

COURT OF APPEAL FOR ONTARIO

CITATION: M.E. v. Children's Aid Society of Toronto, 2025 ONCA 838¹

DATE: 20251201

DOCKET: COA-25-OM-0397

Roberts J.A. (Motion Judge)

BETWEEN

M.E.

Plaintiff (Moving Party)

and

Children's Aid Society of Toronto

Respondent (Responding Party)

M.E.,² acting in person

Sheldon Inkol, for the responding party

Mary Paterson, appearing as *amicus curiae*, Pro Bono Ontario

Heard: November 5, 2025

REASONS FOR DECISION

[1] In accordance with this court's order dated October 18, 2022, M.E. seeks leave to file a notice of appeal from the July 14, 2025 order allowing the Children's

¹ This appeal is subject to a publication ban pursuant to s. 87(8) of the *Child, Youth and Family Services Act*, 2017, S.O. 2017, c. 14, Sched. 1.

This appeal is subject to a publication ban pursuant to ss. 110 and 111 of the *Youth Criminal Justice Act*, S.C. 2002, c. 1.

² The parties agreed that M.E.'s name be initialized. I am prepared to follow the parties' agreement, as was done in earlier decisions of this court.

Aid Society of Toronto's ("CAST") motion to dismiss M.E.'s action for delay ("the dismissal order").

[2] On October 18, 2022, pursuant to r. 2.1.01 of the *Rules of Civil Procedure*, this court heard and dismissed, as "an entirely frivolous, vexatious and abusive matter", M.E.'s appeal from another order made in her action against CAST. This court imposed the following leave requirement: "In order to prevent further abuses of process in this court, the appellant will not be permitted to file any further materials in this court without leave of a judge of the court."

[3] The overarching issue on this motion is whether it is in the interests of justice that M.E. be permitted to file a notice of appeal. In *Huang v. Braga*, 2020 ONCA 645, 75 C.P.C. (8th) 281, Pepall J.A. presented a test for leave in the context of a r. 37.16 order prohibiting a party from filing further documents, which is the substance of the order made here. At para. 16, Pepall J.A. suggested the following helpful factors that I agree should inform the analysis:

Consideration should first be given to the strength of the grounds advanced by the moving party. Put differently, are there reasonable grounds of appeal that merit granting the leave requested? Second, the context of the r. 37.16 order itself should be considered. Is the substance of the leave request a continuation of the frivolous and vexatious or abusive process that had generated the r. 37.16 order in the first place? The r. 37.16 order is of course not a bar, but as stated in *Evans v. Snieg*, 2019 ONSC 7270, at para. 30, "such an order should not be lightly disregarded or blithely treated". Lastly, the overriding consideration is whether

the granting or refusal of leave is in the interests of justice.

[4] See also: *Hoang v. Mann Engineering Ltd.*, 2022 ONCA 82, at para. 10, where Tulloch C.J.O. referenced with approval and applied the same factors.

[5] I start with the overall context of this motion and M.E.'s action against CAST ("these proceedings").

[6] M.E.'s claim against CAST arises out of its alleged improper disclosure of confidential information and documentation concerning M.E. In *M.E. v. Ontario*, 2020 ONCA 289, 43 R.F.L. (8th) 1, this court allowed in part M.E.'s appeal from the dismissal of her action, granting her leave to amend her statement of claim to plead the following claims that they set out at paras. 24 to 29 of their reasons:

[24] The Society received a copy of the pre-disposition report because it was acting in the capacity of the appellant's parent at the time of the youth court proceedings: *Young Offenders Act*, s. 44.1(1)(d); see also *Youth Criminal Justice Act*, s. 119(1)(e). While the Society complied with its statutory obligations in its indefinite retention of the appellant's child-in-care file, the appellant argues and pleads that the Society wrongfully disclosed the pre-disposition report to the Board.

[25] This argument gives rise to several issues. The first is whether the appellant's youth record, which includes the pre-disposition report, was subject to a presumption of non-disclosure: *Young Offenders Act*, ss. 45(1), 45(3); see also the *Youth Criminal Justice Act*, ss. 119(2), 128(2).

[26] The second issue concerns the relationship between the disclosure regimes under the *Young Offenders Act* and the *Youth Criminal Justice Act* and which applies in these circumstances.

[27] The third issue is whether the Society is exempt from the operation of the disclosure regime under these statutes.

[28] The fourth issue is whether the Society was obliged to seek judicial authorization permitting it to disclose the pre-disposition report to the Board, even if the appellant had arguably requested the Society to disclose information to the Board...

[29] The fifth issue is whether any breaches by the Society give rise to civil liability to the appellant for damages.

[7] At para. 32, this court concluded that the culminating issue of whether CAST is liable in damages for allegedly wrongful disclosure is left to be decided.

[8] M.E. did not amend her statement of claim as directed by this court. She spent the next several years bringing numerous unsuccessful motions and appeals, racking up over \$30,000 in costs orders in CAST's favour. She declared bankruptcy. CAST recovered very little of the costs owing. This history formed the basis for the imposition of this court's leave requirement and ultimately led to the dismissal order that M.E. seeks to appeal.

