

COURT OF APPEAL FOR ONTARIO

CITATION: Hamilton v. Vaughan, 2024 ONCA 429

DATE: 20240529

DOCKET: M54778 (COA-23-CV-0317)

Harvison Young, Sossin and Gomery JJ.A.

BETWEEN

Shawn Hamilton

Responding Party
(Respondent/Responding Party)

and

Joanne Vaughan

Moving Party
(Appellant/Moving Party)

Joanne Vaughan, acting in person

Christopher Salazar, for the respondent/responding party

Heard: in writing

REASONS FOR DECISION

[1] The moving party, Joanne Vaughan, brings this motion for review of the endorsement of George J.A. dated January 4, 2024. She seeks to amend the endorsement, in which he granted her an extension of time to perfect her appeal until March 14, 2024.

[2] The responding party, Mr. Hamilton, did not file materials on the motion to review. Before George J.A., he did not oppose the extension of time to perfect but did oppose the other relief sought.

[3] This motion arises out of litigation brought by Mr. Hamilton against Ms. Vaughan. Mr. Hamilton subsequently changed his legal counsel. Ms. Vaughan then brought two motions: a motion to strike and a motion to invoke privilege. These motions were stayed after she brought a further motion pursuant to s. 137.1 of the *Courts of Justice Act*, R.S.O. 1990, c C.43 (“CJA”). The s. 137.1 motion was dismissed, and Ms. Vaughan seeks to appeal that order.

[4] A formal order has not been provided to the motion judge (Richard J.) whose order Ms. Vaughan has appealed. It has therefore been neither signed nor filed and is not included in Ms. Vaughan’s appeal materials. As a result, Ms. Vaughan has brought two motions for an extension of time to perfect her appeal, both of which have been granted. The second motion, heard by George J.A., is the subject of this motion.

[5] In the motion before George J.A., Ms. Vaughan sought: (1) an order extending the time to perfect her appeal; (2) that the new deadline to perfect be

after the motion to strike/invoke privilege is heard in the court below; and (3) an order directing Mr. Hamilton to serve and file a Notice of Change in Representation.

[6] George J.A. granted Ms. Vaughan the extension of time to perfect until March 14, 2024. However, he declined to extend it to accommodate the two motions. He found that there was no need, or basis upon which, to do so. While he found it was not entirely clear why the formal order had not been signed, he encouraged Ms. Vaughan to approve the draft order which was included in the motion materials.

[7] Ms. Vaughan seeks to amend George J.A.'s endorsement in the following three ways: first, to state that the delay in finalizing the order is the fault of Mr. Hamilton; second, to require that Mr. Hamilton serve her with a Notice of Change in Representation; and third, to order a perfection date after the two motions are heard.

[8] With respect to the first amendment, Ms. Vaughan argues Mr. Hamilton has failed to send the draft order to the motion judge to sign, despite her requests to do so, and that George J.A. misapprehended the evidence on this issue.

[9] There is no basis in the record before us that could justify a finding that George J.A. misapprehended the evidence on the question of the absence of an entered order. Intervention is only warranted on a panel review motion if the motion

judge failed to identify the applicable principles, erred in principle or reached an unreasonable result: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, 92 C.B.R. (6th) 214, at para. 14.

[10] Nor do we find any merit in the argument that a Form 15A is mandatory pursuant to Rule 15.03(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, and that the affidavit of service filed by Mr. Hamilton is falsified. This is a serious allegation for which Ms. Vaughan provided no evidence before George J.A., and there is no basis for this panel to intervene.

[11] Finally, we reject the submission that George J.A. failed to provide reasons for refusing to order a perfection date after the two motions below are heard. Ms. Vaughan claims this relief should be granted for two reasons.

[12] First, she argues that the two motions were filed before her s. 137.1 motion and therefore can be heard before the appeal of her s. 137.1 motion, relying on *The Catalyst Capital Group Inc. v. West Fact Capital Inc.*, 2021 ONSC 125. She argues that Mr. Hamilton will suffer no prejudice if the litigation proceeds in this manner.

[13] Second, she argues that the motion judge stayed these motions pursuant to s. 137.4 of the *CJA*, which only applies to tribunal proceedings.

[14] Again, there is no basis for the intervention of this court in George J.A.'s finding that there was no need to extend the date to accommodate the motions below.

[15] The motion is dismissed. There will be no order as to costs.

“A. Harvison Young J.A.”
“L. Sossin J.A.”
“S. Gomery J.A.”