

Case Name:
Wiltshire v. McGill

Between
Loraine Enniss Wiltshire, applicant, and
Peter McGill, Grant Hall and Lisa Hall, respondents

[2005] O.J. No. 2164

139 A.C.W.S. (3d) 954

Court File No. 05-CV-284080PD3

Ontario Superior Court of Justice

R.W.M. Pitt J.

Heard: May 13, 2005.
Judgment: May 30, 2005.

(12 paras.)

Civil procedure -- Applications and motions -- Trials -- Trial of an issue.

Application by Wiltshire against the respondents, McGill and the Halls, for removal of a right of way registered in the Land Claims Office and other relief. The applicant was self-represented and her materials were confusing. She did not cross-examine the respondents and failed to deliver a factum as ordered. She claimed that the right of way for adjoining landowners had lost due to lack of use. McGill deposed that neither he nor his company owned the adjoining lands.

HELD: Application dismissed against McGill. The application was ordered to proceed to trial on whether the right of way had been lost and whether the Hall's use of the right of way infringed the applicant's rights.

Statutes, Regulations and Rules Cited:

Building Code,

Ontario Rules of Civil Procedure, Rule 38.10(b)

Counsel:

Loraine Enniss Wiltshire, In person

Paul H. Starkman for the Respondent, Peter McGill

Melissa A. Kehrer for the Respondents, Grant Hall and Lisa Hall

REASONS FOR JUDGMENT

1 R.W.M. PITT J.: -- This application is for the relief taken verbatim from the materials filed:

- (a) An Order by Judge for the immediate removal of "Right of Way" claim which has no legal basis.
- (b) The gate which was placed by the builder on the East side of the property (286 Bedford Park Avenue), be removed. The gate was on the West side for more than forty years.
- (c) That it be documented in court files that the builder was required by law to have a setback 0.8 m (between facing exterior walls, Lots 288 and 286). This requirement was not followed by building, Mr. Peter McGill. The right of way' and sidewalk for 286 Bedford were always on the West side. This builder fraudulently broke the laws.
- (d) That the new owners of 286 Bedford be ordered to stop harassing me. Since August 2004, my privacy, peace, quiet have been boldly violated. As the only Black owner in this area, in my little bungalow with my daughter, my safety is a major concern. My claim for damages suffered over the last 12 months will be huge.

2 The grounds for the application are taken verbatim from the record and are as follows:

- (a) The condition etc. expires after 40 years, (1990), R.S.O. c. L.5, s. 119(9).
- (b) Pictures clearly show that Right of Way' was never used for more than the last 20 years.
- (c) The purpose of the Right of Way' among the four bungalows, built more than 60 years ago was not the promotion of fraud but JUSTICE. This builder has deceitfully purchased a small lot (125 by 20) for \$360,000.00, built a "three-storey high", two storey

- building, which he sold for more than \$805,000.00. Building Code requirements were not followed. Many obstructions were placed on the east side wall of 286.
- (d) Real property reports documents cases where judge found no legal basis for claim as no evidence existed of use for 20 years. p. 91 - 8 R.P.P. (4th) 200 (Ont. C.A.)

ANALYSIS

3 Since initially I had real difficulty understanding either the claims made by the applicant or the relief she sought, and believed that there were material factual issues in dispute, I was inclined to order that the application proceed to trial pursuant to rule 38.10(b). Both parties resisted this disposition; the applicant, on the ground that there was evidence to support her case, and the respondent, on the ground that there were no material facts in dispute.

4 In a supplementary affidavit, the plaintiff deposed, inter alia, "just typing this is making me very annoyed". That frame of mind seemed to have pervaded all the prior proceedings, and did not contribute to good advocacy.

5 With respect to the first head of relief, the respondent clarified that it was the removal of Right of Way registered in the Land Titles Office that the applicant was seeking, rather than a "claim" to a Right of Way. I am not sure that is what the applicant wanted.

PRELIMINARY MATTERS

6 The applicant did not cross-examine the respondents, apparently due to her anger arising from the manner in which she was allegedly treated by counsel for the respondent, Peter McGill. The respondents' depositions, therefore, remain unchallenged and clearly cannot be regarded as so patently false as to be disregarded.

7 Among the facts deposed to is that Peter McGill had no dealings with the applicant or her property other than in his capacity as an officer of the numbered company, 584104 Ontario Limited. The company is not a party to the action, only Peter McGill is. Neither the corporation nor McGill owns the lands adjoining the applicant's property.

8 On February 28, 2005, Nordeimer J. set a schedule that, inter alia, required the applicant to deliver a factum by April 22, 2005. The applicant did not deliver a factum at all. She seems to believe that she had an option as to whether she delivered a factum or not. Nevertheless, the absence of a factum made it even more difficult to understand what the legal issues were.

9 There were undated photographs attached as exhibits to the applicant's affidavit, but I could not relate them to what appears might have been the issues in the proceeding. The applicant advised the court that she had in

court videos, which she intended to display in court. I had no reason to believe they would assist me, and did not permit them to be shown.

DISPOSITION

10 The application is dismissed against Peter McGill.

11 Pursuant to rule 38.10(b), the application shall proceed to trial on the issues of whether the Right of Way had been "lost" prior to the purported revival by Grant Hall and Lisa Hall, and whether in their use of the Right of Way, the Halls have infringed the rights of the applicant in her use of the Right of Way.

COSTS

12 Subject to any agreement between the parties, brief written submissions on costs are to be made within 20 days of the release of these reasons.

R.W.M. PITT J.

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