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Appeal sought in Chuvalo divorce case

Tuesday, February 20, 2018 @ 10:44 AM | By Terry Davidson

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Case(s):

[Chuvalo v. Chuvalo, 2018 ONSC 311](#)
[Calvert \(Litigation guardian of\) v. Calvert \[1997\] O.J. No. 553](#)

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The estranged wife of George Chuvalo is appealing a recent ruling that the Canadian boxing legend lacks the mental capacity to decide whether to reconcile with her.



Angela Casey, left, and Angelique Moss, Casey & Moss LLP

A Toronto law firm confirmed Feb. 12 that Chuvalo's 61-year-old second wife, Joanne, will be challenging the recent ruling by Ontario Superior Court Justice Frances Kiteley, who had also deemed the aging Chuvalo incapable of instructing counsel and placed the former heavyweight under the legal protection of the Office of the Public Guardian and Trustee.

Lawyers with Casey & Moss LLP, who are representing Joanne, said a notice of appeal has been sent to the public guardian and that they were set to file to the court on Feb. 14.

The appeal, which asks that the Jan. 12 ruling in *Chuvalo v. Chuvalo* 2018 ONSC 311 be set aside due to alleged errors on the part of Justice Kiteley, sets the stage for another act in an ongoing saga that has divided a blended family, each side accusing the other of trying to get at the estate of the man famous for his 15 rounds with Muhammad Ali in 1966.

Two of Chuvalo's adult kids — a son and daughter from his first marriage — hold power of attorney and insist their 80-year-old father wants a divorce, while Joanne maintains he wants to reconcile and is being pushed into leaving her.

Joanne disputes the kids' power of attorney title and is reportedly seeking guardianship in a separate proceeding.

In Chuvalo's November 2015 *Family Law Act* application, which originally contained his son's signature until Justice Kiteley ordered that Chuvalo's replace it, April 2014 is listed as when the couple separated. A divorce is requested, as well as things such as support, family property and some form of restraining order.

In it, Joanne is alleged to have raided the couple's joint bank accounts — as well as some of Chuvalo's personal accounts — to fuel a "severe" gambling addiction and prescription drug problem, and allegedly "depleted the family property post-separation by the amount of ... \$446,302.21."

Joanne's application, which notes September 2013 as the date when they separated, does not ask for a divorce but demands things such as spousal support, the matrimonial home and, like Chuvalo, some type of restraining order.

In it, she accused Chuvalo of taking joint money, having criminal "associates," failing to pay household bills and ending up with tax debt. It also talks of him once being charged with uttering death threats, but that the charges were withdrawn.

Both applications touch on Chuvalo's years of practising the sweet science and his subsequent cognitive decline.

Joanne has since abandoned her application, according to lawyers involved. In her decision, Justice Kiteley said Chuvalo "does not have capacity to decide whether to reconcile" with Joanne, whom he married in 1994.

Justice Kiteley noted while there are signs Chuvalo wants to be with Joanne, he doesn't understand what it entails.

"There is no evidence that he understood whether there would be consequences to a decision to 'live with' his wife," states Justice Kiteley, who cited consequences such as the changing of the financial "status quo" between them, changing the separation and "valuation date" for the purposes of the *Family Law Act* and the potential emotional fallout should reconciliation fail.

Of two experts who assessed Chuvalo, Justice Kiteley leaned mainly on Dr. Richard Shulman, who found Chuvalo "did not have capacity to seek marital reconciliation ... [and he] may be vulnerable to undue influence ..."

But one of Joanne's appeal lawyers said Justice Kiteley, after looking to case law in *Calvert v. Calvert* [1997] O.J. No. 553 during her decision, ended up erring when she created "a more onerous test" for Chuvalo when it comes to capacity.

"*Calvert* holds that separation requires the lowest level of understanding, and divorce and marriage require 'a bit more understanding', but that even marriage does not require a high degree of intelligence to comprehend," said Angelique Moss, of Casey & Moss. "In our view, based on *Calvert*, the capacity to reconcile should be quite low, and equal to the capacity to separate. Otherwise, a person could have the capacity to separate, but not have the capacity to reconcile with one's spouse."

The appeal also takes issue with Justice Kiteley leaning heavily on testimony from Shulman and not from another expert who differed in her view of whether Chuvalo could reconcile.

Among other things, the notice of appeal calls for either a declaration that Chuvalo does have the capacity to reconcile with Joanne, or that the trial proceed "before a new trial judge" on an issue of whether Chuvalo's divorce application "was properly commenced" by his son, whose signature originally appeared on it, and whether Chuvalo "had the capacity and intention to separate."



Kelley Bryan, Perez Bryan Procope LLP

It also questions whether Chuvalo “had the capacity to divorce” when ordered to sign his own signature on the application in place of his son’s.

Lawyer Kelley Bryan, of Perez Bryan Procope LLP, said an appeal could serve up a “clear statement” on the legal test for capacity to reconcile.

“It will be helpful for the legal community ... to have appellate guidance on the issues raised in this appeal,” said Bryan. “As this case shows, mental capacity litigation often includes medical opinion as well as (contested) allegations of fact, but ultimately the test for mental capacity is a legal issue. Ontarians would benefit from a clear statement of the legal test for capacity to reconcile, especially as it may have implications for other aspects of mental capacity law.”

Bryan had said Kiteley’s decision sets a benchmark — at least for the time being.



Kimberley Whaley, Whaley Estate Litigation Partners

“Mental capacity spans many discrete dimensions. ... This ruling establishes that mental capacity to reconcile under the *Divorce Act* requires not only a wish to live with a person, but also an understanding of the financial, legal and emotional consequences.”

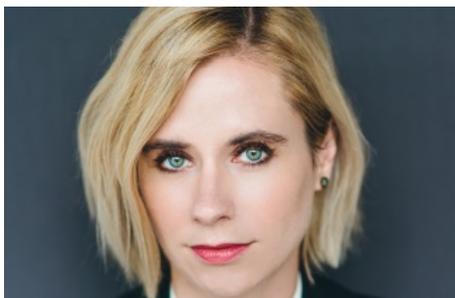
Kimberley Whaley, of Whaley Estate Litigation Partners, also weighed in on the January decision, noting Justice Kiteley’s call for the Chuvalo family to “bury the hatchet and co-operate” in his best interests.

“The sensitivities of it, it’s very emotional,” said Whaley. “We have a vulnerable person where the courts have to ensure that they take the right approach to protecting [Chuvalo’s] economy and his rights, yet carefully weight it against protecting him where protection is needed. The court’s job is to discharge the most ... effective access to justice.”

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