

CANADA / JUDGMENT

Kirby v. Woods

2025 ONCA 744

COURT

Court of Appeal for Ontario

DECIDED

28 October 2025

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Kirby v. Woods Collection Decisions of the Court of Appeal Date 2025-10-28 Neutral citation 2025 ONCA 744 Docket numbers COA-25-CV-0516 Judges Coroza, Steve A.; Madsen, Lene; Rahman, Moiz Subject Family Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Kirby v. Woods, 2025 ONCA 744 DATE: 20251028 DOCKET: COA-25-CV-0516 Coroza, Madsen and Rahman JJ.A. BETWEEN Kirby Applicant (Respondent in Appeal) and Woods Respondent (Appellant) and X, The Child Respondent Martha McCarthy, Meghan de Snoo and Nicole Burrows, for the appellant Meghann Melito, Michael Stangarone and Aria MacEachern, for the respondent Kirby Caterina Tempesta, Renatta Austin and Cheryl Robinson, for the respondent X, The Child Maureen Silcoff and Adam Bercovitch Sadinsky, for the intervener Canadian Association of Refugee Lawyers (CARL) Lorne Waldman, Charles Steven, Sumeya Mulla and Carla Arbelaez, for the intervener United Nations High Commissioner for Refugees (UNHCR) Adrienne Smith, Alison Pridham and Asma Faizi, for the intervener Canadian Council for Refugees (CCR) Laura Best and Xilonen Hanson Pastran, for the intervener Immigration and Refugee Law Clinic (IRLC) Prasanna Balasundaram and Asiya Hirji, for the intervener Canadian Civil Liberties Association (CCLA) Heard: July 4, 2025 On appeal from the judgment of Justice Catherine H. Rhineland of the Superior Court of Justice, dated May 5, 2025, with reasons reported at 2025 ONSC 2655, and from the costs order, dated August 6, 2025. COSTS: REASONS FOR DECISION

- [1] This costs decision relates to the appeal decision dated August 26, 2025. The mother's appeal was successful. The court overturned the application judge's decision to return the child back to her country of origin after Canada granted the child refugee status. The court directed that the mother was entitled to costs of the appeal and that if the parties could not agree on the quantum of costs, they could make written submissions: Kirby v. Woods, 2025 ONCA 601, at para. 131.[1]
- [2] While this court's decision was under reserve, the application judge released her decision on costs. The application judge concluded that the father was wholly successful on the application and entitled to costs in the amount of \$75,000 inclusive of HST for legal fees on a substantial indemnity basis related to the Hague application. The parties were directed by this court to make submissions in relation to these costs as well.

- [3] The mother seeks an order from this court fixing her costs on the appeal at \$40,000 and reversing the application judge's award such that the \$75,000 should be paid to her instead of the father. She submits that she is presumptively entitled to costs as the successful party. She asserts that the application and appeal were of exceptional importance to her given that their outcome determined whether the child would be returned, contrary to the child's objections, to the father and country from which she had been granted refugee status. The issues were also complex, and, in her submission, the father acted unreasonably in objecting to multiple requests to adjourn pending the determination of the refugee proceeding and opposing requests for viva voce evidence. She submits that he also acted unreasonably in opposing requests by the mother and the Office of the Children's Lawyer to admit fresh evidence about the refugee proceeding.
- [4] The father submits that, in all the circumstances, the application judge's costs award should be set aside, and no costs should be awarded against any party on the appeal. He argues that he acted in good faith and that he has limited ability to pay. He also submits that the fact that his legal representation at the appeal stage was pro bono and that the mother's legal representation at all stages was pro bono should be considered in the costs analysis. He asserts that an award for costs in the circumstances is not appropriate given that the Court of Appeal was dealing with a novel issue of public importance. Lastly, he argues that certain items on the mother's bill of costs are unreasonable, including that the matter was staffed by three lawyers.
- [5] The Office of the Children's Lawyer and all Interveners did not seek costs.
- [6] Section 131 of the Courts of Justice Act, R.S.O. 1990, c. C.43 gives this court broad discretion in fixing costs. The governing principles are reasonableness and proportionality: *Beaver v. Hill*, 2018 ONCA 840, 143 O.R. (3d) 519, at para. 12, leave to appeal refused, [2019] S.C.C.A. No. 82.
- [7] We agree with the mother that this appeal raised complex issues of utmost importance to her and to the child. At the same time, the appeal did not raise a novel issue: the rebuttable presumption of harm arising from a positive refugee determination was already established by this court in *A.M.R.I. v. K.E.R.*, 2011 ONCA 417, 106 O.R. (3d) 1, and *M.A.A. v. D.E.M.E.*, 2020 ONCA 486, 152 O.R. (3d) 81.
- [8] Parties with pro bono counsel should be subject to the ordinary costs consequences to allow counsel to receive some reimbursement for their services. This discourages parties from abusing the system without fear of the sanction of costs. It also promotes access to justice by enabling and encouraging more lawyers to volunteer to work pro bono in deserving cases: *1465778 Ontario Inc. v. 1122077 Ontario Ltd.* (2006), 82 O.R. (3d) 757 (C.A.).
- [9] As the wholly successful party, the mother is entitled to costs. We would modestly reduce the amount requested by the mother given the father's limited financial resources.

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- [10] The appellant is entitled to \$50,000 in costs of the application and \$30,000 in costs on the appeal, for a total of \$80,000. “S. Coroza J.A.” “L. Madsen J.A.” “M. Rahman J.A.”
- [1] Further to the order dated June 12, 2025, the identity of the parties and the child is confidential. The names “Kirby” and “Woods” are pseudonyms generated by an online random name generator. This decision is written in a manner intended to maintain confidentiality.
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Prepared on 25 October 2026 · Esheria