

In the Court of Appeal of Alberta

Citation: McDonagh v Kings, 2025 ABCA 151

Date: 20250430
Docket: 2501-0090AC
Registry: Calgary

Between:

Paul McDonagh

Respondent
(Applicant)

- and -

Steven Kings

Applicant
(Respondent)

**Oral Reasons for Decision of
The Honourable Justice April Grosse**

Application for Stay Pending Appeal

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Introduction

[1] This is an application by Mr. Kings for a stay pending appeal pursuant to rule 14.48.

[2] Mr. Kings has filed an appeal of an order dated March 19, 2025 in Court of King’s Bench Action 2510-00211, which is an action commenced by Mr. McDonagh against Mr. Kings. However, in his written application, Mr. Kings asked that this Court stay not only the March 19 order, but also an earlier order dated December 11, 2024 in a different action, being Action 2410-01247, which is an action commenced by Lacombe County against Mr. McDonagh. Counsel for Lacombe County has appeared today.

[3] The two orders are related in the sense that the December 11, 2024 order required Mr. McDonagh to remove certain property from his land in Lacombe County and to clean up that property so as to bring it into compliance with Lacombe County bylaws. It appears that much, if not all, of the personal property that must be removed from Mr. McDonagh’s lands pursuant to the December 11, 2024 order actually belongs to Mr. Kings. Mr. Kings has been storing vehicles and other items on Mr. McDonagh’s land and living in a camper trailer on Mr. McDonagh’s land. The March 19, 2025 order gave Mr. Kings a deadline of March 31 for removing his property, which removal would, in effect, allow Mr. McDonagh to be on the road to compliance with the terms of the December 11, 2024 order. The March 19, 2025 order also precluded Mr. Kings from further residing at the property and declared the property uninhabitable.

[4] No party has appealed the December 11, 2024 order. Mr. Kings had notice of the application that led to the December 11, 2024 order and had an opportunity to be heard. The December 11, 2024 order is not under appeal and stands as a valid and subsisting court order. Moreover, in today’s oral hearing it became apparent that the County’s deadline for bylaw compliance under the December 11, 2024 order has now been extended by consent to June 30, 2025. In these circumstances, Mr. Kings acknowledges that he does not really need a stay of the December 11, 2024 order.

[5] To be clear, the application to stay the December 11, 2024 order in the action between the County and Mr. McDonagh is dismissed.

[6] With respect to the March 19, 2025 order, the Court has a discretion to grant a stay pending appeal. The exercise of the Court’s discretion is guided by the three-part test set out in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334. The fundamental question is whether granting a stay would be just and equitable in all of the circumstances of the case.

[7] I turn to the elements of the three-part test now.

Serious issue to be tried

[8] Mr. Kings argues that the King's Bench justice did not have the jurisdiction to grant the March 19, 2025 order because this is really a landlord/tenant dispute and should be handled by the Residential Tenancy Dispute Resolution Service or the Alberta Court of Justice. He also argues that he was not provided with an eviction notice as a tenant.

[9] The threshold for a serious issue to be tried is low. There is a dispute here as to the nature of the relationship between Mr. Kings and Mr. McDonagh and the rights that flow from that relationship. Mr. Kings claims he was a tenant. Mr. McDonagh asserts that there was an agreement for Mr. Kings to temporarily store some vehicles or other personal property on Mr. McDonagh's land, but that Mr. Kings then breached that agreement by not doing so in a clean and tidy manner, by not paying the agreed fees, and by living on the property without permission and carrying on functions such as building tasers without permission. Mr. McDonagh says that Mr. Kings refused to clean up and remove items and to leave the property when asked. The record before the Court is very limited and there is a reasonable prospect that neither Mr. Kings nor Mr. McDonagh has framed their case in the most applicable legal language to date. I am prepared to accept for the purposes of the stay application that Mr. Kings has raised a serious issue to be tried with respect to whether Mr. McDonagh was entitled to the relief set out in the March 19, 2025 order, whether because Mr. Kings qualified as a tenant or had tried to pay the agreed storage fees or otherwise. I will not list all potential ways that Mr. Kings might be able to ultimately frame his appeal.

