

CANADA / JUDGMENT

Nguyen v. Pham

2025 ONCA 858

COURT

Court of Appeal for Ontario

DECIDED

9 December 2025

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Nguyen v. Pham

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COA-25-OM-0439

Judges

Roberts, Lois B.

Subject

Family

Decision Content

COURT OF APPEAL FOR ONTARIO

CITATION: Nguyen v. Pham, 2025 ONCA 858

DATE: 20251209

DOCKET: COA-25-OM-0439

Roberts J.A. (Motion Judge)

BETWEEN

Suy Thi Nguyen

Applicant (Respondent/Responding Party)

and

Tran Tuan Linh Pham

Respondent (Appellant/Moving Party)

Qasim Ali, for the moving party, Tran Tuan Linh Pham

Raffaele Masellis, for the responding party, Suy Thi Nguyen

Heard: in writing

REASONS FOR DECISION

Overview

- [1] This motion is the last in the numerous steps taken by Mr. Pham in these hotly contentious family law proceedings. He seeks an extension of time to serve and file his notice of appeal from the August 5, 2025 judgment of Vella J. He argues that it is in the interests of justice to grant the extension when the delay is only one day, and his appeal is meritorious.
- [2] Ms. Nguyen opposes the motion. She maintains that the appeal is frivolous and vexatious, and that the delay in advancing his meritless appeal repeats the ongoing pattern of Mr. Pham's unreasonable conduct since they separated in 2015 and throughout the divorce proceedings that Ms. Nguyen commenced in January 2021.
- [3] The overarching factor to be considered in this motion is whether the requested extension of time is in the interests of justice. Informing that analysis are the following well-known factors: 1) the requisite and timely formation of an intention to appeal; 2) the length of and explanation for the delay; 3) any prejudice to the responding party because of the delay; and 4) the merits of the proposed appeal.
- [4] I am not persuaded that it is in the interests of justice to grant the requested extension. Rather, it would be contrary to the interests of justice to do so.

Delay and Prejudice

- [5] I start with the first three interrelated factors.
- [6] The redacted retainer agreement produced by Mr. Pham indicates that at least by August 27, 2025, he had contacted his present counsel, although the retainer was not entered into until September 3, 2025. Although almost at the last minute, I accept that Mr. Pham did form the requisite intention to appeal within the 30-day prescribed deadline for appealing under the Rules of Civil Procedure. However, I note that the delay in starting the appeal reflects Mr. Pham's pattern of conduct throughout these proceedings, as noted in the numerous orders made in the proceedings and summarized in the application judge's reasons.

- [7] With respect to delay, the notice of appeal and certificate of evidence were served and attempted to be filed with this court, one day late, on September 5, 2025. Although the filing delay is merely one day, it should be considered in light of the fact that Mr. Pham delayed until October 27, 2025 to instigate this motion. This combined delay is significant in that it again shows Mr. Pham's pattern of delay that is likely to continue if his appeal is permitted to proceed.
- [8] Moreover, the explanation offered for the one-day delay is inconsistent. The affiant (a paralegal in Mr. Pham's counsel's office) claims that the notice of appeal was filed on September 4, 2025, and that it was through inadvertence that Ms. Nguyen's counsel was not served then. However, the exhibit in support of this claim is merely a copy of the notice of appeal dated September 4, 2025. There is no evidence that the notice of appeal was accepted for filing by this court on September 4, 2025, as alleged. The exhibits indicate that it was not until September 5th that Ms. Nguyen's counsel was served with the notice of appeal and certificate of evidence, and an attempt was made to file the documents with this court. Further, the delay in launching this motion remains unexplained.
- [9] Again, by themselves, these factors are not egregious or remarkable; however, they become important when considered within the context of Mr. Pham's consistently unreasonable conduct since his separation from Ms. Nguyen, including unwarranted refusals and last-minute consents, delay and failure to follow procedural rules and court orders. These are all hallmarks of frivolous and vexatious litigation: *J.J.W. v. K.F.*, 2024 ONCA 362, 1 R.F.L. (9th) 1, at para. 19; *Lavallee v. Isak*, 2022 ONCA 290, at paras. 19, 25. While Ms. Nguyen may not be prejudiced by this delay, the prejudice to her from the continuation of Mr. Pham's conduct is substantial. I can take this pattern of conduct into account in considering the justice of the case: *Jex v. Jiang*, 2021 ONCA 160, at paras. 5, 11.

