ONTARIO COURT OF JUSTICE

COURT FILE No.: D194/21-E000

B E T W E E N :

Barbora Piontková
Applicant

— AND —

Frantisek Kumbera
Respondent

Before Justice Jane Caspers
Heard on October 13, 2022
Reasons for Judgment released on November 3, 2022

Barbora Piontková ……. On her own behalf
Elliott Braganza …… Counsel for the Respondent, Frantisek Kumbera
Melanie Llerena …….. Counsel for the Interjurisdictional Support Order Unit, Family Responsibility Office
P.Hubova ……. Office for International Legal Protection of Children in the Czech Republic

---

CASPERS, J.:

1. INTRODUCTION

[1] This is a ruling on a motion brought by the Respondent, Frantisek Kumbera, ("Respondent") to set aside the registration of the Order of the District of Ceské Budejovice in the Czech Republic, dated June 16, 2017 ("Final Czech Order"). The Final Czech Order was registered with the Ontario Court of Justice on November 10, 2021, under the *Interjurisdictional Support Orders Act, 2002* ("*ISOA"*). The Respondent was personally served with the Notice of Registration of Order on November 24, 2021.

[2] The Czech Republic is a reciprocating jurisdiction for the reciprocal enforcement of support orders with Ontario, pursuant to the *ISOA* and Ont. Reg. 53/03 *Reciprocating Jurisdictions*. Consequently, support orders from the Czech Republic can be registered for enforcement in Ontario pursuant to Part III of the *ISOA*.

[3] The court's power to set aside this order is set out in clause 20(4)(b) of the *ISOA*, which provides:

(4) *Power of court.*-- On a motion under subsection (2), the Ontario court may,

…

(*b*)set aside the registration if the Ontario court determines that,

(i)in the proceeding in which the order was made, a party to the order did not have proper notice or a reasonable opportunity to be heard,

(ii)the order is contrary to public policy in Ontario, or

(iii)the court that made the order did not have jurisdiction to make it.

[4] In his affidavits dated December 17, 2021, and April 12, 2022, the Respondent relies on subclauses 20(4)(b)(i) and (ii) of the *ISOA.* He alleges that in the proceeding in which the Final Czech Order was made, he did not have a reasonable opportunity to be heard and further that the Final Czech Order made by the court in the Czech Republic was contrary to public policy. He asks that, as a result, the registration of the said Final Czech Order be set aside.

[5] A responding affidavit certified on March 22, 2022, was served and filed by the Applicant, Barbora Piontková ("Applicant").

[6] Facta were filed on behalf of the Applicant and the Respondent.

[7] An oral hearing was held on this matter on October 13, 2022.

[8] Present at the hearing of the motion to set aside the registration of the Final Czech Order were the Respondent, with his counsel, Elliott Braganza, the Applicant, Barbora Piontková, Melanie Llerena counsel for the Interjurisdictional Support Order Unit of the Family Responsibility Office, P. Hubova, counsel for the Office for International Legal Representation of Children in the Czech Republic and a Czech interpreter to assist the Applicant. The proceeding was held remotely.

[9] The decision was reserved. This is the ruling.

2. BACKGROUND

[10] The Respondent is the acknowledged father of Diana Karla Kumberová ("Diana"), born February 4, 2009, aged 13 years. The Respondent was formerly in a relationship with the Applicant, who is the mother of Diana. The parties never married.

[11] The Applicant is a citizen of the Czech Republic. Although born in the Czech Republic, the Respondent currently resides in Ontario, Canada.

[12] The parties met in Canada in May 2008. They resided together from November 2008 until they finally separated in October 2009. In November 2009, the Applicant returned permanently to the Czech Republic with Diana. The Respondent says this was done without his consent. The Respondent remained in Ontario, Canada.

[13] The Applicant has since married and currently resides with her husband, Miroslav Piontek, their two sons and Diana in Czechia, Czech Republic.

