# COURT OF APPEAL FOR ONTARIO

CITATION: R.G. v. K.G., 2017 ONCA 108
DATE: 20170209
DOCKET: C62369 and C62604

Gillese, Benotto and Roberts JJ.A.

BETWEEN

R.G.

Applicant
(Appellant)

and

K.G.

Respondent
(Respondent in Appeal)

and

O.G.

Applicant
(Respondent in Appeal)

AND IN THE MATTER OF

O.G.

Applicant
(Respondent in Appeal)

Gary Joseph and Ryan Kniznik, for the appellant

Christina Doris, for the respondent, K.G.

Jesse Mark and Emily Chan, for the respondent, O.G.

Heard: November 22, 2016

On appeal from the order of Justice M.R. Gibson of the Superior Court of Justice, dated July 18, 2016 and on appeal from the from the order of Justice F.P. Kiteley of the Superior Court of Justice, dated August 22, 2016.

**Benotto J.A.:**

[1] This appeal concerns an application by a minor for a declaration that she has withdrawn from parental control.

[2] The father of a now 17-year-old girl appeals a declaration that she has withdrawn from parental control. If his appeal is successful, he also appeals an order which held that, in light of the declaration, the issue of her custody is moot.

[3] The parties are diametrically opposed with respect to the application process and the factors for the court to consider. The father submits that the parents must be parties to an application for a declaration, with full rights to object, file evidence and cross-examine. He submits that the application judge's failure to add him as a party is a basis to overturn the declaration. The respondents (the child and her mother) submit that the parents are not required to be parties because the child has an absolute right to the declaration and the only function of the court on an application for a declaration is to verify that the child has reached the age of 16 in accordance with s. 65 of the *Children's Law Reform Act*, R.S.O. 1990, c. C.12 (*CLRA*).

[4] I would accept neither position. I have concluded, pursuant to basic principles of declaratory relief, coupled with the provisions of the *CLRA*, that the parents must be parties to the application. However, the court has broad discretion to direct the extent of their participation. Further, the factors to be considered by the court go beyond the age of the child to include the reasons for, and the utility, of the declaration.

[5] Although the application judge concluded that the father did not need to be named as a party, the process she followed achieved the same result. I agree with her conclusion and would dismiss the appeal with respect to the declaration.

[6] With respect to the ongoing custody application, I agree with the motions judge that the matter is rendered moot by the declaration and would dismiss this appeal as well.

**BACKGROUND**

[7] The respondent O.G.[1] was born in 1999. Her parents separated when she was 18 months old. Their initial separation agreement provided for joint custody. Under a 2006 amendment, they agreed to live within a certain radius of Oakville, Ontario and not to move their daughter's residence until she was 18 years old.

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[1] I have initialized the name of the young person in response to the request of all parties. Brief reasons for doing so appear at the conclusion of these reasons.

[8] In 2013, the mother, by then remarried, moved to Fort Lauderdale, Florida. O.G. enjoyed frequent and extended visits with her in Florida. All was well until Mothers' Day, 2014. O.G. was planning to visit her mother for the weekend. The day before she was to leave, her father drove her to school. During the drive, they discussed her trip. Later that morning, while she was in class, her father sent her a text saying the weekend was cancelled. Some months later, he told O.G. that her visit in late summer would be the last one for nearly a year. Six upcoming trips were cancelled. O.G. was devastated.

[9] O.G. went to visit her mother as planned in the summer. She decided she wanted to stay. The father flew to Florida to convince her to return. She explained to him that she wanted to stay with her mother. The father returned to Ontario, claimed that the mother had "kidnapped" O.G. and, on September 3, 2014, obtained an order for custody authorizing police enforcement. The father returned to Florida with the order for enforcement. O.G.'s affidavit described her experience:

> Eventually he came back to our house in Florida with the police. The police escorted me out of the house, put me into a taxi, and took me to the airport. I tried to hide in the women's washroom at the airport so that my dad couldn't take me onto the plane, but he threatened to use the police again. Out of fear, I got on the plane. Up until this point in my life, I had never felt so devastated and betrayed.