Merits of the proposed appeal

- [10] It is not my function to determine whether the proposed appeal will ultimately succeed. Rather, I must assess whether the proposed appeal has so little merit that Mr. Pham should be deprived of the important right to appeal: *Issasi v. Rosenzweig*, 2011 ONCA 112, 95 R.F.L. (6th) 45, at para. 10. The lack of merit alone can be dispositive of this motion: *Enbridge Gas Distribution Inc. v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 16; *Liu v. Chan*, 2024 ONCA 699, at paras. 29, 32. As this court noted in *Sabatino v. Posta Ital Bar Inc.*, 2022 ONCA 208, at para. 21, "there are occasions when the lack of merit in an appeal is so clear-cut that, on its own or in combination with a consideration of the other factors, a motion judge determines that leave should not be granted". In my assessment, that is the case here.
- [11] In his notice of appeal, Mr. Pham claims the application judge made the following reversible errors:
- (1) she erred in striking out his pleadings and affidavit evidence at the outset of trial and restricting his participation to making submissions;

- (2) she erred in her application of the test for occupation rent of the matrimonial home;
- (3) she erred in her determination of the post-separation adjustments by failing to account for expenses paid by Mr. Pham for the preservation and maintenance of the matrimonial home;
- (4) she made a palpable and overriding error in finding that Ms. Nguyen was forced to leave the matrimonial home which was not supported by the evidence;
- (5) she erred by ordering that Mr. Pham's share of the net proceeds from the sale of the matrimonial home be held in trust pending the determination of costs.

[12] As I shall explain, none of these grounds have any merit and serve as thinly guised attacks on the application judge's careful and thorough findings which stand free of any apparent error and therefore attract considerable deference on appeal.

1. The striking of Mr. Pham's pleadings and affidavit materials [13] At the outset of trial, on motion by Ms. Nguyen, the application judge struck out Mr. Pham's pleadings and affidavit evidence and restricted his participation to observing the evidence and making closing submissions. The trial proceeded as an uncontested trial on the evidence.

[14] It is well-established that in family law proceedings, the exercise of the court's discretion to strike pleadings and to restrict a party's participation must be exercised sparingly, in exceptional cases, and only where no other remedy would suffice: *Roberts v. Roberts*, 2015 ONCA 450, 65 R.F.L. (7th) 6, at para. 15; *Martin v. Watts*, 2020 ONCA 406, 2020 CarswellOnt 8657, at para. 7. Such an order is driven by the particular facts of each case. However, it is reasonably made in cases, like the present one, where there is an ongoing and willful failure to comply with court orders and other unreasonable behaviour that creates delay and increases costs: *Roberts*, at para. 15; *Martin*, at paras. 4, 7, 8, 9, 22-25.

[15] In her August 5, 2025 reasons, the application judge detailed Mr. Pham's unreasonable behaviour that led to the striking of his Answer and restriction of his participation as trial, as well as the denial of the adjournment sought by Mr. Pham in the event that the motion to strike was denied. The application judge provided the following summary of Mr. Pham's behaviour at para. 5 of her August 5, 2025 reasons:

By way of summary, I noted that the Respondent had not filed an updated sworn financial statement, or an updated net family property statement, much less a comparison net family property statement. He did not file any expert medical evidence, or an updated trial scheduling endorsement form in support of his claim for spousal support, contrary to the order of Sharma J. made at the Trial Management Conference. Indeed, the Respondent did not comply with any of the deadlines set by Sharma J. at the Trial Management Conference, including the timeline for filing his trial affidavits. In light of the well documented delay caused by the Respondent, reflected in prior endorsements (this is a 2021 Application), an adjournment was not a just result. I relied on *Mullin v. Sherlock*, [2018] O.J. No. 6743, 2018 ONCA 1063. As stated, my full reasons were delivered orally on February 18, 2025.

