

CANADA / JUDGMENT

Kideckel v. Kideckel

2025 ONCA 689

COURT

Court of Appeal for Ontario

DECIDED

7 October 2025

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Kideckel v. Kideckel

Collection

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COA-25-CV-1156, M56325

Judges

Monahan, Patrick J.

Subject

Civil

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Kideckel v. Kideckel, 2025 ONCA 689

DATE: 20251007

DOCKET: M56325 (COA-25-CV-1156)

Monahan J.A. (Motion Judge)

BETWEEN

David Kideckel

Plaintiff (Respondent/Responding Party)

and

Brent Richard Kideckel

Defendant (Appellant/Moving Party)

Brent Kideckel, acting in person

Aram Simovonian, for the responding party

Antonios T. Antoniou and Ian Sinke, for the non-parties, Aram Simovonian and Scalzi Caplan LLP

Heard: October 3, 2025

ENDORSEMENT

[1] The moving party and appellant in appeal, Brent Kideckel (“Brent”), moves for the following relief: (i) an order for production from two non-parties in the proceeding; (ii) a stay of enforcement of the July 25, 2025 Judgment under appeal (the “July 25, 2025 Judgment”); and (iii) an order disqualifying two lawyers from participating in the appeal.

[2] For the reasons that follow, the motion is dismissed.

I. BACKGROUND [3] The responding party and respondent in appeal, David Kideckel (“David”), is Brent’s brother. The brothers are estranged. Brent lives in California, U.S.A., while David and his wife, Dahlia Saibil (“Dahlia”), live in Ontario.

[4] On February 1, 2024, David commenced a civil action against Brent for defamation (“David’s Action”). Brent did not defend David’s action and was noted in default on August 1, 2024.

[5] Brent brought a motion to set aside the noting in default (the “Set Aside Motion”) but formally abandoned that Motion on May 20, 2025. Notwithstanding Brent’s having abandoned the Set Aside Motion, the motion judge permitted Brent to participate in the hearing of David’s motion for default judgment on June 19, 2025. At that hearing, Brent argued that he had never been served with David’s statement of claim and that an affidavit of service from David’s counsel attesting to service of the statement of claim was fraudulent.

[6] In the July 25, 2025 Judgment, the motion judge found that Brent had failed to adduce credible evidence in support of his claims and that the statement of claim had come to Brent’s attention. The motion judge proceeded to find that Brent had defamed David and that David was entitled to general damages of \$50,000, aggravated damages of \$20,000, punitive damages of \$20,000, costs of \$20,954.34, and a permanent injunction restraining Brent from publishing any false or defamatory statements about him.

[7] Also relevant is the fact that on May 10, 2024, Brent commenced an action against David, Dahlia, David's counsel Aram Simovonian ("Simovonian"), Scalzi Caplan LLP (a firm where Simovonian previously practiced law), the Toronto Police Service, certain individual police officers, the Province of Ontario, and Doug Downey in his capacity as Attorney General ("Brent's Action"). Brent's Action against various parties, including Scalzi Caplan, was struck on January 27, 2025 for failing to disclose a reasonable cause of action. On August 6, 2025, Brent's Action against David and Dahlia was struck as frivolous, vexatious and an abuse of process and Brent was prohibited from bringing any further proceedings against David and Dahlia without leave of the court (the "August 6, 2025 Order"). Brent has separately appealed the August 6, 2025 Order to this court.

II. DISCUSSION a. The Production Requests [8] Brent seeks production orders against two non-parties (collectively, the "Non-Party Production Requests"), as follows:

- (i) an order against Google LLC to produce data from Brent's email account between January and May 2024; and
- (ii) an order compelling Scalzi Caplan to produce any retainer agreement authorizing Simovonian to act for any party in David's Action or, alternatively, a sworn affidavit confirming whether any such retainer ever existed.

[9] Brent seeks this evidence since he believes it will support his claim that he was never served with the statement of claim in David's Action and that David's counsel Simovonian was not properly retained and thus every action he took was ultra vires. Once he obtains this evidence, he intends to bring a fresh evidence motion in his appeal of the July 25, 2025 Judgment. Brent submits that the legal basis for the Non-Party Production Requests is this court's decision in *R. v. Jaser*, 2023 ONCA 24, where the court granted a production order in anticipation of a fresh evidence motion in a criminal appeal.

[10] The Non-Party Production Requests are without merit for a variety of reasons.

[11] First, Brent has not identified any legal basis for the Non-Party Production Requests. *Jaser* was an appeal of a conviction under the Criminal Code, R.S.C. 1985, c. C-46, which provides specific authority for a court of appeal to order the production of documents or to compel examinations of witnesses in certain circumstances: see s. 683(1)(a) of the Criminal Code.

[12] There is no comparable provision in the Rules of Civil Procedure, R.R.O. 1990, Reg. 194 (the "Rules") for civil appeals. To be sure, r. 30.10 sets out a procedure for ordering production of documents from non-parties where it would otherwise be unfair to require the moving party "to proceed to trial". But r. 30.10 has no application in the context of an appeal. Absent an order admitting fresh evidence (no such order having been sought or made in this appeal) the appeal proceedings will be based on the evidentiary record at the hearing below.

