

CITATION: Weaver v. Robson, 2026 ONSC 351
COURT FILE NO.: CV-23-1116
DATE: 2026-01-21

ONTARIO
SUPERIOR COURT OF JUSTICE (CHATHAM)

B E T W E E N :)
)
Dean Randall Weaver) Steven Pickard, for the Plaintiff/Responding
) Party
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Plaintiff/Responding Party)
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- and -)
)
James Bedford Robson) Eric Florjancic, for the
) Defendant/Responding Party
)
)
Defendant/Moving Party)
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- and -)
)
The Corporation of the Municipality of) Katherine Shand for the
Chatham-Kent) Third Party
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)
Third Party Defendant)
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HEARD: December 9, 2025

REASONS FOR DECISION

Justice E. ten Cate

- [1] This is a motion brought by the Defendant, Mr. Robson, to rectify the land registry record under Section 159 of the *Land Titles Act*, R.S.O. 1990, c. L.5. For reasons that follow, his motion is granted.

Background

- [2] The Plaintiff, Mr. Weaver, and Mr. Robson are abutting landowners on Pioneer Line in Chatham-Kent, Ontario. The properties are separated from the main road by a wide and deep municipal drain. Mr. Robson's property has no direct access to the road; it can only be reached *via* a driveway/bridge owned by Mr. Weaver.
- [3] Mr. Weaver applied to the Committee of Adjustment for the Municipality of Chatham-Kent to sever Part 6 of his property. On February 25, 2021, the COA granted its consent with the following condition:

The Committee of Adjustment has approved Consent application File B-125/20 to sever and convey a new parcel, approximately 3,561 sq. m. (38,333 sq. ft.) in area, shown as Partes 1-5 on the applicant's sketch, **together with a permanent easement over Parts 4 and 5, in favour of the retained parcel shown as Part 6**, to permit the continued usage of the existing access from Pioneer Line, in Part of Lot 4, Concession 3, in the Community of Chatham. [Emphasis added.]

- [4] No appeal was taken from this decision; the appeal period expired on March 17, 2021.
- [5] In December of 2021, Mr. Weaver agreed to sell Part 6 to Mr. Robson so he could build his own driveway/bridge. The Agreement of Purchase and Sale, dated December 4, 2021, contains no mention of an easement but contains the following condition:

[Mr. Robson] and [Mr. Weaver] agree and acknowledge that [Mr. Robson] shall, at [Mr. Robson's] expense have a driveway installed to access the property. Further, [Mr. Weaver] agrees to allow [Mr. Robson] access to the subject property by use of the driveway at 9096 Pioneer Line for a period of up to one year from the date of closing to allow sufficient time for [Mr. Robson] to have the driveway installed.

- [6] The resulting transfer was registered on title on February 28, 2022, along with the Municipality's formal Certificate of Consent to the transfer pursuant to subsection 53(42) of the *Planning Act*, R.S.O. 1990, c. P.13.

- [7] The Defendant deposes that the temporary easement was registered without his knowledge of the pre-existing permanent easement granted by the COA.
- [8] On June 14, 2022, after Mr. Robson met with the municipal drainage department authorities regarding the construction of the bridge, the superintendent advised:

The Committee of Adjustment Decision required a permanent easement. Although Mr. Robson and Mr. Weaver may have agreed to something else in the APS, the property owners cannot alter, replace, or trump the COA decision through a subsequent contract. The time to appeal the COA decision has long since expired. As a result, the Municipality would maintain that a permanent easement was created and continues to exist in accordance with the COA decision, regardless of what private legal arrangements the parties may have attempted to strike....

- [9] On May 14, 2024, the Plaintiff's summary judgment motion was heard before Bezaire, J. At para. 26 of *Weaver v. Robson*, 2024 ONSC 4081 she held:

The Committee of Adjustment decision is clear and final. A permanent easement was granted in favour of the Robson Property. It does not give the parties discretionary authority to subsequently time-limit the easement or remove it from title. [Emphasis in original].

- [10] On October 17, 2024, Bezaire J. released further reasons [*Weaver v. Robson*, 2024 ONSC 5756] in which she determined that the issues of: (1) whether Mr. Robson is required to build an access road, and (2) whether he may no longer use the easement requires a trial. The matter is scheduled for a five-day non-jury trial during the June 8, 2026, sitting.
- [11] On September 15, 2025, this motion was brought by Mr. Robson to rectify title.

