

2005 CarswellAlta 968, 2005 ABQB 462, [2005] W.D.F.L. 3432, [2005] W.D.F.L. 3472, [2005] W.D.F.L. 3476, [2005] A.W.L.D. 2781, [2005] A.W.L.D. 2804, [2005] A.W.L.D. 2807, [2005] W.D.F.L. 3910, [2005] A.W.L.D. 3172, 17 R.F.L. (6th) 244

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G. (A.) v. S. (L.)

A.G. (Plaintiff) and L.S. (Defendant)

Alberta Court of Queen's Bench

Sullivan J.

Heard: May 25, 2005

Judgment: June 29, 2005

Docket: Calgary 0501-01938

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Counsel: Harris N. Hanson for Plaintiff

Diann P. **Castle** for Defendant

Subject: International; Family

Conflict of laws --- Family law — Support — Enforcement of foreign orders — Reciprocal enforcement legislation — General principles

Father had been married twice and had three children from each marriage, four of whom were still in need of care and support — Father was resident of Alberta — Father was employed and earning approximately \$92,000 per year — Father had relationship in Kazakhstan which resulted in birth of daughter — Court order from Republic of Kazakhstan said that father was to be liable for child support in amount equivalent to one quarter of income from all sources until daughter reached legal age — Mother brought claim for order fixing amount of support father must pay to mother for support of daughter — Claim allowed — Award of Kazakhstan court was not reasonable — Order of Kazakhstan court would not be enforceable in jurisdiction in any event — Onus had not been met to show that another jurisdiction was more convenient forum — Alberta was convenient forum — Until further review, child support of \$150 per month was ordered to be calculated at such amounts from birth of daughter to date of judgment.

Family law --- Support — Child support under federal and provincial guidelines — Practice and procedure — Jurisdiction of courts

Father had been married twice and had three children from each marriage, four of whom were still in need of care and support — Father was resident of Alberta — Father was employed and earning approximately \$92,000

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per year — Father had relationship in Kazakhstan which resulted in birth of daughter — Court order from Republic of Kazakhstan said that father was to be liable for child support in amount equivalent to one quarter of income from all sources until daughter reached legal age — Mother brought claim for order fixing amount of support father must pay to mother for support of daughter — Claim allowed — Father acknowledged paternity of daughter — It was in daughter's interest that court acknowledge jurisdiction — Onus had not been met to show that another jurisdiction was more convenient forum — Alberta was convenient forum — Until further review, child support of \$150 per month was ordered to be calculated at such amounts from birth of daughter to date of judgment.

Family law --- Support — Child support under federal and provincial guidelines — Application of guidelines — General principles

Father had been married twice and had three children from each marriage, four of whom were still in need of care and support — Father was resident of Alberta — Father was employed and earning approximately \$92,000 per year — Father had relationship in Kazakhstan which resulted in birth of daughter — Court order from Republic of Kazakhstan said that father was to be liable for child support in amount equivalent to one quarter of income from all sources until daughter reached legal age — Mother brought claim for order fixing amount of support father must pay to mother for support of daughter — Claim allowed — Federal Child Support Guidelines were not binding with respect to child support and would be overly generous according to any standard shown — Cost of raising child in foreign jurisdiction was relevant in determining proper amount for child support — Until further review, child support of \$150 per month was ordered to be calculated at such amounts from birth of daughter to date of judgment.

Cases considered by *Sullivan J.*:

Prichici v. Prichici (2005), 2005 CarswellOnt 1952 (Ont. S.C.J.) — followed

Statutes considered:

Interjurisdictional Support Orders Act, S.A. 2002, c. I-3.5

Pt. 1, Div. 2 — referred to

s. 12 — considered

Parentage and Maintenance Act, R.S.A. 2000, c. P-1

s. 7 — referred to

s. 9 — referred to

Regulations considered:

Divorce Act, R.S.C. 1985, c. 3 (2nd Supp.)

Federal Child Support Guidelines, SOR/97-175

Generally

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Interjurisdictional Support Orders Act, S.A. 2002, c. I-3.5

Interjurisdictional Support Orders Regulation, Alta. Reg. 4/2003

Generally

CLAIM by mother for order determining amount of child support payable by father.

Sullivan J.:

1 The Defendant L. S. is a civil engineer and for the most of the past twenty years has worked overseas on different projects. Often his family would accompany him on these assignments and all of his children were born abroad. He has been married twice, has three children from each marriage, four of whom are still in need of his care and support. On one of his trips abroad, he had a brief relationship with the plaintiff in Kazakhstan which resulted in a birth of a child, A. G. born August 23, 2003.

2 Since the birth of the child, the defendant has been supporting the child by sending money orders to the plaintiff. This has been done on the part of the defendant without court order. The defendant does not have access to the child.

3 In the Statement of Claim the plaintiff alleges, among other things, that the defendant has neglected or refused to pay maintenance for his child since December 2003, and asks for relief, in the nature of an order, fixing the amount of maintenance the defendant must pay to the plaintiff for the support of the child.