[10] Back in Toronto, the relationship between O.G. and her father deteriorated. By then the mother had responded to the outstanding custody action. Early in 2015, the parents attended mediation and settled the action on the basis that the father would have custody until their daughter's 18th birthday, and the mother would have access. The agreement was incorporated into a consent order of Miller J. dated March 4, 2015 (the "Miller Order").

[11] The relationship between O.G. and her father was made worse when, for reasons that she did not understand, he insisted on changing her school. She was about to enter grade 11 and did not want to leave her school, teachers or friends. She was given no choice. She determined to increase her course load, do well, and apply to university a year early. Always a top student, she completed her required courses and obtained a scholarship to the University of Miami. Her father was furious. He insisted that she return to grade 12. Matters between father and daughter reached a pivotal point on April 13, 2016.

[12] The father wanted proof that O.G. had confirmed her attendance at high school for the following year. He had repeatedly demanded that his daughter provide this proof. On April 13, 2016, he yelled at O.G. that if she did not provide this documentation she would "fucking suffer", "regret [her] choices" and be "fucking miserable". At this point, she decided to leave and withdraw from parental control.

[13] O.G. left her father's home that night, on April 13, 2016, and stayed with a family friend. The father sent the police to get her. She told the officers that she had withdrawn from parental control and the police respected her wishes. She told her school principal that she had withdrawn from parental control and the principal respected her wishes.

[14] O.G. proceeded with her plans to attend university. Her father, however, began court proceedings in Florida seeking to obtain an order requiring the University of Miami to disclose the contents of his daughter's application file. This prompted the university to request proof that O.G. was an independent minor. As a result, O.G. applied for a declaration that she had withdrawn from parental control.

[15] O.G.'s application for a declaration was heard by Kiteley J. Meanwhile, the father brought a motion seeking a declaration that the mother was in breach of the Miller Order. This motion was heard by Gibson J. The orders of Kiteley J. and of Gibson J. are the subject of this appeal. I now turn to discuss the context of these orders.

***First attendance before Kiteley J.***

[16] On April 28, 2016 – two weeks after leaving her father's home - O.G. appeared before Kiteley J. requesting a declaration under s. 65 of the *CLRA* that she had withdrawn from parental control. She was represented by Jesse Mark,

counsel for Justice for Children and Youth. Kiteley J. raised several concerns with Mr. Mark and invited him to provide a supplementary affidavit. He did so.

[17] O.G. swore an affidavit outlining her academic achievements, her high school grades and her desire to attend the University of Miami. She indicated that her father consistently told her he will "do everything he can to stop" her attendance at the university. She explained the necessity for the declaration:

> I have been further advised by the University of Miami that as a minor living in the custody of my father, my father is able to demand that the University of Miami withdraw my application and its corresponding acceptance and scholarship.

[18] Kiteley J. was satisfied that O.G. had withdrawn from parental control and made the following endorsement:

> [T]he evidence indicates that [O.G.] is a remarkable young woman. I have no hesitation in making the order. There are no respondents in this application because counsel takes the position that the parents are not entitled to notice either of the Application or of the order. I accept his submissions.

[19] The formal order (the "Declaration") provided as follows:

> This Court Declares that pursuant to s. 65 of the *Children's Law Reform Act*:
>
> 1. [O.G., date of birth] has withdrawn from the parental control of her father [the appellant], and has withdrawn from the parental control of her mother [the respondent].

2. O.G. is an independent minor with all of the statutory and common law rights and privileges of a minor who has withdrawn from parental control.

