NOVA SCOTIA COURT OF APPEAL
Citation: *Mohammed v. Hanson*, 2018 NSCA 94

Date: 20181204
Docket: CA 475007
Registry: Halifax

Between:

Zanib Mohammed

Appellant

v.

Simeon Hanson

Respondent

Judge:	The Honourable Justice Peter M.S. Bryson The Honourable Justice Jamie W.S. Saunders
Appeal Heard:	October 10, 2018, in Halifax, Nova Scotia
Subject:	**Family Law. Child Support Under the *Interjurisdictional Support Order Act* ("*ISO*")**
Summary:	The appellant claimed the Family Court judge erred in dismissing the appellant's application to confirm a provisional child support order granted by the Family Court in the United Kingdom without hearing from the appellant. The *ISO* did not require that the appellant receive notice of the hearing. The Nova Scotia Family Court scheduled a hearing and notified the respondent in accordance with the *ISO*. The Court dismissed the appellant's application because she heard evidence from the respondent that the parties' daughter was not residing with the appellant but with the respondent's parents to whom the respondent was paying support for the child.
Issues:	Did the judge err in dismissing the appellant's application by failing to identify and apply the correct law?

Result: Appeal allowed. The judge did not address ss. 13(a) and (c) of the *ISO* regarding entitlement and amount of support. New hearing ordered before a new Family Court judge. Both parties are to be notified and given an opportunity to lead evidence and make submissions. Although the *ISO*, as recently amended, does not require that an applicant be given notice of the Nova Scotia hearing, where, as here, there is a substantial factual dispute, both parties should be notified and given an opportunity to attend and give evidence and make submissions.

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Judges:	Bryson, Saunders and Van den Eynden, JJ.A.
Appeal Heard:	October 10, 2018, in Halifax, Nova Scotia
Held:	Appeal allowed without costs, per reasons for judgment of Bryson and Saunders, JJ.A., with Van den Eynden J.A. concurring
Counsel:	Appellant in person Respondent in person

Reasons for judgment:

[1] The appellant, Ms. Mohammed and the respondent, Dr. Hanson are the parents of a 9-year-old daughter. Ms. Mohammed resides in England and Dr. Hanson in Nova Scotia. The appellant obtained a provisional child maintenance order from an English court and applied in Nova Scotia to enforce that order under the reciprocal enforcement regime.

[2] The case was heard in the Nova Scotia Family Court. Ms. Mohammed did not appear at that hearing. Dr. Hanson appeared and testified. Neither was represented by counsel.

[3] So too on this appeal. Each of the appellant and respondent is self-represented.

[4] The hearing judge dismissed the appellant's motion for reciprocal enforcement. Ms. Mohammed now appeals. She alleges a host of errors including bias on the part of the judge and claims that she was denied natural justice in the manner in which the case was heard. She seeks a variety of remedies and forms of relief, most of which are not available in the forum she chose to have the matter heard.

[5] On appeal, both parties sought leave to introduce fresh evidence. That evidence was admitted provisionally so that its ultimate admissibility might be considered during the course of our deliberations. Further, each party cross-examined the other on their respective affidavits and documentation.

[6] For the reasons that follow, we would allow the appeal and send the case back for a new hearing, before a different judge, on an expedited basis. Specific suggestions will be offered to guide the judge assigned to hear the case.

[7] We will start with a brief summary of the material facts, adding further detail in our analysis and disposition of the principal issues, as may be required.

Background

[8] Ms. Zanib Mohammed is a nurse who currently resides in Menston, Leeds, England with her 9-year-old daughter, Layla Charlotte Grace Hanson. Dr. Simeon Hanson is a psychologist who moved to Canada in 2014 and practices in Nova Scotia.

[9] The parties are divorced and Dr. Hanson has since remarried.

[10] On September 29, 2016, Ms. Mohammed obtained a provisional child maintenance order from the Family Court in the United Kingdom. In accordance with the procedures for reciprocal enforcement of such orders, the U.K. authorities forwarded the U.K. order to the Family Court, (*Interjurisdictional Support Orders Act*, S.N.S. 2002, c. 9, "ISO").

[11] On July 6 and August 16, 2017, Nova Scotia Family Court Judge Jean Dewolfe heard Ms. Mohammed's application. Ms. Mohammed did not appear at the hearing, nor participate by any other means (for example, by telephone or video conference). Dr. Hanson appeared and testified. Neither party was represented by counsel at the hearing.

