COURT OF APPEAL FOR ONTARIO

CITATION: Wade v. Avery, 2025 ONCA 275
DATE: 20250414
DOCKET: COA-24-CV-0989

Gillese, Gomery and Pomerance JJ.A.

BETWEEN

Angela Nadine Wade

Applicant (Respondent)

and

Matthew James Avery

Respondent (Appellant)

Aaron B.R. Drury, for the appellant

Joel J.W.G. Szaefer, for the respondent

Heard: April 7, 2025

On appeal from the order of Justice J. Ross Macfarlane of the Superior Court of Justice, dated May 24, 2024.

REASONS FOR DECISION

[1] Following the parties' separation in 2019 after 16 years of marriage, the respondent applied for a divorce. In her application, she sought child support for the parties' three children, exclusive possession of the matrimonial home, equalization of net family property, and other relief. The applicant did not file an answer or provide financial disclosure. He did not make meaningful child support

payments or otherwise assist with the children's expenses, even after being ordered to do so in October 2023. He did not contribute to any payment on the parties' joint obligations, including the mortgage on the matrimonial home, car loan, and other debts. When the respondent brought a summary judgment motion in April 2023, the appellant did not respond, nor did he participate in the uncontested trial that followed a year later.

[2] The appellant now seeks to challenge the trial judge's order requiring him to pay past and ongoing child support as well as s. 7 expenses and granting the respondent a vesting order conferring to her sole title to the matrimonial home.

[3] This court will typically not entertain appeals from uncontested trials absent exceptional circumstances, notably where the issues raised in the appeal have clear merit or an injustice has been done: *Lamothe v. Ellis*, 2022 ONCA 789, 79 R.F.L. (8th) 8, at para. 3; *Matos v. Driesman*, 2024 ONCA 271, at paras. 17-18. The court may also decline to hear appeals from parties who have ignored court orders, particularly orders to pay child support: *Cosentino v. Cosentino*, 2017 ONCA 593, 98 R.F.L. (7th) 53, at para. 8.

[4] Although we permitted the appellant to present his submissions, we find that no exceptional circumstances exist. We are not persuaded that the appeal has clear merit or that the trial judge's order is unjust.

[5] The appellant argues that the trial judge should not have granted a vesting order, for two reasons. First, the respondent did not seek such an order in her original application. Second, the order resulted in a windfall to the appellant.

[6] In the context of family law claims, ss. 9(1)(d)(i) and 34(1)(c) of the *Family Law Act*, R.S.O. 1990, c. F.3, empower a court to grant a vesting order on an application for equalization of net family property or support. A vesting order is an enforcement mechanism that a court has the discretion to grant where "the previous conduct of the person obliged to pay, and his or her reasonably anticipated future behaviour, indicate that the payment order will not likely be complied with in the absence of more intrusive provisions": *Lynch v. Segal* (2006), 82 O.R. (3d) 641 (C.A.), at para. 32, leave to appeal refused, [2007] S.C.C.A. No. 84. Absent an error in principle or an error in law in the exercise of that discretion, this court will not intervene: *Lynch*, at para. 65.

[7] When drafting her original application in 2020, the respondent was not required to anticipate that the appellant would fail to respond or to contribute meaningfully to the children's support or the parties' joint debts and obligations over the years that followed. The question is whether the appellant had adequate notice that the respondent was seeking a vesting order at the uncontested trial in 2024. We find he did.

[8] The respondent first asked for a vesting order in her motion for summary judgment in 2023. The motion judge granted the motion in part, ordering the

appellant to pay arrears of child support and some s. 7 expenses. She was concerned, however, that the appellant might not have understood that a vesting order was a possible outcome of the motion. She also found that she could not adjudicate the respondent's property claims on the evidence before her. The motion judge accordingly adjourned the balance of the issues, including the respondent's request for a vesting order, to an uncontested trial. She ordered the respondent to serve a copy of her endorsement on the appellant prior to trial date.

[9] The trial judge found that the respondent not only complied with this order but also served the appellant a copy of the order that she intended to seek at the uncontested trial, which included a vesting order. The appellant was therefore on notice that the respondent was seeking to have sole title to the matrimonial home at trial.

[10] The appellant argues that the trial judge erred in granting a vesting order in the absence of evidence about the current value of the matrimonial home. Because the trial judge's analysis proceeded based on the value of the home at the date of separation, and its value had increased substantially when it was sold in mid-2024, the appellant claims that the respondent got a windfall.

[11] Prior to granting a vesting order under s. 9 or s. 34 of the *Family Law Act*, the court "should be satisfied that there is some reasonable relationship between the value of the asset to be transferred and the amount of the targeted spouse's liability": *Lynch*, at para. 33. Mathematical precision is not required, particularly

when the party against whom the order is being made has failed to make any financial disclosure, thereby denying the opposing party and the court relevant information.

[12] The trial judge was clearly alive to the potential unfairness of a vesting order given the limited evidentiary record. He told the respondent's counsel that he needed to have "a rough satisfaction that there isn't a windfall here to your client. That's the concern". The trial judge calculated the approximate value of the parties' equity in the matrimonial home at the date of separation. He considered the child support and s. 7 expenses that the appellant had failed to pay. The trial judge also considered the substantial amount of money that the respondent had expended to service the parties' joint debts, including their mortgage, since the separation. He noted that the respondent had independently maintained the home and supported the children for five years, effectively without any help from the appellant.

[13] The trial judge concluded that the appellant's share of the equity in the matrimonial home as at the date of separation corresponded roughly to his debt to the respondent and that a vesting order was "a reasonable resolution of the equalization of the parties' property and [their] other obligations". He acknowledged that there would have been some "additional accumulated equity" in the home since separation and balanced this against the undisputed evidence that the appellant had not paid any of the carrying costs after that date.

[14] While evidence of the current value of an asset to be transferred may sometimes be required to assess the appropriateness of a vesting order under s. 9 or s. 34 of the *Family Law Act*, we cannot conclude that its absence gave rise to an injustice in this case, particularly since some of the evidentiary gaps in the record were attributable to the appellant's failure to participate in the proceedings.

[15] The trial judge's analysis shows no error of principle. He exercised his discretion to grant a vesting order to secure past and ongoing support obligations, on evidence that they would otherwise remain unsatisfied. In consideration of the vesting order, the respondent is foreclosed from otherwise recovering unpaid child support and s. 7 expenses owed to her by the appellant as at the date specified in the order, and from advancing any further claim for equalization of net family property. The respondent is also made liable for all the parties' joint debts, including the balance of their mortgage and line of credit. Reasonably read in the context of the entire proceedings, the order also forecloses the respondent from seeking any recovery of payments she made to service joint debts after the date of separation.

[16] Finally, the appellant contends that the trial judge should not have ordered retroactive and ongoing child support because the motion judge had already made some support orders and because the respondent had suggested that she might waive any entitlement to support going forward if a vesting order were granted. In

our view, the trial judge's orders were open to him to make on the evidence and were not inconsistent with the motion judge's earlier order.

[17] In oral argument, the appellant took the position that the trial judge's approach to the property claims ran contrary to the *Partition Act*, R.S.O. 1990, c. P.4. The *Partition Act* was not pleaded, and we decline to consider this submission.

[18] The appeal is dismissed, with costs of $12,500 all-inclusive to the respondent.

"E.E. Gillese J.A."
"S. Gomery J.A."
"R. Pomerance J.A."