[14] The Respondent is the father of another child, Maya aged 3 years. He separated from Maya's mother in 2021 after a seven-year relationship and shares care of Maya on an equal basis.

[15] No detailed information has been provided with respect to the Applicant's employment status.

[16] The Respondent is a certified engineer technologist. He was employed as a director engineering for Aryzta, a food supplier for wholesale customers such as Tim Hortons and Sobeys until April 2020 when he was furloughed by Aryzta for reasons apparently related to COVID-19. His salary was reduced to 50%. In June 2020 his position was eliminated due to restructuring. EI was received until September 2021. Although the Respondent claims that he has been seeking employment, he is currently unemployed and living on his reduced savings.

3. LITIGATION HISTORY

[17] The issues of parenting arrangements and child support have been before the court in the Czech Republic on several occasions since 2010.

[18] A Decision from the District Court in Tábor in the Czech Republic[1] dated February 17, 2011[2] placed Diana in the care of her mother, ordered child support payable by the Respondent to the Applicant in the amount of $500[3] per month commencing June 1, 2010, and fixed arrears at $4000. The presiding Justice noted that "the father did not appear at the hearing and did not respond to the court's invitation to make written submissions on the matter." Nevertheless, this was an Order that the court determined was consented to by the Respondent based on an email allegedly sent directly to the Applicant and presumably thereafter shared with the court as it is referenced in the Czech Judgment.

[19] The matter was next before the District Court in Tábor in 2012. It appears that on that occasion, it was the Respondent, represented by counsel, JUDr. Jitka Nemcová, who initiated a motion for visitation adjustment. A Final Czech Order[4] was made for personal contact and SKYPE electronic communication.

[20] In 2013 the Respondent commenced a motion to vary his February 17, 2011 child support Order for Diana in the District Court in Tábor. The transcribed Czech Judgment appears to indicate that he was again assisted by attorney at law, JUDr. Jitka Nemcová. The motion was dismissed by Order dated January 31, 2013. The presiding Justice found that the request for a variation was "unfounded" and that there was "no merit in the father's claim for reduction of maintenance". This Decision appears to have been predicated on two findings, (a) that it had been less than two years since the last variation and (b) that although the Respondent submitted that he had a reduced income

[1] All decisions have been submitted with English translation. Translations provided by the Office for International Protection of Children.
[2] Exhibit "A" to the Affidavit of the Applicant, signed and certified on March 22, 2022.
[3] All child support and income valuations are in Canadian dollars.
[4] Exhibit "B" to the Affidavit of the Applicant.

to $21,115 per year, his expenses had decreased, and the needs of Diana had increased.[5]

[21] The Decision was appealed by the Respondent who, on the appeal, was again represented by JUDr. Jitka Nemcová, attorney at law. The appeal was dismissed and the Decision of the Court of First Instance was confirmed on September 26, 2013.[6]

[22] On November 11, 2016, the Applicant brought a motion before the Regional Court in Ceské Budejovice wherein she sought to increase the child support payable by the Respondent as ordered by the Czech court on February 17, 2011. She further requested an order permitting her to change the name of Diana's surname.

[23] The Applicant acknowledges that she did not follow the procedure under the *ISOA* legislation but instead elected to start the proceeding under purely Czech law.

[24] The Respondent filed an answer and agreed to answer the court's questions[7].

[25] On June 16, 2017, upon reviewing the materials filed by both parties, the court ordered ongoing child support for Diana to be paid by the Respondent to the Applicant in the amount of $1000 per month, payable on the 20th day of each month, and in advance. Child support arrears were fixed at $3500 for the period November 1, 2016 to June 16, 2017, to be paid within 6 months of the date of the Order.

[26] It is this Final Czech Order, which was registered in the Ontario Court of Justice under the *ISOA* legislation on November 10, 2022, and the registration of which the Respondent now seeks to have set aside.