[12] Judge Dewolfe accepted Dr. Hanson's testimony and dismissed Ms. Mohammed's motion for reciprocal enforcement. Her reasons for doing so are brief:

> **THE COURT:** I believe I have sufficient information with which to make a decision. There was an application made by Ms. Mohammed for reciprocal enforcement of child support for Layla who is the child of Ms. Mohammed and Mr. Hanson. Mr. Hanson has no contact with Ms. Mohammed or Layla. His evidence is that Layla is in the care of his parents and is attending school about four minutes away from his parents' home. There is confirmation provided that the child does attend school and that her primary residence is noted as his parents; address.
>
> On the other hand, Ms. Mohammed lives in Menston and works in Hesslington and there are closer schools. Mr. Hanson has provided evidence of that but she was not enrolled in those as of April 2017, at least. His evidence is that while it is about 30 miles away, the traffic would make it in excess of an hour's drive to take Layla to Marsden school from her mother's home.
>
> So I accept his evidence that Layla has been living with his parents since approximately May/June 2014. I also accept his evidence that there was a verbal agreement between his parents, himself and Ms. Mohammed with respect to the payment of child support. Where he was no longer eligible to be enrolled in the Child Support Agency Program in the United Kingdom, a private arrangement was made, albeit verbally, with some backup from the evidence that I have seen here today – some of the Exhibits, the e-mails, and so on – whereby a bank account would be set up for Layla and he would pay 200 pounds per month. He understood a similar amount would be paid by Ms. Mohammed and that appears to be confirmed by her bank records which are part of her application which was filed with the Court. There are regular, periodic payments to Layla Hanson and I

> presume those go to a bank account, the same bank account that Mr. Hanson's payments go to.
>
> Therefore, child support is being paid. Ms. Mohammed, while she may have legal custody pursuant to an old Order, is not the primary guardian of the child. It appears at this point that Mr. Hanson's parents are. I am not aware, and neither is Mr. Hanson, as to whether there is a Family Court or a Court Order in the United Kingdom or a written agreement in the United Kingdom with respect to guardianship. But obviously Ms. Mohammed has acquiesced to that guardianship and it does not make sense from where I am sitting and it is not appropriate or in the child's best interest to have Ms. Mohammed pay child support when that would just take away from Mr. Hanson's ability to pay that child support to his father who appears to be one of the guardians at this point in time of Layla.
>
> That arrangement is a voluntary arrangement. I assume it will continue. It has without an Order for the last three years and, as a result, I am not prepared to make an Order with respect to the reciprocal enforcement of the maintenance Order that was made in the United Kingdom and that decision will be communicated to the U.K. Courts. So I am dismissing the application.

[13] The operative provision of the judge's confirmatory order dated December 1, 2017 states:

> **IT IS HEREBY ORDERED:**
>
> > THAT the Application for Reciprocal Enforcement of Maintenance Orders, dated the 14th day of February 2017, is hereby dismissed.

[14] Ms. Mohammed applied to this Court to extend the time for filing her Notice of Appeal because she received notification of Judge Dewolfe's decision after expiry of the appeal period. The extension was granted (*Mohammed v. Hanson*, 2018 NSCA 38.) Ms. Mohammed also sought our leave to introduce fresh evidence on the appeal. She claimed that Dr. Hanson gave false and misleading evidence resulting in her application being dismissed. She gave notice that she wished to present fresh evidence on appeal.

[15] In his responding factum, Dr. Hanson also indicated that he would seek our leave to introduce fresh evidence in order to answer the "new" evidence Ms. Mohammed hoped to place before the Court.

[16] Sadly, the bitterness that exists between the parties is evident in all of their written and oral submissions, and was palpable at the hearing in this Court. For the purposes of this appeal, it is not necessary to repeat the graphic details contained in the many aspersions each casts against the other. Rather, simply to illustrate the

depth of their mistrust and hostility, we will note, somewhat obliquely, their respective positions.

[17] Ms. Mohammed accuses Dr. Hanson of hiding material facts regarding his income in an attempt to minimize his ability to contribute to child support; says he has repeatedly committed perjury in his representations to the courts; hides behind the purported "agreement" he has with his parents as a way to distract from the real issue of their daughter's needs and his obligations as her father; and is "guilty" of having committed serious criminal offences.

