

COURT OF APPEAL FOR ONTARIO

CITATION: Hart v. Balice, 2022 ONCA 787

DATE: 20221117

DOCKET: C70179

Paciocco, George and Favreau JJ.A.

BETWEEN

Melissa Hart and Patricia Hart

Plaintiffs (Appellants)

and

Victoria Balice

Defendant (Respondent)

Melissa Hart, acting in person (audio only)

Ashley Ferguson and Norman Groot, for the respondent

Heard: November 10, 2022, by videoconference

On appeal from the order of Justice Frederick L. Myers of the Superior Court of Justice, dated November 3, 2021.

REASONS FOR DECISION

[1] The motion judge dismissed a motion brought by the appellant, Melissa Hart, as frivolous, vexatious and an abuse of process pursuant to r. 2.1 of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194. The motion judge also directed that the appellant is not to bring any further motions in the underlying action without leave.

At the conclusion of the hearing, we dismissed the appeal with reasons to follow. These are the reasons.

[2] The appellant brought the motion in the context of an action that she and Patricia Hart commenced in 2017. In their action, they alleged that the respondent had improperly placed a lien on their property for \$10,000. They claimed that the lien led to the sale of their property, and they sought over \$4,000,000 in damages, including punitive damages.

[3] Allen J. dismissed the action on summary judgment on the basis that the claim was barred by the two-year limitation period, *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, and that there was no evidence that the respondent placed the lien on the property or that the alleged lien caused the sale of the property or any damage. The appellant was unsuccessful on appeal to this Court and in bringing a subsequent motion for fresh evidence to reopen the appeal.

[4] The appellant then tried to revive the action in the Superior Court by bringing a motion pursuant to r. 59.06 of the *Rules of Civil Procedure*, alleging that Allen J.'s judgment was obtained by fraud. The proposed motion generated several case conferences and other procedures, but ultimately the Superior Court issued a notice to the appellant that the court was considering dismissing the r. 59.06 motion pursuant to r. 2.1. In an endorsement dated October 5, 2021, the motion judge dismissed the r. 59.06 motion on the basis that it was frivolous, vexatious

and an abuse of process. The motion judge found that the appellant was essentially seeking to reargue the dismissal of the action and that she was unwilling to accept the finality of the decision. In his endorsement, the motion judge also noted that the appellant had not filed any submissions in response to the r. 2.1 notice.

[5] The motion judge subsequently became aware that the appellant had filed submissions with the court, and he reconsidered his decision based on those submissions. In an endorsement dated November 3, 2021, the motion judge confirmed the dismissal of the appellant's r. 59.06 motion and also ordered that the appellant is not to bring any further motions in the action without leave of the court.

[6] We see no error in the motion judge's decision. The r. 59.06 motion and the appellants' conduct in this matter have all the hallmarks of a frivolous, vexatious and abusive proceeding.

[7] As held in *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, 343 O.A.C. 87, at para. 8, r. 2.1 "should be limited to the clearest of cases where the abusive nature of the proceeding is apparent on the face of the pleading and there is a basis in the pleadings to support the resort to the attenuated process." The re-litigation of issues already decided is one of the hallmarks of abuse of

process: *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720, at para. 23.

[8] The motion was the third attempt by the appellant to advance the same issues. The claim was originally dismissed by Allen J. and then by this court. This court denied a motion to reopen the case. The r. 59.06 was yet another attempt to reopen the case. As held by the motion judge, r. 59.06 is reserved for rare circumstances where a party can demonstrate that a judgment was obtained by fraud or where new and critical evidence is discovered that could not have been known without due diligence. Here, on the face of the motion materials, the appellant does not identify any evidence that would justify a finding that Allen J.'s judgment was obtained by fraud and, more significantly, it is evident that she seeks to have the court reconsider evidence and arguments already made. This is clearly vexatious conduct and an abuse of process. The respondent is entitled to finality in these proceedings. This is not a close call.

[9] The appeal is dismissed.

[10] Costs of the appeal to the respondent in the amount of \$6,800, inclusive of disbursements and HST.

"David M. Paciocco J.A."

"J. George J.A."

"L. Favreau J.A."