

COURT OF APPEAL FOR ONTARIO

CITATION: Priest v. Reilly, 2018 ONCA 389

DATE: 20180419

DOCKET: C64686

MacFarland, LaForme and Epstein JJ.A.

BETWEEN

Elaine Lynn Priest

Applicant (Respondent)

and

Paul Duncan Reilly

Respondent (Appellant)

Paul Duncan Reilly, acting in person

Kathryn A. Junger, for the respondent

Heard and released orally: April 13, 2018

On appeal from the order of Justice Donald J. Gordon of the Superior Court of Justice (Family Court), dated December 1, 2017.

REASONS FOR DECISION

[1] The order under appeal relates to a motion to change child and spouse's support obligation ordered under Part III of the *Family Law Act*, R.S.O. 1990, c. F.3 ("*FLA*"). It was made at a family court location in Hamilton. The relevant appeal route is prescribed through the operation of the *FLA* and the *Courts of Justice Act*, R.S.O. 1990, c. C.43 ("*CJA*").

[2] Section 48 of the *FLA* provides that appeals of orders under Part III of the *FLA* from the Ontario Court of Justice lie to the Superior Court of Justice.

[3] Section 21.9.1 of the *CJA* provides:

A statutory provision referred to in the Schedule to section 21.8 or in section 21.12 that provides for appeals from decisions of the Ontario Court of Justice to the Superior Court of Justice shall be deemed to provide for appeals from decisions of the Family Court to the Divisional Court.

[4] The schedule to s. 21.8 refers to the *FLA*, except Part V. Consequently, an appeal of a family court decision made under Part III of the *FLA* properly lies to the Divisional Court and not to the Court of Appeal: see *Christodoulou v. Christodoulou*, 2010 ONCA 93, 258 O.A.C. 193.

[5] Accordingly, the Divisional Court has jurisdiction over this appeal. We have no choice but to quash the appeal on the basis we do not have jurisdiction to hear it. That said, we feel compelled to express strong support for the concern voiced by MacPherson J.A. in *Christodoulou* about the inconsistency in current appeal routes and how confusing they must be for the public, for counsel and for institutional litigants. We add that the litigants most significantly affected by the confusion are self-represented litigants such as one of the parties to this appeal.

[6] It has been over eight years since MacPherson J.A. went on to specifically invite legislative reform in this area. This is a serious access to justice problem that must be remedied.

DISPOSITION

[7] The appeal is therefore quashed. We make no order as to costs.

“J. MacFarland J.A.”

“H.S. LaForme J.A.”

“Gloria Epstein J.A.”