[18] For his part, Dr. Hanson accuses Ms. Mohammed of lying to judges when she appeared in court in England by portraying herself as a single mother living with her daughter in poverty when, in fact, (according to Dr. Hanson) she was steadily employed, had agreed to their daughter living with and being reared by his parents, while attending private school and enjoying such luxuries as private swimming and horseback riding lessons; says that the accusations she has made against him are absolutely false and shown to be such by investigating authorities; that she is unstable; continues to pursue a vendetta against him with no regard for their daughter's best interests; and that her actions and words are meant to destroy him and his professional career.

[19] This case exposes the weaknesses of the provisions of the ISO in circumstances like these, and how the limits in evidence gathering often leave judges handicapped in their ability to discern the truth.

[20] At the hearing we advised the parties that we would provisionally admit the fresh evidence each had presented so that this "new" evidence could be considered as part of our overall deliberations. We have concluded it is not necessary for us to decide its ultimate admissibility. To do so would require us to rule upon the reliability and/or credibility of the evidence, a step we are not prepared to take in this matter since an appeal is in most cases, an unsuitable forum in which to find the facts required to make such a decision.

Issues

[21] In narrative form, Ms. Mohammed's Notice of Appeal complains of factual errors in the hearing judge's decision which resulted from only Dr. Hanson appearing and giving evidence. Ms. Mohammed says she has evidence that would have refuted Dr. Hanson's regarding a maintenance agreement with his parents and

Layla's living arrangements, among other things. In her factum, Ms. Mohammed identifies 9 issues which we paraphrase as follows:

i. A lack of fair process because she was not heard.

ii. Factual errors made by the judge concerning income, Layla's needs, and a failure to apply child support guidelines.

iii. "Bias" by the judge because she failed to consider all facts relevant to Layla's needs.

iv. Factual errors regarding the existence of any maintenance agreement between the parties.

v. The failure to pay proper child support ignores Layla's best interests.

vi. The process has led to delay, prejudicing Ms. Mohammed and Layla. Interim relief is requested.

vii. Fresh evidence should be admitted to do justice. A "full judicial review" is requested concerning the lower court's "legal error".

viii. Costs incurred in appealing the order are requested.

ix. Redress is requested for Dr. Hanson "misleading" the lower court.

[22] These grounds confuse factual and legal issues and in some cases seek relief only a trial judge could give after hearing all the evidence. The grounds also overlap and are repetitive. It is plain that all the allegations of bias against the judge are simply complaints that incorrect factual findings were made. The allegations against Dr. Hanson assume favourable findings of fact for Ms. Mohammed, after all the evidence is heard.

[23] Based on the record and the parties' submissions this appeal can be most appropriately disposed of by addressing one issue: Did the judge identify and apply the appropriate law when she dismissed Ms. Mohammed's application?

Standard of Review

[24] In *Waterman v. Waterman*, 2014 NSCA 110, Justice Beveridge described the standard of review in ISO cases:

> [21] The complaints of error advanced by the appellant attract different standards of review. Where a judge makes a decision to award or vary spousal support, he or she is required to make a discretionary decision, balancing a variety of factors and guided by the particular facts of the case at hand. Appellate courts

> owe deference to such a decision, and will not intervene unless satisfied that the judge erred in principle, significantly misapprehended the evidence or made an award that is clearly wrong. (See *Hickey v. Hickey*, [1999] 2 S.C.R. 518 at ¶ 10-12; *Saunders v. Saunders*, 2011 NSCA 81 at ¶ 17.)
>
> [22] The second ground of appeal claims an error in law by the application judge in not following the process mandated by the *ISO Act.* Interpreting and complying with statutes are questions of law. These are reviewed on the standard of correctness. (See *B.H. v. Nova Scotia (Minister of Community Services*), 2009 NSCA 67 at ¶ 12.) However, decisions resulting from the application of legal principles or the exercise of judicial discretion are afforded deference. An appeal court has no role to overrule such decisions, absent palpable and overriding error or patent injustice.
>
> [23] The third ground of appeal argues there was a breach of the rules of natural justice or procedural fairness. This is a question of law. Our review does not engage concerns associated with the concept of a standard of review. (See *Bellefontaine v. Slawter*, 2012 NSCA 48 at ¶ 18.) The adjudicator either fulfilled the duty required or did not (See *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12 at ¶ 43; *Nova Scotia (Community Services) v. N.N.M.*, 2008 NSCA 69 at ¶ 39). In other words, either there was a breach of the principles of natural justice, or there was not.

