

Superior Court of Justice Family Court Branch

(Name of Court)

at 75 Mulcaster Street, Barrie, Ontario L4M 3P2

(Court office address)

Endorsement

Date	Applicant:	<input checked="" type="checkbox"/> Present
May 23, 2024 Long Motion	Pasquale de Rosa	<input checked="" type="checkbox"/> Present
	Counsel: R.Grossi, D.Ajrawat, A.Andrade (ralph@grossilawoffice.com)	<input checked="" type="checkbox"/> Present <input type="checkbox"/> Duty Counsel
	Respondent: Kaliopi de Rosa Tzounakis (kaytzounakis78@gmail.com)	<input checked="" type="checkbox"/> Present <input type="checkbox"/> Present <input type="checkbox"/> Duty Counsel

Order to go in accordance with minutes of settlement or consent filed.

Overview and Background

Before me is AF’s long motion dated Oct.3/23 seeking findings that RM has breached the orders of Nov.18/22 and May 8/23, imposition of consequences under Rule 1(8) including costs and striking RM’s pleadings and related relief.

The parties married Sept.22/01 and separated Sept.10/22. They have 2 children, Cassandra (20) and Antonio (17). The former MH has sold, with net proceeds of sale remaining in trust.

There are 2 orders at the heart of this motion. They are:

1. My order of Nov.18/22 imposing disclosure obligations, granting exclusive possession of the MH to AF, granting leave for questioning and prohibiting certain activities by both parties, and
2. The order of McCarthy J. dated May 8/23 which imposed further disclosure obligations upon RM and fixed dates for questioning of the parties in June/23.

At the outset I confirmed with the parties the following are the affidavits being relied upon on this motion:

1. AF’s sworn Oct.3/23
2. RM’s sworn Oct.31/23
3. AF’s sworn Nov.7/23.

AF sought to rely upon a supplementary affidavit sworn in May/24. For oral reasons, I denied this request.

AF sought to rely upon an expert’s report dated Oct.2/23. RM raised an objection

on the basis of the proposed expert's qualifications. I received submissions from the parties. Evidence was before me regarding qualifications. For oral reasons, I qualified Mr. Tweed to give expert evidence regarding the nature of cryptocurrency and how related transactions and accounts are recorded, maintained and accessed. I directed that any opinions expressed in Mr. Tweed's report regarding whether RM had in fact failed to disclose required disclosure be disregarded.

AF submits multiple breaches by RM. I propose to address each in turn.

Alleged Breach re Involving the Children

The Nov.18/22 order provides: "The parties shall not speak about this litigation in front of the children...nor shall they permit their family members to do so."

AF alleges:

1. AF received a text from Cassandra insisting he not attend court on Jan.4/23. He asserts Cassandra must have received information about the court appearance from RM.
2. Knowing AF was unavailable, RM attended the MH home with the children on Jan.16/23, for 3 hours, during which she texted him: "The kids are disgusted!! You are sick." The children also messaged him directly asking his whereabouts.
3. RM again attended the MH on Jan.22/23 with the children who dismantled furniture that had not been agreed to be removed. RM had the children question AF regarding contents.
4. On May 21/23, two days after AF's lawyer communicated to RM's lawyer his opposition (due in part to cost) to RM's proposed travel with Antonio to New York, Cassandra texted AF: "...don't make up stupid excuses because of safety or money."

In her affidavit, RM deposes: "I have not spoken about this litigation in front of the children, however if asked a question by the children on their own volition, I cannot lie to them. Cassandra asked me about the first court date and when that was occurring and I could not lie to her." During submissions RM conceded she had been overheard by Cassandra at least twice when RM was discussing the litigation with one of her parents.

RM's evidence is internally inconsistent. At the same time she swears she has not spoken about the litigation in front of the children, she admits doing so when asked by the children. In addition, RM has not denied the allegations summarized at item 4 above.

I find it is likely RM spoke about this litigation within earshot of Cassandra. She has admitted doing so deliberately. This is a clear breach of the Nov.18/22 order.

I am concerned by RM's decision to directly involve the children in her attendances at the MH, something she does not deny; however, I do not find a breach of the Nov.18/22 order in this regard, as the children's attendance and the communications received from them by AF is not necessarily triggered by knowledge of the litigation obtained from RM. At the same time, I do note RM's

failure to respect the admonition in my Nov.17/22 endorsement to refrain from involving the children directly in this dispute.

The responsible and order-compliant response to a query from the children is to decline answering as it is a matter between the parents.

Alleged Breach re Failure to Provide Full Accounting

AF's focus with this allegation is upon RM's cryptocurrency holdings. Mr. Tweed's report of Oct.2/23 is of some assistance.

AF submits that para.2 of the Nov.18/22 order and paras. 2, 3, 5, 6, 7, 9, 10, 11, 12, 16, 17, 18, 19, 20, 24, 25 and 27 of Sch.A to the May 8/23 order are engaged.

AF alleges:

1. RM failed to obey para.2 of the Nov.18/22 order by refusing to provide the supporting documentation including her cryptocurrency accounts and/or programs.
2. RM failed to provide supporting documentation regarding her cryptocurrency investments, claiming such are "no longer running and that they have shut down given the downturn of the crypto market."

In response, RM alleges:

1. She responded to the Nov.18/22 disclosure orders by letters from her counsel dated Dec.5/22 and Jan.24/23.
2. She cannot access cryptocurrency information because "the crypto programs have closed down." She attaches to her affidavit screen shots to confirm her evidence.
3. In submissions, RM asserts the Shakepay and NDex cryptocurrency accounts were opened by her in AF's name. There is no evidence to this effect. She says she has no account numbers.

