

Enforcing Court Orders

Singh v Pierpont, [2016] MBQB 183 (CanLII)

Note: This case has multiple references to “custody”, a term no longer used in the Divorce Act. You can treat the facts about custody as background information in analyzing why the court came to its decision about how to award costs.

Facts:

Ms. Singh and Mr. Pierpont were married in Hawaii in March 2010. Their son was born in Hawaii in July 2010. They separated in 2011. They were divorced in Hawaii in 2012. The order set out specific visitation terms. The child had been living in Manitoba with the mother since 2011, except during visits with the father. In June 2013, the court in Hawaii denied the father’s request to change legal and physical custody. The court did modify visitation and added Skype visits. In March 2014, the court in Hawaii gave the father sole physical custody and the mother reasonable visitation. In April, the mother filed an application under *The Child Custody Enforcement Act* for primary care and control of their son. She argued that the child had a real and substantial connection to Manitoba, not Hawaii. The Manitoba Court of Queen’s Bench granted the mother interim custody and ordered that the child not be removed from Manitoba. The father was allowed care and control from May 5, 2014 to May 9, 2014. The father did not return the child on May 9th as he had agreed to do and as he was ordered to do. Instead, the father took the child to Hawaii.

On May 13, 2014, the mother applied under the *Hague Convention on the Civil Aspects of International Child Abduction* asking that the child be returned to Manitoba, for police assistance, and for the father to pay travel costs.

In May 2014, the court in Manitoba decided that the child had a real and substantial connection to Manitoba and in June ordered that the child be returned to Manitoba and that the father pay travel costs. In April 2015 there was a conference call with a judge from the Hawaiian court who decided that Hawaii lost jurisdiction once the child had been in Canada for six months. The child was returned to Manitoba. The mother filed for sole custody in Manitoba which was awarded in May 2015. The mother also asked for costs.

Discussion Questions:

- 1) Do you agree or disagree with the judge’s decision? Why?
- 2) Why is it important to follow a court order?
- 3) Was the judge’s solution appropriate, or should the judge have made one of the orders provided under 60.10(5)?

Relevant Law:

Court of Queen’s Bench Rules

Sections 60.05 and 60.10

Resources:

You can read the entire case at:

<http://canlii.ca/t/gtw8f>

You can find *The Court of Queen’s Bench Rules* at:

<http://web2.gov.mb.ca/laws/rules/qbr1e.php>

The Decision:

Since the mother was successful in *The Child Custody Enforcement Act* proceedings, the court awarded her costs associated with that. The court called the father's behaviour: "reprehensible and outrageous." The court awarded the mother costs of \$50,000. Her fees and disbursements were \$79,429.59 and travel costs were \$16,350.15. The court did not award compensation for lost wages and lost contribution to her pension plan, saying that those amounts were not covered under *The Child Custody Enforcement Act*. Previous decisions had said that a court can award solicitor-client costs where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties.

Relevant Law:

The Court of Queen's Bench Rules

ENFORCEMENT OF ORDER TO DO OR ABSTAIN FROM DOING ANY ACT

60.05 An order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be enforced against the person refusing or neglecting to obey the order by a contempt order under rule 60.10.

CONTEMPT ORDER

Motion for contempt order

60.10(1) A contempt order to enforce an order requiring a person to do an act, other than the payment of money, or to abstain from doing an act, may be obtained only on motion to a judge in the proceeding in which the order to be enforced was made.

Service

60.10(2) The notice of motion shall be served personally on the person against whom a contempt order is sought, and not by an alternative to personal service, unless the court orders otherwise.

Affidavit in support

60.10(3) An affidavit in support of a motion for a contempt order may contain statements of the deponent's information and belief only with respect to facts that are not contentious, and the source of the information and the fact of the belief shall be specified in the affidavit.

Warrant for arrest

60.10(4) A judge may issue a warrant for arrest (Form 60I) of the person against whom a contempt order is sought where the judge is of the opinion that the person's attendance at the hearing is necessary in the interest of justice and it appears that the person is not likely to attend voluntarily.

Content of order

60.10(5) In disposing of a motion under subrule (1) the judge may make such order as is just, and where a finding of contempt is made, the judge may order that the person in contempt,

- (a) be imprisoned for such period and on such terms as are just;
- (b) be imprisoned upon failure to comply with a term of the order;
- (c) pay a fine;

- (d) do or refrain from doing an act;
 - (e) pay such costs as are just; and
 - (f) comply with any other order that the judge considers necessary;
- and may direct the sheriff to take possession of and hold the property of the person in contempt and to collect and hold any income from the property until the person complies with the order.