

ONTARIO
SUPERIOR COURT OF JUSTICE
DIVISIONAL COURT

B E T W E E N:)
)
ISABELLA BARRETT) *George Karahotzitis*, for the Applicant on
) the Motion (Appellant in the Appeal)
)
Applicant)
)
- and -)
)
)
)
EDUARD KOURIL) *Douglas J. Spiller*, for the Respondent on
In his capacity as executor of the Estate of) the Motion (Respondent in the Appeal)
JAROSLAV KOURIL, deceased)
)
)
Respondent)
)
)
)
) **HEARD:** April 1, 2003

BENOTTO S.J.: (Orally)

[1] Mr. Kouril appeals the judgment of Dyson J. under the *Succession Law Reform Act*. In that judgment His Honour found that the parties had cohabited prior to the appellant's death and awarded the respondent a lump sum payment.

[2] The appellant appealed in error to the Court of Appeal; the matter is now properly before this Court. He is late in perfecting the appeal and seeks an extension of time to do so. The material is ready so that the appeal can be perfected today.

[3] Counsel for the appellant says that the judgment is stayed. The respondent says that the judgment is for support and thus there is no automatic stay. The respondent has been unable to collect on the judgment pending the appeal because of this uncertainty. It was brought to my attention that the respondent is on welfare and has no funds.

[4] The appeal is one from findings of fact. The appellant concedes that this poses a very difficult burden on him. In my view the judgment is not stayed by the appeal. However, if it were stayed, I would lift the stay under these circumstances and order the payment as a condition of the extension sought. I therefore:

- (i) grant the extension of time requested; the appeal is to be perfected today;
- (ii) I expedite the appeal and fix the date of May 27, 2003 for the hearing;
- (iii) I order the appellant to pay to the respondent forthwith as a condition of the extension the amount owing on the judgment, plus pre-judgment interest. That money shall be held In Trust by her counsel pending the outcome of the case. The money is to be paid within 7 days.

[5] Costs: I have heard submissions with respect to costs. The costs of the motion before Mr. Justice Rosenberg in the Court of Appeal dated February 28, 2003 were reserved to me and I am therefore fixing the costs of that motion plus the motion before me today.

[6] The respondent did attempt, as the correspondence discloses, to resolve this issue and the result of the motion before me are basically what her counsel proposed in the offer and in argument. In my view this matter should have been resolved and she shall have her costs. The appellant is to pay the costs to the respondent forthwith which I fix at \$7,000, inclusive of disbursements and GST for both motions combined.

BENOTTO S.J.

Date of Reasons for Judgment: April 1, 2003
Date of Release: April 3, 2003

COURT FILE NO.: 136/03

DATE: 20030401

**ONTARIO
SUPERIOR COURT OF JUSTICE**

DIVISIONAL COURT

B E T W E E N:

ISABELLA BARRETT

Applicant

- and -

EDUARD KOURIL

In his capacity as executor of the Estate of
JAROSLAV KOURIL, deceased

Respondent

ORAL REASONS FOR JUDGMENT

BENOTTO S.J.

Date of Reasons for Judgment: April 1, 2003

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