***Father's attendance before Fitzpatrick J.***

[20] The following day, on April 29, 2016, the father attended on an *ex parte* basis before Fitzpatrick J. Although the father had been represented in the multiple court proceedings to that point in time, he represented himself before Fitzpatrick J. He sought an extension of the police enforcement clause of the Miller Order. Nothing in the record indicates that Fitzpatrick J. was told about the Declaration made the day before.[2] Fitzpatrick J. granted the order. Later that same day, the police went to where O.G. was residing. On being informed of the Declaration, the police took no action.

***Father's motion before Gibson J.***

[21] The matter did not end there. The father moved for a declaration that the mother was in breach of the Miller Order. The mother brought a cross-motion to set aside the Miller Order. O.G. sought, and was granted, standing on the motion and cross-motion. She also sought to have the Miller Order set aside in light of her withdrawal from parental control.

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[2] It is unclear when the father received actual notice of the declaration by Kiteley J. Formal notice appears to have been given on May 2, 2016.

[22] The motions were heard by Gibson J. on May 12, 2016. On June 2, 2016, he released his reasons, stating at para. 17:

> I agree with [O.G.'s] submission that her withdrawal from parental control makes the terms of the [Miller Order] now unenforceable.

[23] Gibson J. set aside the Miller Order and the order of Fitzpatrick J. He also dismissed the father's request for a declaration that the mother had breached the terms of the Miller Order. Even though the terms of the Declaration rendered the father's request for custody academic, the father submitted that there should be a court record affirming his position about what happened and what the mother did. Gibson J. disagreed, saying at para. 21:

> [The father's] persistence with the motion amounted to a self-absorbed attempt to have a judicial imprimatur validating his particular perspective. Not only was this unnecessary given what has now transpired, it was ill-considered. [The father's] submissions are replete with exaggerated and pejorative language [...] for example, his assertion, unsubstantiated by any expert or other evidence, that [O.G.] suffers from "Stockholm Syndrome"...

[24] The reasons of Gibson J. confirm that O.G. had "voted with her feet" and was capable of determining her own future. He ordered that no person shall have custody of O.G.

***Second attendance before Kiteley J.***

[25] On July 28, 2016, three months after the Declaration, the father launched a motion before Kiteley J. seeking to set aside the Declaration and restore his sole custody of O.G. By then, O.G. was 17 years old. The hearing was held on Thursday, August 18, 2016. O.G. had moved into residence at the University of Miami and was scheduled to begin classes the following Monday, August 22, 2016.

[26] The father submitted that the Declaration should be set aside because he was entitled to be a party to, or at least to have been given notice of, the application which led to the Declaration. He relied on s. 62(3) of the *CLRA* which provides that on an application under Part III in respect of a child, the parties shall include the parents. He also requested that Kiteley J. grant him custody so that O.G. would be returned to high school in Oakville.

[27] O.G. submitted that she had an absolute right to withdraw from parental control and that her father was not entitled to be a party or to receive notice of her application. The only consideration for the court, she submitted, was proof that she had attained the age of 16 in accordance with s. 65 of the *CLRA*.

[28] Kiteley J. concluded that the motion before her was not a *request* by O.G. to withdraw from parental control but rather a declaration that her right to do so had been exercised. Since the hearing was not for "custody, access or

guardianship" – the title of Part III of the *CLRA* - s. 62(3) did not apply and the father was not entitled to be named as a party or to receive notice.

[29] Despite this conclusion, the application judge went on to review the extensive record containing more than a dozen affidavits in order to evaluate the best interests of O.G. She concluded at paras. 35 and 36:

> First, my impression of [O.G.] at the time of the hearing on April 28, 2016 is reinforced. She is articulate, thoughtful, and intelligent.... Second, she has sound reasons for wanting to accelerate her university entrance and to attend a university in Florida. Third, at age 17, her wishes and preferences must be respected.
>
> ...
>
> Alternatively, if I had found that the father should have been named as a respondent or was entitled to notice, I would dismiss the claim for custody.... [T]he issue of custody ... has now been canvassed extensively in court twice: before Gibson J. and before me. The father has had the opportunity to be heard twice and no further opportunities are required in order to achieve procedural fairness.

