

COURT OF APPEAL FOR ONTARIO

CITATION: Yar v. Yar, 2012 ONCA 658

DATE: 20121001

DOCKET: C53292

Goudge, Simmons and Gillese JJ.A.

BETWEEN

Qasim Abraham Yar

Applicant (Appellant)

and

Roya Fatemeh Yar

Respondent (Respondent)

Aaron Franks and Michael Zalev, for the appellant

Tom Bastedo and Samantha Chowsky, for the respondent

Heard and released orally: September 21, 2012

On appeal from the order of Justice William Festeryga of the Superior Court of Justice, dated January 14, 2011.

ENDORSEMENT

[1] We are all of the view that the reasons for judgment offered to support the orders challenged by the parties are, regrettably, woefully inadequate. In many cases we cannot discern any findings of fact that would be necessary to found such orders, nor can we see the path followed by the trial judge to reach his

conclusions. We therefore agree with the parties that paras. 5, 9, 10, 11, 12, 15, 16, 17, 18 and 19 must be set aside.

[2] We agree with the appellant that the same is true of para. 12. Paragraph 13 is similarly deficient. As a result para. 14 must fall as well, based as it is on imputed income. As a consequence, the costs order below obviously cannot be sustained and will be set aside.

[3] The respondent contends that for paras. 12, 13, 17 and 18, this court should craft a remedy. However, the parties submit, and we agree, that all other issues we have dealt with should receive a new trial. In our view, there is a significant interrelationship between all the issues left for disposition once these orders are set aside. The interests of justice therefore are best served by returning all issues to a new trial. Costs of the first trial will be for the new trial judge.

[4] We direct that these issues all be returned for a new trial, and we order that the new trial be expedited. Pending that, the interim order will remain in effect, subject to any variations that may properly be made.

[5] We recognize the burdens placed on the parties by the defects in this trial. That is very unfortunate. We hope and expect that justice will be properly served by the new trial.

[6] In our view, the means of both parties have been significantly depleted over the course of this litigation. We hope that this consideration will be a

significant guide if this matter goes forward. In the circumstances, this is not a case for costs, and none are ordered.

“S.T. Goudge J.A.”

“Janet Simmons J.A.”

“E.E. Gillese J.A.”