

COURT OF APPEAL FOR ONTARIO

CITATION: Susin v. Susin, 2018 ONCA 549

DATE: 20180615

DOCKET: M49003 (C61734)

Strathy C.J.O., Feldman and Brown JJ.A.

BETWEEN

Fermino Susin

Applicant
(Respondent)

and

Dorino Susin, John Susin, Anita Rahman, Dianne Susin,
Sister Stella Marie, Gloria Devenz, Esther Susin
and Theresa Lensborn

Respondents
(Appellants)

AND BETWEEN

John Susin

Applicant

and

Fermino Susin, Dorino Susin, Anita Rahman,
Dianne Susin, Sister Stella Marie, Gloria Devenz,
Esther Susin and Theresa Lensborn

Respondents

Esther Susin, acting in person

Margaret A. Hoy, for the responding party

Heard: In writing

ENDORSEMENT

[1] This matter comes before the court by way of a motion in writing to set aside the order of Fairburn J.A., dated March 5, 2018, dismissing the appellants' motion to set aside the order of Gillese J.A., which required that the appellants each pay the sum of \$15,000 into court as security for costs of their appeal.

[2] The court has directed the Registrar to give notice to the parties, pursuant to r. 2.1.01(3) that the court is considering making an order under r. 2.1.01(1).

[3] Litigation among the nine Susin siblings, relating to the estate of their late father, has been before this court on three prior occasions.

[4] The appellant, John Susin, appealed an order made in 2008 by Quinn J., declaring him to be a vexatious litigant. His appeal was dismissed by this court: *Susin v. Susin*, 2009 ONCA 231. This court observed:

[T]he record shows that there was ample evidence to support his finding that the appellant is a vexatious litigant. His conduct in this case is indicative of his persistent and unwarranted pursuit of legal proceedings that are both meritless and frivolous. His conduct has resulted in enormous inconvenience and expense, over many, many years, to opposing litigants and in this era of strained court resources, he can no longer be permitted unrestrained access to the courts of Ontario.

[5] In 2014, this court quashed an appeal by Dianne Susin on the ground that the order under appeal was interlocutory: *Susin v. Susin*, 2014 ONCA 461. In so doing the court noted, at para. 3, a trail of unpaid costs orders in related

proceedings and observed that the appeal should also be quashed “on the basis of the appellants' persistent and unexplained failure to honour these costs orders.”

[6] Again in 2014, this court upheld a finding of contempt against another brother, Dorino Susin: *Susin v. Susin*, 2014 ONCA 733. As Blair J.A. noted in that case, at para. 2, “[T]he Susin brothers and sisters have been squabbling over the estate of their late father, John Sr., since the death of their mother in 1998.”

[7] The proceedings in this court are only the tip of the iceberg. In her endorsement in this litigation, *Susin v. Susin*, 2018 ONCA 220, Fairburn J.A. stated, at para. 17:

Since this court dismissed John Susin's effort to have the vexatious litigant designation set aside almost a decade ago, at a minimum, it appears that he has brought motions before over fifteen different judges, on over twenty different days, in at least four different jurisdictions. The respondent has faced the daunting task of attempting to navigate his way through this labyrinth of litigation brought by John Susin, all the while facing an increasingly dwindling estate.

[8] The result is that a relatively modest estate, consisting primarily of the family home, has been dissipated, leaving behind a slew of unpaid costs orders against the appellants.

[9] Moreover, the continued misconduct of some of the participants in the proceedings, notably John Susin, has been the subject of sanctions. January 2016, Ramsay J. of the Superior Court of Justice found that the appellant, Esther Susin, had facilitated her brother's [John Susin's] campaign against the estate and his

contravention of a prior order. Ramsay J. found John Susin in contempt *instante* and he was committed to prison overnight.

[10] John Susin has recently been found in contempt of the vexatious litigant order and in January of 2018 was sentenced to 30 days' imprisonment: *Susin v. Susin*, 2018 ONSC 148.

[11] Having considered the submissions of the parties, the motion to set aside the order of Fairburn J.A., the endorsement of Fairburn J.A., and the endorsement of Gillese J.A., as well as the history of this litigation, we are satisfied that the motion is frivolous, vexatious and an abuse of process and it is dismissed, pursuant to r. 2.1.02(1).

[12] Having considered the foregoing matters, as well as the order of Quinn J., dated July 23, 2008, declaring the appellant John Susin a vexatious litigant, the 11-year history of these proceedings, which includes numerous and substantial unpaid costs orders against the appellants, we are satisfied that it is appropriate to make an order pursuant to r. 2.1.02(3) prohibiting the appellants, or any of them, from making any further motions in this proceeding without leave of a judge of this court. Any such motion seeking leave must be made in writing and will not be accepted unless proof of service on the respondent's counsel is provided at the time of filing.

[13] In addition, before bringing any such motion, the appellants are required to satisfy all outstanding costs orders made against them by judges of both this court

and of the Superior Court of Justice, and shall file proof by affidavit that they have done so.

[14] For these reasons, it is ordered that:

- a. the motion to set aside the order of Fairburn J.A., is dismissed, with costs fixed at \$1,000, inclusive of disbursements and taxes;
- b. if the appellants fail to pay security for costs, pursuant to the order of Gillese J.A. within 30 days, the appeal shall be dismissed as abandoned; and
- c. the appellants are prohibited from making any other motions in this proceeding without leave of a judge of this court, on the terms set out in paras. 12 and 13 of these reasons, namely:
 - i. any such motion seeking leave must be made in writing and will not be accepted unless proof of service on the respondent's counsel is provided at the time of filing; and
 - ii. before bringing any such motion, the appellants are required to satisfy all outstanding costs orders made against them by judges of both this court and of the Superior Court of Justice, and shall file proof by affidavit that they have done so.

"G.R. Strathy C.J.O."

"K. Feldman J.A."

"David Brown J.A."