EDITORIAL NOTE: CHANGES MADE TO THIS JUDGMENT APPEAR IN [SQUARE BRACKETS].

NOTE: PURSUANT TO S 35A OF THE PROPERTY (RELATIONSHIPS) ACT 1976, ANY REPORT OF THIS PROCEEDING MUST COMPLY WITH SS 11B, 11C AND 11D OF THE FAMILY COURT ACT 1980. FOR FURTHER INFORMATION, PLEASE SEE https://www.justice.govt.nz/family/about/restriction-on-publishing-judgments/

IN THE FAMILY COURT
AT AUCKLAND

I TE KŌTI WHĀNAU
KI TĀMAKI MAKAURAU

FAM-2018-004-000053
[2021] NZFC 4666

IN THE MATTER OF	THE PROPERTY (RELATIONSHIPS) ACT 1976
BETWEEN	[LINCOLN MOON] Applicant
AND	[PIPER MOON] Respondent

Hearing:	19 May 2021
Appearances:	The Applicant in Person The Respondent in Person
Judgment:	20 May 2021

RESERVED JUDGMENT OF JUDGE D A BURNS
[In relation to interlocutory applications brought by the applicant husband]

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[1] I presided over a hearing on 20 May 2020 under the Property (Relationships) Act 1976 ("the Act").

[2] Submissions were timetabled. Mr [Moon] made an application for extension which was granted but when he failed to file submissions within the extended timeframe I delivered a reserved judgment on 22 May 2020.

[3] Subsequently an appeal was filed with the High Court. That appeal was either withdrawn or abandoned.

[4] A further appeal has been filed in the High Court and I understand is set down for hearing on 25 May 2021.

[5] Mr [Moon] (the applicant - husband) has filed six interlocutory applications with the Auckland Family Court:

(a) Discharge or rescind an order/direction for particular discovery dated 8 August 2018 (application made on 4 November 2020);

(b) Discharge or rescind the reserved judgment of Judge Burns dated 22 May 2020 (application made 17 December 2020);

(c) Application to strikeout pleading of Ms [Moon]'s interlocutory application dated 15 December 2020 (application made on 29 December 2020);

(d) Application to vary the minute of Judge Burns dated 20 March 2020 (application made on 8 March 2021);

(e) Application for costs order against Mr [Moon] (application made on 8 March 2021);

(f) Application to vary common bundle used for hearing on 20 March 2020 (application made on 10 March 2021).

[6] Ms [Moon] (the respondent – wife) has filed a cross-application dated 15 December 2020 seeking orders striking out the pleadings filed by Mr [Moon] to rescind the order of the Court dated 8 August 2018.

[7] I presided over a judicial conference on 12 March 2021. I directed that all the interlocutory applications be consolidated and heard together. I made other procedural directions which culminated in the hearing being set down before me on 19 May 2021.

[8] For the purposes of that hearing I received a bundle of documents which included written submissions from Mr [Moon] in support of his case. Ms [Moon] filed an affidavit in support of her opposition dated 31 March 2021. In addition she filed written submissions dated 5 May 2021.

[9] Both parties were in person and presented further oral submissions. I reserved the judgment. Dealing with each interlocutory application in turn as follows:

Discharge/rescind order for particular discovery dated 8 August 2018

[10] I have inspected the decision section of the file and the administration section. I dismiss this application to discharge and rescind the order for the following reasons:

(a) The initial interlocutory application for an order for particular discovery against Mr [Moon] was filed on 20 April 2018 together with supporting affidavit dated 19 April 2018;

(b) Mr [Moon] filed a notice of defence and supporting affidavit 23 May 2018 on 23 May 2018;

(c) Judge Druce made the following directions:

- Set the interlocutory application for discovery for a one-hour hearing.

- Written submissions to be filed no later than 5 working days prior to the hearing.

- Mr [Moon] is urged to get legal advice as he is at peril of costs orders against him if he fails to disclose the relevant documentation.

