

COURT OF APPEAL FOR ONTARIO

CITATION: Bader v. Evans, 2014 ONCA 648

DATE: 20140922

DOCKET: C56783

Simmons, Rouleau and Hourigan JJ.A.

BETWEEN

Biljana Bader

Respondent

and

Cory Lloyd Evans

Appellant

Donald G. Martin, Q.C. and Mark Elkin, for the appellant

George O. Frank and Lianne Sharvit, for the respondent

Heard and released orally: September 15, 2014

On appeal from the threshold motion of Justice Mary A. Sanderson of the Superior Court of Justice, dated October 11, 2012.

ENDORSEMENT

[1] The appellant appeals the threshold ruling and the costs order made by the trial judge in a motor vehicle accident action.

[2] In his submissions to the court, the appellant's counsel did not press his client's appeal of the threshold ruling. This was a sensible approach, as we see no basis to interfere with the trial judge's well-reasoned decision on that motion.

[3] With respect to costs, the appellant's counsel conceded that there is no basis for appellate interference with the trial judge's award of costs to the respondent in the amount of \$135,000 up to the date of the offer to settle made by the appellant.

[4] The narrow issue before us is whether we should interfere with the trial judge's decision to depart from the usual costs consequences of a plaintiff obtaining a judgment less favourable than the terms of the offer to settle and award no costs to either party after the date of the settlement offer.

[5] The appellant submits that the award of the jury was below the amount in the offer to settle and that there are no exceptional circumstances that would justify a departure from the rule. We agree.

[6] The trial judge's reasons did not set out grounds that would support her finding of exceptional circumstances, nor, on the facts of the case, do we find that such exceptional circumstances exist. We conclude, therefore, the trial judge erred in principle in departing from the rule.

[7] In our view, leave to appeal costs order should be granted and the appropriate order is to set aside the award of no costs post-offer of settlement and order costs payable to the appellant in the amount of \$70,000, to be set off against the \$135,000 awarded to the respondent.

[8] Given our decision, it is unnecessary to consider the respondent's motion to quash the appellant's appeal of the threshold ruling.

[9] The costs of the appeal will be to the appellant in the amount of \$5,000, on a partial indemnity scale, inclusive of disbursements and applicable taxes.

“Janet Simmons J.A.”

“Paul Rouleau J.A.”

“William C. Hourigan J.A.”