COURT OF APPEAL FOR ONTARIO

CITATION: Ontario Federation of All Terrain Vehicle Clubs v. Ireland, 2025 ONCA 411
DATE: 20250604
DOCKET: COA-24-CV-1150

Miller, Paciocco and Coroza JJ.A.

BETWEEN

Ontario Federation of All Terrain Vehicle Clubs

Applicant (Respondent)

and

Robert Paul Ireland

Respondent (Appellant)

Douglas J. Spiller, for the appellant

Hayley Crawhall-Duk and Charles R. Daoust, for the respondent

Heard: May 29, 2025

On appeal from the judgment of Justice Sylvia Corthorn of the Superior Court of Justice, dated October 15, 2024, with reasons reported at 2024 ONSC 5723.

REASONS FOR DECISION

[1] The respondent, Ontario Federation of All Terrain Vehicle Clubs ("the Federation"), brought a successful application for a judgment: (1) declaring that Facebook posts made by the appellant, Mr. Ireland, are defamatory; (2) directing Mr. Ireland to remove the posts; and (3) permanently enjoining Mr. Ireland from publishing further posts defaming the Federation. We dismissed the appeal from the bench for reasons to follow. These are our reasons.

[2] Having been served with a notice of application, Mr. Ireland was required by operation of r. 38.07(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, to deliver a notice of appearance forthwith. He chose not to do so. Certain consequences followed from this. He was not entitled to: "receive notice of any step in the application" (r. 38.07(2)(a)); "receive any further document in the application" (r. 38.07(2)(b)); file material (r. 38.07(2)(c)); and be heard at the hearing of the application, except with leave of the presiding judge (r. 38.07(2)(d)). Nevertheless, counsel for the Federation emailed Mr. Ireland on numerous occasions to provide him with materials and keep him updated on the scheduling of hearing dates. In response, Mr. Ireland was oppositional and abusive, and expressed the opinion that the proceedings were defective and invalid.

[3] Mr. Ireland did not appear at the hearing, which proceeded in his absence. The application judge considered the issues, found Mr. Ireland liable for defamation on the evidence presented to her, and awarded the Federation the relief it sought, including costs of the application.

[4] Mr. Ireland simultaneously brought a motion in Superior Court to set aside the judgment under r. 38.11 on the basis that his failure to appear at the hearing was due to accident, mistake, or insufficient notice, and appealed the judgment to this court. The motion was dismissed. Although the appeal from that order was not before us, we note that our disposition of the instant appeal renders the appeal from the motion moot.

[5] Although Mr. Ireland made other arguments as well, the focal point of his appeal was that he was denied procedural fairness. There are two arguments, neither of which are persuasive. First, at the hearing, the Federation was granted an order amending the style of cause from “Paul Ireland” (which is, uncontroversially, the appellant’s name) to “Robert Paul Ireland” (which is also his name). Mr. Ireland argues that this amendment generated an obligation to personally serve him with an amended notice of application, and that proceeding with the hearing without doing so was procedurally unfair.

[6] We rejected this argument. Mr. Ireland was never in any doubt that the notice of application was addressed to him, and the mere correction of misnomer (if it was misnomer), allowed under r. 5.04(2), did not generate an obligation to serve him with an amended notice of application: *Ormerod v. Strathroy Middlesex General Hospital* (2009), 97 O.R. (3d) 321 (C.A.), at para. 24; r. 38.07(2)(b).

[7] Second, Mr. Ireland argued that because counsel for the Federation had gratuitously provided him with notice of hearing dates and materials, while being under no legal obligation to do so, the Federation thereby incurred a common law obligation to continue providing him with notice. Mr. Ireland argues that the Federation provided him with less than complete information, particularly with respect to a rescheduled hearing date. The Federation denied the accuracy of this factual assertion, but more significantly, denied that it had any obligation under the rules or common law to provide him with information.

[8] We rejected this second argument as well. Counsel for the Federation acted in the best tradition of the bar by continuing to communicate with Mr. Ireland in the hope of negotiating a resolution short of a hearing and, failing that, keeping him apprised of steps in the proceeding, notwithstanding that the *Rules of Civil Procedure* expressly provide that a respondent who does not file an appearance is not entitled to receive such notice: r. 38.07(2)(a). Counsel's act of civility – civility that was met with abuse from Mr. Ireland – did not generate any additional procedural obligation to Mr. Ireland at common law.

[9] Mr. Ireland raised a limitations period argument in his factum. It was not pursued in oral argument. In any event, we see no merit in it.

[10] Finally, with respect to the merits of the defamation claim, we are satisfied that the application judge did not err in her identification of the governing law or

her application of it to the evidence before her. She made no error in concluding that the words complained of were defamatory. To escape liability, Mr. Ireland had to establish the defence of truth or fair comment and faced the resulting evidential burden. As he did not participate in the hearing, he did not provide any evidence that could have satisfied that burden. He argued before this court that there was sufficient evidence before the application judge from the materials filed by the Federation to allow the application judge to conclude both that the posts were not defamatory and even if they were, that defences were available.

[11] Whether the application judge could have come to a different conclusion on the record before her is not the question before this court. This court is tasked with deciding whether the application judge made a reviewable error on the evidence that was before her: *Foulidis v. Ford*, 2014 ONCA 530, 323 O.A.C. 269, at para. 37. We have concluded that she did not, and that there is no basis to interfere with her judgment on appeal.

DISPOSITION

[12] The appeal is dismissed. Leave to appeal costs is dismissed. The Federation is awarded costs of the appeal in the amount of $5,000 inclusive of disbursements and HST.

"B.W. Miller J.A."
"David M. Paciocco J.A."
"S. Coroza J.A."