

COURT OF APPEAL FOR ONTARIO

CITATION: Roscoe v. Roscoe, 2012 ONCA 817

DATE: 20121126

DOCKET: C55604

Simmons, Cronk and Rouleau JJ.A.

BETWEEN

Peter Karl Roscoe

Appellant

and

Kendra Roscoe

Respondent

Peter Karl Roscoe, acting in person

Jirina Bulger, for the respondent

Heard: November 13, 2012

On appeal from the order of Justice Timothy Minnema of the Superior Court of Justice, dated April 25, 2012.

ENDORSEMENT

[1] The appellant appeals from a child support variation order awarding lump sum child support to the respondent in the amount of \$32,053.51 as requested by the respondent and dismissing the appellant's request for a retroactive reduction of child support. The order also dismisses the appellant's requests for

leave to bring further motions (he had previously been declared a vexatious litigant) and his various constitutional challenges.

[2] We agree that the appellant's financial circumstances had changed somewhat from the date of the original support order in which the trial judge imputed to him rental income of \$16,800 per year from his home. The appellant's home was seized and sold by a mortgagee in October 2010. Nonetheless, we are not persuaded that the motion judge erred in dismissing the appellant's claim for a retroactive reduction of child support and in granting the respondent's request to vary the periodic child support order to an order for lump sum child support.

[3] The appellant has never paid child support voluntarily since the original order was made in 2003. Nor has he made proper financial disclosure. Further, he has engaged the respondent in protracted litigation. Apart from the seizure of his home, the appellant did not demonstrate any other change in his circumstances. In 2003, the trial judge took account of the equalization payment in imputing investment income. The fact that the appellant may not be working now does not rebut the trial judge's conclusion that he is capable of working.

[4] The child is now just under 14 years of age. No child support has been paid since March 2011. Even assuming a somewhat reduced level of ongoing

periodic support would have been warranted from October 2010 forward, the lump sum support awarded is not outside the range of what was appropriate.

[5] In the circumstances, a lump sum award was appropriate and we are not satisfied that any retroactive variation of child support was necessary.

[6] The motion judge was correct in holding that the appellant's requests for leave to bring many of the motions he sought to advance had previously been dealt with – as had some of the motions. That said, in our view, the motion judge erred in failing to consider the appellant's motion for leave to request access. The appellant had been granted leave to bring a motion to seek the involvement of the Office of the Children's Lawyer. His advice to the court that he had determined that the Office of the Children's Lawyer would not become involved was not dispositive of his request to advance a claim for access.

[7] The appellant shall be entitled to request leave to bring a motion for access. The appeal is otherwise dismissed.

[8] Costs of the appeal are to the respondent on a partial indemnity scale fixed in the amount of \$6,500 inclusive of disbursements and applicable taxes.

“Janet Simmons J.A.”

“E.A. Cronk J.A.”

“Paul S. Rouleau J.A.”