

Court of Queen's Bench of Alberta

Citation: Chin v Mills Jr., 2019 ABQB 631

Date: 20190819
Docket: FL01 30861
Registry: Calgary

Between:

Geisha Rena Chin

Plaintiff

- and -

Matthew Timothy Mills Jr.

Defendant

Endorsement (Costs)
of the
Honourable Madam Justice M.H. Hollins

[1] In May of 2019, I heard and granted the application of Mr. Mills Jr. under the Hague Convention for the return to Bermuda of the child of the parties. Ms. Chin had gone to Toronto over the Christmas holidays to visit family and, without the consent of Mr. Mills Jr., simply did not return to Bermuda. Instead, resettled with the infant child in Calgary. I found the habitual residence of the child to be Bermuda and directed him returned there.

[2] Mr. Mills Jr. now applies for costs. Both parties have provided their written submissions thereon. Costs, even in Hague proceedings, are still in the discretion of the Court. Article 26 of the Hague Convention says that I may order reimbursement of travel costs and of legal representation. This does not affect the exercise of my discretion under our Rules of Court and my obligation to consider the relevant factors under Rule 10.33.

[3] There is no necessity here for me to re-examine the motives or conduct of the parties. While an unsuccessful party on a Hague application should not automatically be deemed to have acted in bad faith, the fact remains that Ms. Chin was wholly unsuccessful. This costs award should discourage similar behaviour in other families and should fairly compensate Mr. Mills Jr. for a significant legal bill incurred just to get back to the “starting point” i.e. to have matters of parenting determined in the proper jurisdiction.

[4] The total solicitor-client costs claimed are \$42,097.50, which includes approximately \$11,000 of work done by Mr. Mills Jr’s Bermuda lawyer. I do not accept Ms. Chin’s submission that these figures are unreasonable. While the case was not particularly legally complex, there is no question that the nature of the application was not just important but very time-sensitive, which can often increase the legal costs incurred to obtain a final disposition. Nor do I accept her submission now that she simply cannot afford it when she managed to arrange all the travel and costs of relocating to Calgary.

[5] However, as other cases have done, I conclude that some of the legal work done will likely, or possibly inevitably, be useful in the pending parenting and support litigation. For that reason, I will grant an award to substantially indemnify, but not completely indemnify, Mr. Mills; *Sakr v. Weismann*, April 23, 2013 ABQB and *Solem v Solem*, 2013 ONSC 7467, specifically 75% of the solicitor-client fees claimed, or a total of \$31,572. Ms. Chin will have until December 1, 2019 to pay these fees or to make arrangements that are satisfactory to Mr. Mills Jr.

Heard on the 16th day of May, 2019.

Dated at the City of Calgary, Alberta this 19th day of August, 2019.



M.H. Hollins
J.C.Q.B.A.

Appearances:

Andy Hayer
Vogel Lawyers
for the Plaintiff Geisha Rene Chin

Max Blitt, Q.C.
Spier Harben
for the Defendant Matthew Timothy Mills Jr.