

COURT OF APPEAL FOR ONTARIO

CITATION: Crawford v. Crawford, 2018 ONCA 810

DATE: 20181009

DOCKET: C65188

Hourigan, Miller and Trotter JJ.A.

BETWEEN

Stacey Elizabeth Crawford

Respondent

and

Paul Glen Crawford

Appellant

Patrick Morris, for the appellant

Erika MacLeod, for the respondent

Heard and released orally: October 4, 2018

On appeal from the judgment of Justice Jennifer Woolcombe of the Superior Court of Justice, dated March 5, 2018.

REASONS FOR DECISION

[1] There is a dispute between the parties regarding their date of separation. The appellant brought a motion seeking an order fixing the date of separation as at January 1, 2011, based on an agreement between the parties to use that date to value the appellant's pension.

[2] The respondent brought a motion to strike paragraphs from the appellant's affidavit and Answer referring to an alleged agreement on the issue of the date of separation on the ground that they referred to communications that were protected by settlement privilege.

[3] The motion judge ruled that the evidence did not "evince a clear decision to reach a final settlement of the issue" and ordered that the issue of the date of separation be determined at trial. She also struck references to the privileged communications on the ground that they would be irrelevant to the issue to be decided at trial.

[4] On appeal, the appellant submits that motion judge erred because he should have been permitted to argue at trial that the parties concluded a settlement agreement with respect to the date of separation.

[5] We disagree.

[6] On the motion below, the appellant was attempting to enforce the parties' alleged agreement on the issue of the date of separation. Therefore, the settlement communications were both relevant and producible for the purposes of determining whether an agreement had been reached. The motion judge found that there was no such agreement for all purposes. There has been no appeal of that finding.

[7] The trial the motion judge ordered will determine the date of separation, not the issue of whether the parties reached an agreement on that point, which issue has been finally determined. In these circumstances, the motion judge was correct in striking the impugned paragraphs. These communications are properly considered to be privileged and cannot be used at trial for the purpose of determining the correct date of separation.

[8] The appeal is dismissed.

[9] The appellant shall pay the respondent her costs of the appeal in the all-inclusive sum of \$6,500.

“C.W. Hourigan J.A.”

“B.W. Miller J.A.”

“G.T. Trotter J.A.”