

COURT OF APPEAL FOR ONTARIO

CITATION: Land v. Dryden (Police Services Board), 2023 ONCA 329

DATE: 20230508

DOCKET: C69812

Fairburn A.C.J.O., Simmons and Zarnett JJ.A.

BETWEEN

Jonathan Land and Stephanie Flora Henry

Appellants

and

Dryden Police Services Board and its employees: Sgt Scott M. Silver; Cst. Jared H. Olsen, Cst. Paul A. Howarth, Cst. Kevin Hildebrand and Anishinaabe Abinoojii
Family Services and its employees: Danielle Gardner and Karen Taylor

Respondents

Jonathan Land, acting in person

Stephanie Henry, acting in person

Stuart Blake and Kelsey Yakimoski, for the respondents Dryden Police Services Board and its employees: Sgt Scott M. Silver, Cst. Jared H. Olsen, Cst. Paul A. Howarth, Cst. Kevin Hildebrand

Abram Silver and Darryl Buxton, for the respondents Anishinaabe Abinoojii Family Services and its employees: Danielle Gardner and Karen Taylor

Heard: January 26, 2023

On appeal from the judgment of Justice John S. Fregeau of the Superior Court of Justice, dated May 31, 2021, with reasons reported at 2021 ONSC 3798.

COSTS ENDORSEMENT

[1] We allowed the appellants' appeal in part, set aside the summary judgment dismissing several of their claims against the Dryden Police Services Board and its employees, Scott M. Silver, Jared H. Olsen and Paul A. Howarth and directed that those claims proceed to trial.

[2] We dismissed the balance of the appellants' appeal with the result that, under the summary judgment: i) their action against Dryden Police Services Board employee, Kevin Hildebrand and Anishinaabe Abinoojii Family Services and its employees Danielle Gardner and Karen Taylor is dismissed in its entirety; and ii) some of their claims against the Dryden Police Services Board and its employees, Scott M. Silver, Jared H. Olsen and Paul A. Howarth are dismissed.

[3] The appellants did not make submissions seeking costs of the appeal or responding to the costs submissions of the respondents. No costs of the appeal are ordered in their favour.

[4] The respondents, Dryden Police Services Board and its employees, Scott M. Silver, Jared H. Olsen, Paul A. Howarth and Kevin Hildebrand seek costs against the appellants on a partial indemnity scale fixed in the amount of \$10,000 in relation to the appeal and the summary judgment motion. They assert they are entitled to costs because success on the appeal was divided and because the self-represented appellants unnecessarily complicated this matter, both on appeal and on the summary judgment motion.

[5] Save as set out below, the costs claim of the respondents, the Dryden Police Services Board and its employees, Scott M. Silver, Jared H. Olsen, Paul A. Howarth and Kevin Hildebrand, is denied. Although success on the appeal was divided, the appellants were substantially successful on appeal in that we directed that the majority of their claims proceed to trial. The most complicating factor on appeal was the failure of the motion judge to properly interpret or apply the statutory provisions at issue. These respondents provided limited assistance with that issue. Save as set out below, there will be no order as to costs of the appeal with respect to these respondents. The costs order of the motion judge awarding these respondents partial indemnity costs against the appellants in the amount of \$25,000 is set aside and the costs of that motion are reserved to the trial judge.

[6] Dryden Police Services Board employee, Kevin Hildebrand, was entirely successful on appeal and the appellants' claims against him are dismissed under the summary judgment. As counsel did not allocate any amounts from the costs outline filed on behalf of the Dryden Police Services Board or its employees to Kevin Hildebrand, he is awarded nominal partial indemnity costs of the appeal against the appellants fixed in the amount of \$1,000 inclusive of disbursements and applicable HST.

[7] The respondents, Anishinaabe Abinoojii Family Services and its employees Danielle Gardner and Karen Taylor were entirely successful on appeal and are awarded costs against the appellants on a partial indemnity scale fixed in the

amount claimed by them of \$3,623.30 inclusive of disbursements and applicable HST.

“Fairburn A.C.J.O”

“Janet Simmons J.A.”

“B. Zarnett J.A.”