[30] Kiteley J. dismissed the motion to set aside the Declaration and dismissed the father's request for custody.

## ISSUES

[31] The father appeals the orders of Kiteley J. and Gibson J. He also seeks to admit fresh evidence with respect to both appeals. I will address the following issues:

1. Is the fresh evidence admissible?
2. Are the parents required to be parties to the application for a declaration that a child has withdrawn from parental control?
3. What factors are considered on an application for a declaration that a child has withdrawn from parental control?

**ANALYSIS**

**Issue 1: Is the fresh evidence admissible?**

[32] In order to appreciate the significance of the fresh evidence application, a bit of background is required.

[33] As referred to earlier, the father raised the issue of "Stockholm syndrome" before Gibson J. The motion judge characterized this as a belief by the father that the mother "continues to illegally influence [O.G.] in disastrous ways" such that the child is "continually acceding to [the mother's] perverse will." The motion judge commented that these allegations were unsubstantiated by any expert or other evidence.

[34] The father raised the issue again before Kiteley J. on August 18, 2016. He asserted that O.G. is the victim of a "trauma bond" imposed by the mother. He submitted a letter from a physician in Michigan which describes "trauma bond" and "situations of Stockholm syndrome". The application judge attached no evidentiary value to the letter or the father's reliance on it.

[35] This letter, now in the form of an affidavit from Dr. Frank M. Ochberg, a Michigan psychiatrist, sworn November 7, 2016, is the proposed fresh evidence. The psychiatrist indicates that he could not previously provide sworn testimony due to medical issues and reiterates the contents of his previous letter. He has never met O.G.

[36] The father seeks to have this evidence admitted to establish that O.G. is not acting of her own free will but rather has been brainwashed by her mother, who is essentially her captor.

[37] The principles governing the admissibility of fresh evidence on appeal are outlined in *R. v. Palmer*, [1980] 1 S.C.R. 759 at p. 775. The *Palmer* test requires the applicant to satisfy four criteria: (i) the evidence could not have been adduced at trial; (ii) the evidence must be relevant in that it bears on a decisive or potentially decisive issue; (iii) the evidence must be reasonably capable of belief; and (iv) the evidence must be such that, if believed, it could reasonably, when taken with the other evidence adduced at trial, be expected to have affected the result.

[38] These criteria are more flexible where an appeal involves the best interests of a child; it is important to have the most current information possible when determining the child's best interests "[g]iven the inevitable fluidity in a child's

development": *Children's Aid Society of Owen Sound v. R.D.* (2003), 44 R.F.L. (5th) 43 (Ont. C.A.), at para. 21, per Abella J.A.

[39] The proposed evidence does not meet the test set out in *Palmer*. It is not "fresh" but the reiteration of a theory already raised and rejected twice. In the face of the extensive record regarding O.G., the affidavit from a psychiatrist who has never met her could not reasonably have affected the result.

[40] In my view, the father's continued pursuit of this issue confirms O.G.'s position that he is obsessed with controlling her and that this has blinded him to the reality that it is *he*, not her mother, who is the reason that she withdrew from parental control. It also reinforces the strength of the findings in the courts below.

[41] I would not admit the fresh evidence.

[42] I turn to consider the legal basis for the withdrawal from parental control.

***A child's right to withdraw from parental control***

[43] It has always been a rule of common law that a parent's right to custody will not be enforced against a child's will once the child has reached the "age of discretion": *Rex v. Greenhill* (1836), 4 A. & E. 624 (K.B.); *Reg. v. Howes* (1860), 3 E. & E. 332 (Q.B.). Historically, this meant that the child had the right to withdraw from parental control and the court would not force the child to return to a custodial parent, but would allow the child to live where he or she chose. The

age at which a child has the right to withdraw from parental control is codified in s. 65 of the *CLRA*:

> Where child is sixteen or more years old
>
> Nothing in this Part abrogates the right of a child of sixteen or more years of age to withdraw from parental control.