[9] To be clear, this is not a motion for leave to appeal; it is a motion for leave to file a notice of appeal. This court imposed the leave requirement because M.E. had instigated in these proceedings myriad unsuccessful frivolous and vexatious

motions and other steps, including serving and filing voluminous and incoherent documents, and making unfounded and serious allegations against counsel and others. Having regard to the impetus for and purpose of the leave requirement, including the history of these proceedings, it is therefore necessary to examine M.E.'s proposed notice of appeal to determine whether it contains the same deficiencies and is of the same vexatious and frivolous nature that led to the imposition of the leave requirement.

[10] M.E.'s proposed notice of appeal contains the same fatal flaws as her previous pleadings. Her stated grounds of appeal are references to various provisions of the *Young Offender's Act*, *Youth Criminal Justice Act*, the *Mental Health Act*, "*Child and Family Services Act (repealed)*" and *Child, Youth and Family Services Act, 2017*. She also asks to "set aside" the dismissal order, claiming that "the Justice was acting ultra vires of her jurisdiction", citing *Toronto (Police Service) v. L.D.*, 2018 ONCA 17, 357 C.C.C. (3d) 1, a decision dealing with the proper route of appeal from a youth court judge's decision. None of these statutory provisions nor the requested order are tenable grounds of appeal in relation to the dismissal order. M.E.'s materials on this motion do not provide any clarification. Her challenge to the dismissal order is unknowable. As such, the proposed appeal is frivolous and vexatious and does not meet the leave requirement. For these reasons, I do not grant M.E. leave to file the proposed notice of appeal.

[11] The next question is whether M.E. should be permitted leave to amend her notice of appeal.

[12] *Amicus* points out that there are factors in support of granting leave. *Amicus* argues that there are arguable grounds of appeal from the dismissal order arising from errors in the motion judge's application of the test for dismissing an action for delay, including that: 1) the motion judge attributed the entire period of delay to M.E. without taking into account the delay resulting from her bankruptcy; and 2) the motion judge failed to properly weigh M.E.'s potentially meritorious claims as a factor in her analysis when considering the question of prejudice to CAST. *Amicus* highlights that this court has held that M.E. has certain discrete, tenable claims against CAST that, apart from the damages claim, raise pure issues of law that arguably transcend the interests of the parties and are of public interest. As a result, M.E.'s action does not entirely depend on a factual record that CAST may have difficulty in producing, attenuating any issue of prejudice to CAST because of M.E.'s delay in pursuing her claims.

[13] CAST argues against granting leave. Given the deference owed to the motion judge's decision, the proposed appeal lacks merit. Moreover, the motion judge made no error in finding that M.E. has encountered tremendous difficulty in providing proper materials within deadlines and staying on track in these proceedings, even when she has received the benefit of extensive judicial case management and direction. I accept CAST's argument that, without legal

assistance, it is highly unlikely that M.E. will be able to produce a proper notice of appeal and perfect her appeal within the required deadlines. CAST asserts that M.E. has therefore failed to rebut the presumed prejudice to CAST from her delay.

[14] Allowing amendments to a notice of appeal is a discretionary call. The overarching factor guiding the decision is whether it would be in the interests of justice to do so. The most important considerations are prejudice to the respondent and the merits of the proposed appeal.

[15] In assessing M.E.'s main arguments for leave to amend her notice of appeal from the dismissal order, it is helpful to set out the test for the dismissal of actions for delay. The governing legal principles were summarized by this court in *Sickinger v. Krek*, 2016 ONCA 459, 132 OR (3d) 548, at paras. 29 to 31 as follows:

[29] The principles that apply on a motion to dismiss an action for delay were set out by this court in *Langenecker v. Sauvé*, 2011 ONCA 803, 286 O.A.C. 268. As noted in paras. 6-7 of that decision, an action may be dismissed for delay where the delay is (1) inordinate; (2) inexcusable; and (3) such that it gives rise to a substantial risk that a fair trial of the issues in the litigation will not be possible because of the delay.

[30] The jurisprudence provides guidelines for evaluating the three requirements:

Inordinate: A court will measure the length of time from the commencement of the proceeding to the motion to dismiss to determine if the delay is inordinate: *Langenecker*, at para. 8; *Ali v. Fruci*, 2014 ONCA 596, 122 O.R. (3d) 517, at

para. 11. When considering the delay, the court should remember that some cases will move slower than others because of the issues raised, the parties involved, and/or the nature of the action: *Langenecker*, at para. 8.

Inexcusable: A court should consider the reasons offered for the delay and whether those reasons provide an adequate explanation, with regard to the credibility of the explanations, the explanations for individual parts of the delay, the overall delay, and the effect of the explanations considered as a whole: *Langenecker*, at paras. 9-10.