- [16] The application judge correctly applied the governing principles to facts that justified her striking Mr. Pham's Answer and restricting his participation at trial. I see no arguable basis for appellate intervention.
2. Occupation rent of the matrimonial home [17] Mr. Pham and the parties' son remained in the matrimonial home when Ms. Nguyen and the parties' daughter left and rented the basement in Ms. Nguyen's brother's home. The application judge correctly applied the governing test in *Griffiths v. Zambosco* (2001), 54 O.R. (3d) 397 (C.A.) and exercised her discretion to order Mr. Pham to pay occupation rent in the amount of \$56,590 to Ms. Nguyen for the nine years that he lived in their house. In making her finding of the amount owing, she properly relied on the uncontested expert calculation of occupation rent for the matrimonial home.
- [18] Also informing her decision was Mr. Pham's steadfast and unfair refusal to sell the matrimonial home until Ms. Nguyen commenced her application in January 2021. Mr. Pham's unreasonable position deprived Ms. Nguyen of her share of the equity in the parties' only significant asset while she struggled to support herself and their daughter and lived in a cramped basement. The application judge also found that Ms. Nguyen and their daughter were forced to leave the matrimonial home because of Mr. Pham's violence. The application judge's reasonable exercise of her discretion and findings of fact are firmly rooted in the record and are entitled to deference on appellate review.
3. Post Separation Adjustments [19] The application judge recognized that Mr. Pham had exclusively paid expenses for the matrimonial home from the date of separation until the date the matrimonial home was sold in 2022. She based her calculation of the expenses paid by Mr. Pham on the documentary evidence that was before her and gave Mr. Pham credit for mortgage payments, property tax payments and insurance premiums. She found that Ms. Nguyen owed Mr. Pham the amount of \$41,447.19 for her share of post separation expenses. There was no evidence of any other payments made by Mr. Pham. The application judge made no error in her calculation.
4. Ms. Nguyen's departure from the matrimonial home [20] As earlier indicated, the application judge found that Ms. Nguyen and her daughter were required to leave the matrimonial home because of Mr. Pham's violence. The application judge was entitled to accept Ms. Nguyen's uncontested evidence on this point. She made no palpable and overriding error in doing so.
5. Ordering Mr. Pham's share of the net proceeds from sale held in trust [21] The application found that Mr. Pham had failed to pay costs awards made in Ms. Nguyen's favour. She ordered that the previous costs awards were to be deducted from Mr. Pham's share of the net sale proceeds. She also ordered that his share remain in trust until the costs of the application were determined. Given Mr. Pham's conduct in these proceedings, it was reasonable for the application judge to order that his funds be held in trust as security for Ms. Nguyen's costs. Based on his past conduct, it was reasonable to assume that Mr. Pham

would not voluntarily pay those costs if not required to do so. There is no error in the application judge's sensible exercise of her discretion.

Conclusion

- [22] I return, as I began, to the justice of the case. Ms. Nguyen is 61 years old and has, for several years, been unemployed with little financial resources other than from her share of the matrimonial home which Mr. Pham unreasonably deprived her of for almost nine years. She had to leave the matrimonial home because of Mr. Pham's violence. Although of very limited means, she voluntarily paid support for the parties' son until he finished his post secondary education. Throughout these proceedings, she has acted reasonably and fairly. She is entitled to finality. It would be grossly unfair to require her to respond to a meritless appeal.
- [23] There comes a point where enough is enough. Mr. Pham has surpassed that point in these proceedings. The justice of the case requires that it must stop here.

Disposition

- [24] The motion is dismissed.
- [25] Ms. Nguyen is entitled to her costs from Mr. Pham. If the parties cannot agree on the scale and amount of costs, they may make brief written submissions of no more than two pages, plus a costs outline, within 7 days of the release of these reasons. The costs awarded will be deducted from Mr. Pham's share of the net sale proceeds currently held in trust.

"L.B. Roberts J.A."

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