[13] Quite apart from the fact that there is no legal basis for the Non-Party Production Requests, Brent has not served the relevant Request on Google and it is not clear why Brent requires a court order to obtain data relating to Brent's own email account. Moreover, the retainer

agreement sought from Scalzi Caplan is presumptively privileged and Brent has not pleaded or argued any basis to interfere with that privilege beyond his unsupported claim that the judgment was obtained by fraud. In any event, Brent has not established the relevance of any such retainer agreement to the issues on appeal in this proceeding.[1]

[14] The Non-Party Production Requests are therefore dismissed.

b. The Stay of Enforcement of the July 25, 2025 Judgment [15] The principles governing the granting of a stay of enforcement pending appeal are set out in *RJR-MacDonald, Inc. v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at p. 334. In considering whether “the interests of justice” call for a stay, the court will consider the following factors:

- (i) whether there is a serious question to be determined on the appeal;
- (ii) whether the moving party would suffer irreparable harm if the stay were refused; and
- (iii) which of the parties would suffer greater harm from the granting or refusal of the stay pending a decision on the merits.

[16] Apart from the order for the payment of damages and costs (the enforcement of which is automatically stayed pursuant to r. 63.01 of the Rules), the July 25, 2025 Judgment ordered Brent to refrain from publishing any false or defamatory statements about David. I see no basis to stay this injunction pending the hearing of this appeal.

[17] With respect to the merits of the appeal, Brent has failed to identify any reversible error in the motion judge’s finding that he was properly served with David’s statement of claim. Brent’s notice of appeal consists of bald assertions that the statement of claim was never served, that the motion judge relied on “fabricated or unserved evidence”, and that the judgment was obtained “through material misrepresentations to the Court.” But Brent does not provide any support for these bare allegations in the record, nor does he identify any errors in the motion judge’s factual finding that he was, in fact, served with David’s statement of claim. While Brent disagrees with this factual finding, mere disagreement with a motion judge’s finding of fact does not constitute a basis for appellate intervention.

[18] Nor has Brent identified any harm that he would suffer if the injunction prohibiting him from publishing false or defamatory statements against David is not stayed pending appeal. Brent can act in accordance with the injunction simply by not defaming David. He has not explained how this restriction would cause him any harm, much less irreparable harm.

[19] Finally, the balance of convenience also does not favour the grant of the stay. As established, Brent would not suffer any harm by simply not defaming David. David, on the other hand, would likely suffer harm if the injunction was stayed given the motion judge’s finding that Brent would be likely to continue defaming David without such additional deterrence.

[20] The request for a stay of enforcement is therefore dismissed.

- c. Disqualification of counsel [21] Brent seeks an order disqualifying Simovonian and Ian Sinke (“Sinke”), LAWPRO-appointed counsel to Simovonian and Scalzi Caplan, from acting on this appeal.
- [22] I note that a litigant should not be deprived of his or her choice of counsel without good cause: *MacDonald Estate v. Martin*, [1990] 3 S.C.R. 1235. The test is whether a fair-minded and reasonably informed member of the public would conclude that counsel’s removal is necessary for the proper administration of justice: *Maftoun v. Banitaba*, 2012 ONCA 786, at para. 4.
- [23] Brent seeks to disqualify Simovonian on the grounds that he is a “material witness” on the appeal. This argument is presumably based on the fact that in the proceeding below, Simovonian swore an affidavit of service stating that he served David’s statement of claim on Brent by email, in accordance with a Superior Court order for substituted service. Simovonian was not cross-examined on the affidavit of service, which was tendered as an exhibit to David’s affidavit in the proceeding below.
- [24] The practice of counsel swearing affidavits of service is routine, particularly when service has been effected pursuant to an order for substituted service. If all counsel who swore such commonplace affidavits were, on that basis alone, conflicted from acting as counsel for their clients, it would give rise to pointless litigation over routine matters. Brent has provided no credible evidence to support his claim that Simovonian’s affidavit of service was false or fraudulent. In these circumstances, the attempt to disqualify Simovonian on the basis that he swore a affidavit of service is frivolous and entirely without merit.
- [25] Brent’s argument that Sinke should be disqualified from acting as counsel of record on this appeal is equally unfounded. Brent’s argument appears to be based on the fact that Sinke acted as counsel for Simovonian and Scalzi Caplan in Brent’s Action. Brent argues that this placed Sinke in a conflict of interest because Brent believes that Simovonian was fired by Scalzi Caplan.
- [26] Amongst the many problems with this request are the following:
- although Simovonian and Scalzi Caplan were defendants in Brent’s Action, they are not parties to this appeal. Thus, Sinke is not counsel of record in this proceeding, and a request to disqualify him as a counsel on the record is pointless;
 - there is no evidence that Simovonian was fired by Scalzi Caplan, nor is there any air of reality to the claim that Simovonian and Scalzi Caplan have adverse interests placing Sinke in a conflict; and
 - even if there were such evidence and such a conflict possibly existed, that would be an issue as between Simovonian and Scalzi Caplan and would not concern Brent.
- [27] I therefore dismiss the motion to disqualify Simovonian and/or Sinke.

III. DISPOSITION [28] The motion is dismissed.

[29] The successful parties are entitled to their costs on a partial indemnity basis. I order Brent to pay costs to David in the amount of \$1,750, and to Simovonian and Scalzi Caplan in the amount of \$1,730, in both cases inclusive of HST.

“P.J. Monahan J.A.”

[1]. Brent appears to be seeking a Scalzi Caplan LLP retainer agreement in order to argue that Simovonian, previously a lawyer at the Scalzi Caplan, did not have legal authority to institute proceedings on David’s behalf.

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