Positions of the Parties

- [12] Mr. Weaver takes the position that: (a) the easement over his land is for a maximum of one year and expires once the bridge/driveway is constructed; (b) this court has no jurisdiction to question the validity of the Municipality's consent/easement under subsection 53(42) of the *Planning Act*; and (c) the matter is *res judicata* because Bezaire J. determined the contractual issues of whether Mr. Robson is required to build an access and whether he may no longer use the easement after he builds the access, require a trial.
- [13] Mr. Robson takes the position that: (a) Bezaire J. determined the easement is permanent which is binding on the parties; (b) this court has jurisdiction to rectify title pursuant to section 159 of the *Land Titles Act*, and (c) the easement and Consent of the Municipality were registered by mistake, must be deleted from title and a permanent easement substituted.

- [14] The Municipality attended but made no submissions. I am advised it consents to Mr. Robson's motion.

Analysis

- [15] The only real issue is whether there is a mistake on title which should be rectified.
- [16] Section 159 of the *Land Titles Act* permits this court to rectify title where a person is entitled to an estate, right or interest in or to registered land in such manner as is considered just.
- [17] Section 53(42) of the *Planning Act* states:
- When a consent has been given under this section, the clerk of the municipality or the Minister, as the case may be, shall give a certificate to the applicant stating that the consent has been given and **the certificate is conclusive evidence that the consent was given** and that the provisions of this Act leading to the consent have been complied with and that, despite any other provision of this Act, the council or the Minister had jurisdiction to grant the consent and after the certificate has been given no action may be maintained to question the validity of the consent. [Emphasis added]
- [18] The authority of a local COA to grant consent comes from Section 4 of the *Planning Act*. This provision affords the Minister of Municipal Affairs and Housing the ability to delegate various powers to municipal councils; the municipal councils in turn can appoint specific committees to exercise this authority granted to them by the Minister.
- [19] Section 53 of the *Planning Act* permits a COA to make decisions on applications for changes to land configuration in the form of Consents. In granting consent to an application to sever land, a COA is bestowed with all the powers and limitations dictated by the *Planning Act*.
- [20] The purpose of section 53(42) is to provide Certificates of Consent to land severance, specifically allowing the remaining portion to be sold before the severed portion, thereby streamlining complex land division by allowing transactions to proceed even if the original severance isn't fully finalized. This avoids delays and repeat applications for property owners and permits sale of the remaining portion in advance of the severed portion. The resulting Certificate of Consent is then registered on title as evidence to the world of the COA's decision; no action may be brought to challenge its validity.
- [21] There is no dispute that a Certificate of Consent was issued by the Municipality and registered -- the question is whether the easement registered pursuant to that consent accurately reflects the decision of the COA.

- [22] In my view, a Certificate of Consent does not immunize the resulting transfer or easement from rectification where the instrument registered is not the instrument approved. Although the *Planning Act* protects the **process** of granting or refusing consents, it does prevent the court from correcting errors in **registration** where there has been a mistake.
- [23] There is no question the COA granted a permanent easement. Bezaire J. determined that the Municipality's approval of the transfer was conditional upon the easement being permanent. Clearly, this was done for sound policy reasons – to ensure that Mr. Robson, and any future landowners can access the property in perpetuity.
- [24] Importantly, the Municipality consents to Mr. Robson's motion. Implicit in that position is acknowledgment of the administrative error in registration. The fact that the parties made a separate private agreement is of no moment -- the Consent and time-limited easement were clearly registered in error and should be rectified.
- [25] Meanwhile, as determined by Bezaire J., the contractual issues of whether Mr. Robson is required to build an access road and whether he may use the permanent easement may proceed to trial in June.

Order

- [26] I therefore order as follows:

1. The easement registered as Instrument No. CK201003 shall be deleted from title to the property municipally known as 9098 Pioneer Line, Chatham, Ontario N7M 5JI and legally described as PT LT 4 CON 3 CHATHAM PT 6, 24R10999; T/W 625006; TOGETHER WITH AND EASEMENT OVER PARTS 4 & 5 24R10999 AS DESCRIBED IN SCHEDULE B HERETO; CHATHAM-KENT.

2. The property municipally known as 9098 Pioneer Line, Chatham, Ontario, N7M 5JI and legally described as PT LT 4 CON 3 CHATHAM PT 6, 24R10999; T/W 625006; shall be subject to a permanent easement over the Servient Lands set out below in favour of the Dominant Lands set out below:

Servient Lands: PT LT 4 CON 3 CHATHAM PT 4 & 5, 24R10999; CHATHAM-KENT.

Dominant Lands: PT LT 4 CON 3 CHATHAM PT 6, 24R10999; T/W 625006; TOGETHER WITH A PERMANENT EASEMENT OVER PARTES 4 & 5 24R1099R; CHATHAM-KENT.

Costs

- [27] If the parties cannot agree on costs, they make submissions limited to three pages, exclusive of bills of costs, within 30 days.

There shall be no reply without leave of the court.

"Justice E. ten Cate"
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Released: January 21, 2026

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Released: January 21, 2026