COURT OF APPEAL FOR ONTARIO

CITATION: Flores v. Glegg, 2022 ONCA 825
DATE: 20221128
DOCKET: C70244 & C70254

Pepall, Trotter and Thorburn JJ.A.

DOCKET: C70244

BETWEENs

Hazel Flores and Armando Flores

Applicants
(Respondents)

and

Robert Glegg

Respondent
(Appellant)

DOCKET: C70254

AND BETWEEN

Justice for Children and Youth, Jesse Mark, Mary Birdsell and Emily Chan

Applicants
(Respondents)

and

Robert Glegg

Respondent
(Appellant)

James Zibarras, for the appellant Robert Glegg

Adam J. Wygodny for the respondents Hazel Flores and Armando Flores

Linda Plumpton, Alexandra Shelley and Tosh Weyman, for the respondents Justice for Children and Youth, Jesse Mark, Mary Birdsell and Emily Chan

Heard: October 31, 2022

On appeal from the judgments of Justice Sean F. Dunphy of the Superior Court of Justice, dated December 29, 2021, with reasons reported at 2021 ONSC 8515, and the costs orders dated January 24, 2022, with reasons reported at 2022 ONSC 453.

REASONS FOR DECISION

[1] The genesis of this litigation began with the appellant Robert Glegg's daughter's withdrawal from his parental control and her alleged reasons, therefor.

[2] On April 28, 2016, the appellant's daughter O.G., who was then a minor, sought and obtained a declaration to withdraw from the appellant's parental control and seek child support from him. Until the order was issued, the appellant had sole custody of O.G. At the emancipation proceeding, O.G. was represented by Justice for Children and Youth ("JFCY"), a not-for-profit legal aid clinic.

[3] JFCY and three of its current or former staff lawyers are respondents on this appeal. The other respondents, Hazel and Armando Flores, are family friends of O.G. and her mother. The Flores respondents provided a safe haven for O.G. when she withdrew from parental control.

[4] After unsuccessfully opposing O.G.'s withdrawal from his parental control, the appellant commenced numerous proceedings including: an unsuccessful

appeal of the withdrawal declaration, a private prosecution against the mother that was stayed, unsuccessful complaints alleging professional misconduct and seeking disbarment against two of the JFCY lawyers, the seeking of criminal charges against the mother in Florida that the Florida police refused to pursue, an unsuccessful application for enforcement of subpoenas and letters rogatory in Ontario and an unsuccessful ensuing appeal, commencement and dismissal of a Florida action seeking $9.6 million in damages against the mother for intentional interference with custodial rights and intentional infliction of emotional distress.[1] In addition, he commenced: (1) a tort claim against the respondents JFCY and certain of their named employees seeking damages for alleged false representations made to block the release of records that allegedly showed that O.G.'s mother perjured herself and assisted O.G. in making fraudulent claims against the appellant in the emancipation proceeding, and (2) a tort claim against the Flores respondents seeking damages for allegedly helping O.G.'s mother circumvent the appellant's sole custody order.

[5] The respondents brought two parallel applications against the appellant pursuant to s. 140 of the *Courts of Justice Act*, R.S.O. 1990 c. C.43: the first, to

[1] The appellant also brought a motion for reconsideration of the dismissal of the Florida action which decision was under reserve when this appeal was argued.

have the appellant declared a vexatious litigant, and the second, to stay his proceedings against them.

[6] After a detailed review of the appellant's conduct and the law, the application judge granted both applications.

[7] He held that the appellant and his counsel were simply "attempting to re-surface old allegations in new packaging. ... Bringing claims whose foundations have all been fundamentally determined in final decisions of this court is unreasonable and amounts to a clear abuse of process." The application judge further held that O.G. was not "an unwitting cog in plans devised for her by others"; "there can be no objective doubt – despite Mr. Glegg's refusal to accept it – that this was a plan that O.G. ardently desired and played the dominant role in pushing."

[8] He declared the appellant to be a vexatious litigant, stayed the existing proceedings, and barred him from commencing further proceedings absent leave of the court. He subsequently ordered full indemnity costs against the appellant.

[9] In these two appeals, the appellant appeals the judgments declaring him a vexatious litigant as well as the cost order against him.

Analysis of the Grounds for Appeal

[10] The appellant raises four grounds of appeal.

[11] First, he submits that the application judge erred in treating the applications as consolidated and gave no reason for doing so.

[12] We disagree.

[13] The application judge did not consolidate the applications, nor was he asked to. The application repeatedly referred to the “two parallel” applications.

[14] Although, evidence from one application was relied on in the other, the respondents expressly gave notice to the appellant that they intended to rely on evidence from the other application. Moreover, Davies J.’s endorsement following a case conference dated October 21, 2020, expressly noted the anticipated reliance by the respondents on that evidence.

[15] He treated the two applications not as one, but as two parallel proceedings wherein some evidence from one was relied on in the other. We see no error.

[16] Second, the appellant submits that the application judge erred in finding the appellant’s proceedings to be an abuse of process and a collateral attack on previous court orders.

