

Supreme Court of the State of New York
Appellate Division: Second Judicial Department

D36745
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Submitted - October 15, 2012

WILLIAM F. MASTRO, J.P.
PETER B. SKELOS
ANITA R. FLORIO
THOMAS A. DICKERSON, JJ.

2012-00688
2012-03983

DECISION & ORDER

In the Matter of Olly Jasen, appellant, v Bruce A.
Karassik, respondent.

(Docket Nos. F-3720-07, F-3618-10)

Olly Jasen, Toronto, Ontario, Canada, appellant pro se.

Kantrowitz, Goldhamer & Graifman, P.C., Chestnut Ridge, N.Y. (Paul B. Goldhamer
and William T. Schiffman of counsel), for respondent.

In related proceedings pursuant to the Family Court Act, inter alia, to enforce a child support order dated April 24, 2007, and entered in the Superior Court of Justice of the Province of Ontario, Canada, the petitioner appeals, as limited by her brief, from (1) so much of an order of the Family Court, Rockland County (Warren, J.), dated December 7, 2011, as denied her objections to so much of an order of the same court (Kaufman, S.M.), dated July 15, 2011, as, after a hearing, denied that branch of her petition which was for an award of an attorney's fee for legal services rendered to her between August 15, 2007, and November 1, 2010, granted that branch of her petition which was for an award of interest on unpaid costs only to the extent of awarding such interest at the rate of 2% per annum, and denied those branches of her petition which were for an award of interest at the rate of 6% per annum on unpaid child support arrears accruing from April 13, 2010, to June 13, 2011, and (2) so much of an order of the same court (Warren, J.), dated March 26, 2012, as, upon reargument, and upon the vacatur of the determination in the order dated December 7, 2011, denying her objection to the determination in the order dated July 15, 2011, denying that branch of her petition which was for an award of an attorney's fee for legal services rendered to her between August 15, 2007, and November 1, 2010, directed a hearing in connection with that branch of the petition, adhered to the determination in the order dated December 7, 2011, denying her objection

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to the determination in the order dated July 15, 2011, granting that branch of her petition which was for an award of interest on unpaid costs only to the extent of awarding interest at the rate of 2% annum, and, in effect, adhered to the determination in the order dated December 7, 2011, denying her objection to the determination in the order dated July 15, 2011, denying that branch of her petition which was for an award of interest at the rate of 6% per annum on unpaid child support arrears accruing from April 13, 2010, to June 13, 2011, and denied that branch of her motion which was, in effect, for leave to renew her objection to so much of the order dated July 15, 2011, as denied that branch of her petition which was to direct the relevant Support Collection Unit to collect all support arrears, costs, and interest “in full immediately,” which objection had been denied in the order dated December 7, 2011.

ORDERED that the appeal from the order dated December 7, 2011, is dismissed, without costs or disbursements, as that order was superseded by so much of the order dated March 26, 2012, as was made upon reargument; and it is further,

ORDERED that the appeal from so much of the order dated March 26, 2012, as directed a hearing in connection with that branch of the petition which was for an award of an attorney’s fee for legal services rendered to the petitioner between August 15, 2007, and November 1, 2010, is dismissed, without costs or disbursements, as no appeal lies as of right from an order which directs a hearing to aid in the disposition of a motion (*see Serraro v Staropoli*, 94 AD3d 1083, 1084; *Aguilera v Pistilli Constr. & Dev. Corp.*, 63 AD3d 765, 766; *Akerman v Akerman*, 53 AD3d 633, 633), and leave to appeal has not been granted; and it is further,

ORDERED that the order dated March 26, 2012, is modified, on the law, by deleting the provision thereof, upon reargument, in effect, adhering to the determination in the order dated December 7, 2011, denying the petitioner’s objection to the determination in the order dated July 15, 2011, denying that branch of the petition which was for an award of interest at the rate of 6% per annum on unpaid child support arrears accruing from April 13, 2010, to June 13, 2011, and substituting therefor a provision, upon reargument, vacating that determination in the order dated December 7, 2011, and thereupon granting that objection; as so modified, the order dated March 26, 2012, is affirmed insofar as reviewed, without costs or disbursements.

In an order dated April 24, 2007 (hereinafter the Canadian order), the Superior Court of Justice of the Province of Ontario, Canada, awarded the mother child support, and directed that any unpaid child support obligation was to accrue interest at the rate of 6% per annum. The father failed to pay his child support obligation from April 13, 2010, to June 13, 2011, in the principal sum of \$16,642.15, and the mother petitioned the Family Court, Rockland County, inter alia, to enforce the Canadian order. Although the Family Court directed the father to pay that principal sum, it declined to include an award of interest on that sum. Contrary to the Family Court’s conclusion, the award of child support arrears should have included an award of interest at the rate of 6% per annum.

Under the Uniform Interstate Family Support Act (hereinafter the UIFSA), which New York adopted as article 5-B of the Family Court Act (*see Matter of Spencer v Spencer*, 10 NY3d 60, 65), a state may not modify an issuing state’s order of child support unless the issuing state has lost continuing, exclusive jurisdiction, or the parties consent to a modification (*see id.* at 66; *see*

also *Matter of Batesole-Harmer v Batesole*, 28 AD3d 551, 551). Although the UIFSA does not expressly apply to the Canadian order, since Ontario is not a “state” within the meaning of that statute (*see* Family Ct Act § 580-101[19]), the equitable principles embodied therein, as well as traditional common-law principles of comity, require New York courts to enforce the terms of a child support order or judgment entered in the courts of a foreign nation, “absent some showing of fraud in the procurement of the judgment or that recognition of the judgment would do violence to some strong public policy of this State” (*Matter of Fickling v Fickling*, 210 AD2d 223, 223-224; *see Matter of Hiebaum v Hiebaum*, 233 AD2d 397, 398).

Upon reargument, the Family Court, in effect, adhered to its prior determination denying the mother’s objection to the determination of a support magistrate denying that branch of the petition which was for an award of interest at the rate of 6% per annum on unpaid child support arrears that had accrued over the period from April 13, 2010, to June 13, 2011, in the principal sum of \$16,642.15. In doing so, the Family Court, in effect, improperly modified the Canadian order, notwithstanding the facts that the courts of Ontario have not lost continuing, exclusive jurisdiction over the matter, the parties did not consent to the modification, and there was no showing that the Canadian order was procured by fraud or that recognition of that order would do violence to some strong public policy of New York. Since the mother’s request for an award of interest at the rate of 6% per annum on these arrears should have been granted, the arrears in the amount of \$16,642.15 that were awarded by the Family Court must bear interest at a rate of 6% per annum, as directed in the Canadian order.

The mother’s remaining contentions are either without merit or not properly before this Court.

MASTRO, J.P., SKELOS, FLORIO and DICKERSON, JJ., concur.

ENTER:


Aprilanne Agostino
Clerk of the Court