

COURT OF APPEAL FOR ONTARIO

CITATION: Byrd v. Douglas K. Murdoch Revocable Trust, 2025 ONCA 825

DATE: 20251128

DOCKET: M56197 & M56202 (COA-25-CV-0450)

van Rensburg, Miller and Sossin JJ.A.

BETWEEN

Darryl Byrd

Appellant (Moving Party)

and

Douglas K. Murdoch, as Trustee of the
Douglas K. Murdoch Revocable Trust and
Scott Murdoch

Respondents (Responding Parties)

Darryl Byrd, acting in person

Darwin E. Harasym, for the responding parties

Heard: November 26, 2025

On review of the decision of Justice Monahan of the Court of Appeal for Ontario,
dated June 11, 2025.

On review of the decision of Justice Lauwers of the Court of Appeal for Ontario,
dated July 17, 2025.

REASONS FOR DECISION

[1] These are our reasons for dismissing two panel review motions brought by
the moving party/appellant, Darryl Byrd.

[2] The panel review motions were to review the orders of single motion judges of this court in the context of Mr. Byrd's appeal of the order of Kalajdzic J. dated February 27, 2025. That order dismissed his action against the respondents on the basis of *res judicata*, abuse of process and unpaid costs orders in previous related proceedings.

[3] The first panel review motion commenced by Mr. Byrd was to review the order of Monahan J.A. dated June 11, 2025. That order required Mr. Byrd to post security for costs of the appeal in the amount of \$15,000 and to pay costs of \$11,836 to the respondents, all within 30 days. In the context of that panel review motion, Mr. Byrd brought a motion for an order granting him leave to order, obtain, and file the transcript of the motion before Monahan J.A. for use in the panel review motion. The motion was dismissed by Lauwers J.A. on July 17, 2025. That order was the subject of a second panel review motion.

[4] A panel review of a motion judge's decision under s. 7(5) of the *Courts of Justice Act* is not a *de novo* determination. Discretionary decisions of a motion judge are entitled to deference. However, a reviewing panel may intervene if the motion judge erred in principle or reached an unreasonable result, or if the motion judge's decision reflects legal error or a misapprehension of material evidence: *Hillmount Capital Inc. v. Pizale*, 2021 ONCA 364, at para. 18.

[5] We concluded that no such error was demonstrated in this case.

[6] We first addressed the panel review motion of Lauwers J.A.'s order, because, if Mr. Byrd was successful in the review, it would have been necessary to adjourn the panel review of Monahan J.A.'s order until after the requested transcript was obtained and filed.

[7] We dismissed the panel review of Lauwers J.A.'s order. The decision not to grant leave to order and file the transcript of the hearing before Monahan J.A. was a proper exercise of the motion judge's discretion. He considered Mr. Byrd's stated reasons for requesting the transcript and he concluded that it was not necessary for Mr. Byrd's panel review of the order of Monahan J.A. Justice Lauwers reasonably concluded that Mr. Byrd may well have misinterpreted Justice Monahan's questioning of opposing counsel as suggesting that he would refuse any order for security for costs (as opposed to an order that included security for the costs of the proceedings below). In any event, there was no error in Lauwers J.A.'s conclusion that the transcript was not required for Mr. Byrd to challenge the order on his panel review.

[8] We then turned to the panel review of Monahan J.A.'s order. We also dismissed that motion. In awarding security for costs Monahan J.A. identified and applied the correct principles for an award of security for costs under r. 61.06(1), which incorporates by reference r. 56.01. He reasonably concluded that there were compelling reasons to justify an order for security for costs: he observed that the appeal was a continuation of meritless litigation, and he noted that Mr. Byrd had

failed to comply with orders to pay costs in the earlier proceedings. These are proper grounds on which an order for security for costs can be made, and the motion judge's findings and order are amply supported by the record in this case.

[9] The panel review motions were accordingly dismissed with costs to the responding parties fixed at \$2,500, all inclusive.

[10] We also ordered that Mr. Byrd shall have a further 30 days to pay the security for costs into court to the credit of the appeal, and that if he fails to do so, his appeal shall be dismissed, without the necessity for a further motion. We dispensed with the necessity for Mr. Byrd to approve our order dismissing the panel review motions.

"K. van Rensburg J.A."
"B.W. Miller J.A."
"L. Sossin J.A."