(d) On 9 July 2018 Mr [Moon] filed an interlocutory application for extension to file response on directions made on 22 June 2018 by Judge Druce along with an application to move forward the hearing date of 8 August;

(e) Mr [Moon] now submits that on 9 July 2018 he filed an interlocutory application for "extension to file response to discovery application of Ms [Moon] in her affidavit". I accept the submission made by Ms [Moon] that what he now says is different from what he actually filed. I accept that he has already provided his response to her discovery application and affidavit on 23 May 2018. That he wanted to file a response to "Judge Druce's judgment on the sole aim of getting the hearing adjourned". I observed in the reserved judgment that I issued in May 2020 that there had been a tactical element to a number of matters by Mr [Moon] and that he had put his head in the sand, was prevaricating and not facing up to the reality of the issues. That pattern of behaviour that I observed at the hearing before me and recorded in my reserved judgment continues to the present day;

(f) On 26 July 2018 the Deputy Registrar granted the extension to file a response to judicial directions dated 29 June 2018 filed by Mr [Moon]. Mr [Moon] now claims that the Registrar never served those documents on him and this has subsequently caused him prejudice. At the hearing before me I asked him if he could advise what prejudice had been caused. In my view he was not able to identify any specific prejudice. He is adamant before me that it was not received by him and that had it been he would have taken a different approach (unspecified) and has been prejudiced. I do not accept his assertion to the Court and find that the document was likely served by the Registrar on him. I do not accept his unsworn statement to the Court that he was not served. I find that no prejudice has been demonstrated by him;

(g) Mr [Moon] tried to vacate the hearing on 8 August 2018 asserting various reasons. This was a matter I dealt with in Chambers and declined to adjourn the hearing on 2 August 2018 and the reasons were set out in my minute of that date. A further application was made on 7 August 2018 attaching a medical certificate to it seeking for the hearing to be adjourned. That further application was declined;

(h) The Court made an order for particular discovery on 8 August and the Court imposed a timeframe for compliance. The application was routine and the outcome was entirely predictable. Ms [Moon] complied with the order made against her by filing an affidavit and her counsel filed a memorandum in compliance with the order;

(i) On 15 August 2019 Ms [Moon] through her counsel filed and served a notice to produce documents on the husband which again was not complied with. The case was set down for a long cause fixture on 20 May 2020. The usual telephone conference took place beforehand. Counsel for Ms [Moon] elected to proceed to hearing even though there have been non-compliance with discovery orders by Mr [Moon]. She did so in reliance to the warnings given to Mr [Moon] by the Court that if he failed to comply there was a possibility that adverse inferences would be drawn against him. My understanding was that Ms Hoult was concerned about further delay and sought to proceed to hearing on that basis.

[11] As I have stated above I could find no prejudice to Mr [Moon] throughout the proceedings. He asserts that there was prejudice to him and he would have done things differently but he has not been able to provide any specific examples. His approach to filing the interlocutory applications that he has filed appears to be a continuation of the pattern of behaviour of prevarication, delay and obfuscation. He was given a full opportunity to be heard at the hearing before me. He was given a full opportunity to provide written submissions which he failed to do. He asserts that an extension was granted and the Court issued a judgment before the expiration of the extension. I reject that argument for the reasons set out later in this judgment.

[12] The reasons for the finding in relation to the bank accounts and income earned prior to separation but undisclosed by the husband are set out fully in the reserved judgment. The finding and the reasons can be the subject of careful scrutiny by the High Court on the appeal which is to be heard shortly if the High Court finds that I was in error in making that finding then I will follow what directions are made by the High Court as a result. For my part I am clear that the husband was ordered to provide

documentary material especially bank accounts in relation to his income prior to separation. He failed to do so and the adverse inferences were drawn against him in accordance with the warning that had been provided to him. To the present day he has still not provided the bank account statements and when I challenged him on this at the hearing on 19 May he failed to provide any satisfactory reason. He says that Ms [Moon] has the documents and she kept the laptop but that still does not provide an explanation as to why he has not been able to obtain the bank statements from the bank. What he has provided is not relevant to the issue. If there was prejudice as a result of the orders made by the Court the best way for him to demonstrate that would be to provide the documentary material and to show it. He has despite receiving legal advice in relation to the appeal failed to do so. He did produce other documentary material but the High Court has found that the additional material was not relevant and did not grant him leave to adduce further evidence. Accordingly I am satisfied it is appropriate to dismiss the interlocutory application to discharge/rescind the order for particular discovery. It is dismissed accordingly.

