COURT OF APPEAL FOR ONTARIO

CITATION: Parrish v. Navarro, 2014 ONCA 856
DATE: 20141201
DOCKET: C58985

Rouleau, van Rensburg and Pardu JJ.A.

BETWEEN

Clyde Franklin Parrish Jr.

Appellant

and

Regina Navarro

Respondent

Steven Benmor, for the appellant

Marc D'Heureux, for the respondent

Heard and released orally: November 20, 2014

On appeal from the Final Order of Justice Douglas K. Gray of the Superior Court of Justice, dated May 27, 2014 and June 11, 2014 (costs).

ENDORSEMENT

[1] The appellant appeals from the refusal of a motion judge to dismiss the respondent's application for child support under the *Family Law Act*. He argues that the motion judge erred in concluding that the respondent was not obliged to proceed under the *Interjurisdictional Support Orders Act* and erred in refusing to

stay the application on the ground that it was not the convenient forum for the hearing of the dispute.

[2] The parties were married on August 26, 1995 and separated in Florida approximately 11 months later. They were divorced on December 4, 1996. The child was born on June 17, 1997 in Toronto and has lived continuously in Ontario with his mother since then.

[3] There is no court order or child support agreement in place for the child.

[4] The appellant's first argument is conclusively answered by *Jasen v. Karassik*, 2009 ONCA 245 holding that the *Interjurisdictional Support Orders Act* provides an alternative procedure and does not bar an applicant from seeking support from an out-of-province respondent under the *Family Law Act* provided that the court has jurisdiction to hear the claim.

[5] An Ontario court has jurisdiction under the *Family Law Act* provided that there is a real and substantial connection between the claim and Ontario. Here, the child was born in Ontario and the child and his mother have resided in Ontario for all of the child's life. Here, the ordinary residence of the child in Ontario is a sufficient basis to conclude that there was a real and substantial connection between Ontario and the subject-matter of the litigation, custody and support of the child. (See also *Knowles v. Lindstrom,* 2014 ONCA 116.)

[6] The motion judge dealt with the issue of the convenient forum and noted that the onus was on the appellant to show that another forum was clearly more convenient than Ontario for the litigation of this claim. He concluded that the appellant had not met his onus.

[7] The appellant has not established any error in principle or palpable and overriding error in the determination that Ontario was a proper and convenient forum. The choice of law in the agreement is irrelevant as the agreement did not purport to deal with child support. Proceeding in Ontario causes no obvious unfairness to the appellant who has the financial means to obtain and instruct counsel in the Ontario proceedings.

[8] The appellant argues that the only relevant evidence in this case is the father's income. We disagree. The application raises issues as to the needs and means of the parties and the child.

[9] As for costs, the motion judge applied the correct principles when he awarded costs on a substantial indemnity basis after he found that the appellant, through his counsel, had behaved unreasonably in suggesting that the respondent's counsel was at risk of costs personally and questioning whether he had behaved professionally in not following the ISOA procedure.

[10] Leave to appeal costs is refused.

[11] For these reasons, the appeal is dismissed, with costs awarded to the respondent fixed in the amount of $6,000 inclusive of HST and disbursements.

"Paul Rouleau J.A."

"K. van Rensburg J.A."

"G. Pardu J.A."