Prejudice: The third factor considers the prejudice caused by the delay to a defendant's ability to put forward its case for adjudication on the merits: *Langenecker*, at para. 11. An inordinate delay will give rise to a presumption of prejudice and, unless rebutted, that presumption may result in the action being dismissed: *Armstrong v. McCall* (2006), 213 O.A.C. 229 (C.A.), at para. 11. A defendant may also suffer, and demonstrate, case-specific prejudice: *Langenecker*, at para. 12.

[31] An order dismissing an action for delay is discretionary and entitled to deference from an appellate court: *Ali*, at para. 10. It should not be overturned unless the motion judge exercised his discretion unreasonably, acted on an incorrect principle, or made a palpable and overriding error on a factual matter: *Ali*, at para. 10; *Canadian National Railway Company v. Kitchener (City)*, 2015 ONCA 131, 33 M.P.L.R. (5th) 173, at para. 14.

[16] The motion judge in the present case referenced *Langenecker* and the governing principles it espouses for dismissing an action for delay. Her thorough reasons that are grounded in the record amply support that the delay was inordinate and inexcusable. The motion judge summarized the reasons for her dismissal of the action at paras. 36-37 of her decision:

[36] However, unlike litigants who issue a claim and take no steps, after M.E. launched her claim and she became mired in a series of interim proceedings, appeals and requests for reconsideration, all of which have failed, and contributed to the delay in her addressing the substance of the action. This in turn led to costs orders approaching \$30,000 until she declared bankruptcy, with the largest creditor being the firm acting for CAST. Throughout, M.E. has been consistent to her theme of injustice, but has not been able to focus the litigation on the issue which the Court of Appeal found in 2020 was potentially meritorious.

[37] These proceedings, which began over nine years ago, have not moved forward for five years, since the Court of Appeal allowed M.E.'s appeal in part. M.E. has had the benefit of judicial case management from two separate judges, and received judicial direction to focus on that claim: *M.E. v. HMTQ et al.*, 2021 ONSC 2862 at para. 43. Yet, M.E. brought proceedings in two courts which have been found to be vexatious and frivolous, has not attended to amending her statement of claim to bring the action which she was permitted to bring by the Court of Appeal, and in her submissions on this motion, continued to describe the alternative issues that she feels she must confront, without engaging with the test for delay or her plan for prosecuting the claim. I infer from all of this that she will not pursue the remainder of the existing claim found to be justiciable on the merits in a timely way, to the prejudice of CAST.

[17] While I am not finally determining the issue, it is difficult to find error with the motion judge's calculation of the amount and attribution of the delay in issue. Her focus on only five of the over nine years of total delay favoured M.E. It was no error for the motion judge to conclude that the delay stemmed from M.E.'s actions, including her voluntary assignment into bankruptcy. This is not a question of blame but a tracing of the reason for the delay.

[18] Likewise, the argument that there is little prejudice to CAST because of the merits of M.E.'s claims is a weak ground of appeal. The motion judge concluded that prejudice to CAST is presumed because of the length of the delay. She then went on to find further prejudice to CAST if the action is permitted to continue because M.E. insists on focusing on "alternative issues" rather than the claims that this court directed her to address in her statement of claim more than five years ago. The motion judge's conclusion that M.E. will not pursue the remainder of her existing claims in a timely way is grounded firmly in the record. As a result, in the analysis of prejudice to CAST, the merits of M.E.'s proposed remaining claims ceases to be a relevant factor if she will not pursue them, as the motion judge found. As such, M.E. failed to rebut the motion judge's finding of prejudice to CAST.

[19] *Amicus* submits that the real difficulty here is that M.E. needs legal assistance and that an order could be made similar to the one this court made in *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720. This court found that Mr. Lochner exhibited many of the features of vexatious litigants and had

engaged in harassing behaviour for over a decade; however, recognizing that Mr. Lochner should not be forever barred from accessing the courts, this court, at para. 34, ordered the “exceptional relief” that Mr. Lochner was prohibited from making further motions unless he was represented by a lawyer, his materials prepared and filed by a lawyer, and leave of a judge of this court had been obtained by a lawyer acting on his behalf.

[20] Notwithstanding *amicus*' very able submissions, I remain unpersuaded that even if represented by a lawyer, M.E. would focus on the relevant issues on her appeal or in her action, if her appeal were successful. If she was not prepared over the last five years to follow the clear directions given by this court and by judges of the Superior Court in the course of extensive case management, it is unlikely, in my view, that M.E. will follow a lawyer's advice if she feels that another course of action is required. That is, of course, her prerogative, but it translates into further delay and actual prejudice to CAST because CAST is entitled to finality.

[21] In any event, from a practical point of view, there is no indication that M.E. will be able to retain counsel to assist her. She advised the court that she has a legal aid certificate but that she has not been successful in finding a lawyer who will take on her case.

[22] Accordingly, M.E.'s motion for leave to file a notice of appeal is dismissed.

In the circumstances, I make no order as to costs.

[23] The court is very grateful to *amicus* for her very helpful submissions.

“L.B. Roberts J.A.”