4 The Statement of Defence in part reads as follows:

1. In answer to the whole of the Statement of Claim, the Defendant states that he files this Statement of Defence to appear in the said action so that his case may be heard, and further, that he may raise all issues allowable pursuant to the Statutes.

.

4. The Plaintiff has not plead the statute in the Statement of Claim that is being relied upon to commence the action in Alberta.

5. The Plaintiff has not followed the statutory procedures to commence the action as set out in the *Partage and Maintenance Act*, RSA 2000, c.P-1 as amended, s. 7 and s. 9.

6. The Plaintiff has not followed the statutory procedures to commence the action as set out in the *Interjurisdictional Support Orders Act*, SA 2002, c.I-3.5 as amended, division 2.

7. Kazakhstan is not a reciprocating jurisdiction listed in the *Interjurisdictional Support Orders Regulation*, Alta. Reg. 4/2003 as amended.

8. The Courts in Kazakhstan have jurisdiction over the claim and have made orders with respect to the claim.

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5 In an affidavit filed on May 16, 2005 counsel for the plaintiff filed a translation of a court order from the Republic of Kazakhstan which said in part that they found the defendant to be the father of the child, Alysha, born August 24, 2003, and that he be liable for child support in the amount equivalent to one quarter of income from all sources for the period July 23, 2004 until his daughter reached "the legal age".

6 With respect to jurisdiction I am satisfied on a plain reading of paragraph 1 of the Statement of Defence that the defendant has attorned to the jurisdiction of the Alberta Court. Had he not so attorned I would be satisfied that in any event the court had jurisdiction to deal with this matter. The defendant is a resident of Alberta and acknowledges his paternity of the child, Alysha and that it is in the interest of the child that this Court acknowledge jurisdiction.

7 Section 12 *Interjurisdictional Support Orders Act* reads as follows:

12(1) In determining the entitlement to support for a child, the Alberta court must first apply the law of the jurisdiction in which the child ordinarily resides, but if the child is not entitled to support under that law, the Alberta court must apply the law of Alberta.

(2) In determining the amount of support for a child, the Alberta court must apply the law of Alberta.

(3) In determining the entitlement to support and the amount of support for a claimant, the Alberta court must first apply the law of Alberta, but if the claimant is not entitled to support under that law, the Alberta court must apply the law of the jurisdiction in which the claimant and the respondent last maintained a common habitual residence.

8 I am satisfied that dealing with the choice of law that the award of the Kazakhstan Court is not reasonable and that the order of the Kazakhstan Court would not be enforceable in this jurisdiction in any event.

9 In *Prichici v. Prichici*, 2005 CarswellOnt 1952 (Ont. S.C.J.), the Court in paragraph 27 said this:

In analyzing the issue of jurisdiction, the court first looked at the question of jurisdiction *simpliciter*. It held that since an application for child support is an action *in personam*, it is sufficient for the defendant to be present in the jurisdiction for the plaintiff to have the right to commence proceedings here. The onus then falls to the defendant to show that another jurisdiction is the more convenient forum.

10 I am satisfied therefore that the onus has not been met to the defendant to show that another jurisdiction is the more convenient forum. Alberta is the convenient forum.

11 I turn now to consideration of the quantum of child support. I am advised by counsel that the defendant is currently employed and earning approximately \$92,000 per year and he has four children whom he supports in Canada in addition to his wife who is ill.

12 I am not satisfied that the Federal Support Child Maintenance Guidelines of Canada should apply to children living in foreign jurisdictions. The cost of raising child in the foreign jurisdiction is relevant in determining what the proper amount is for child support. The child support guidelines in themselves have been based on the similar philosophy within Canada. Each province is different, depending on the cost of raising a child in each province. The defendant has submitted that the child support payable by the defendant to the plaintiff be set at

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\$100 per month in a country where the per capita annual income is \$1,197.71 U.S. a year. I have no evidence to support any claim for a specific amount of child support. There is no material before me suggesting what it costs to raise a child in Kazakhstan. I acknowledge that there is a cost. On the other hand, I am not satisfied either that the child has to live at or just above the poverty line in Kazakhstan when she is entitled to the benefit of a better standard of living because of what appears to be the relative wealth of the child's father. There is also some concern on my part that others may benefit in the immediate family unit from this particular child receiving a very generous award. Let me say that I am not particularly concerned about this issue. A higher award will result in a happier family and happier siblings and relatives, hopefully resulting in a better standard of living for Alysha.

13 Therefore, in the result, I find this Court has jurisdiction. I find, too, that the *Canadian Child Support Guidelines* although helpful are not binding with respect to child support and that they in fact would be overly generous according to any standard shown before me. Although I recognize that this amount is somewhat arbitrary, until further review, I order that child support be payable in the amount of \$150 per month to be calculated at such amounts from the birth of the child to today's date less any adjustment for interim payments made by the defendant.

Claim allowed.

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