

COURT OF APPEAL FOR ONTARIO

CITATION: Carey-Patel v. Carey, 2019 ONCA 144

DATE: 20190222

DOCKET: M49728 (C65824)

Hourigan, Benotto and Huscroft JJ.A.

BETWEEN

Lydia Carey-Patel, Robert Patel, and Davie Aello

Appellants (Applicants)  
(Respondent party)

and

Jennie Carey, Arthur Carey, Douglas Carey, and  
The Office of the Public Guardian and Trustee

Respondents (Moving Party)

Matthew R. Harris and Yonatan Lipetz for the appellants

Richard Watson, for the respondents

Heard and released orally: February 21, 2019

ENDORSEMENT

[1] The respondents move to quash the appeal on the basis that the order appealed from is interlocutory.

[2] The application in the Superior Court involved a family dispute about the care of a 91 year old woman suffering from dementia. Following a five-day trial,

Kurz J. made several orders regarding her physical and financial care, including a change of the power of attorney. He specifically said: “I adjourned the balance of this trial to November 16, 2018 in order to allow the guardians to work together on plans for Jennie’s personal care and property.” He added that if they are unable to do so, “I reserve the right to make the final determination.”

[3] As far back as *Henderson v. Kallio*, 1932 OR 675 at 678, this court has held that an interlocutory order is one that does not determine the very subject matter of the litigation. The subject matter here is the care of a 91 year old. The plain meaning of the trial judge’s order discloses that the issue remains outstanding.

[4] The order appealed from is interlocutory. The appeal is therefore quashed. Costs of the motion payable by the appellants in the all-inclusive sum of \$5,000.

“C.W. Hourigan J.A.”  
“M.L. Benotto J.A.”  
“Grant Huscroft J.A.”