

COURT OF APPEAL FOR ONTARIO

CITATION: Affleck v. Sunrise Senior Living, Inc., 2025 ONCA 267

DATE: 20250410

DOCKET: COA-23-CV-0370

Roberts, Paciocco and George JJ.A.

BETWEEN

Marnie Affleck

Plaintiff
(Appellant)

and

Sunrise Senior Living, Inc.*, Sunrise of Erin Mills*, Jennifer Seehra*, Elisabethette Garcia*, Linda Barbara Fraser, and Linda Barbara Frase as Estate Trustee of the Estate of Redvers Dalton Stubley

Defendants
(Respondents*)

Marnie Affleck, acting in person

Maya Kanani, for the respondents

Heard: April 4, 2025

On appeal from the order of Justice Jasmine T. Akbarali of the Superior Court of Justice, dated March 1, 2023, with reasons reported at 2023 ONSC 1405.

REASONS FOR DECISION

[1] The appellant brought a claim for negligent infliction of nervous shock and defamation against the respondents, Sunrise of Erin Mills Retirement Home, and

two of its employees, the Executive Director and an Assisted Living Coordinator.¹ The appellant alleged that the respondents impeded her ability to see her mother, who was a resident in the home, and made defamatory statements about her. She claimed that the respondent's conduct caused her trauma, stress, and various other injuries. She sought \$10M in compensatory damages, \$800K in aggravated damages, and \$4M in punitive damages.

[2] The trial judge dismissed the appellant's claim in its entirety and ordered her to pay costs to the respondents in the amount of \$330K. The appellant appeals on the basis that the trial judge 1) erred in finding that the respondents were not negligent and did not defame her, 2) erred by relying on hearsay statements, and 3) erred in not awarding her damages. She also seeks leave to appeal the trial judge's costs order.

[3] We are not persuaded that the trial judge committed any error of law or that she erred in her factual findings. With respect to the negligence claim, we agree with the trial judge that "the actions [the respondents] took in this situation were reasonable and designed to respect and protect [the appellant's mother], and [were] consistent with the directions of her chosen substitute decision makers".

¹ The claim has been dismissed against the appellant's sister, Linda Barbara Fraser, and the estate of the appellant's father, Redvers Dalton Stublely.

[4] With respect to the defamation claim, we agree with the trial judge that the statement of claim did not plead the alleged defamation with the required specificity. We also agree with her findings that 1) the allegation that the appellant had attempted to extort or steal money from her mother was “substantially true”; and 2) with respect to staff indicating that the appellant was subject to a restraining order, when she was in fact served with a trespass notice, the difference was “minimal” and the result of the appellant’s own conduct.

[5] With respect to the allegation, and finding, that the appellant had attempted to extort or steal money, the appellant argues that the trial judge misapprehended the evidence about the cheque her mother had given to her daughter. She points out that the trial judge incorrectly identified the date on the cheque, and ignored evidence that the appellant’s mother had mailed the cheque. In our view, even if the trial judge erred, it was not an overriding error. The trial judge’s finding that the extortion and theft allegations were “substantially true” rested on more than that one incident, and included evidence that the plaintiff had taken her mother to two different branches of her bank to obtain new cheques and a new bank card.

[6] We also reject the appellant’s argument that the trial judge’s findings were rooted in hearsay.

[7] Lastly, as there is no basis on which to interfere with the costs award, leave to appeal costs is denied.

[8] The appeal is dismissed. Costs of the appeal are payable by the appellant to the respondents in the all-inclusive amount of \$9,000.

“L.B. Roberts J.A.”

“David M. Paciocco J.A.”

“J. George J.A.”