

COURT OF APPEAL FOR ONTARIO

CITATION: Tovmasyan v. Petrosian, 2023 ONCA 345

DATE: 20230512

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Trotter, Sossin and Copeland JJ.A.

BETWEEN

Hasmik Tovmasyan

Applicant
(Respondent)

and

Armen Petrosian

Respondent
(Appellant)

Ila Lateran, for the appellant

Viktoriya Terentyeva, for the respondent

Heard: May 11, 2023

On appeal from the order of Justice Shaun O'Brien of the Superior Court of Justice, dated June 8, 2022, with reasons reported at 2022 ONSC 3472.

REASONS FOR DECISION

[1] The appellant, Mr. Petrosian, appeals the orders made by the trial judge permitting the respondent, Ms. Tovmasyan, to relocate to California with the two children of the marriage, as well as awarding child support and spousal support. At the conclusion of the hearing, we dismissed the appeal with reasons to follow.

[2] The facts of this case are set out in great detail in the trial judge's comprehensive reasons. They need not be repeated here.

[3] We find no error in the manner in which the trial judge disposed of each of the issues on appeal.

[4] The most contentious issue at trial was whether the respondent would be entitled to relocate with the children. This decision involved the application of s. 39.4 of the *Children's Law Reform Act*, R.S.O. 1990, c. C. 12 ("*CLRA*"). The trial judge was guided by the factors set out in s. 39.4(3). In careful reasons, the trial judge explained why it was appropriate to permit the respondent to re-locate, particularly why it was in the best interests of the two children to move to a location where their extended family members already reside.

[5] The appellant submits that the trial judge erred in placing the onus on him to establish why the proposed re-location should not be permitted. We disagree. Section 39.4(6) of the *CLRA* places the burden on the part opposing the re-location if the children "spend the vast majority of time in the care of the party who intends to relocate" with the children. The trial judge found that the children spent the vast majority of the time in the care of their mother, the respondent. The appellant submits that the trial judge overlooked the fact that he was prevented from spending more time with the children due to criminal charges he was facing for assaulting and threatening the respondent and the children. We disagree. The trial

judge considered this issue within a much broader frame. She found that the appellant exercised only minimal parenting time with the children and showed only the faintest of interest in increasing his time with them in any substantial way.

[6] The appellant also appeals the trial judge's orders for child support and spousal support. The complaint in both instances relates to the trial judge's imputation of income. The trial judge imputed an income of \$150,000 to the appellant. Given that the appellant was "blatantly delinquent in meeting his disclosure obligations", the trial judge was required to gauge the appellant's true income from the annual expenses listed in his Financial Statement. In the circumstances, this was a reasonable approach. We see no error.

[7] As for the respondent's income, the trial judge only imputed income to her commencing in November 2022, and that was in the amount of \$30,000. The appellant submits that the evidence established that, even though she had primary care of the two children, she could have found remunerative work of some type while they were in school. The trial judge rejected this submission. This finding was open to her on the trial record.

[8] In conclusion, the appellant has been unable to identify any legal errors or palpable and overriding errors of a factual nature. As noted at the outset, the appeal was dismissed at the hearing. The respondent is entitled to costs on a

partial indemnity scale in the amount of \$10,000 (inclusive of disbursements and HST) payable forthwith.

"Gary Trotter J.A."

"L. Sossin J.A."

"J. Copeland J.A."