

FILE/DIRECTION/ORDER

BEFORE JUDGE Matteson ACTION # 06-cv-31953

Dr. A. Durakovic  
Plaintiff(s)

-v-

T. Guzman et al.  
Defendant(s)

CASE MANAGEMENT: YES [ ] NO [ ]

COUNSEL: M. Keppenstein for the plaintiff  
D. Richmond, for the defendant Guzman  
G. Wray, for York Police and related  
G. Asaro, for the CAS dependants  
 ORDER  DIRECTION FOR REGISTRAR dependants

REPORTED SETTLED ADJOURNED TO TRIAL SCHEDULING COURT  
 NO ONE APPEARED ADJOURNED TO TO BE SPOKEN TO COURT

This is an appeal from the  
interlocutory order of Master Abrams  
dated June 2, 2016. The order  
appealed from was made under  
Rule 34.07 of the Rules of Civil  
Procedure, under which the court  
may make an order regarding the

March 10, 2017  
DATE

[Signature]  
JUDGE'S SIGNATURE

## FILE/DIRECTION/ORDER

Judges Endorsement Continued

manner and location of examinations for discovery in an action.

The plaintiff is a Canadian citizen who currently lives in Maryland, USA. The plaintiff has sued his former wife (the defendant Gorman) and others for defamation, as summarized in the appellants' factors:

✓ This action claims that Ms. Gorman falsely and maliciously, as part of a contentious marital breakdown, reported to police that the plaintiff was a terrorist, a fundamentalist and a violent Islamic cult leader associated with al-Qaeda and the Taliban. The statements were said to be made in 2004, and are disputed, but for purposes of this appeal I assume they were made as alleged.

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

Although the plaintiff continued to travel to Canada after 2004, he has not done so since 2008. In his factum before me he submits that he has a "reasonable fear that Canadian authorities might act on the false terrorism allegations should he return." The respondents take the position that the plaintiff wishes to avoid coming to Ontario because he owes over \$700,000 in child support to his ex-wife and lost access to his children in 2008 so there was no need to come to see them, <sup>since then.</sup>

The man under appeal arises from the plaintiff's request that he either be examined for discovery in his action by videoconference or that the examination be conducted in Maryland, USA. The Master ordered that he attend for his

## FILE/DIRECTION/ORDER

Judges Endorsement Continued

examination for disbarment in Ontario.

In doing so, she exercised her discretion under R34.07 and the appellant concedes that the Master made no error of law in her decision.

The appellant submits that the Master erred<sup>in</sup> ~~in~~ entirely failing to consider or failing to adequately consider the facts put forward by the ~~plaintiff~~<sup>appellant</sup> in support of his request not to come to Ontario for his examination for disbarment. But

either way, the appellant submits that the Master "misconceived or ignored" the evidence in a way that affected her conclusion, as submitted by the plaintiff/appellant.

Accordingly, the standard of review is palpable and overriding error, although the plaintiff's counsel



FILE/DIRECTION/ORDER

Judges Endorsement Continued

concerns. For example, the Master begins by saying that the plaintiff's/apellant's request is founded on his belief that coming to Canada "would automatically trigger national security measures with grave consequences", quoting from the plaintiff's affidavit. The Master proceeds to make numerous references to terrorism and related issues (see, e.g., paras. 4, 5, 6, 9, 11 and 12).

The appellant submits that the reasons for decision show a "glaring absence" of central evidence because the above numerous reference and the reasons generally do not recite ~~relevant~~ <sup>sufficient</sup> detail from the factual record put forward by the plaintiff. However, the Master is not obliged to include

## FILE/DIRECTION/ORDER

Judges Endorsement Continued

extensive detailed facts in her reasons for decision: VandeLier v. Edwards, 2001 Sec 60 at paras. 14-15

The question is whether the omission gave rise to a reasonable belief that the Master must have forgotten, ignored or misconceived the evidence in a way that affected her conclusion. On the contrary the reasons show that she did consider the appellant's ~~evidence~~ evidence, accepting increased concerns raised by his counsel (para. 12) and expressly saying that she was proceeding "without in any way minimizing [the plaintiff's] upset and consternation that found his claims." (para. 11). The appellant also urges a comparison between the Master's reasons for decision on this interlocutory motion with the reasons

## FILE/DIRECTION/ORDER

## Judges Endorsement Continued

for decision of Justice Morgan on a motion for summary judgment in this action that he dismissed. 2013 ONSC.958.

A motion for summary judgment is a very different type of motion, ~~and~~ requiring different determinations. As well, it is ~~very~~ apparent on the face of that decision that the record before Justice Morgan was very different. This suggested comparison is not particularly helpful.

The Master's reasons do not show, as suggested by the appellant, that the Master must have forgotten, ignored or misconstrued the evidence, let alone that she did so in a way that affected her conclusion. There was no palpable and overriding error.

In accordance with the standard



Superior Court of Justice

FILE/DIRECTION/ORDER

Judges Endorsement Continued

of review, and despite able argument of the plaintiff's/appellants' counsel, this appeal is dismissed.

The parties shall make their written costs submissions as follows:

① the respondents shall file brief written submissions by March 24, 2017; and

② the appellants, by April 7, 2017.

If the parties are able to settle costs they need only notify me.

