

Date: 200204012
Docket: CA 172322

NOVA SCOTIA COURT OF APPEAL
[Cite as: *Weller v. Davison*, 2002 NSCA 49]

Glube, C.J.N.S.; Chipman and Cromwell, J.J.A.

BETWEEN:

ANTHONY THOMAS WELLER

Appellant

- and -

JANENE MARIE DAVISON

Respondent

REASONS FOR JUDGMENT

Counsel: Appellant in person
Respondent not appearing

Appeal Heard: February 8, 2002

Judgment Delivered: April 12, 2002

THE COURT: Appeal dismissed per reasons for judgment of Cromwell, J.A.;
Glube, C.J.N.S. and Chipman, J.A. concurring.

CROMWELL, J.A.:

- [1] In a judgment and decree dated July 11, 1991, the Family Court Division of the District Court in Dakota County, Minnesota ordered Anthony Thomas Weller to pay \$332.63 in child support to Janene Marie Davison. That judgment and decree was registered with the Prothonotary of the Supreme Court of Nova Scotia on 20 June, 1995 pursuant to the **Maintenance Orders Enforcement Act**, R.S. 1989 c. 268 as amended (the “**Act**”). By an application filed with the Supreme Court (Family Division) on June 28, 2000, Mr. Weller applied to set aside the registration. His application came on for hearing before Gass, J. of that Court on October 6, 2000. On January 17, 2001 the judge gave an oral decision in which she extended the time within which Mr. Weller could bring his application but dismissed the application on the merits. Mr. Weller now appeals that dismissal.
- [2] In applying to set aside registration of the order, the burden was on Mr. Weller to show that the order of the Minnesota Court had been obtained by fraud or error. The relevant provisions of the **Act** are ss. 3(5) and 3(6) which state:
- 3(5) A respondent may, within one month after receiving notice of the registration of a registered order, apply to the registration court to set the registration aside.
- 3(6) On application under subsection (5) the registration court shall set aside the registration if it determines that the order was obtained by fraud or error or was not a final order.
(emphasis added)
- [3] Justice Gass was not persuaded that the order in question had been obtained by fraud or error within the meaning of s. 3(6). She recognized that it was not her function on the application to sit as if on appeal from the order of the Minnesota Court.
- [4] In order to understand the grounds of Mr. Weller’s application to set aside registration of the order, some background is necessary.
- [5] Mr. Weller and his former wife, Janene Marie Davison, are the parents of twin boys who were born in 1982. Mr. Weller and Ms. Davison initially met in Nova Scotia and lived here until 1987. They moved to California and then to Minnesota. They married in 1989 in Minnesota.
- [6] Ms. Davison took court proceedings which resulted in Mr. Weller moving out of the matrimonial home and Ms. Davison obtaining custody of the children. At a pretrial conference in May of 1991, an order was made (by

- Judge Sutherland) that the children not be removed from school without the knowledge and consent of Ms. Davison. However, Mr. Weller, claiming that he had the permission of Ms. Davison, picked the boys up in early June of 1991 and took them for an extended family visit in Canada. Meanwhile, the divorce hearing had been set for 9:00 a.m. on June 27, 1991.
- [7] The police were called in connection with the children being taken to Canada contrary to the order made at the pretrial. The children were ultimately apprehended in Toronto and returned to Minnesota. After the children were apprehended, Mr. Weller travelled from Toronto to Minnesota. He called the Minnesota court on June 27, the day set for the hearing, to advise that he would be there at 10:30 and to ask that proceedings be delayed. He had not appeared by noon, but called the court again to say he would be there by 1:30. At 12:12, the Court struck Mr. Weller's answer in the divorce and decided to proceed by way of default, noting that felony charges had been filed against Mr. Weller in connection with his taking the children to Canada.
- [8] Mr. Weller then appeared as the Court was in the midst of dealing with the divorce as a default matter. The presiding judge declined to hear Mr. Weller on the merits of the case, advised him that he would be arrested on the felony warrant and strongly cautioned him not to say anything about the matters giving rise to the charges until he had consulted with an attorney.
- [9] The judge granted dissolution of the marriage, awarded custody to Ms. Davison and ordered Mr. Weller to pay \$332.63 in child support beginning July 1, 1991.
- [10] Mr. Weller was charged criminally in connection with the removal of the children to Canada. After a four day jury trial, at which Mr. Weller was represented by counsel, he was convicted of depriving Ms. Davison of parental rights in violation of a court order. Imposition of sentence was stayed and a probation order made.
- [11] Mr. Weller says that the registration of the child support order should be set aside because he has demonstrated that it was obtained by fraud or error. He submits that to determine whether the order was obtained by fraud or error, we must look, not only at all the steps in the Minnesota courts leading up to the making of the order, but also the criminal proceedings thereafter. He says that there were false statements in Ms. Davison's initial petition; that the custody evaluation conducted in connection with the divorce proceedings was "a charade"; that the pretrial at which the order preventing removal of the children was made was "a farce"; that the judge who made that order lied

at the criminal trial; that there were many defects in the criminal trial procedure and that the Minnesota courts were in violation of various articles of the Hague convention. Mr. Weller asks us, as what he calls a “panel of experts”, to review the entire record of proceedings in the Minnesota courts to determine if he was fairly treated.

- [12] That, however, is not our function on this appeal from an order refusing to set aside registration of a maintenance order. The purpose of reciprocal enforcement legislation is to facilitate enforcement of obligations of persons resident in one state, province or territory when their dependents are resident in another state: J.G. Castel, *Canadian Conflict of Laws* (4th, 1997) at 420; in other words, to recognize and give effect to the orders of courts of reciprocating states which have acted within their proper jurisdiction.
- [13] The focus of the inquiry on Mr. Weller’s application to set aside registration is whether the support order was obtained by fraud or error. While the whole order made after the divorce trial is filed with the Nova Scotia court, the term “order” for the purposes of the **Act** means “... an order or determination of a court providing for the payment of money as maintenance ...” : s. 2(h). It follows that the issue in these proceedings in the Nova Scotia courts to set aside the registration of the order is whether the maintenance aspect of the order was obtained by fraud or error: see *Castel* at 429.
- [14] While Mr. Weller makes many complaints about his treatment in the Minnesota courts, I do not understand him to say that he had no obligation to support his sons or that the court had no jurisdiction to order him to pay maintenance or that the amount ordered was excessive. Moreover, in the circumstances confronting the Minnesota court on the day the order was made, I see no fraud or error of a type that should lead the courts of this Province to refuse to register the support aspect of that order. The Minnesota court had jurisdiction over the support proceedings. It limited Mr. Weller’s participation in the hearing only after he had failed to appear and after the Court concluded that he had apparently breached a court order, for which breach a felony arrest warrant had been issued.
- [15] Changed circumstances and mistakes of fact can be addressed under other provisions of the **Act**.
- [16] I, therefore, agree with Gass, J. that Mr. Weller’s application to set aside registration must be dismissed. I would, therefore, dismiss the appeal but without costs.

Cromwell, J.A.

Concurred in:

Glube, C.J.N.S.

Chipman, J.A.