4. SETTING ASIDE REGISTERED ORDERS

[27] In Part III, the *ISOA* sets out the procedure when a party wishes to register a court order that was made in a reciprocating jurisdiction. Conceivably, this might be an order that was made several years ago, as it is in this case.

[28] The grounds to set aside support orders from reciprocating jurisdictions outside of Canada are set out in clause 20(4) (b) of the *ISOA*.

[29] On the return of the motion, the court may either confirm the registration or set it aside (s. 20(4)). If the order is confirmed it is sent to the Family Responsibility Office for enforcement. If the court sets aside the registration, it must provide written reasons and send these to the *ISOA* unit (s. 20(5)). If the order is set aside, the case is treated as a new support order or a variation of a support application. If the order does not contain enough information to make a decision, a request will be made from the reciprocating jurisdiction for this information and the case will not proceed until this is received (s.21).

---

[5] Exhibit "C" to the Affidavit of the Applicant.
[6] Exhibit "D" to the Affidavit of the Applicant.
[7] The Final Czech Order at page 4 of the translation notes that documents forwarded by the Respondent were delivered in the English language and that "the court requested a translation by a translator from the English language."

Does setting aside a registered Order invalidate the Order?

[30] In the appeal decision of *Ontario (Family Responsibility Office, Director) v Bougrine,* [2022] OJ No 939, 2022 ONCA 161, 2022 CarswellOnt 2447, 2022 ACWS 166, 468 DLR (4th) 532, 69 RFL (8th) 257, J.C. Macpherson, J.A. upheld the earlier decision of Justice Andre Guay of the Ontario Court of Justice being the court of first instance and specifically rejected the argument that the setting aside of the registration in Ontario invalidated the Finnish Order which was the subject of the proceedings. He quoted Justice Guay at paragraph 19 of the Appeal Decision as follows:

> "*I do not read section 21 of the ISOA as invalidating the order whose registration has been set aside. Rather, I interpret this section of the Act as creating a mechanism for avoiding the need to commence a new child support application*. Setting aside registration of a foreign child support order for reasons of alleged improper service on a party or because a party alleges that he has not been given a reasonable opportunity to respond to the application giving rise to the order should not mean that the order is thereby rendered invalid, particularly when there is no reliable proof that such allegations are true … It seems all too easy for a person opposed to registration of a foreign child support order to throw up meritless obstacles to its enforcement as seems to have happened in the present case. The ability to set aside [registration of] a presumptively valid foreign support order (ISOA operates on this basis) on the uncorroborated evidence of a person whose financial interests are likely adversely affected by that order is, I believe, a weakness in the enforcement procedure established by ISOA. [Emphasis added.]

[31] To invalidate the Order which has been set aside would remove the Respondent's obligation in Ontario to support his child.

[32] The Czech Final Order therefore remains a valid but unenforceable (in Ontario) foreign child support order.

5. POSITION OF THE PARTIES

Respondent's Position

[33] Broadly speaking, the Respondent's position is that the Final Czech Order should be set aside on the basis that he did not have a reasonable opportunity to be heard within the Czech Republic court proceeding as:

1) his knowledge of Czech is limited.

2) he was not familiar with the court process.

3) he did not have legal representation at the time.

4) while the Final Czech Order notes that he did not elect to be present and the matter might proceed in his absence, he denies this. While he responded to the court's inquiries, he thought he would have a further opportunity to respond and make submissions.

5) he was not able to attend in the Czech Republic as he was working; and

6) he was not able to attend virtually.

[34] On secondary grounds he argues that the Final Czech Order is contrary to public policy as:

1) he currently no longer earns the income that the Final Czech Order was based on;

2) he may have a claim for child support to be reduced under the "undue hardship" provisions of s. 10 of the *Child Support Guidelines ("Guidelines").*

3) he is currently unemployed, and the Final Czech Order is based on a financial situation which is "outdated and unsustainable".

4) the Ontario Court of Justice has jurisdiction to vary the Final Czech Order at this motion.

