

COURT OF APPEAL FOR ONTARIO

CITATION: Lakhtakia v. Mehra, 2023 ONCA 88

DATE: 20230208

DOCKET: C70304

Huscroft, Miller and Nordheimer JJ.A.

BETWEEN

Jyoti Lakhtakia

Applicant
(Respondent)

and

Vineet Mehra

Respondent
(Appellant)

Adam Black and Sarah Boyle, for the appellant

Steven Benmor and Misha Leslie, for the respondent

Heard: January 31, 2023

On appeal from the order of Justice Andrew Pinto of the Superior Court of Justice, dated January 7, 2022, with reasons reported at 2022 ONSC 201.

REASONS FOR DECISION

[1] The proceedings in this family law matter are protracted, dating to 2015. There have been approximately 40 endorsements and orders, culminating in a 12-day trial and a 70-page decision. The facts are set out fully in that decision and there is no need to repeat them here.

[2] The appeal is dismissed for the reasons that follow.

Supervised parenting time is appropriate

[3] The appellant argues that the trial judge erred in ordering that the appellant's parenting time with his child be supervised. We disagree. The trial judge found that the appellant was a flight risk and was untrustworthy. There was sufficient risk that the appellant may flout the court's orders, including arranging to have his child taken to India, the United Arab Emirates, or another non-signatory to the *Convention on the Civil Aspects of International Child Abduction*, Can. T.S. 1983 No. 35 (the "*Hague Convention*"). These findings are well supported in the record. Moreover, the appellant has spent very little parenting time with the child since the start of the proceedings, and that time was supervised. The trial judge was satisfied that limits on the appellant's parenting time were in the best interests of the child. We see no error in the trial judge's order that would allow this court to interfere on appeal.

The trial judge properly determined the beneficial ownership of Universal Wealth Assets Ltd. ("UWA")

[4] The appellant argues that the trial judge erred by exceeding the court's jurisdiction. In our view, the trial judge properly determined ownership in order to address the support issues that were before him, which required knowledge of which assets were generating income. He found that the appellant presented an

incoherent and improbable narrative about UWA belonging to the respondent and concluded that the appellant was the beneficial owner of UWA from 2014 to 2020. There is no basis to interfere with this finding.

[5] However, the trial judge's order improperly includes a declaration concerning ownership of the shares of UWA, when a declaration was not sought as relief by either party, although the respondent did include such a declaration in the draft order attached to her opening trial statement that was filed. The parties agree that this matter has no impact on the outcome of this case. Nevertheless, the declaration was made without jurisdiction and must be deleted from the order.

The trial judge properly determined the support payable

[6] The appellant argues that the trial judge erred in determining the support payable. We disagree. The appellant is in essence seeking to relitigate the matters determined by the trial judge. The trial judge carefully reviewed the extensive evidence, including an expert report. We do not accept that the expert exceeded her role. The trial judge was entitled to draw adverse inferences from the failure of several key witnesses to testify, including the appellant's brother. His findings are amply supported in the record and are entitled to deference in the absence of an error in principle or a palpable and overriding error. The appellant has not established any such error.

The trial judge did not impose an improperly broad restraining order

[7] The appellant argues that the restraining order imposed was improperly broad. We disagree. In all the circumstances of this case, it was entirely appropriate to ensure that property under the appellant's control not be dissipated until after all of the support and costs orders were satisfied. Nor, given this record, do we accept that the appellant cannot comply with the order.

Leave to appeal costs

[8] The appellant seeks leave to appeal the costs awarded by the trial judge of \$950,000.

[9] An award of costs is a discretionary decision that is entitled to deference. This court will set aside a costs award only if the trial judge 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.

[10] The costs awarded in this case are indeed high. However, this was complicated litigation conducted over several years, involving 23 motions, multiple family conferences and attendances, and approximately 40 judicial endorsements and orders. The trial judge awarded the respondent costs on a full indemnity basis because of the appellant's misconduct throughout the litigation, the details of which are fully documented in his decision. The appellant misled the court and engaged in fraudulent activity and bad faith and unreasonable conduct over a period of

years. We do not accept that it would be appropriate to parse the details of the appellant's conduct on the basis that not all of it was motivated by bad faith.

[11] In all of the circumstances, it was open to the trial judge to find that full indemnity costs were appropriate. There is no error in principle, nor can it be said that the costs award is plainly wrong.

[12] Accordingly, leave to appeal costs is denied.

[13] The appeal is dismissed.

[14] The respondent is entitled to costs of the appeal on a partial indemnity basis. The amount sought by the respondent is high, but it is less than the amount the appellant would have sought had he been successful, and there is no reason to discount the respondent's costs as the appellant suggests. Accordingly, we fix costs to the respondent at \$80,000, all inclusive. This money is to be paid out of the \$100,000 the appellant paid into court as security for the costs of this appeal.

“Grant Huscroft J.A.”
“B.W. Miller J.A.”
“I.V.B. Nordheimer J.A.”