, the application should be granted for the following reasons.

[15] First, Mr. Pyper has failed to comply with filing deadlines. Indeed, he has made no effort to get on with the application to vary the order of Justice Fitch denying him leave, despite having notice of this application to have his application to vary dismissed on the basis of non-compliance with the *Rules*.

[16] Second, there is in my view no basis on which a division of this Court could interfere with the decision of Justice Fitch to deny leave to appeal—in other words,

the application to vary has no merit. Mr. Pyper has not identified any errors in principle in Justice Fitch’s reasons. I note as well that the appeal he wishes to bring is from an order protecting solicitor-client privilege and there is, in addition, no merit to that underlying appeal.

[17] Third, Mr. Pyper has a long history of appealing every step and every process, which has been described in other proceedings as a form of family violence.

[18] Finally, the delay in addressing the application to vary is causing prejudice to Ms. Schuetze. The documents in issue were demanded as part of the assessment of special costs awarded in Ms. Schuetze’s favour. Until the proceeding in this Court is brought to a close, the potential for an appeal of that order denying the production of further privileged documents remains an impediment to the costs hearing proceeding.

[19] For all of these reasons, I accordingly order that Mr. Pyper’s application to vary the order of Justice Fitch is dismissed with costs to Ms. Schuetze.

“The Honourable Madam Justice Fenlon”