CITATION: Spiegelman v. Avantia et al, 2025 ONSC 6970
COURT FILE NO.: CV-22-89871
DATE: 2025 12 09

SUPERIOR COURT OF JUSTICE - ONTARIO

RE: Janice Spiegelman, Plaintiff

AND:

Avantia Medical Imaging and Restorative Health, Stittsville Imaging Centre Inc. & Dr. Gregory Davies, Defendants

BEFORE: C. MacLeod RSJ

COUNSEL: Andrew Lister, for the Plaintiff

Linette King, for the Defendants

HEARD: December 9, 2025

ENDORSEMENT

[1] This is an action for wrongful dismissal and misrepresentation brought under Rule 76 of the Rules of Civil Procedure (simplified procedure). Pursuant to Rule 24.1.04, the action is also subject to a requirement to mediate. The parties have been unable to agree whether the mediation should be in person or by videoconference and this motion is brought pursuant to Rule 1.08 (8).

[2] Rule 1.08 (8) actually calls for a disagreement about the mode of appearance at mediation to be resolved at a case conference. There was a case conference before an Associate Justice but apparently the parties insisted on a motion because in their view the matter could not be resolved without affidavit evidence. That is why the matter appeared on a civil motions list today.

[3] I reserved to give written reasons solely because there is no jurisprudence dealing with this particular issue in the post-Covid era with the transition to readily available videoconferences. In addition, the insistence on bringing a motion when the rules contemplate a case conference raises an important practice point.

[4] Prior to 2020, all court appearances and all court related processes such as discovery or mediation were presumptively in person. Departure from this norm required either the agreement of the parties or a court order or perhaps both. In particular, cases under Rule 24.1 established that

the party seeking departure from the norm of attendance in person would have the onus of establishing that the proposed method of participation was in the interests of justice.[1]

[5] At that time, a request to participate in mediation by a method other than personal attendance was considered to be "an exemption". I would add that in what now seems like ancient times, participation by videoconference would have appeared exotic and the usual request was for a party or an insurer to participate by telephone.[2] Nevertheless, in 2018 the court permitted an elderly plaintiff with health challenges who would require an interpreter and was located in Romania to participate in mediation by videoconference.[3]

[6] We live in changed times. Videoconferences are now an established mainstream method of participating in court proceedings. Indeed, the court's "presumptive guidelines to determine the mode of hearing in civil matters" contemplate that most routine court appearances in civil matters will take place virtually. This includes motions and pre-trials.[4] The presumptive guidelines do not assist in resolving this issue, however, because mediation is not listed in the practice directions.

[7] The Plaintiff relies upon Rule 1.08 to establish a presumption. She states that she called for mediation to take place and required that it be held in person. In that case, she argues the onus is on the Defendant to show why the mediation should not take place in that manner. The problem with that argument is that Rule 1.08 calls for non-adversarial discussions between the parties to resolve the matter and if the parties cannot agree, calls for a case conference at which the court is to give direction.

[8] As Myers J., put it recently, "decisions under Rule 1.08 should be available quickly and with little expense to avoid creating yet another process to bog down civil actions", "the decision of which method of attendance applies to a step in a proceeding short of trial is of little consequence in most cases." He went on to say that "I do not think it is strictly correct to speak of a burden of proof for a case conference" … "subrule 1.08 (8) (2) (i) encourages agreement for the method of attendance at examinations for discovery and mediations."[5] The rule is certainly not written with a view to encouraging motions.

[9] I find that the affidavit material filed on this motion is of no help whatsoever to determining if there is any basis for ordering the parties to participate in mediation in person rather than virtually. That is in part because the affidavits focus on the merits of the case more than the mediation process. More importantly, there is no evidence by which the court can objectively determine that settlement is more probable by one mode of proceeding over another.

[10] The plaintiff deposes that she wants the opportunity to confront the defendant and to look him in the eye. Even if I conclude from that statement that settlement is more likely if this need is

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[1] See *Parmalat Canada Inc. v. Russ and Carol Madarash Holdings Ltd.*, 2019 ONSC 1057 (Master)
[2] See *Chase v. Great Lakes Altus Motor Yacht Sales,* 2010 ONSC 6365 (Master)
[3] *Hontaru v. Doe*, 2018 ONSC 1014 (Master)
[4] See *Consolidated Civil Provincial Practice Direction* and *Consolidated Practice Direction for the East Region* on the Ontario Courts web site.
[5] *Worsoff v. MTCC 1168*, 2021 ONSC 6493

satisfied, the evidence is not compelling that the same objective cannot be achieved in a videoconference. The defendant's evidence illustrates that the mediator offers virtual mediations but there is no evidence from the mediator or any other mediator about the relative efficacy of in person or virtual mediation.

[11] Prior to the pandemic and to the forced pilot project in which the court was required to adopt virtual hearings, it was common wisdom that mediations or Judicial pre-trials would be more effective if the parties were physically in attendance.[6] Experience has cast doubt on that.

[12] Anecdotally, many if not most mediations now take place virtually and many other court processes from examining witnesses to civil pre-trials are also conducted virtually. In some cases, not only do virtual attendances save time and money but in some cases they have real benefits such as pulling in more senior claims examiners, consulting with other counsel, or consultation with key witnesses that might not occur if all parties had to convene in one location.[7] None of those aspects of successful mediation are addressed by the affidavits. There is no evidence, other than the opinion of the plaintiff or a law clerk, about process design or how to make resolution most probable.

[13] In this case, all parties reside in Ottawa or environs. Defence counsel and defendants' insurer or claims examiner are located in Toronto. No one has requested a hybrid hearing in which the insurer participates remotely. The expense of travelling to Ottawa from Toronto is not by itself a compelling factor. On the other hand, there is no compelling evidence that a virtual mediation cannot be entirely appropriate and successful.

[14] This is a Rule 76 proceeding in which cost effectiveness and efficiency are supposed to be paramount. The parties should be taking a similar approach to mediation and to resolving this dispute. In the final analysis, there is nothing in the evidence that suggests it will make much difference if the mediation takes place in person or on-line. What will make a difference is the willingness of the parties to seek a compromise solution and the assistance of an experienced and competent mediator. There is no evidence to suggest that the mediator thinks he cannot conduct an effective mediation virtually or in person.

[15] The evidence simply shows that the plaintiff wishes to confront the defendant and explain what impact the dismissal and manner of dismissal had on her life. Quite apart from the fact that all of this is clear from the pleadings, the discovery and the affidavits, this evidence is insufficient to demonstrate that a videoconference mediation cannot be perfectly effective.

[16] I do not wish to suggest that Rule 76 mediations should be presumptively by videoconference nor that the decision concerning the mode of mediation should not be taken seriously. In this case, however, it should not have been necessary to bring a motion. The parties

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[6] See *Chase, supra*

[7] See Eric Galton, *The Remarkable (And Often Very Surprising) Benefits of Virtual Mediation*, posted on Mediate.com, June 25, 2021 as an example: https://mediate.com/the-remarkable-and-often-very-surprising-benefits-of-virtual-mediation/

ought to have been content with the decision of the Associate Judge at a case conference and I am not convinced that anything significant turns on the mode of proceeding.

[17] I direct that the mediation take place by videoconference or, if the parties and the mediator agree, it may be hybrid.

[18] In light of the absence of jurisprudence on this point and the fact that the affidavit evidence and the motion was of little utility, there will be no costs of the motion.

Judge

Date: [Click and Type Date]