Applicant's Position

[35] The Applicant wishes the motion to set aside the registration of the Final Czech Order dismissed. She argues that that the Respondent has not met any of the articulated criteria referenced in s. 20(4)(b)(i) and (ii) to have the registration of the Final Czech Order set aside under section 20(4) of the *ISOA.*

[36] Ms. Llarena appeared as an agent for the ISO Unit. She requested that the Respondent's motion be dismissed for the following reasons:

1) by sending in answers to the questions presented by the Czech court, the Respondent was given a reasonable opportunity to be heard.

2) the Respondent was knowledgeable about Czech court proceedings having engaged in the process since 2010. In 2012 and 2013 he had the assistance of Czech counsel.

3) the Respondent had attorned to the Czech courts' jurisdiction.

4) the Respondent complied with the Order until 2020.

6. ANALYSIS

6.1 SECTION 20(4) *ISOA*

A. Notice

[37] There are several cases dealing with this ground to set aside registered orders.

[38] Justice June Maresca set aside two orders from Poland when she found that there was deficient service of the application in Poland. In one case, the Polish court went ahead on a default basis even when they knew where the payor was located[8]. Justice Theo Wolder also set aside an order from Poland due to deficient service[9] as did Justice Sherr when the Polish designated authority could not provide evidence that the father had been served with notice of the Polish proceeding.[10]

[39] There are no material facts in dispute in this case respecting the first defense which is based upon proper notice.

B. Reasonable opportunity to be heard

[40] By not following the provisions as set out in the *ISOA* did the Applicant impair the Respondent's ability to respond?

[41] The Respondent was born in the Czech Republic and came to Canada as a refugee at the age of 15. He has visited the Czech Republic on a number of occasions but resides in Canada. Whether he is conversant with Czech for the purpose of this proceeding is irrelevant. His personal knowledge of the law and court proceedings in the Czech Republic is also immaterial.

[42] What is relevant, I find, is the Czech court's process itself as understood by this Ontario court as it relates to the hearing which resulted in the Final Czech Order.

[43] On reviewing the documentation filed, I find that large portions of the English translation of the Czech Judgment, which provides the foundation for the Final Czech Order, are impenetrable. This may well be the result of a translation issue. Regardless, that is the document upon which this court must rely in making its decision today.

[44] According to the transcript, the Respondent agreed that the hearing could be held in his absence. The transcribed Czech Judgment at page 3 notes as follows:

> "The father replied to the mother's motion in his answer received by the District Court Ceske Budejovice on 19 May 2017, in which he responds to the summons and also to the court request to answer the asked questions if he fails to turn up before the court, *and he agreed that the court hearing may be held in his absence.* The father in his answer states that he wants the court to hold the hearing in his absence with regard to the distance of his place of residence, which is in Canada as he has lived outside the Czech Republic since he was fifteen." [Emphasis mine]

---

[8] *Gal v. Lukasiewcz* 2008 ONCJ 676 (Canlii) and *Nowosielska v. Nowosielski,* 2004 ONCJ 282 (Canlii).
[9] *Milewska v. Anisko* [2008] O.J. No. 1752 (OCJ).
[10] *Szostek v. Szostek* 2011 ONCJ 663 (CanLII).

[45] The Respondent disputes this.

[46] Did the Respondent, in fact, have an adequate opportunity to be heard consistent with due process? This court finds that he did not for the following reasons:

a) The only reference to the waiver of the Respondent's right to be heard and to challenge the evidence of the Applicant is the assertion in the Czech Judgment that he waived his rights. There is no documentary evidence to support this.

b) The Czech Judgment stipulates that evidence was taken in accordance with "provisions of Section 101, paragraph 3 of the Code of Civil Procedure." That legislation has not been provided to the court for consideration.

