CITATION: M.Y. v. A.L., 2024 ONSC 1867
COURT FILE NO.: FS-23-0118-0000
DATE: 2024 03 28

SUPERIOR COURT OF JUSTICE – ONTARIO
491 Steeles Avenue East, Milton ON L9T 1Y7

RE: M.Y.

AND:

A.L.

BEFORE: Conlan J.

COUNSEL: M.Y., Self-Represented
Geoffrey Wells, for the Respondent

HEARD: In Writing

ENDORSEMENT

[1] The mother, M.Y., appeals the arbitral award of Mr. Michael Kleinman ("Arbitrator") dated December 4, 2023 ("Decision").

[2] For the following reasons, the appeal is dismissed. Costs are ordered in favour of the father, A.L., in the amount of $4,733.34, on a substantial indemnity scale. Although the father sought full recovery of costs in the sum of $5,916.68, my view is that costs on a substantial indemnity scale are more appropriate, and I think that the amount ordered herein is a fair, just, reasonable, and proportionate quantum of costs in the circumstances of this case.

[3] Respectfully, the appeal is not a meritorious one. It should not have been brought.

[4] The Decision of the Arbitrator was made on the basis of an executed "Amending Separation Agreement", or "ASA", dated September 6, 2023. At clause 2 of the ASA, the parties amended the parenting arrangements for their two children as set out in section 4 of their "Separation Agreement" dated March 6, 2017.

[5] In other words, the parties consented, in writing, to the 2-2-5-5 shared parenting schedule, and the Decision merely enforced that agreement in the form of an arbitral award.

[6] What this is really about is the mother's desire to resile from the ASA. She has every right to pursue that goal of resilement, although it would only prolong the litigation, but the process for that is not what she tried to do before the Arbitrator [to effectively set aside the ASA by way of a 14B motion, as the Arbitrator eluded to at subparagraph 16(h)(ii) of his Decision] and equally not what she tried to do before this Court (to make a collateral attack on the ASA by launching an appeal of the Decision).

[7] It is not the job of this Court to give the mother legal advice. She is a bright, articulate lady, as evidenced by her presentation in the courtroom today. She has been cautioned many times in the past about proceeding without legal advice; see, for example, footnote 6 of the Decision. She is self-represented, however, so I will say this, which was already said to the mother during the brief hearing of the within appeal – there is no motion to change any agreement or final order that is before this Court.

[8] The same arguments that the mother made to this Court on the appeal were put to the Arbitrator before the Decision was made. Those same arguments, including (i) alleged duress on the part of the mother, and (ii) an alleged absence of a true agreement between the parties to alter the parenting schedule, and (iii)

the father's alleged lack of follow-through with anticipated parenting coordination and/or counselling, as three examples, were all considered and rejected by the Arbitrator. The mother should refer to, in particular, paragraph 16 of the Decision.

[9] It is not the role of this Court to effectively retry the matter that was heard by the Arbitrator. The Decision is entitled to significant deference. *Petersoo v. Petersoo*, 2019 ONCA 624, at paragraph 35, *Patton-Casse v. Casse*, 2012 ONCA 709, at paragraphs 9-11, *N.M.A. v. J.B.A.*, 2024 ONSC 1346, at paragraph 21.

[10] The mother has identified no error made by the Arbitrator except to allege, by implication, at paragraph 2 of her Notice of Appeal dated January 9, 2024, that the Decision failed to consider the best interests of the children. The mother brings the appeal under the authority of section 14 of the parties' "Mediation-Arbitration Agreement" dated December 19, 2022, which provides for a right of appeal on a question of law.

[11] A failure to consider the best interests of a child is an error in law. Here, two parents, both known to the Arbitrator and both having been previously working with the Arbitrator for some period of time, reached an agreement on a revised parenting schedule. Both parents must have believed at the time that the revised parenting schedule was in the best interests of the children. For some reason, afterwards, the mother unilaterally failed or refused to uphold the agreement. She engaged in self-help. The parties had previously stipulated in writing that the Arbitrator "shall" issue an arbitral award incorporating the terms of any agreement reached by them, which would include the agreement to revise the parenting schedule (see footnote 4 of the Decision). When the mother's failure or refusal to uphold the ASA was brought to the attention of the Arbitrator, he did exactly that – he made an award incorporating the terms of the parties' written agreement

to revise the parenting schedule. But the Arbitrator did much more than simply rubber-stamp the ASA; he addressed the mother's arguments (the same ones advanced in this Court) and rejected them for the reasons given.

[12] The mother has failed to demonstrate any error in law. Consequently, the appeal had to be dismissed.

[13] This Court has exercised its discretion to award in favour of the successful father substantial indemnity, rather than the more typical partial indemnity, costs because of the mother's obvious attempt to set aside the ASA in an improper way, something she was expressly cautioned about by the Arbitrator, and what this Court, respectfully, would characterize as a misguided appeal.

Conlan J.

Released: March 28, 2024