

COURT OF APPEAL FOR ONTARIO

CITATION: Pervez v. Mohammed, 2022 ONCA 778

DATE: 20221114

DOCKET: C70681

Pepall, Trotter and Thorburn JJ.A.

BETWEEN

Hasnath Pervez

Applicant (Appellant)

and

Ziauddin Ahmed Mohammed

Respondent (Respondent)

Allen C. Gerstl, for the appellant

Jerrold K. Grossman and Ruth D. Richards, for the respondent

Heard: November 1, 2022

On appeal from the order of Justice Allan R. Rowsell of the Superior Court of Justice, dated March 7, 2022.

REASONS FOR DECISION

[1] The appellant appeals from the March 7, 2022 consent order of Rowsell J. incorporating terms of the appellant and the respondent's separation agreement.

[2] The parties were engaged in family law proceedings to determine, among other things, child and spousal support.

[3] On July 9, 2021, they entered into a settlement agreement that contemplated a consent order incorporating its terms. They both were represented by counsel and acknowledged that they had had independent legal advice and all the disclosure they requested and required. In the agreement, the respondent described his 2020 annual income as amounting to \$161,155.

[4] In furtherance of the settlement, the parties listed and sold their matrimonial home, liquidated their investment property, and the respondent waived his equalization claim of \$176,308.28 against the appellant and paid her \$75,000 as a lump sum on account of spousal support.

[5] In December, 2021, the appellant learnt that the respondent had jointly purchased a large house with his brother and sister-in-law. She began to question whether he had made full financial disclosure and alleged through her lawyer that he had misrepresented his income given the costs associated with the new property.

[6] Although the appellant's notice of appeal asserts that her counsel advised the respondent's counsel that the consent to the order was withdrawn, this is nowhere to be found in the record before this court. What is in the record is a February 1, 2022 email from the respondent's counsel attaching bank statements from the brother and sister-in-law confirming that they transferred \$450,400 to the respondent and that the respondent used approximately \$520,000 he received

from the matrimonial home sale proceeds and the \$325,000 he received from the investment property proceeds as a down payment on the new house. Counsel included the trust ledger and closing documents for the new house to confirm the ownership. Counsel stated that she trusted this was sufficient and that the matter could now be put to bed. She noted that her client had agreed to receive significantly less for the investment property than market value in an effort to settle all outstanding issues.

[7] There is no evidence of any response from the appellant.

[8] On February 10, 2022, the respondent moved under r. 14 of the *Family Law Rules*, O. Reg. 114/99, for the granting of the July 9, 2021 consent order. The appellant used Form 14B for this motion, which is available for “procedural, uncomplicated or unopposed matters”: r. 14(10). The motion was made on notice to the appellant, was in writing, and advised that opposition was expected.

[9] The appellant did oppose the motion as it related to spousal and child support. In her affidavit, she questioned the disclosure made by the respondent. She maintained that he purchased a new house for \$3,500,000 and had monthly mortgage payments of \$7,940.59 that would be much more than the respondent could afford based on his disclosed income. She asked that the court order disclosure of particulars of the respondent’s current income, its source, and financial statements for any private corporations he had. The motion judge granted

the consent order requested by the respondent and did not order the disclosure requested by the appellant.

[10] The appellant now raises two issues.

[11] First, she submits that the respondent failed to comply with r. 13 of the *Family Law Rules* which required him to deliver an updated financial statement or an affidavit that his financial means had not changed since the filing of his last financial statement. She relies on *Dowdall v. Dowdall*, 2021 ONCA 260.

[12] That case involved a motion judge's exercise of discretion to refuse to grant a consent order in the face of a finding of material non-disclosure and bad faith. In contrast, in the appeal before us, the respondent had made full disclosure when the parties entered their settlement and explained with back-up documentation how the house purchase with his brother and sister-in-law was consistent with his previously-disclosed assets and income. In the face of a consent that had been implemented and that was accompanied by disclosure and independent legal advice, r. 13 was inapplicable.

[13] Second, the appellant submits that the motion judge erred in granting a 14B motion given that the appellant had filed a 14A affidavit. She argues that a 14B motion is only available when the matter is procedural, uncomplicated, unopposed, on consent, or urgent.

[14] In our view, the respondent was entitled to bring a 14B motion. He had provided information explaining the house purchase, the appellant did not bring proceedings to invalidate the consent order, and the parties had proceeded to implement the terms of their agreement over the course of six months. The respondent advised the court that opposition was expected. The motion judge reviewed the evidence including the appellant's affidavit and exercised his discretion to grant the order in this seemingly uncomplicated matter. We see no basis on which to interfere.

[15] Lastly, we also observe that s. 25(1) of the *Federal Child Support Guidelines*, SOR/97-175, requires every spouse against whom a child support order has been made to provide annual income disclosure on written request of the other spouse.

[16] The appeal is dismissed. As agreed by the parties, the appellant is to pay the respondent costs fixed in the amount of \$8,265.94 on a partial indemnity scale inclusive of disbursements and applicable tax.

"S.E. Pepall J.A."
"G.T. Trotter J.A."
"J.A. Thorburn J.A."