c) The Respondent was not represented by counsel in the proceedings held in 2017. Why he elected not to do so when he had done so in the past, is not relevant although he does submit that he could not afford it. The fact is that he had no representation. The Respondent states that there was no opportunity for him to attend court "virtually" or by teleconference as none was offered to him or available at the court[11]. The Applicant does not refute this claim.

d) It is unclear what a summons entails in Czech proceedings and how acting on a summons impacts the court process from the perspective of the Respondent. By filing his answer and financial information for 2015 and 2016 this would certainly suggest that he attorned to the jurisdiction. But he did not necessarily know how that information would be used by the Czech court.

e) The Respondent received some interrogatory questions by email from the court. He attempted to answer the questions that the court asked of him. He states[12] that he expected that there would have been a further opportunity for him to answer the court's questions or make further submissions once the court had received his answers. This did not happen, and a decision was made with no further notice on June 16, 2017, by the Czech court. There is no evidence to suggest that, by submitting his answers in English, which were later translated into Czech, this was sufficient to enable him to participate fully in the court proceeding.

f) The answers which were submitted in the 2017 hearing by the Respondent do not appear to have been filed in this Ontario proceeding. What have been filed and which are referenced as Exhibit E to the Applicant's affidavit, are translated documents from the 2013 Appeal.

g) The Applicant was represented by counsel Radka MacGregor Pelikánová, in the 2016 hearing. She produced documents allegedly relating to the Respondent's real estate exploits with supporting documentation from the "land

[11] Respondent's Factum, paragraph 17.
[12] Factum, paragraph 17.

registry for Ontario, Canada." It is unclear whether the Respondent had an opportunity to consider these documents and respond to their filing.

h) There is a reference to inquiries having been made of family members as to his income[13]. That evidence, although not apparently relied upon by the presiding Jusitce, if submitted as a matter of conjecture and not by way of sworn evidence, may not be admissible.

i) In reviewing the evidence of the matter, the Czech court considered "a record of the examination of the mother during the court hearing." Was this inquiry presented verbally or in writing? This is not clear. Answers relate to evidentiary issues. If this was an oral inquiry than the court presumably heard responses and received evidence to which the Respondent could not reply. If it were in writing, was the Respondent afforded an opportunity to respond as he would have been under the *ISOA* legislation? I suspect not.

j) Although the Respondent may have responded to the summons, I find that he did not necessarily have an opportunity to be heard to the extent that one would expect. The Applicant could comment not only on her facts but also on his, without the Respondent being afforded the same opportunity.

[47] In *Waszczyn v. Waszczyn* 2007 ONCJ 512 (OCJ), a case provided to the court by the Respondent, Justice Sherr set aside a Polish order where he found that it was unrealistic to expect a Canadian respondent of limited means to effectively respond to an application for support in Poland.

[48] In very similar circumstances, Justice Marion Cohen referencing the decision in *Waszczyn* set aside a Polish order on the basis that the mother in Ontario did not have a reasonable opportunity to be heard. The mother was poor and was unable to travel or retain counsel. [See: *Ziemianczyk v. Ziemianczyk* [2008] O.J. No. 1479 (OCJ)].

[49] Given that the Respondent resides in Canada, it is not unreasonable to expect that he could not leave his employment to travel to the Czech Republic for an extended period.

[50] In this case the Respondent did not have counsel in 2010 but did in 2012. He had counsel in 2013 at the first instance and on appeal with respect to the financial issues. It is not for the court to speculate as to why he decided not to retain counsel in the 2017 proceeding. The fact is he did not.

[51] As noted by the Respondent the *ISOA* unit has taken a "a vigorous stand in support" of the Applicant. She herself has filed no caselaw or factum. Yet as noted by the Respondent, the Applicant had the right to appear by video conference rather than in person, was supported by a representative of the ISOA unit who facilitated the delivery of materials, had her own counsel, and had available to her a Czech-English Interpreter. By any measure the Applicant had a huge advantage.

[13] Czech Judgment, page 6.

