

CANADA / JUDGMENT

Vassell Estate v. Vassell

2026 ONCA 203

COURT

Court of Appeal for Ontario

DECIDED

20 March 2026

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Vassell Estate v. Vassell Collection Decisions of the Court of Appeal Date 2026-03-20 Neutral citation 2026 ONCA 203 Docket numbers COA-25-CV-0760, M56494 Judges van Rensburg, Katherine; Miller, Bradley; Coroza, Steve A. Subject Civil Decision Content COURT OF APPEAL FOR ONTARIO CITATION: Vassell Estate v. Vassell, 2026 ONCA 203 DATE: 20260320 DOCKET: M56494 (COA-25-CV-0760) van Rensburg, Miller and Coroza JJ.A. In The Matter of the Estate of Enid Vassell (also known as “Enid Doreen Vassell”), deceased BETWEEN Courtnay Vassell, in his capacity as the Estate Trustee for the Estate of Enid Vassell Applicant (Responding Party) and Natasha Vassell Respondent (Moving Party) AND BETWEEN Natasha Vassell Applicant (Moving Party) and Courtnay Vassell, personally and in his capacity as Estate Trustee of the Estate of Enid Vassell Respondent (Responding Party) Natasha Vassell, acting in person Lauren Wianecki and Amelia Yiu, for the responding party Heard: March 5, 2026 On review of the decisions of Justice Darla A. Wilson of the Court of Appeal for Ontario, dated November 21, 2025 and January 23, 2026. REASONS FOR DECISION

- [1] The moving party, Natasha Vassell, asks that a panel of this court review and overturn two decisions of a single judge made in the context of her appeal of the judgment of Vallee J. The first decision under review is dated November 21, 2025, refusing an extension of time for the perfection of the appeal. The second is dated January 23, 2026, and awards full indemnity costs of the motion to the responding party Courtnay Vassell, in the sum of \$16,492.35.
- [2] On a motion under s. 7(5) of the Courts of Justice Act, this court will only interfere if the motion judge failed to identify the applicable principles, erred in principle, or reached an unreasonable result: *Saffih v. Sbih*, 2024 ONCA 710, at para. 4. As we explain, while we see no such error in respect of the order refusing to extend time to perfect the appeal, we are reducing the costs of the single-judge motion to the partial indemnity amount of \$9,895.41.
1. The Refusal to Extend Time to Perfect the Appeal [3] The test for granting an extension of time to perfect an appeal is set out in *Enbridge Gas Distribution v. Froese*, 2013 ONCA 131, 114 O.R. (3d) 636, at para. 15. The factors the court generally considers are: (1) whether the appellant formed an intention to appeal within the prescribed time period; (2) the length of and explanation for the delay; (3) whether there is any prejudice to the responding party; and (4) the merits of the proposed appeal. After considering all the circumstances, the

motion judge must determine whether an extension of time is in the interests of justice.

- [4] The motion judge identified and applied the correct test. She observed that there had been a long delay: Ms. Vassell had done nothing to perfect her appeal after serving her notice of appeal in June 2025 and it was only after receiving a notice of intention to dismiss the appeal for delay from this court that she contacted the Superior Court to have the judgment under appeal issued and entered. She did not explain the further delay in moving forward with her appeal. The motion judge accepted that there would be prejudice to the responding party and other estate beneficiaries if an extension of time were granted, noting that Ms. Vassell's actions had resulted in the estate incurring considerable costs that depleted the value of the estate. The motion judge also found that the appeal was devoid of merit because it challenged the findings of fact of Vallee J. that led her to reject Ms. Vassell's allegations of undue influence. As the motion judge noted, it is not the function of this court on appeal to reverse a court's factual findings, unless there is an error of law or a palpable and overriding error of fact.
- [5] Accordingly, on the record that was before the motion judge, we see no error in her decision to refuse an extension of time for Ms. Vassell to perfect her appeal.
- [6] In her attendance before us Ms. Vassell sought to rely on additional materials that were not before the motion judge, consisting of an affidavit sworn on February 25, 2026, attaching numerous exhibits.
- [7] Some parts of the affidavit related to the motion judge's costs award – they were properly before us and considered by us. Other parts of the affidavit and numerous exhibits consisted of proposed fresh evidence on the appeal and requests for interim relief in the appeal.
- [8] Previously, Ms. Vassell had sought to have the panel hear her fresh evidence motion at the same time as her review motion. The panel had refused the request, and Ms. Vassell was advised of the panel's direction that her fresh evidence motion materials would not be accepted for filing until after the review motion was determined, and only if she was successful on the motion. The additional documents that Ms. Vassell tendered at the hearing of the review motion were substantially the same as what had been refused for filing days earlier, they were not properly before us, and we did not consider them in arriving at our disposition of the motion.
- [9] No reason has been demonstrated for overturning the motion judge's order refusing to extend the time for perfection of the appeal; this part of the review motion is accordingly dismissed.
2. The Motion Judge's Costs Award [10] An award of costs on an enhanced scale may be justified as a sanction for a party's behaviour in the conduct of proceedings. Costs on a full indemnity scale are reserved for exceptional cases where a party's misconduct is "especially egregious": *Net Connect Installation Inc. v. Mobile Zone Inc.*, 2017 ONCA 766, 140 O.R. (3d) 77, at para. 8. As this court noted in *Bayford v. Boese*, 2021 ONCA 533, 69 E.T.R. (4th) 216, at

paras. 5-6, the conduct of a party in the court below may be considered by the judge of first instance in awarding enhanced costs; however, it is only a party's conduct on the appeal that would justify such a costs order to be made by this court.

- [11] In our view the motion judge erred in this case in awarding costs on other than a partial indemnity scale because there was no evidence of misconduct deserving of sanction by the moving party in her pursuit of the appeal. Contrary to the submissions of the responding party, costs on a higher scale were not justified by the moving party's pursuit of a meritless appeal, or because she had not paid the costs order from the court below (which was stayed while her appeal was pending: see r. 63.01 of the Rules of Civil Procedure). Nor was there evidence of a continuation in this court of conduct that would warrant sanction through a costs award on a higher scale. In this regard, we note that, in the court below, Vallee J. refused to award substantial indemnity costs against the moving party, stating that there was "no finding of reprehensible, scandalous or outrageous conduct."
- [12] Accordingly, we set aside the costs award of the motion judge and substitute costs in favour of the responding party on a partial indemnity basis, which we fix at \$9,400, inclusive of disbursements and applicable taxes.
3. Disposition [13] The review motion is granted in respect of the costs order of the motion judge but is otherwise dismissed. As success was divided, there will be no costs of this review motion. "K. van Rensburg J.A." "B.W. Miller J.A." "S. Coroza J.A."

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Prepared on 27 October 2026 · Esheria