I have reviewed RM's counsel's letter dated Dec.5/22. It contains no explicit references to cryptocurrency accounts.

The letter of Jan.24/23 appears to include a spreadsheet that shows 19 cryptocurrency transactions for the period April 25/22 to Nov.9/22, with value totalling about \$27,000. The spreadsheet does not confirm account details, including account number and holder. The covering letter describes it as an "update" without confirming precisely what is being summarized in the spreadsheet. For example, are the transactions those performed by RM or AF? Are these all or only some of the transactions?

I am not satisfied RM has fully exhausted her best efforts to comply with her obligations under the outstanding orders. She has not adopted the contents of the letters from her counsel as being true and accurate responses to her disclosure obligations. Mr. Tweed's report confirms that the kind of information RM has been ordered to provide is readily obtainable. Even without the expert evidence of Mr. Tweed, I would not be satisfied with RM's efforts to date. The screen shot upon which RM relies is not convincing. Overall, her affidavit lacks detail of her efforts to comply. RM may wish to consider securing the assistance of a

professional third party to investigate accessibility of the disputed accounts. Greater effort at compliance by RM is required. Orders as below.

Allegation re RM's Failure to Contribute to Expenses

Paras. 11 to 13 of the Nov.18/22 order impose an obligation on the parties to share certain expenses (credit cards, , AF's BMO and Cash Money LOCs, children's cellphones) in specified proportions.

AF alleges that commencing April/23 RM stopped making contributions, resulting in arrears of \$4,850.53 as of Sept.11/23.

RM says she did her best to comply until the MH sold. She says AF has not paid child support and is in dire financial circumstances. She proposes her obligation be satisfied from her share of the sale proceeds.

It is apparent there is no dispute that RM has breached the order of Nov.18/22 in this regard, and I so find. The issue will be what remedy should result.

Allegation re RM's Unauthorized Use of Joint Accounts

The Nov.18/22 order states: "Any joint accounts held by the parties shall not be used unless both parties consent in writing prior to using same."

AF says RM withdrew \$2,766.67 from the joint BMO savings account on May 10/23 and a further \$1,900 on July 31/23. He says she did not seek and he did not provide his consent.

RM says she did provide notice in writing and that she needed the funds for Cassandra's university expenses. She proposes the expenses be recovered from her share of the net proceeds.

Notice to AF of her intention to withdraw funds from the joint account is clearly insufficient for compliance with the order of Nov.18/22. AF's written consent is required. RM having withdrawn funds without his consent, she has clearly breached the order and I so find. Her reasons may bear on the appropriate remedy.

I note that RM has never initiated a motion for support.

Allegation re RM's Failure to Attend Questioning

The May 8/23 order required RM to attend questioning on June 21/23.

AF says she failed to do so.

RM confirms she did not attend but says her notice came earlier than a day prior. She says she did not attend as she did not have counsel. She expresses regret for her conduct.

I note her NCR filed in the court file is dated June 19/23.

The order required RM's attendance for questioning on June 21/23. RM's failure to comply is conceded. I find she breached the Nov.18/22 order in this regard.

Disposition

Remedies under Rule 1(8) can be expensive and procedurally devastating. A range of options is available to me including costs, dismissal of RM's claims, striking RM's pleadings, denial of further audience to RM and a later motion for contempt.


Before I consider which options are best suited to the circumstances before me, I intend to give RM an opportunity to bring herself into compliance as a demonstration that she has developed an understanding of the importance of compliance with orders of the court. Given my findings above, it is apparent RM's misguided view to date has been that her compliance is optional. I cannot emphasize strongly enough how dangerous this view is. If RM wishes to ensure she is not precluded from ongoing active participation in this proceeding, she must comply with orders of this court to the very best of her ability. I will consider RM's compliance with the orders below in determining the appropriate result, including costs.

ORDERS TO GO:

1. Motion adjourned to a date (approximately 60 days hence) before me via Zoom to address RM's compliance hereafter and remedies for her non-compliance, to be arranged through the office of the Trial Coordinator, approximately. One hour.
2. RM shall attend questioning on a date, time and place of AF's counsel's choosing, subject to notice in writing per the Rules.
3. RM shall forthwith execute an authorization and direction in AF's favour authorizing immediate release to AF from RM's share of the proceeds of sale those monies she should have paid regarding the parties' expenses pursuant to paras. 11-13 of the Nov.18/22 order and this sum shall be applied by AF as intended by that order.
4. RM shall forthwith execute an authorization and direction in AF's favour authorizing immediate release to AF from RM's share of the proceeds of sale the sum of \$4,666.67 representing those monies she removed from the parties' joint accounts contrary to para. 6 of the Nov.18/22 order and this sum shall be deposited to and remain in the joint account in accordance with the said order.
5. Within 30 days, on a best efforts basis, RM shall provide the following disclosure to AF:
 - a) Confirmation of the total number of cryptocurrency accounts she established, either in her name, AF's name, both parties' names or jointly with any third party.
 - b) Confirmation of the account numbers and name of the account holders for all such accounts.
 - c) Login information for all such accounts.
 - d) Statements of account for all such accounts from Jan.1/22 to present.
 - e) Confirmation of the value of the accounts as of DOM and Vdate.
 - f) If unable to comply with any of the above, an affidavit detailing

efforts to comply and explaining why compliance is not possible.

6. Costs of today reserved.

A handwritten signature in black ink that reads "Douglas J." with a stylized flourish at the end.

Justice P.A. Douglas