6.2 Section 51 *ISOA*

[52] The *ISOA* expressly preserves the continued availability of remedies under other legislation. Section 51 of the *ISOA* reads:

> *This Act does not impair any other remedy available to a person*, the Province of Ontario, a province or territory of Canada, a jurisdiction outside Canada or a political subdivision or official agency of the Province of Ontario, of a province or territory of Canada or of a jurisdiction outside Canada.

[53] Even if the Ontario court has jurisdiction to hear a case outside the *ISOA* mechanism, is this a good idea?

[54] The broader interjurisdictional support regime contemplates those applicants will not be precluded from seeking remedies in their own domestic courts. However, this route must be pursued cautiously and with a full appreciation of the potential consequences. In following the course that she did, the Applicant, in this case, assumed the risk that the order that she obtained would be unenforceable.

[55] In the case of *Waszczyn,* Justice Sherr, in somewhat similar circumstances to those before me, reasoned as follows:

> **[**8] ... It is unrealistic to expect that persons of modest means, such as the respondent, have the financial resources to litigate child support cases in jurisdictions as far away as Poland. It is difficult to communicate effectively with foreign counsel without face-to-face meetings. Because of the distance and cost involved, the respondent was unable to appear in court to ensure that counsel properly communicated his position. The comprehensive procedure to make support claims against payors residing in foreign jurisdictions, set out in the Act (the ISO procedure), was created to address these issues and to establish a fair process for support payors. Since the Republic of Poland is a reciprocating jurisdiction under O.Reg. 158/07 under the Act, the proper step in this case should have been for the applicant to follow the ISO procedure set out in Part 2 of the Act. Her application for support should have been sent to the designated authority in Ontario and served on the respondent. The respondent would then have had the opportunity of responding to the application in the Ontario court.
>
> …….
>
> [10] What can be derived from this discussion is that, if an applicant chooses to bring a support application against a non-resident respondent outside the ambit of the Act, he or she runs a significant risk that the support order will not be enforced, because the reciprocating court might very well determine, as I have in this case, that the respondent did not have a reasonable opportunity to be heard, or determine that an order against a non-resident respondent obtained by service ex juris is not capable, in any circumstances, of registration and enforcement.

[56] There are risks when an applicant decides to bypass the *ISOA* mechanism. It is difficult for parties of modest means to effectively litigate cases in foreign jurisdictions. The *ISOA* was created to address these issues and to establish a fair process for support payors to be heard. If an applicant chooses to bring a support application against a non-resident respondent who resides in a reciprocating jurisdiction, outside the ambit of the *ISOA*, even though the *ISOA* could have been used, he or she runs a significant risk that the support order will not be enforced, because the reciprocating court might very well determine (when the order is registered there and subsequently challenged) that the respondent did not have a reasonable opportunity to be heard, or determine that an order against a non-resident respondent obtained by service *ex juris* is not capable, in any circumstances, of registration and enforcement.

[57] The question is whether the Respondent participated fully in the Czech proceedings that lead to the Final Czech Order and whether he had an opportunity to be heard. I find that he did not.

C. Contrary to Public Policy

[58] As a second consideration, the Respondent argues that the registration should be set aside on the basis that the Czech Final Order is contrary to public policy.

Quantum of child support

[59] The court should give careful consideration before deciding that something is contrary to public policy, particularly in the area of conflict of laws.[14] Setting aside a foreign order on a public policy basis should be given a narrow application. This defense is not meant to bar enforcement of a judgment rendered by a foreign court with a real and substantial connection to the cause of action for the sole reason that the foreign jurisdiction would not yield the same result as in Canada. [15]The public policy defense is not meant to interfere with findings of fact by foreign jurisdictions when proper process has been followed. To find otherwise would undermine the integrity of the interjurisdictional scheme[16].

