

The Canadian Abridgment eDigests -- Family Law - Ontario

2013-15
April 15, 2013

FAM.III.7.b.iii.A

Subject Title: Family law

Classification Number: III.7.b.iii.A

Division of family property -- Events after separation -- Sale or dissipation of assets -- Order for preservation of property -- Jurisdiction of courts

Parents of child resided together in Ontario from July 2011 to April 2012 with wife as primary caregiver from birth, and were living in Ontario with child at time of separation -- Parties were Canadian citizens, however husband was business development consultant in Thailand and child was born in Thailand -- Wife commenced application in Ontario, and brought urgent motion for preservation of property and certificate of pending litigation on matrimonial home -- Motions judge assumed jurisdiction and granted orders requested -- Father appealed -- Appeal dismissed -- In assuming jurisdiction, motions judge relied on fact that parties resided together in Ontario for substantial period of time, they resided in Ontario with child at time of separation, child was enrolled in preschool program in Ontario, and both parties were Canadian citizens -- Determination of jurisdiction in summary fashion was not unusual, based on case law -- Motions judge made no error in assuming jurisdiction for purpose of making urgent preservation orders while adjourning question of forum conveniens to later date.

Naeli v. Ghaeinizadeh (2013), 2013 ONCA 2, 2013 CarswellOnt 5, David Watt J.A., H.S. LaForme J.A., S. Lederman J. (ad hoc) (Ont. C.A.) [Ontario]

FAM.IV.1.m.i

Subject Title: Family law

Classification Number: IV.1.m.i

Support -- Spousal support under Divorce Act and provincial statutes -- Practice and procedure -- General principles

Parties were married in 1986 and separated in 2007 -- Parties entered into separation agreement in 2010, which included provision that husband was to pay \$3,000 per month in spousal support to wife -- Husband filed separation agreement with court in 2012, and brought motion to vary support -- Wife made response to husband's motion and sought her own variation of support, claiming husband had not been forthcoming with disclosure at time of agreement -- Case conference was scheduled for March 2013 -- Wife claimed that her motion could be brought before case conference -- Wife moved to stay or dismiss husband's motion to change, based on undisputed fact that husband had not made \$42,000 worth of payment under separation agreement -- Motion adjourned until after case conference -- Wife's motion was for substantive relief, which was prohibited until after case conference under family law rules -- Matter was more appropriately dealt with at case conference, which would allow parties to canvass issues and possibly reach resolution -- Motion was not dealing with urgent relief, and therefore was not exception to rule.

Jones v. Jones ([2013](#)), [2013 CarswellOnt 1464](#), [2013 ONSC 780](#), Scott K. Campbell J. (Ont. S.C.J.) [Ontario]

FAM.V.6.b

Subject Title: Family law

Classification Number: V.6.b

Domestic contracts and settlements -- Variation of terms -- Jurisdiction of courts

Mother and sperm donor signed donor agreement, in which sperm donor agreed to have no involvement with, or rights of access to any child born from his sperm -- Child was born and sperm donor brought application seeking declaration of parentage and access to child -- Settlement conference was held, where counsel for sperm donor attended in person, and counsel for mother attended via telephone from airport -- At settlement conference, mother's counsel felt pressured and reluctantly agreed that donor agreement was invalid, without instructions from client and without opportunity to consult with client -- Consent order was made regarding invalidity of donor agreement -- Mother brought motion to change order seeking to strike out paragraphs related to invalidity of donor agreement -- Motion was granted -- Order was made without notice and court had jurisdiction pursuant to Rule 25(19)(d) of Ontario Family Law Rules to change order -- Order was based on consent given by lawyer without authority to do so, in circumstances where opposing counsel had good reason to doubt authority to consent and where there would be no prejudice to sperm donor if order was changed and no effective compensation available to mother if change was not made.

W. (W.) v. X. (X.) ([2013](#)), [2013 CarswellOnt 1584](#), [2013 ONSC 879](#), Patricia C. Hennessy J. (Ont. S.C.J.) [Ontario]

FAM.IX.1.a

Subject Title: Family law

Classification Number: IX.1.a

Custody and access -- Jurisdiction of courts -- General principles

Parents of child resided together in Ontario from July 2011 to April 2012 with mother as primary caregiver from birth, and were living in Ontario with child at time of separation -- Parties were Canadian citizens, however father was business development consultant in Thailand and child was born in Thailand -- Mother commenced application in Ontario and brought urgent motion for temporary custody of child -- Motions judge assumed jurisdiction and granted temporary custody of child to mother -- Father appealed -- Appeal dismissed -- While motions judge did not specifically address each of criteria for exercising jurisdiction to order custody under s. 22(1)(b) of Children's Law Reform Act, minimum criteria to establish jurisdiction simpliciter were met -- Child was living in Ontario at time of application and for many months prior, there was no application for custody elsewhere, there was no extra-provincial order relating to custody, child had real and substantial connection in Ontario, and on balance of convenience it was in child's best interests for jurisdiction to be exercised for purposes of urgent motion -- Question of whether Ontario was forum conveniens for purpose of application for substantive relief was adjourned to later date -- Motions judge made no error in assuming jurisdiction.