[44] Once a child declares an intention to withdraw from parental control, her independence may – as it was here – be recognized by the police and the schools. There is no formal court process for a child to withdraw. This was recognized by the application judge at para. 13 when she said of O.G:

> She did not require a court order or a declaration permitting or enabling her to withdraw from parental control. She did not require a court order to protect her privacy at her school in Oakville because, after informing the principal in writing by letter dated April 22, 2016, the principal respected her instructions and did not provide information to her father. She did not require a court order to prevent the police from apprehending her and taking her back to her father's home because she informed the police that she had withdrawn from her father's control and the police respected her right to do so.

[45] Unlike jurisdictions such as Quebec which have procedures for "emancipation", Ontario law does not have a formal process for withdrawing from parental control. The child simply has to take control of the incidents of custody which include decision making regarding residence and education. No court process is required.

[46] However, there is a distinction between the fact of withdrawing from parental control and an application to court for a declaration that a child has withdrawn from parental control. The former is a right that is exercised unilaterally. The latter engages the court's jurisdiction with respect to declaratory relief.

***Nature of declaratory relief***

[47] A declaratory judgment is "a formal statement by a court pronouncing upon the existence or non-existence of a legal state of affairs": Zamir & Woolf, *The Declaratory Judgment*, 3rd ed. (London: Sweet & Maxwell, 2002) at para. 1.02. Courts have jurisdiction to grant declaratory relief under their inherent jurisdiction and pursuant to s. 97 of the *Courts of Justice* Act, R.S.O. 1990, c. C.43. The nature of the relief was articulated in detail by the Supreme Court of Canada in *R. v. Solosky*, [1980] 1 S.C.R. 821. There, Dickson J. said at pp. 830-832:

> Declaratory relief is a remedy neither constrained by form nor bounded by substantive content, which avails persons sharing a legal relationship, in respect of which a 'real issue' concerning the relative interests of each has been raised and falls to be determined.
>
> The principles which guide the court in exercising jurisdiction to grant declarations have been stated time and again. In the early case of *Russian Commercial and Industrial Bank v. British Bank for Foreign Trade Ltd*, [[1921], 2 A.C. 438] in which parties to a contract sought assistance in construing it, the Court affirmed that declarations can be granted where real, rather than

> fictitious or academic, issues are raised. Lord Dunedin set out this test (at p. 448):
>
> > The question must be a real and not a theoretical question, the person raising it must have a real interest to raise it; he must be able to secure a proper contradictor, that is to say, someone presently existing who has a true interest to oppose the declaration sought.
>
> In *Pyx Granite Co. Ltd. v. Ministry of Housing and Local Government*, [[1958] 1 Q.B. 554], (rev'd [1960] A.C. 260, on other grounds), Lord Denning described the declaration in these general terms (p. 571):
>
> > .. if a substantial question exists which one person has a real interest to raise, and the other to oppose, then the court has a discretion to resolve it by a declaration, which it will exercise if there is good reason for so doing.
>
> ...
>
> As Hudson suggests in his article, "Declaratory Judgments in Theoretical Cases: The Reality of the Dispute" (1977), 3 Dal.L.J. 706:
>
> > The declaratory action is discretionary and the two factors which will influence the court in the exercise of its discretion are the utility of the remedy, if granted, and whether, if it is granted, it will settle the questions at issue between the parties.

[48] These principles inform both issues in this appeal with respect to the declaration: who the parties should be and what factors the court should consider.

**Issue 2: Are the parents required to be parties to the application for a declaration that a child has withdrawn from parental control?**

[49] O.G. submits that the parents are not to be parties to the application. She submits that she has an absolute right to withdraw from parental control. She does not need their consent to do so. Therefore, she submits there is no position the parents could take which would affect the result. This submission ignores the distinction between withdrawing from parental control and seeking a declaration from the court.

