

DATE: 20020306  
DOCKET: C37132

COURT OF APPEAL FOR ONTARIO

RE: DIANE WRIGHT (Appellant) - and - COSMOND WRIGHT  
(Respondent)

BEFORE: FELDMAN and SHARPE JJ.A. and GILLESE J. (*ad hoc*)

COUNSEL: Max Rapoport  
For the appellant  
  
Maurice Pilon  
For the respondent

HEARD: February 28, 2002

RELEASED ORALLY: February 28, 2002

On appeal from the order of Justice James dated September 20, 2001, setting aside the order of Justice Timms dated April 26, 2001.

**ENDORSEMENT**

[1] The appellant made an offer to settle, which was accepted by the respondent and then included in an order of Justice Timms, who was presiding at a settlement conference.

[2] When the appellant subsequently received a letter from her lawyer with the terms of the settlement, she took the position that the wording of the settlement offer, which she had signed, was not what she had intended. She immediately advised her lawyer of the mistake and asked him to advise the other side, which he did. Counsel for the respondent took the position that there was no mistake and that he would move to enforce the settlement, but did not do so.

[3] Counsel for the appellant then brought a Rule 14.10 motion over the counter to have the order rectified. That procedure, however, is reserved for uncomplicated,

procedural or unopposed matters. Counsel for the appellant expected the motion to be opposed. Justice James made the order which appeared to be unopposed at the time.

[4] The respondent subsequently moved before Justice James for an order enforcing the settlement. On that motion, the affidavit of the appellant from the Rule 14.10 motion as well as evidence filed by both the appellant and the respondent were before the court. The appellant pleaded the mistake. The respondent swore in his affidavit that he had accepted the offer to settle on the basis that he believed it was a reasonable offer from the appellant's viewpoint.

[5] In his brief reasons, Justice James set aside his Rule 14.10 order as it was not a proper over-the-counter motion, and reinstated the order of Justice Timms without referring to the mistake issue. We agree that it would have been preferable had Justice James referred to his decision on the mistake issue in his reasons for judgment. However, we are satisfied that on the record before him and before us, there is no basis to conclude that the respondent knew or ought to have known that the appellant made a unilateral mistake in making her offer. In those circumstances, there is no basis for this court to set aside the order.

[6] Counsel filed bills of costs and made submissions on costs. Costs will be payable to the respondent fixed at \$4,000.

Signed: "K. Feldman J.A."

\_\_\_\_\_ "Robert J. Sharpe J.A.

\_\_\_\_\_ "E.E. Gillese J.A. (ad hoc)"