Naeli v. Ghaeinizadeh (2013), 2013 ONCA 2, 2013 CarswellOnt 5, David Watt J.A., H.S. LaForme J.A., S. Lederman J. (ad hoc) (Ont. C.A.) [Ontario]

FAM.IX.1.b

Subject Title: Family law

Classification Number: IX.1.b

Custody and access -- Jurisdiction of courts -- Discretion regarding scope of inquiry

Parties married in November 2008, and separated in April 2010 -- Parties had one child, M, born April 27, 2009 -- In March 2011, mother commenced proceedings and sought custody of M -- Mother brought motion for order for assessment pursuant to s. 30 of Children's Law Reform Act -- Motion was dismissed, but without prejudice to entitlement to bring fresh motion upon better and further material -- Mother brought second motion for order for assessment -- Motion granted -- Interventions of voluntary nature with two professionals had not succeeded in accomplishing much -- This was high conflict case -- Assessment could pave way towards consensus on which school M would attend, or provide evidence to assist trial judge in making decision -- Assessment was necessary to allow parties to understand needs of M and need for cooperation -- Cost was no obstacle -- It was in best interests of M that assessment be conducted both to promote settlement and to provide evidence for trial judge.

Glick v. Cale (2013), 2013 CarswellOnt 1409, 2013 ONSC 893, Kiteley J. (Ont. S.C.J.) [Ontario]

FAM.XIV.2.f

Subject Title: Family law

Classification Number: XIV.2.f

Children born outside marriage -- Affiliation and support -- Enforcing order or agreement

Mother and sperm donor signed donor agreement, in which sperm donor agreed to have no involvement with, or rights of access to any child born from his sperm -- Child was born and sperm donor brought application seeking declaration of parentage and access to child -- Settlement conference was held, where counsel for sperm donor attended in person, and counsel for mother attended via telephone from airport -- At settlement conference, mother's counsel felt pressured and reluctantly agreed that donor agreement was invalid, without instructions from client and without opportunity to consult with client -- Consent order was made regarding invalidity of donor agreement -- Mother brought motion to change order seeking to strike out paragraphs related to invalidity of donor agreement -- Motion was granted -- Order was made without notice and court had jurisdiction pursuant to Rule 25(19)(d) of Ontario Family Law Rules to change order -- It was not clear on face of matter what role donor agreement would play in ultimate determination of matters in issue, but it was obvious from pleadings that case raised new and complex issues -- Donor agreement was central to actions of and positions taken by both parties and should be before court.

W. (W.) v. X. (X.) (2013), 2013 CarswellOnt 1584, 2013 ONSC 879, Patricia C. Hennessy J. (Ont. S.C.J.) [Ontario]

FAM.XV.7.a

Subject Title: Family law

Classification Number: XV.7.a

Children in need of protection -- Practice and procedure in custody hearings -- General principles

Child was apprehended from care of her mother, and placed in temporary care of Society -- Society's motion for summary judgment making child Crown ward was granted -- Mother appealed -- Appeal allowed -- New trial was ordered -- Mother raised triable issues which were not sufficiently explored -- Conflict between evidence of mother and Society regarding mother's mental health, parenting ability and with respect to missed scheduled access with child constituted matters of fact that needed to be resolved by trial -- Mother was eliminated from participating in trial, rendering record incomplete.

Children's Aid Society of Toronto v. W. (S.) ([2013](#)), [2013 ONSC 489](#), [2013 CarswellOnt 978](#), Kruzick J. (Ont. S.C. J.) [Ontario]

FAM.XV.8.a

Subject Title: Family law

Classification Number: XV.8.a

Children in need of protection -- Status review hearing -- General principles

Mother had significant mental health issues -- Children were in father's care under supervision of Society pursuant to temporary order -- Order placed children in father's care subject to 12-month supervision with no access to mother -- Mother was denied adjournment of Society's motion for summary judgment -- Society's motion for summary judgment with respect to status review application was granted -- Mother's appeal from decision denying adjournment and decision granting summary judgment was dismissed -- Mother appealed -- Appeal dismissed -- There was no error committed -- Findings were supported by materials and affidavit evidence in record however -- There was no basis for interfering with judge's discretionary decision to refuse adjournment -- Mother had failed to take sufficient steps to comply with terms of order requiring her to address her mental health issues by cooperating with Society and following treatment recommendations.

S. (K.) v. Children's Aid Society of Waterloo (Regional Municipality) ([2013](#)), [2013 ONCA 104](#), [2013 CarswellOnt 1731](#), J. MacFarland J.A., Paul Rouleau J.A., R.A. Blair J.A. (Ont. C.A.); affirming ([2012](#)), [2012 ONSC 4908](#), [2012 CarswellOnt 11435](#), C. Lafreniere J. (Ont. S.C.J.) [Ontario]



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