

COURT OF APPEAL FOR ONTARIO

CITATION: Wachsberg v. Wachsberg, 2018 ONCA 508

DATE: 20180531

DOCKET: C64843 & M49061

Juriansz, Benotto and Fairburn JJ.A.

BETWEEN

Charles David Wachsberg

Applicant
(Appellant)

and

Allyson Anne Wachsberg

Respondent
(Respondent in Appeal)

George Karahotzitis and Patrick D. Schmidt, for the appellant

Harold Niman and Kristen Normandin, for the respondent

Heard and released orally: May 28, 2018

On appeal from the order of Justice E.R. Kruzick of the Superior Court of Justice dated, December 18, 2017.

REASONS FOR DECISION

[1] In 2015, the parties signed a separation agreement which limited the husband's income for purposes of support calculations to \$1 million per year. The agreement also provided that neither party has "any obligation to inform the other

of changes in either party's financial position". In response to a divorce application by the husband, the wife moved to set aside the agreement.

[2] The motion judge ordered the husband to disclose his income tax returns for the three years surrounding the time of the negotiation of the agreement and to provide a sworn financial statement.

[3] The husband appeals this order. The wife moves to quash the appeal on the basis that the order is interlocutory and the appeal lies to the Divisional Court with leave.

[4] The appellant submits that the order is final because it implicitly disposes of the substantive issue in the action: his rights under the separation agreement not to disclose his financial position. He submits the underlying order "finally and irrevocably determines the enforceability of the non-disclosure term".

[5] We do not agree.

[6] This court in *Hendrickson v. Kallio*, [1932] O.R. 675, at p. 678 provided that an interlocutory order is one:

...which does not determine the real matter in dispute between the parties – the very subject matter of the litigation, but only some matter collateral. It may be final in the sense that it determines the very question raised by the application, but it is interlocutory if the merits of the case remain to be determined.

[7] The order in question on this appeal does not finally determine or decide the subject matter of the litigation between the parties, namely, the enforceability of the separation agreement. The motion judge's analysis makes it clear that he did not determine the validity of the separation agreement. Instead the motion judge made a procedural order for disclosure – the most basic requirement under the Family Law Rules. It remains open to the trial judge to accept the husband's position on the validity of the agreement.

[8] The order is clearly interlocutory and the appeal is therefore quashed. The appellant shall pay to the respondent her costs of the appeal and the motion to quash, fixed in the amount of \$25,000 all inclusive.

“R.G. Juriansz J.A.”

“M.L. Benotto J.A.”

“Fairburn J.A.”