Irreparable harm

[10] Mr. Kings asserts that he will suffer irreparable harm. In his memorandum, filed with the Court, he described this matter as urgent because he is at risk of losing all his possessions. His materials allude to difficulties he had moving camper vehicles and other such large items from the site prior to the March 31 deadline due to ground and weather conditions and other challenges. I was advised in oral argument that the County has not taken enforcement action in terms of having their personnel or a civil enforcement agency deal with any items left on Mr. McDonagh's property. However, Mr. McDonagh advised the Court that he hired an individual, who has been dismantling all of the property that Mr. Kings left on the site.

[11] I have no actual evidence as to the exact status of what is now left on the site. Mr. McDonagh advises in submissions that the person he hired has almost completed his work and that there is really nothing left intact to recover from the property other than some tires. Mr. Kings says that he has spoken to neighbours, who advise that there are a few vehicles left and he believes he has some tools and other such items that would still be on the property. Mr. Kings has not been permitted on the property since March 31 and was arrested for attending there. In the meantime, the original restraining order application was heard and a restraining order was granted on April 14, 2025 such that Mr. Kings cannot be within 200 metres of the land.

[12] Although Mr. Kings has identified that some of the items he left behind have sentimental value, property loss is generally compensable in damages. When that is the case, it does not necessarily amount to irreparable harm. There is also a significant issue now as to whether there is anything left that could be meaningfully recovered, in any event.

[13] On the particular evidentiary record in this case, I am not satisfied that Mr. Kings has demonstrated on a balance of probabilities that he will suffer irreparable harm as a result of the stay not being granted.

Balance of Convenience

[14] I will consider balance of convenience in any event. In this analysis, I assume that Mr. Kings has made out a case for irreparable harm in the nature of a loss of further personal property, including property with sentimental value and property for which he will be unable to recover damages.

[15] The evidence before the Court shows that Mr. Kings has had notice of the County's position since at least September 2024. The County served him with a formal notice of the County's demands against Mr. McDonagh and Mr. Kings replied. There is some indication that he asked for some extra time to clean up or remove his belongings. Approximately six months have now passed and approximately three months passed before the County ever got their court order against Mr. McDonagh. I appreciate that there is a distinction between the steps needed to clean up the property to comply with the County bylaw and completely vacating the property as required by the March 19, 2025 order. However, Mr. Kings' failure to act in a material way in response to the County's notice in the fall of 2024 is a significant contributing factor to the circumstances now before the Court, including the risk that Mr. Kings faces regarding the loss of his property. His failure to act led to the County seeking a court order and putting Mr. McDonagh under increasing pressure, which, in turn, resulted in the action now before the Court.

[16] Mr. Kings acknowledged during oral submissions today that Mr. McDonagh expressed, back in December 2024, that he wanted Mr. Kings to move. Mr. Kings also told the Court in oral submissions today that he agreed with that. He offers many reasons why he was unable to move, including a lack of eviction notice, which affected his ability to acquire funds from Alberta Works for the move, ground conditions that made it impossible to move some of the equipment, and other such reasons. However, while there is some evidence of Mr. Kings selling a few vehicles, it is apparent that he did not take all reasonable and possible steps to bring the land into compliance with the County bylaw before March 31. Notably, the order under appeal then gave him another 12 days and he still did not remove his property from the site. Again, I appreciate that Mr. Kings offers reasons why he was not in a position to do that but the point is that he has had a number of opportunities and has been either unwilling or unable to remove the property and I must take that now into account at the balance of convenience stage.

[17] In sum on that point, Mr. Kings' failure to act when given the opportunity to do so is a significant contributing cause to the circumstances that he now says will cause him harm.

