

COURT OF APPEAL FOR ONTARIO

CITATION: Cinar v. Cinar, 2012 ONCA 507

DATE: 20120719

DOCKET: C53772

Simmons, Juriansz and Hoy JJ.A.

BETWEEN

Omer Cinar

Appellant

and

Sebahat Cinar

Respondent

Will Hutcheson, for the appellant

Shmuel Z. Stern, for the respondent

Heard and endorsed: July 16, 2012

On appeal from the judgment of Justice Nancy L. Backhouse of the Superior Court of Justice, dated April 27, 2011.

APPEAL BOOK ENDORSEMENT

[1] In oral argument on appeal, the appellant advanced two arguments.

[2] First, that the amount of spousal support paid prior to the trial date far exceeds the amount that would have been appropriate under the Spousal Support Advisory Guidelines. (Ottawa, Department of Justice, 2008).

[3] We do not accept this argument. The financial arrangement prior to trial under a temporary order was initially that the husband would pay \$700 per month on account of spousal support and \$500 per month on account of child support. In addition, the husband was to pay the mortgage, house insurance and property taxes in relation to the matrimonial home and receive a credit for one half of the mortgage payments to be paid from the equalization payment. The wife was to pay all other expenses in relation to the matrimonial home.

[4] However, under a subsequent temporary order this arrangement was changed. Effective as of the date of the first order, the appellant was no longer required to pay spousal support and he was no longer to receive a credit for mortgage payments paid. In addition, he was to receive, and did receive, a credit for spousal support payments actually paid.

[5] At trial, the only issue that appears to have been raised in relation to the pre-trial financial arrangements is occupation rent. The trial judge rejected this claim. Given that the financial arrangements prior to trial appear to have been crafted to permit the wife and child to remain in the home and that the husband did not earlier request an order for sale of the matrimonial home, in our view, it was well within the discretion of the trial judge not to revisit the arrangements that were put in place prior to trial. At trial, the trial judge found that neither of the parties was credible and imputed income to both parties. In these circumstances

it would have been next to impossible to disentangle the financial arrangements made prior to trial.

[6] The appellant's second argument is that the trial judge erred by failing to ensure that the respondent had a Turkish interpreter. We are not persuaded that the failure to have a Turkish interpreter gave rise to a miscarriage of justice. Both parties were represented by counsel at trial. Neither counsel raised the issue at trial; nor did the trial judge. Based on our review of the transcript, the respondent sought and obtained clarification when she did not understand words or concepts. We would not give effect to this ground of appeal.

[7] The appeal is therefore dismissed.

[8] Costs of the appeal will be to the respondent on a partial indemnity scale fixed in the amount of \$6,000 inclusive of disbursements and applicable taxes.