IN THE FAMILY COURT
AT KAIKOHE

I TE KŌTI WHĀNAU
KI KAIKOHE

FAM-2013-027-000037
[2022] NZFC 9770

IN THE MATTER OF	THE FAMILY PROCEEDINGS ACT 1980
BETWEEN	JASON MICHAEL VILE Applicant
AND	JUDITH LERNER Respondent
AND	INLAND REVENUE DEPARTMENT Other Party

Hearing:	23 September 2022
Appearances:	J Day for the Applicant No appearance by or for the Respondent No appearance by or for the Other Party
Judgment:	6 October 2022

ORAL JUDGMENT OF JUDGE M HOWARD-SAGER

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[1] I have an application before me today pursuant to the Family Proceedings Act 1980. It is an application that has been filed by Mr Vile who is present in court today represented by Mr Day. That application is to discharge a registration order in New Zealand which is dated 5 December 2018. That order pertains to the registration

of an order that had been made in Canada for Mr Vile to pay maintenance or child support in respect of his two boys. It should be noted that that order provided for Mr Vile to pay to Ms Lerner the sum of $216.06 per month. That was until the children reached the age of 18 or until otherwise advised, and the order specifies that as the Canadian order had been registered in New Zealand, it would be treated like a maintenance order here. It is worth noting that Mr Vile's two boys in respect of whom the order was made are Benjamin and Mitchell who are now aged 20 and 24 respectively.

[2] On 27 September last year, Mr Vile made his application to discharge the overseas maintenance order registered in the New Zealand court. Of course, this Court has no ability to discharge or vary an order that has been made in Canada, but there is certainly jurisdiction for me to discharge the registration order in New Zealand. That application has been served on both the Inland Revenue in New Zealand and also on Ms Lerner who is not present today. That is particularly important because Ms Lerner has been given full opportunity to put a position before the Court and she has chosen not to do so.

[3] I had also directed earlier that the Inland Revenue should be served as well, and service via email was effected on them back in January of this year. Confirmation of acceptance of that service via email was provided from the Inland Revenue Department. Whilst they are not in a position to be able to consent to the orders that Mr Vile seeks today, they certainly do not oppose what he has been asking for today, and I will return to that in a moment.

[4] This file has an interesting background to it, and it is somewhat complicated by the fact that Mr Vile was originally required to pay some child support for his boys (that was way back in around 2013) and he then reconciled between 2014 and 2016 with Ms Lerner when he moved back to Canada with her. As a result, his child support obligations came to an end at that particular point in time, but when he returned back to New Zealand in 2016, that ramped up again and Ms Lerner made two applications, one for child support in New Zealand and one also for child support in Canada as well. As I mentioned, the registration order in New Zealand dated 5 December 2018 confirms the order that had been made in Alberta, Canada, in July 2017.

[5] Submissions have been made on Mr Vile's behalf that the order should never have been registered in New Zealand because it effectively has resulted in him being double charged in respect of payments for his boys. I am told that he was responsible for paying child support in Canada and, as a result, arrears have accrued in New Zealand, and he was also paying his $217.06 per month in New Zealand. Whilst the documentation that is before me does not specify that there should be a remission of those arrears owing in New Zealand, I am asked to deal with that today by Mr Day.

[6] There is evidence attached to Mr Vile's affidavit in the form of an attachment dated 22 May 2020 where Inland Revenue have confirmed that all amounts owing for child support under the formula assessment had been paid in full. On 3 July 2020, so hot on the heels of that letter, Mr Vile then received a further letter from the Inland Revenue Department stating that because the court order had been registered through the Ministry of Justice, they were still required to follow what had been registered. Effectively, they were still required to chase him for the arrears payment that was noted on that order. They stated that until a variation or a discharge order was received, the arrears on that account would still be payable. It should be noted that that amounts to some $18,000. It is those arrears that Mr Vile asks me to remit today.

[7] Mr Day has taken me through the legislation and says to me that I have the jurisdiction to discharge or to remit those arrears accordingly, and as I mentioned, the basis of that submission is that, effectively, Mr Vile has been double charged in respect of child support in both New Zealand and also in Canada.

[8] As I mentioned, Inland Revenue do not oppose the application that has been filed by Mr Vile. In fact, I am told by Mr Day that they have actively encouraged Mr Vile to make an application to this Court for the registration order to be discharged and for any arrears to be remitted, simply because they have to follow the order that is before them. As I mentioned, there has been ample opportunity for them to advise otherwise if they did not agree with this.

[9] Ms Lerner has also been given full opportunity to put her position before the Court in respect of the discharge of the order. She has not been given an opportunity to be heard in respect of remission of arrears, but she certainly could have raised that

issue in the court, and I note that she has also been sent a copy of today's fixture notice, so even if she had not taken the opportunity to file a response, she could have had someone appear in the actual court today or could have corresponded with the registry to say that she wished to be heard and wished to enforce any arrears. I note that there are potentially monies still owing in Canada, and of course, we cannot do anything about that, so that avenue is certainly open to Ms Lerner to reconsider.

[10] On that basis, I have heard full submissions from Mr Day who has also provided me with some case law, but he says because of the uniqueness of the situation, there is not a lot around that would be able to assist me today, but he says that I certainly have jurisdiction to make the orders that are sought. Accordingly, I am going to do what Mr Vile asks me to do today. The registration order in New Zealand dated 5 December 2018 is now discharged. I remit the arrears owing in New Zealand.

[11] There is no application for costs made today, so Mr Vile's costs will lay as they fall.

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Judge M L Howard-Sager
Family Court Judge | Kaiwhakawā o te Kōti Whānau
Date of authentication | Rā motuhēhēnga: 06/10/2022