[18] While I have found that Mr. Kings made out a serious issue to be tried, that issue relates more to whether the procedure and timing for ordering him to remove his property were in accordance with whatever the relationship may have been between Mr. Kings and Mr. McDonagh. I am satisfied that at some point, Mr. Kings could have been legally required to remove his property from Mr. McDonagh's land. According to Mr. Kings, he had actually agreed to do so back in December 2024. So, there may be a serious issue to be tried, but there is also a serious issue about whether an appeal will practically change the circumstances for Mr. Kings in terms of having to remove his property from Mr. McDonagh's land. Further, his appeal is far from overwhelming on the merits and the merits is a relevant factor in the overall analysis of whether a stay should be granted.

[19] A particularly challenging factor in this case is that in many ways, the concerns now before the Court do not arise directly from the March 19, 2025 order itself. Staying that order on its face will not necessarily avoid the harm that Mr. Kings is concerned about. The March 19, 2025 order does not, on its face, grant any rights to Mr. McDonagh to deal with Mr. Kings' property or to deal with it in the way that he has. Mr. Kings' concerns arise out of the steps that Mr. McDonagh has taken, and that Mr. McDonagh feels justified in taking, whether he feels so justified based on the March order, the County's order, alleged unpaid storage fees, or otherwise.

[20] In my view, Mr. Kings has raised at least a fair issue as to whether Mr. McDonagh was entitled to take the exact steps he has taken vis-à-vis Mr. Kings' property. I am not in a position in the context of this application or on the record before me to determine that issue one way or the other. I simply say there is an issue. However, that is largely a civil dispute for money between Mr. Kings and Mr. McDonagh. I note that the only pleadings that have been filed to date are for a restraining order. So, it is very difficult for the Court to assess the rights between Mr. Kings and Mr. McDonagh, whatever those may be.

[21] I have considered carefully whether I should grant some sort of temporary injunctive relief to prevent Mr. McDonagh from further dismantling any of Mr. Kings' property that may remain and to allow Mr. Kings a further opportunity to have that property removed. However, there are numerous impediments to issuing an order of that nature. In the intervening period, as I alluded to earlier, I am advised that Mr. Kings has been arrested in relation to an attendance at the property and is under release conditions not to further attend at the property. The restraining order application has now been heard and granted and, under that order, Mr. Kings is prevented from being within 200 metres of the property. Those are currently valid and subsisting orders. If I were to permit Mr. Kings to retrieve property by an agent, which would be advisable given the tensions that at least are potentially present, given what I have observed and given that the restraining order was granted, that would have to be an agent such as a civil enforcement agent or some other agency who could be assured to manage the process properly and not simply cause further disputes

between the parties. However, there is no evidence of there being any funds available to pay for that type of assistance.

[22] Finally, Mr. McDonagh believes he is taking the steps reasonably available to him to comply with the County's order. Again, the interplay between what Mr. McDonagh needs to do for the County and what he is entitled to do vis-à-vis Mr. Kings, is not a matter that I can fully resolve today. Whether Mr. McDonagh is overstepping in that regard remains to be seen, as I have outlined. However, I am not convinced that there is a particularly practical way for the Court to start ordering exactly what Mr. McDonagh can and cannot do vis-à-vis Mr. Kings' property while still ensuring that he remains on track to comply with the County's order. When the County acts to enforce its bylaws, and now to demand compliance with the court order, it is presumed to act in the public interest. And I must weigh that element of public interest in the balance of convenience as well.

[23] When I weigh all of these factors, I am not convinced that the balance of convenience weighs in favour of a stay and I am not convinced that I should exercise my discretion to grant a stay of the March 19, 2025 order in these particular circumstances. It is simply not the just and equitable remedy to deal with the myriad of issues that are now before the Court or that may be before a future court.

Conclusion

[24] For the reasons I have just outlined, Mr. Kings' application for a stay is dismissed.

Application heard on April 23, 2025

Memorandum filed at Calgary, Alberta
this 30th day of April, 2025

Grosse J.A.

Appearances:

The Respondent P. McDonagh

The Applicant S. Kings

M. Hayward
for the interested party, Lacombe County