[60] Some courts have been more inclined to set aside the registration of orders on a public policy basis when it finds the support amount is not in line with the *Guidelines.*

[61] In *Ziemianczyk, supra*, Justice Cohen found that the Polish order was against public policy, as it imposed a significant child support obligation against an Ontario mother who earned less than $7,000 each year. In *Hastings v. Deacon*, 2014 ONCJ 618, Justice Sheilagh O'Connell set aside the registration of a Florida order because it was three times higher than what would be ordered in Ontario and as such was contrary to child support policy in Ontario.

[14] See: *Block Bros. Realty Ltd. v. Mollard* 1981 CanLII 504 (B.C. C.A.).
[15] See: *Beals v. Saldanha* [2003] 3 S.C.R. 416

[16] *Samis (Guardian of) v. Samis,* 2010 ONCJ 500 (CanLII)

[62] Significantly, the Ontario Court of Justice in *Hastings v. Deakin*, *supra* affirmed that an Ontario Court "should give careful consideration before deciding that something is contrary to public policy". If an Ontario Court were inclined to set aside the registration of any foreign support order that grants an amount of support that differs from what would be ordered under Ontario's *Guidelines* that would undermine the integrity and intent of the *ISOA.*

[63] In *M.W.G. v. K.A.A.*, [2012] N.B.J. No. 441 (NBQB), the court set aside the registration of a child support order for both retroactive and ongoing support from the State of Maine because, pursuant to the laws of New Brunswick, the child support would have been far less than that provided for in the Maine order. The Maine order obligated the Respondent to pay $525.00 per month whereas under New Brunswick laws the Respondent would be obligated to pay $327.00 per month. The court concluded that the Maine order was excessive, and it set aside the registration on the basis that the order was contrary to public policy.

[64] This case is distinguishable from the above-referenced cases.

[65] In the case before me, the Respondent's verified income in 2016 when the Final Czech Order was made was $69,352.50. According to the Czech Judgment, the income was incorporated into documents provided by the Respondent to the court.

[66] While on the face of it, the Final Czech Order requires the Respondent to pay child support that is higher than might have been ordered under Ontario's *Guidelines* ($630 v. $1000), it appears that the presiding Justice took into account not only what was considered a reasonable child support quantum but also factored in what this court might consider to be s. 7 expenses under the *Guidelines* - English lessons, painting, drama and registration in the Montessori school – and calculated a global amount. Accordingly, an order for support made in Ontario pursuant to the *Guidelines,* factoring in the child support and the s. 7 expenses, in the end, might not have departed significantly from what was ordered in the Final Czech Order. Without specifics regarding the costs ascribed to the additional expenses for Diana in the Czech Republic, it is difficult to assert with any certainty.

[67] The Respondent criticizes the Applicant for waiting five years to advance the case for registration of the Final Czech Order. To his credit the Respondent paid the ordered $1000 per month until on or about June 2020 when he lost his position, so enforcement was not necessary**.** Since January 2021 he has been sending to the Applicant $200 per month. The Applicant now seeks enforcement of the Final Czech Order for $1000 per month.

Undue Hardship

[68] The Respondent has argued that he ought to be entitled to claim undue hardship in relation to the access to Diana and the thousands of dollars he has spent in that regard which is a consideration under s. 10 of the *Guidelines*. This argument is one of dubious merit given that he has admitted to having had little or no contact with his daughter since 2014.

[69] The Respondent also submits that he is sharing care of another daughter, Maya, by another relationship for whom he is paying one half of the daycare costs. No particulars are filed.

Decline in Income

[70] The Respondent submits that his income has declined considerably and for that reason the child support obligation should be reduced.

[71] In *Ziemianczyk, supra* the Ontario Court did not find the Florida Order to be "contrary to public policy" by comparing the Respondent's income at the time of the Ontario Motion to set aside the registration of the Order to the income that the Florida Order was based on, but rather the Court compared what was ordered in the Florida Order versus what would have been ordered in Ontario based on the Respondent's income that the Florida Order was based on.