[17] The appellant no longer disputes O.G.’s decision to withdraw from parental control. However, he maintains that O.G. “was not acting of her own free will, but rather has been brainwashed by her mother” to withdraw from his parental control. The appellant claims that while he had sole custody of O.G. and she was a minor, O.G.’s mother breached the sole custody order by encouraging O.G. to withdraw from the appellant’s parental control.

[18] The appellant claims the respondents conspired to assist O.G.'s mother in her brainwashing efforts.

[19] There is no dispute that the appellant had sole custody of O.G. while she was a minor, that O.G.'s mother knew of her intention to withdraw from the appellant's sole custody and move to Florida, and that she assisted O.G. in her application to the University of Miami without the knowledge of the appellant. Moreover, as Perell J. found, O.G.'s application and her mother's role in it resulted in the "second outbreak of the family relationship breakdown".

[20] However, the appellant's request to have O.G.'s mother declared in breach of the sole custody order for brainwashing her child was heard and denied, as was the appeal from that order. It was denied on the basis that the allegations of wrongdoing against O.G.'s mother were moot, as O.G.'s withdrawal from the appellant's custody was voluntary.

[21] Several judges of the Superior Court and this court held that O.G. was not brainwashed; she expressed her own clear desire to withdraw from the appellant's parental control and obtained a court order to allow her to do so. Most notably, in *R.G. v. K.G.*, 2017 ONCA 108, 136 OR (3d) 689, at paras. 36, 39-40, Benotto J.A. of this court rejected the appellant's proposed fresh evidence that O.G. was "not acting of her own free will, but rather has been brainwashed by her mother, who is

essentially her captor". She concluded that the evidence was "not 'fresh' but the reiteration of a theory already raised and rejected twice."

[22] The tort claims against the JFCY and Flores respondents are premised on the allegation that they were not assisting O.G. exercise her own free will, but were assisting O.G.'s mother in her alleged attempts to wrongly exercise control over O.G. It follows that since the premise underlying these claims has been raised and finally rejected, these claims too must fail.

[23] The application judge correctly held that the appellant's actions against the respondents could not succeed without seeking to attack conclusions of this and other courts including, most importantly, that O.G. was not "brainwashed by her mother" but was acting of her own free will. When these conclusions are drawn, there is nothing tortious in assisting O.G. to exercise her own free will.

[24] One of the objectives of abuse of process is to protect the integrity of the court's process by preventing a party from relitigating matters that have already been finally determined. As the Supreme Court of Canada held in *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 SCR 77, at paras. 35-55, the doctrine is related to the common law doctrines of *res judicata*, issue estoppel and collateral attack, but is more flexible because it is available even where, as in this case, one or more parties to the action were not parties to the underlying action. The doctrine of abuse of process also applies to prevent re-litigation of previously

decided facts, namely, whether O.G. was brainwashed by her mother: *Winter v Sherman Estate*, 2018 ONCA 703, at para. 8.

[25] As the premise for these actions, that O.G. was brainwashed by her mother to seek emancipation, has been finally determined, the appellant's actions based on this premise amount to an abuse of process.

[26] While we understand a father's sorrow about the loss of a cherished relationship with a child, we see no basis on which to interfere with the application judge's finding that the appellant's actions against the respondents are predicated on allegations which several Ontario courts, including this one, have rejected. Moreover, the application judge correctly held that the appellant is a vexatious litigant.

[27] Third, the appellant submits that the application judge erred in prohibiting the appellant from litigating "in any court".

[28] The application judge ordered: "that no further proceeding may be instituted by Robert Glegg in any court if such proceeding is in any way related to, arising from or concerning directly or indirectly (a) the custody, emancipation/withdrawal from parental control or support of Robert Glegg's daughter, [O.G.]; or (b) any alleged breaches of any separation agreement or related orders involving Robert Glegg's former spouse … except by leave of a judge of the Superior Court of Justice."

[29] The application judge's order, including the prohibition on the appellant from commencing and continuing certain proceedings "in any court" absent leave, is specifically provided for in s. 140(1) of the *Courts of Justice Act*. We do not give effect to this ground of appeal.

[30] Fourth, the appellant argues that the application judge erred in permanently staying the appellant's actions against the respondents.

[31] The respondents sought dismissal or a permanent stay of the actions against them. The court's inherent jurisdiction and s.106 of the *Courts of Justice Act* empower the application judge to stay the underlying actions permanently. Contrary to the appellant's assertion that s.140 "does not provide any jurisdiction to outright stay a proceeding", Ontario courts have accepted that s. 140 is not a "complete code" that precludes the court from making purposive ancillary orders: *Peoples Trust Company v. Atas*, 2018 ONSC 58, at para. 41, aff'd 2019 ONCA 359.

[32] Finally, the appellant seeks to appeal the full indemnity costs award. A court should set aside a costs award on appeal only if the application judge has made an error in principle or if the costs award is plainly wrong: *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9, [2004] 1 S.C.R. 303, at para. 27. In this instance, full indemnity costs were fully justified on the record before the application judge, and we see no basis on which to interfere.

[33] The appeal is dismissed.

[34] The appellant is to pay the Flores respondents' costs in the amount of $9,468.26 and the JFCY respondents costs in the amount of $30,488.33, inclusive of disbursements and applicable tax.

"S.E. Pepall J.A."
"Gary Trotter J.A."
"J.A. Thorburn J.A."