[50] The father relies on s. 62(3) of the *CLRA* to support his position that the parents must be parties to the application. As it stood at the time, this section provided:

> **Parties**
>
> (3) The parties to an application under this Part in respect of a child shall include,
>
> (a) the mother and the father of the child[.][3]

[51] Part III of the *CLRA* is entitled "Custody, Access and Guardianship". Sections 62 and 65 are located in Part III of the *CLRA* under a subheading named "Procedure." The application judge determined that, since the application

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[3] Note: as of January 1, 2017, clause (a) refers to "the child's parents" rather than "the mother and father of the child": 2016, c. 23, s. 14. Nothing in this appeal turns on the amendment.

for a declaration was not for custody, access or guardianship, s. 62(3) did not apply. With respect, I come to a different conclusion for two reasons.

[52] First, as explained in *Solosky*, declaratory relief involves "persons sharing a legal relationship" in respect of which the "relative interests" of each are to be determined. Here, the relationship shared is that of parent and child. The relevant interests are the independence of the child and the custodial interests of the parent. The parent may have an interest to oppose the declaration. As noted in *Solosky,* (relying on *Russian Commercial,*) the person requesting the relief must "secure a proper contradictor", that is, "someone [...] who has a true interest to oppose the declaration sought."

[53] Second, s. 62(3) of the *CLRA* provides that the parents must be before the court in an application in respect of a child. Although the heading under Part III states "Custody, Access and Guardianship", the provisions of s. 62(3) state that, in an application under Part III "in respect of" a child, the parents are to be parties. It is not limited to custody, access and guardianship issues.

[54] Although I have concluded that the parents are to be parties to the application for a declaration, the court retains discretion to direct their involvement and participation in the application. The father suggests that he should have all the usual rights including introducing and cross-examining on affidavits. This, however, is not automatic. The judge hearing the application will

determine, based on the unique facts before her, what degree of participation is appropriate. Courts maintain an inherent jurisdiction to control their process: *R.(C.) v. Children's Aid Society of Hamilton* (2004), 70 O.R. (3d) 618 (S.C.); *Re Stelco Inc.* (2005), 75 O.R. (3d) 5 (C.A.), at para. 35.

[55] Also, r. 1(7.2) of the *Family Law Rules*, O. Reg. 114/99 gives the court the authority to make orders for directions and conditions respecting procedural matters as the court considers just. Each case must turn on its own facts and is subject to the discretion of the application judge.

[56] Here, the application judge did not accept the father's submission that he should be a party. However, to the extent that this was an error, it was cured by her conduct of the hearing. The father was permitted to file material and make submissions. The application judge fully and thoroughly canvassed all of the evidence before her and made findings based on that evidence.

**Issue 3: What factors are considered on an application for a declaration that a child has withdrawn from parental control?**

[57] O.G. submits that, because she has the unfettered right to withdraw from parental control, she has an unfettered right to the declaratory relief that she sought. She submits that the court should consider nothing but that she is over the age of 16. She says that "there is no consideration of the mental capacity or circumstances of the child. There are no-pre-conditions, qualifiers, or exceptions to this right. Indeed, the *only* consideration is the age of the child."

[58] I do not agree with this broad proposition. As already articulated, when declaratory relief is sought, the court should inquire into the reasons why the declaration is sought, the utility of the remedy and whether, if it is granted, it will resolve the issue between the parties. The reasons of the application judge are clear that the Declaration was necessary to allow O.G. to attend university and resolve the dispute with her father. It is also significant that the application judge considered the extensive record and grounded her conclusions based on the best interests of O.G.

[59] This court recently addressed a request for declaratory relief by a child who wished to withdraw from parental control. In *N.L. v. R.R.M*, 2016 ONCA 915, the judge of first instance made no order as to custody. This court dismissed the child's request for declaratory relief concluding that there was no practical utility to such an order.

