

CITATION: Atout v. Atout, 2016 ONSC 5769
COURT FILE NO.: FS-16-410859
DATE: 20160915

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: BILLYE VEGH ATOUT, Applicant

-and-

SAID MEDHAT ATOUT, Respondent

BEFORE: F.L. Myers J.

COUNSEL: *Alexandrea Grant*, for the Applicant

Daniel W. Simard, for the Respondent

READ: September 15, 2016

COSTS ENDORSEMENT

[1] The applicant succeeded on all of the relief that was in issue on the cross-motions. She obtained interim custody. She obtained an order dispensing with respondent’s consent to the children’s schooling. She obtained an order dismissing the respondent’s motion to compel her to deliver the children to Arizona.

[2] Under the *Family Law Rules*, costs presumptively follow the event. I see no basis to depart from the *Rules* in this case.

[3] The respondent says that the applicant was not successful in relying on the doctrine of *parens patriae*. But that was a fallback position to support the relief that she sought and obtained on her primary argument under the *Children’s Law Reform Act*.

[4] The respondent also relies on two cases involving similar issues in which the court exercised its discretion to decline to order costs on the facts. Unlike those cases, in this case, in my view, there was a clear winner. Moreover, there is no basis to penalize the applicant for her “self-help” as argued by the respondent. While she left Qatar and brought the children to Canada without the respondent’s express consent, they both had to leave Qatar. Absent an agreement (that was not likely forthcoming from either side) no matter who took the children and no matter where they went, the other spouse would complain of “self-help.” The applicant was transparent

in her dealings with the respondent and invited cooperation and access. Her behaviour was not at all akin to a case of kidnapping despite the respondent's allegations.

[5] The respondent did not submit any offer to settle for review. The applicant, by contrast, made a timely and comprehensive offer to settle all issues before the court. The applicant's offer included:

- i) That the children primarily reside in Toronto with the applicant;
- ii) That the respondent's signature and consent to enroll the children in school in Toronto and to apply for the children's health cards, citizenship, and passports be dispensed with;
- iii) That the respondent have regular Skype access and supervised access in Toronto; and
- iii) That the applicant will keep the respondent informed of the children's general well-being.

[6] The offer also contained costs consequences including that there would be no costs payable to the applicant if the respondent accepted the offer within the first five days after it was made.

[7] The offer terms (iii) and (iv) above made the offer more favourable to the respondent than the outcome. In all other material respects the applicant obtained the relief that she sought. Therefore, under Rule 18(14) the applicant is entitled to her costs on a full indemnity basis from the date of the offer, August 19, 2016. In my view, it is both fair and reasonable that the respondent forthwith pay the applicant her costs in the sum of \$9,686.78, inclusive of disbursements and HST.

F.L. Myers J.

Date: September 15, 2016