

CITATION: Cavanaugh v. 226937 Ontario Limited, 2009 ONCA 753

DATE: 20091030

DOCKET: C50253

COURT OF APPEAL FOR ONTARIO

O'Connor A.C.J.O., Sharpe and Juriansz J.J.A.

BETWEEN:

Lisa Cavanaugh, Andrew Hale-Byrne, Richard Van Dusen, Margaret Granger and
Timothy Blacklock

Plaintiffs (Appellants)

and

226937 Ontario Limited c.o.b. as Grenville Christian College, the Incorporated Synod of
the Diocese of Ontario, Charles Farnsworth, Betty Farnsworth, J. Alastair Haig and Mary
Haig

Defendants (Respondents)

Russell Raikes and Loretta Merritt, for the appellants

Geoff Adair and Maria Sirivar, for the respondents, 226937 Ontario Limited, Farnsworth
and J. Alastair Haig

Eric Williams, for the respondent, Mary Haig

Heard and orally released: October 26, 2009

On appeal from the order of Justice P. Perell of the Superior Court of Justice dated March
4, 2009.

ENDORSEMENT

[1] The motion judge struck a number of paragraphs in the statement of claim on the basis they were non-justiciable. It is conceded that he identified the applicable legal principles. In particular, he pointed out there was no tort of religious indoctrination and that proposition is not challenged before us.

[2] We are satisfied that the motion judge did not err in striking portions of the statement of claim on the basis of non-justiciability to which he referred to in his reasons.

[3] The appellants submit, however, that the motion judge failed to address one of the theories of their fiduciary duty claim. That theory is that the respondents committed to educate the children in accordance with Anglican faith and values, and that they breached their duty to do so by promoting and indoctrinating the students with fundamentally different religious values, thereby causing them harm. The parties dispute whether this theory was advanced to the motion judge. In any event, the motion judge did not address it.

[4] Generously read, some paragraphs of the statement of claim are capable of supporting this theory. However, it needs to be pleaded with greater clarity and specificity. We give leave to the appellants to amend to plead the claim on this theory.

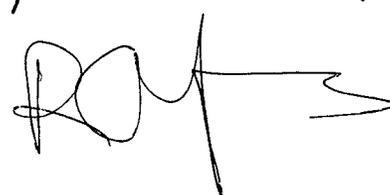
[5] The motion judge also struck a number of other paragraphs in the statement of claim on the basis that they were redundant, irrelevant, pled evidence or were argumentative. By and large, we agree with the motion judge's conclusions. However,

we are of the view that the following paragraphs ought not to have been struck: paras. 25, 30, 32(g), 32(h) except that the words "real or" remain struck, 32(j), 33(a), 33(d), 33(h), 33(i), and 33(aa).

[6] To the extent that facts pleaded in the paragraphs struck by the motion judge could be advanced in support of the theory referred to in paras. 3 and 4 above, the appellants are entitled to plead those facts as part of that theory.

[7] Finally, we wish to underline the comments of the motion judge at paras. 44 to 47 as to the effect of striking out portions of pleadings.

[8] In the result, the appeal is allowed in part in accordance with this endorsement. The costs of this appeal are fixed in the amount of \$5,000, inclusive of disbursements and GST and are payable in the cause.

 A.C.J.U.
M. J. O'Connell J.A.
 J.A.