[60] Weiler J.A. said this at paras. 49-51:

> [The child] agrees with the motion judge's order insofar as it does not grant any person custody of or access to him. Nonetheless, he seeks, "A declaration that [he] has withdrawn from parental control and has all of the statutory and common law rights of an independent minor."
>
> In support of his submission [the child] relies, in part, on the decision of Kiteley J. in [*O.G.*], *Re*, 2016 ONSC 5292, granting similar declaratory relief. That decision is under appeal to this court and the reasons are yet to be released.

> Insofar as declaratory relief is concerned, I note that the jurisprudence is to the effect that the Superior Court's jurisdiction to grant declaratory relief is not to be exercised in a vacuum; a court must have a reason to exercise its discretion to grant declaratory relief; where legislation exists dealing with the subject matter, the court should consider whether a legislative gap exists that would give rise to a jurisprudential reason for exercising the court's discretion to grant declaratory relief. See, for example, *Danso-Coffey v. Ontario*, 2010 ONCA 171, 99 O.R. (3d) 401, at paras. 30-32; Donald J. M. Brown, Q.C. & the Honourable John M. Evans, *Judicial Review of Administrative Action in Canada*, loose-leaf (2016-Rel. 3), (Toronto: Thomson Reuters Canada Ltd., 2013), at p. 1-77. A declaration can only be granted if it will have practical utility in settling a "live controversy" between the parties: see *Daniels v. Canada*, 2016 SCC 12, 395 D.L.R. (4th) 381, at para. 11, *Khadr v. Canada (Prime Minister)*, 2010 SCC 3, [2010] 1 S.C.R. 44, at para. 46; Brown and Evans, at p. 1-73. None of this jurisprudence was the subject of submissions before us.

[61] Unlike the child in *N.L.*, O.G. was the subject of a custody order and was embroiled in a "live controversy" about her attendance at university. There was a practical utility achieved by the Declaration.

[62] To summarize, when asked to make the Declaration, the application judge fully considered O.G.'s best interests and satisfied herself that the Declaration was necessary and appropriate in all the circumstances. There was no procedural unfairness and her findings were supported by the evidence. The declaratory relief was not exercised in a vacuum. There was a clear reason for it.

[63] I see no reason for appellate intervention with respect to the Declaration.

*Order of Gibson J.*

[64] The father's appeal of the order of Gibson J. is premised on overturning the order of Kiteley J. Since I would uphold her order, it is not necessary to consider the submissions in relation to Gibson J.'s order.

[65] I do comment, however, that the conclusions of Gibson J. reinforce those of Kiteley J. who concluded that O.G.'s best interests were indeed served by the Declaration confirming that she had withdrawn from parental control.

*Initialization*

[66] The parties joined in a request that this court anonymize its reasons. The issue was raised before Kiteley J., who did not have proper submissions and made no decision. She noted, however, that the identity of the parties was already in the public domain. During oral submissions before this court, the parties stated their position to be that the Declaration would not be anonymized but the reasons of this court would be. We have been advised by counsel that the reporting service LexisNexis Quicklaw has been notified, takes no position and will abide by any order made by the court. I would therefore grant the motion to anonymize the reasons of this court.

**CONCLUSION**

[67] This appeal demonstrates the importance of the emerging movement to incorporate the voice of the child in all matters concerning minors. The degree to

which the court will follow the wishes of the child will depend upon the age and level of maturity of the child and will be subject to the judge's discretion as she seeks to determine the child's best interests. When, as here, the child is months away from her eighteenth birthday, a continuation of litigation involving her indicates more about the parent's needs than the child's.

**DISPOSITION**

[68] I would dismiss the appeal from the orders of Kiteley J. dated August 22, 2016 and Gibson J. dated August 22, 2016, with costs payable to the respondent O.G. in the amount of $11,000 and the respondent mother in the amount of $10,000. These amounts are inclusive of disbursements and HST.

Released: FEB - 9 2017

M.L. Benotto J.A.

I agree. G.R. Gibson J.A.

I agree. L.B. Roberts J.A.