Discharge/rescind the reserved judgment of 22 May 2020

[13] Mr [Moon] in the hearing before me reiterated his written submissions and maintained that the Court had issued its judgment prior to the expiration of the extension granted to him by me for filing of his submissions. I observe that despite that assertion he never has filed any further submissions which may have possibly demonstrated some prejudice to him. He has not shown to the Court that a reasonable argument has not been taken into account or a factual matter was overlooked. He says that he has not filed the submissions because the Court had issued a judgment first. However he has asserted that as a result of what he believes is a breach by the Court of its own directions prejudice arises. I strongly reject that the Court did not comply with the directions made by me. The file reveals that Mr [Moon] was granted an extension of 21 days from Wednesday 25 March to file his submissions. That period ended on 15 April 2020. Mr [Moon] applied for another extension on 6 May 2020 based on Covid-related reasons and I dealt with that in Chambers and granted a further extension of 21 days which logically commenced from the date that the first extension was to expire namely 15 April 2020. The 21 days therefore granted to Mr [Moon] ended on 6 May. I waited a further two weeks before issuing my judgment on 22 May

2020 reaching the conclusion that no further submissions were likely to be filed because two extensions had already not been complied with. Therefore I reject Mr [Moon]'s assertion and his calculation that the extension went from the day it was granted or when the Covid period expired. Mr [Moon] is relying on his own logic rather than reading the minute issued by the Court and the clear and unambiguous logical outcome of the extension being granted.

[14] The doctrine of res judicata applies. The Court is functus officio. A full hearing has taken place on a defended basis and a judgment has been issued. The only basis that Mr [Moon] can challenge is on appeal. If he considered that there was some evidence that has come to light after the hearing for which there was a reasonable explanation for not appearing before me or there were some basis for an application for rehearing then that was the proper course for Mr [Moon] to file. He has failed to file the appropriate applications and the applications that he filed are procedurally incorrect. I do not accept Mr [Moon]'s argument that the 21 days applied from the date of lockdown being lifted but even if I accept Mr [Moon]'s submissions that that period would have ended on 18 May 2020 it was still two days before I delivered the judgment. There is simply no basis for his assertion to the Court.

<u>Application to vary minute of Judge Burns dated 20 March 2020, application for costs against Ms [Moon] made on 8 March 2020 and an application to vary common bundle used for hearing on 20 March 2020</u>

[15] For the same reasons as above all of those applications are without merit and should be dismissed. There is no basis for me to vary the minute dated 20 March 2020. I do not think I have any jurisdiction to do so and there is no basis in fact in law for doing so. The application for costs against Ms [Moon] is without merit because Mr [Moon] in the appearances before me has been in person. He is not entitled to costs because he is not a lawyer and he has not engaged a lawyer in the Family Court. There are no grounds for costs. The application to vary the common bundle used for hearing before me is again without merit. Considerable oral evidence was given by both parties in addition to the documentary material before the Court. Any matters that needed to be expanded on or amended were heard and determined. I have the full

notes of evidence available. There is simply no basis for this application and no prejudice has been demonstrated as a result of the alleged issue.

The wife's application dated 15 December for an order striking out pleadings filed by the applicant to rescind the order of the Court dated 8 August

[16] For the reasons given above I consider that application to be appropriate and it is granted. There will be no order for costs for the same reason that Ms [Moon] has appeared in Court in person. I find that the application filed by Mr [Moon] to be without merit and inappropriate. I consider that no further application should be filed with the Court or accepted. I grant leave to Ms [Moon] to apply to the Court for a finding that Mr [Moon] is a vexatious litigant. Such application has to be in writing and referring to the grounds. I direct that no further interlocutory applications are to be accepted for filing by the Family Court at Auckland without leave of the Court being granted. Mr [Moon] will need to make an application for leave before any further applications are accepted for filing. I direct that that application be placed before me for consideration in Chambers and I will decide on the basis of the merits (if any) of any further applications to be filed by him.

[17] The Family Court at Auckland has heard and determined the applications before it. Unless directed by the High Court to further consider matters the role of the Family Court is complete unless there are subsequent applications for enforcement of the orders already made.

Dated at Auckland this day of 2021 at am/pm.

D A Burns
Family Court Judge