COURT OF APPEAL FOR ONTARIO

CITATION: Fair v. Fair, 2012 ONCA 900
DATE: 20121220
DOCKET: C55424

LaForme and Watt JJ.A. and Lederman J. (*ad hoc*)

BETWEEN

William Garth Fair

Appellant

and

Betty Rutherford Fair

Respondent

Gary Joseph and Kenneth Younie, for the appellant

Susan Metzler, for the respondent

Heard and released orally: December 13, 2012

On appeal from the judgment of Justice John Murray of the Superior Court of Justice, dated April 3, 2012.

ENDORSEMENT

[1] In December 2009, Mr. Fair brought an emergency motion to change his May 2005 court ordered child and spousal support based on a change in circumstances. At the same time, Ms. Rutherford moved for child support and s. 7 expenses. An interim stay of the support orders was granted and a trial was ordered.

[2] At trial in March 2012, in which both parties were self-represented, Mr. Fair's request for the change of the support arrangement was largely denied and he was ordered to pay significant arrears to Ms. Rutherford. He appeals that order on the basis that the trial judge erred in three ways: (1) by denying him an adjournment to retain counsel; (2) by imputing income to him without a sufficient evidentiary basis; and (3) by ordering that horse-related expenses are s. 7 expenses and that they should be borne solely by him.

(1) Denying the Adjournment

[3] A trial judge has wide latitude in deciding whether to grant or refuse the adjournment of a scheduled trial. The decision is discretionary and the scope for appellate intervention is limited. The trial judge's decision to proceed and not adjourn the trial in this case was a proper exercise of his discretion.

[4] Mr. Fair provided no supporting evidence about his alleged search or steps to retain a lawyer. It was Mr. Fair who requested a hearing on the variation of the support arrangements in the first instance. He must have known that he would need to establish through evidence that there were actually grounds for that variation. He had ample opportunity to retain a lawyer and to prepare himself.

[5] The trial judge considered all the circumstances including two peremptory orders against Mr. Fair, the reason Mr. Fair gave for not being prepared and the

history of the proceedings. The trial judge properly exercised his discretion in refusing an adjournment and this ground of appeal fails.

(2) Imputing Income

[6] From his past experiences in court, Mr. Fair had familiarity with and knowledge about a court's authority to impute income. Indeed, in 2005, Mr. Fair consented to an order imputing his income at $200,000. Further, in a 2009 document between the parties, which they called a memorandum of understanding, Mr. Fair agreed to an imputed income of $129,000.

[7] At trial, he failed to provide the necessary income information despite having been ordered to do so. He had no credible evidence as to his financial circumstances when the original order was made or what the material change in circumstances was. The trial judge had a sufficient basis for imputing the income he did. This ground of appeal also fails.

(3) Section 7 Expenses

[8] Finally, on a full and fair reading of the trial judge's reasons and the order, it is abundantly clear that he did not conclude that the horse related expenses were not s. 7 expenses and nevertheless ordered Mr. Fair to pay them as counsel asserts. Rather, the trial judge accepted them as s. 7 expenses and then ordered Mr. Fair to pay 100 per cent of them. There is no reason to interfere with this decision. This ground of appeal also fails.

[9] For these reasons, the appeal is dismissed.

(4) Costs

[10] The respondent is entitled to her costs in the amount of $8,500 inclusive of HST and disbursements. The full amount of this costs award is to be attributed as support.

"H.S. LaForme J.A."
"David Watt J.A."
"S. Lederman J. (*ad hoc*)"