

COURT OF APPEAL FOR ONTARIO

CITATION: Martin v. Martin, 2012 ONCA 814

DATE: 20121122

DOCKET: M41791 (C55412)

Blair, Rouleau and Tulloch JJ.A.

BETWEEN

Linda Jean Martin

Applicant (Respondent on Appeal)
(Moving Party on Motion)

and

Brian Stephen Martin

Respondent (Appellant)
(Responding Party on Motion)

Theodore C. Dueck, for the moving party (respondent on appeal)

Brigitte Gratl, for the respondent (appellant)

Heard: November 21, 2012

Motion to dismiss or quash appellant's notice of appeal.

ENDORSEMENT

[1] In our view, most of the orders the appellant seeks to attack are interlocutory in nature and are therefore not within the jurisdiction of this Court. The motion to quash turns primarily on the orders providing for the sale of the matrimonial home and the underlying rights relating to that sale. We agree these

latter orders are final in nature because they finally determine the application with respect to the sale. However, there was no automatic stay of the orders of Haines J. respecting the sale and the practical reality is that the property has been sold. The proceeds of the sale are paid into court to await the still-to-be determined rights of the parties to the proceeds. The appeal with respect to the sale orders is therefore moot, and in our view, is not one of those rare appeals that should be allowed to proceed notwithstanding that it is moot. See *Cada v. Cada* 2003 Carswell Ont. 3858 (Ont. C.A.).

[2] The motion to quash the appeal is therefore granted. The moving party is entitled to the costs of the motion fixed in the amount of \$5,000 inclusive disbursements and all applicable taxes.