COURT OF APPEAL FOR ONTARIO

CITATION: Harrison v. Arrocha, 2015 ONCA 432
DATE: 20150615
DOCKET: C58658

Simmons, Cronk and Blair JJ.A.

BETWEEN

Paul Harrison

Respondent
(Appellant)

and

Liz Michelle Arrocha

Applicant
(Respondent)

Allison Pyper, for the appellant

Irving I. Frisch, for the respondent

Heard: June 10, 2015

On appeal from the order of Justice C. Horkins of the Superior Court of Justice, dated March 19, 2014.

ENDORSEMENT

[1] The appellant appeals from an order declaring G.A. to be a child of the marriage, and requiring that the appellant pay Guideline child support so long as the child remains a child of the marriage, retroactive child support fixed at $10,000 and spousal support in the amount of $959.00 per month for one year.

[2] The appellant raises multiple issues on appeal, challenging the trial judge's finding that the child is a child of the marriage as well as her findings concerning the appellant's income and ability to pay and concerning the respondent's ability to obtain child support from the child's biological father and contribute to her own support and that of her child.

[3] We would not give effect to any of these arguments. The trial judge reviewed the evidence and the relevant authorities and made detailed findings supporting her conclusions. In our view, the appellant's arguments are nothing more than an effort to have this court retry the case. That is not our function. It is well established that, particularly in family law cases, an appellate court is not entitled to substitute its views for those of the trial judge. Absent an error in principle, a serious misapprehension of the evidence or unless an award is clearly wrong, an appellate court must not intervene: *Hickey v. Hickey*, [1999] 2 S.C.R. 518; *Van de Perre v. Edwards*, [2001] 2 S.C.R. 1014. No such error has been shown.

[4] The appellant also seeks leave to file fresh evidence on appeal, including a copy of an extract from his 2013 Notice of Assessment from Revenue Canada. The extract suggests that the appellant's actual taxable income for 2013 was $55,000, rather than $79,319 as referenced in his financial statement filed at trial. The trial judge's awards of child and spousal support were both based in part on the appellant's income of $79,319 as set out in his financial statement.

[5] We decline to admit the fresh evidence. In our view, it lacks the necessary cogency to warrant admission on appeal. In particular, concerning the extract from the 2013 Notice of Assessment, Revenue Canada's assessment is entirely dependent upon the information provided by the appellant in his filed tax return and the documentation relating to it. While the appellant says in his affidavit that "[h]e learned that he had made an overly excessive estimate of income", he does not say what he claimed as income in his tax return and he provides no basis for stating that his income was overestimated.

[6] In any event, the trial judge's order sets out a procedure for adjusting the child support payable under the order based on annual production of the appellant's income tax return and notice of assessment. This is the procedure that should be followed to adjust child support.

[7] Although the appellant raised the issue of the trial judge's costs award in his supplementary notice of appeal, he did not file the costs order, the trial judge's reasons on costs or any other material relating to this issue. Accordingly, we are not in a position to address the matter.

[8] The appeal is therefore dismissed and leave to appeal costs is denied. Costs of the appeal are to the respondent on a partial indemnity scale fixed in the amount of $7500, inclusive of disbursements and applicable taxes.

“Janet Simmons J.A.”
“E.A. Cronk J.A.”
“R.A. Blair J.A. ”