

COURT OF APPEAL FOR ONTARIO

CITATION: Porter v. Kik, 2026 ONCA 159

DATE: 20260303

DOCKET: COA-25-CV-0262

Gillese, Coroza and Osborne JJ.A.

BETWEEN

Michelle Porter

Applicant (Appellant)

and

John Kik

Respondent (Respondent)

Richard M. Van Buskirk, for the appellant

Glenda McLeod, for the respondent

Heard: February 13, 2026

On appeal from the order of Justice Scott N. Latimer of the Superior Court of Justice, dated December 9, 2024.

Gillese J.A.:

[1] An order was made by a judge of the Family Court under only the *Family Law Rules*, O. Reg. 114/99. The order was appealed to this court. However, pursuant to s. 19(1)(a.1) of the *Courts of Justice Act*, R.S.O. 1990, c. C 43 (the “CJA”), the appeal properly lay to the Divisional Court. Consequently, the appeal was quashed for lack of jurisdiction.

Background in Brief

[2] The parties have been engaged in acrimonious family law proceedings for some time. By order dated November 18, 2023, Ms. Porter was required to post security for costs of the trial of \$65,000. Ms. Porter has not complied with that order or the \$7,500 associated costs order (the “Orders”).

[3] Ms. Porter applied for relief from the obligation to comply with the Orders. Her request was denied because there was no doubt about the correctness of those Orders.

[4] Mr. Kik moved to compel Ms. Porter to comply with the Orders (the “Motion”). By order dated December 9, 2024 (the “December 2024 Order”), the Motion was granted and Ms. Porter was ordered to comply with the Orders, failing which Mr. Kik was permitted to proceed with an uncontested trial. In his reasons, the motion judge noted that Ms. Porter’s failure to pay the Orders “is consistent with her overall approach to this litigation” and there was “no indication in this record of any future inclination to comply”.

[5] Counsel for Ms. Porter filed a notice of appeal against the December 2024 Order with this court on January 8, 2025.

[6] By letter to counsel for both parties dated May 28, 2025, the office of the Executive Legal Officer of this court alerted the appellant to the potential

application of s. 19(1)(a.1) of the *CJA* and the possibility that the appeal might fall within the jurisdiction of the Divisional Court. Section 19(1)(a.1) reads as follows:

19 (1) An appeal lies to the Divisional Court from,

...

(a.1) a final order of a judge of the Family Court made only under a provision of an Act or regulation of Ontario;

[7] Although counsel for the appellant advised they were prepared to seek an order transferring the appeal to the Divisional Court, months went by and no steps were taken to either initiate the transfer or move the matter along in this court.

[8] Counsel for the respondent regularly followed up with opposing counsel, to no avail. Finally, she asked that this court set the appeal down, and the matter came before this panel.

[9] After hearing from the parties, the court advised the parties that the appeal was quashed for lack of jurisdiction and that brief reasons would follow. These are the promised reasons.

Analysis

[10] Pursuant to s. 19(1)(a.1) of the *CJA*, an appeal lies to the Divisional Court from a final order of a judge of the Family Court made only under a provision of an Act or regulation of Ontario. The December 2024 Order was made at the Kitchener Superior Court of Justice, by a judge of the Family Court, and it was made pursuant

to provincial legislation only, namely, the *Family Law Rules*. Clearly, s. 19(1)(a.1) governed and the appeal lay to the Divisional Court, not to this court.

[11] I would observe the following. In a situation such as that which occurred here, there are two options which could move the matter along, rather than allowing it to languish. First, if the parties agree that the appeal should be transferred to the Divisional Court, they can file a consent order in this court, without the necessity of personal attendance, and if appropriate, the order will be issued by a judge of this court. Second, it would be open to a respondent to bring a motion in this court to quash the appeal for lack of jurisdiction. Such a motion would be scheduled to be heard at an early date: see s. 7.2.5 of the “Practice Direction Concerning Civil Appeals at the Court of Appeal for Ontario” (March 1, 2017).

DISPOSITION

[12] For these reasons, the appeal is quashed with costs to the respondent fixed at \$12,375, all inclusive.

Released: March 3, 2026 “E.E.G.”

“E.E. Gillese J.A.”
“I agree. Coroza J.A.”
“I agree. P.J. Osborne J.A.”