Analysis

[25] The judge never mentions the ISO in her decision. Specifically, she erred because she never addressed s. 13(a) or (c) of the Act which required her to consider, respectively, entitlement to support under Nova Scotia or U.K. law, and if justified, the amount of that support:

> 13 The following rules apply with respect to determining entitlement to support and the amount of support:
>
> > (a) in determining a child's entitlement to support, the Nova Scotia court ***shall*** first apply Nova Scotia law but, where the child is not entitled to support under Nova Scotia law, the Nova Scotia court ***shall*** apply the law of the jurisdiction in which the child is habitually resident;
> >
> > …
> >
> > (c) in determining the amount of support for a child, the Nova Scotia court ***shall*** apply Nova Scotia law, including, for greater certainty, the *Child Support Guidelines*, as amended from time to time, made under the *Parenting and Support Act*.
>
> [Emphasis added]

[26] Without expressly addressing entitlement or support, the judge accepted Dr. Hanson's evidence that he made regular payments of 200£ a month to his parents for Layla and dismissed Ms. Mohammed's application. Because she did not address the requirements of s. 13 of the ISO, we would allow the appeal and order a new hearing.

[27] In fairness to the judge, the factual errors alleged by Ms. Mohammed appear an inevitable result of the statutory process, which requires the judge to consider the evidence provided to the court and the documents from the reciprocating jurisdiction—in this case, the provisional U.K. support order and materials. The applying party—Ms. Mohammed—did not know what Dr. Hanson's evidence would be because she was not notified of the hearing in accordance with a recent amendment to the ISO:

> 10(1A) For greater certainty, the claimant is not required to be served with the notice, information or documents referred to in clause (1)(b).

Clause (1)(b) describes the notice to appear before the Nova Scotia court and the responding party's obligation to provide information or documents required by the regulations.

[28] One hopes that upon reflection the parties might approach a resolution of this case more objectively so that it could be concluded without further delay and cost to each of them, both financially and emotionally. Should it be available, the parties might also wish to seriously consider some form of judicial mediation.

[29] We also note Dr. Hanson's "assurance" to us at the hearing that if a Family Court Judge in Nova Scotia were to "fix" his obligations as Layla's father, he would immediately attend in Family Court with full disclosure of his financial position and proceed to consent to an order stipulating paying that amount on a monthly basis.

[30] Nothing in these reasons should be seen as curtailing or limiting the authority, jurisdiction or discretion of the judge who presides at the new hearing. What follows are comments intended to assist the judge assigned to hear the case.

[31] Simply to guide the litigants and perhaps promote an early resolution, we would respectfully suggest that it will be a waste of time and judicial resources to rehash the years of antagonism and disaffection, in an effort to assign blame to the person(s) responsible.

[32] Rather, the new hearing should provide an opportunity to both sides to put their best foot forward in presenting or challenging evidence at a time when they can both participate. While the judge's focus will be to determine the child's entitlement to support and the quantum of that support, pursuant to the provisions of the ISO, we think it likely, based on the record here, that the judge will also wish to address:

i. Layla's legitimate needs;

ii. where, when, and with whom Layla resides in England, and if her residency is divided between Ms. Mohammed and Dr. Hanson's parents, what costs are borne by the parties to that shared relationship;

iii. what each parent has paid, and is paying, for Layla's support;

iv. each parent's true financial position and their respective ability to pay child support; and

v. Dr. Hanson's obligation to pay child support as Layla's father, and setting the terms of that obligation.

[33] The ISO may be an efficient means of securing support payments in cases where there are no substantial factual disputes between the parties. In *Waterman*, this Court emphasized the need to hear both parties where facts were in dispute and explained the fundamental failure of natural justice by proceeding without giving both parties notice.

[34] Following *Waterman*, the Nova Scotia legislature amended the ISO as described above to make it clear that applying parties had no right to notice or service of the respondent's reply. That amendment frustrated identification and resolution of the factual disputes in this case, in which Dr. Hanson alleged that Ms. Mohammed misled the U.K. courts when she obtained her provisional support order and Ms. Mohammed alleged that the Nova Scotia court wrongly understood that Layla did not reside with her. By refusing both parties a simultaneous audience, the ISO may yield an unfair process and an unreliable outcome. Although the ISO does not require notice to applicants of a hearing in Nova Scotia, it does not preclude notice in cases like this involving contested issues of fact and credibility.

[35] We would allow the appeal and send the case back for a new hearing with notice to both parties, before a different judge, on an expedited basis, without costs.

Bryson, J.A.

Saunders, J.A.

Concurred in:

Van den Eynden, J.A.