COURT OF APPEAL FOR ONTARIO

CITATION: Visic v. Elia Associates Professional Corporation, 2022 ONCA 841
DATE: 20221201
DOCKET: C70804

MacPherson, Miller and Copeland JJ.A.

BETWEEN

Anica Visic

Plaintiff (Responding Party)
(Appellant)

and

Elia Associates Professional Corporation,
Patricia Elia and University of Windsor

Defendants (Moving Parties)
(Respondents)

Anica Visic, acting in person

Antoni Casalinuovo, for the respondents

Heard: November 28, 2022

On appeal from the judgment of Justice Susan Vella of the Superior Court of Justice, dated May 20, 2022.

REASONS FOR DECISION

[1] The appellant's action against the respondents was dismissed on a motion for summary judgment. The motion judge held that the respondents' limitations defence was established on the record before her, leaving no genuine issue requiring trial, and was determinative of the action.

[2] At the hearing of the appeal, we dismissed the appeal with reasons to follow. These are those reasons.

[3] The appellant was employed by the respondent law corporation in 2007 as an articling student. The individual respondent was her principal. The appellant's articles were ended after 5 months. More than a decade of litigation and administrative hearings have since followed, including the appellant's unsuccessful complaint to the Human Rights Tribunal of Ontario, a licensing hearing before the Law Society of Ontario ("LSO") in which the individual respondent gave character evidence about the appellant, and the current action for defamation before the Superior Court, which was commenced in 2018.

[4] In the present action, the appellant sued the respondents for defamation and other causes of action. The statement of claim alleges that the respondents committed various wrongs against the appellant by stating to the LSO "and others" that the appellant had acted dishonestly in not disclosing to the respondents her official law school transcripts, which showed that she had failed her first year of law school. The appellant claimed that the respondents' statements have prevented her from securing employment as a lawyer.

[5] The motion judge found that the statements made by the respondents over the course of the hearing of the HRTO application in 2009 were known to the appellant at that time. Similarly, the statements made to the LSO during its

investigation into her good character in 2012, were made in the appellant's presence.

[6] Given the appellant did not commence the action until 2018 – well outside the 2-year limitation period – the onus was on the appellant to adduce sufficient evidence to demonstrate that there was a genuine issue requiring a trial with respect to whether any of the factors listed in s. 5(1)(a) of the *Limitations Act, 2002*, S.O. 2002, c. 24, Sched. B, postponed the commencement of the limitation period. The appellant alleged that the respondents made defamatory statements to unknown parties after the LSO hearing and these statements prevented her from securing employment. But the motion judge found that the appellant failed to adduce any credible evidence that the respondents made any such statements after 2012, or that "she lost any potential job opportunities or that her career was otherwise impaired as a lawyer" as a result of the respondents' impugned statements.

[7] On appeal, the appellant has repeated the arguments rejected by the motion judge as to whether she has raised a genuine issue requiring trial with respect to when the limitation period commenced. She has not identified any reviewable errors.

[8] It was open to the motion judge to conclude that the appellant presented no credible evidence to support her belief that the respondents' statements had

thwarted her career, and that her assertions about statements made to unknown parties were speculative. Those findings are entitled to deference.

[9] The appellant additionally argued that the motion judge erred with respect to three “preliminary” or procedural issues. We do not agree that the motion judge erred.

[10] First, the appellant takes issue with the individual respondent’s refusal to attend for cross-examination. As the motion judge noted, the appellant did not pursue any remedy with respect to the refusal. Accordingly, the issue was not properly before the motion judge and there was no need for her to rule on it.

[11] Second, the appellant argues that the motion judge should have granted her leave to amend the statement of claim. Again, and as the motion judge noted, the appellant did not bring a motion for leave to amend and did not provide a draft amended statement of claim. The question was not properly before the motion judge.

[12] Third, the appellant argues that the scheduling endorsement of Dunphy J. only provided for a motion to strike and not a summary judgment motion, and as such, it was improper for the motion judge to hear the summary judgment motion. We see no merit to this submission. The appellant was not prejudiced in any way by the decision of the respondents to proceed by way of summary judgment

motion. The appellant knew that the respondents were relying on a *Limitations Act* defence and what was required to defend against it.

DISPOSITION

[13] The appeal is dismissed. The respondents are awarded costs of the appeal in the amount of $2,000, inclusive of HST and disbursements.

"J.C. MacPherson J.A."
"B.W. Miller J.A."
"J. Copeland J.A."