[72] Accordingly, a Respondent's income after the date of the foreign support order is not relevant. Any change to a Respondent's income since the date of a foreign support order would not meet any of the prescribed grounds to have the registration of a foreign support order be set aside pursuant to section 20(4) of the *ISOA.* Rather, any change to a Respondent's income should be addressed in a variation proceeding, such as in a support variation application under the *ISOA.*

[73] In summary, s. 20(4)(b)(ii) of the *ISOA*, the phrase "contrary to public policy" does not assign to the enforcing court a plenary reconsideration of the merits that were before the issuing court. Rather, "public policy" refers to an issue invoking "fundamental morality of the Canadian legal system".

[74] In *Beals v. Saldanha*, [2003] 3 S.C.R. 416, the Supreme Court of Canada noted as follows at paragraph 76:

> "The use of the defence of public policy to challenge the enforcement of a foreign judgment involves impeachment of that judgment by condemning the foreign law on which the judgment is based. It is not a remedy to be used lightly. The expansion of this defence to include perceived injustices that do not offend our sense of morality is unwarranted. The defence of public policy should continue to have a narrow application."

[75] I do not find that the Final Czech Order offends public policy interests in Ontario.

7. DECISION

[76] The Respondent's evidence has established to my satisfaction that he did not have a reasonable opportunity to be heard in the Czech court and I am therefore setting aside the registration of the Final Czech Order, as it relates to child support only under subclause 20(4)(b)(i) of the *ISOA.*

7.1 NEXT STEP

[77] Subsection 21(2) of the *ISOA* provides that, if the Ontario court needs further information or documents from the Applicant, the Ontario court shall send the designated authority a direction to request the information or documents from the Applicant or the appropriate authority in the reciprocating jurisdiction and adjourn the matter.

[78] I would ask the designated authority to seek the following information from the reciprocating jurisdiction:

a) Information concerning the law of the Czech Republic with respect to the child's entitlement to support both ongoing and what this court would refer to as s. 7 expenses pursuant to the *Child Support Guidelines.*

b) A method of calculating child support.

c) A sworn financial statement from the Applicant in Form FLR 13.

d) Confirmation of the Applicant's income for the years 2019, 2020 and 2021.

e) Detailed evidence to support the costs incurred in the Czech Republic for extraordinary expenses for Diana since January 1, 2017 and details of how those costs were allocated between the Applicant and the Respondent.

[79] The trial coordinator of the court is directed to forward a copy of these reasons and this Order to the designated authority being the Interjurisdictional Support Orders Unit, Family Responsibility Office, so that it may remit these materials as soon as possible to the reciprocal jurisdiction.

[80] The trial coordinator is directed to schedule this matter returnable within 30 days of the receipt of the materials requested and to notify the Respondent's counsel of the date and provide counsel with copies of any material.

[81] I wish to thank all counsel for their facta, caselaw and thoughtful submissions.

ORDER

[82] Accordingly for the above reasons, I make the following Order:

1. The registration of the Order from the District Court in Ceské Budejovice in the Czech Republic dated June 16, 2017, is hereby set aside.

2. No steps shall be taken to enforce this Order pending further Order of this court.

3. The Interjurisdictional Support Orders authority shall request from the Applicant or from an appropriate authority in the Czech Republic, the following information:

a) Information concerning the law of the Czech Republic with respect to the child's entitlement to support both ongoing and what this court would refer to as s. 7 expenses pursuant to the *Child Support Guidelines.*

b) A method of calculation of child support.

c) A sworn financial statement from the Applicant in Form FLR 13.

d) Confirmation of the Applicant's income for the years 2019, 2020 and 2021.

e) Detailed evidence to support the costs incurred in the Czech Republic for extraordinary expenses for Diana since January 1, 2017 and details of how those costs were allocated between the Applicant and the Respondent as determined by the Czech Final Order.

November 3, 2022

Signed: Justice Jane Caspers