"Come [Back] Up and See Me Sometime" — When You're Actually Ready

Monter v. Licea (September 16, 2021), Doc. Newmarket FC-20-331 (Ont. S.C.J.) — Jarvis J. [Ont. S.C.J. currently unreported]

This endorsement was released by Justice Jarvis with respect to a Settlement Conference that was scheduled to take place the next day. The parties had not completed cross-examinations/questioning, they each claimed there was outstanding disclosure, and there was a motion booked for the end of September.

The case involved child support and property claims. The parties had not filed updated sworn Financial Statements, Net Family Property Statements or a Comparative Net Family Property Statement. And there had been no Rule 18 Offers to Settle exchanged. (Justice Jarvis noted that an offer in a Settlement Conference Brief is not a Rule 18 Offer to Settle.)

The father had made an offer in his Settlement Conference Brief simply suggesting that the "parties execute a 50-50 parenting plan" without any further details.

While we have, in previous issues, noted situations where counsel have been justifiably upset when, for example, materials are rejected for being a half-page over the limit — this is the sort of situation that makes judges justifiably upset. How could a meaningful Settlement Conference be held in such a situation?

Justice Jarvis was quite understandably annoyed in that counsel were either wholly unfamiliar with both the Family Law Rules and the recent province-wide Practice Direction dealing with family law — or had simply not complied. Justice Jarvis further suggested that the clients should not be charged for their lawyer's failure to follow court procedure.

Justice Jarvis noted that:

• parties in a family law case are entitled to one — not serial — Settlement Conferences;

• a Settlement Conference is not meant to deal with contested issues that require evidence and argument; and

• a Settlement Conference is not meant to provide incremental guidance from the court.

Rather, Settlement Conferences are meant to allow the court to help parties settle their cases with the benefit of full information. Otherwise, the Conference is a waste of precious court resources when such resources are at a premium.

His Honour determined there would be no useful purpose in having the scheduled Settlement Conference, and as he did in Ni v. Yan, 2020 CarswellOnt 14206 (S.C.J.) (see 2020-40, October 19, 2020 edition of TWFL), he vacated the date ex proprio motu (a little Latin can be fun).

His Honour essentially said "come back and see us some time" — after you've done what you need to do, including completing disclosure, questioning (if required), and exchanging Rule 18 Offers to Settle.

With the premium placed on court resources these days, we suspect this is going to happen more-and-more frequently.

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