NOVA SCOTIA COURT OF APPEAL
Citation: *Stanton v. Stanton*, 2025 NSCA 38

Date: 20250527
Docket: CA 542625
Registry: Halifax

Between:

Crystal (Stanton) Tessier, Brian Stanton and Michael Stanton

Appellant

v.

Stanley Stanton

Respondent

Judge:	Derrick, J.A.
Motion Heard:	May 22, 2025, in Halifax, Nova Scotia in Chambers
Written Decision:	May 27, 2025
Held:	Motion dismissed with costs
Counsel:	Jacques Tynes, for the appellant Jason T. Cooke, K.C., for the respondent

Decision:

Introduction

[1] At the heart of this motion for a stay, and the appeal being pursued by the appellants, is the Fish House which is situated on land owned by the respondent, Stanley Stanton. The Fish House was described in the decision being appealed from as "a dilapidated and uninsulated shack" that Crystal (Stanton) Tessier renovated into "a nice cottage".

[2] On January 20, 2025, Justice Pierre Muise of the Nova Scotia Supreme Court released a written decision in a dispute involving issues of adverse possession, prescriptive easement, proprietary estoppel, and trespass all related to the Fish House (*Stanton v. Stanton*, 2025 NSSC 22). The appellants failed to establish possessory title to the property under and immediately surrounding the Fish House and therefore had no right to use the prescriptive right-of-way to the Fish House other than, as the trial judge found, for the limited purposes of removing it as ordered. Stanley[1] was found to be the legal title holder to the property other than the Fish House which he testified belonged to the appellants.

[3] Justice Muise found entirely in Stanley's favour, ordering the appellants to remove the Fish House from the property and awarding $13,000 in damages to Stanley. $8,000 of the total was assessed as punitive damages payable solely by the appellant, Crystal.

[4] In a nutshell, at para. 131 of his decision, the trial judge found:

> [131] The Fish House has been at its current location since the early 1970s. Stanley has owned the land since 1987. He first attempted to have Ms. Tessier agree to a lease in 2017 or 2018. He had his then lawyer send her a letter dated June 24, 2019, asking that the property be vacated and that the Fish House be restored to its previous condition. October 3, 2019, he filed the within action.

[5] It is unnecessary for me to discuss the substance of Justice Muise's decision but I will note the evidence he accepted led him to conclude that the appellants "ought reasonably have been able to have the Fish House removed by September

[1] As Justice Muise did, I refer to the parties by their first names to avoid confusion and mean no disrespect to any of them.

1, 2019" (*Stanton*, at para. 236). He found its continued presence on Stanley's property "constituted a continuing trespass from then".

[6] The trial judge's Order dated March 12, 2025 ordered that the appellants had failed to establish ownership of any portion of Stanley Stanton's property. They were to remove or cause to be removed from Stanley's property, the Fish House and its contents, on or before May 1, 2025. They were enjoined from entering Stanley's property for any purpose other than to remove, or arrange the removal of the Fish House and its contents until and including May 1, 2025. They were permanently enjoined, from May 2, 2025 onward, from entering Stanley's property for any purpose whatsoever. They were enjoined from the use of the right-of-way on Stanley's property to access the Fish House for any purpose other than to effect its removal and then only up to and including May 1, 2025.

[7] The appellants are appealing the trial judge's Order and sought a stay of it pursuant to *Civil Procedure Rule* 90.41 pending the hearing of the appeal. Crystal says her motion for a stay should succeed as the appeal raises arguable issues, there will be irreparable harm if the Order is not stayed, and the balance of convenience favours the appellants.

[8] For the reasons that follow, I am not persuaded the legal requirements for a stay have been made out. I have concluded the motion for a stay should be dismissed.

The Notice of Appeal and Materials Filed in Support of the Stay Motion

[9] The appellants have advanced seven grounds of appeal in a Notice of Appeal filed on April 17, 2025. It is relevant to the stay motion to set out the precise wording of the grounds:

> (1) Judicial Bias: Justice Muise erred by not recusing himself despite a previous formal complaint filed against him by Appellant Crystal Tessier, creating a reasonable apprehension of bias and undermining procedural fairness.
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> (2) Credibility Assessments: Justice Muise consistently found witnesses for the Plaintiff fully credible while harshly discounting the Appellants' witnesses, notably Crystal Tessier and Lindsay Trask. His credibility assessments were one-sided, did not adequately weigh corroborative evidence, and were inherently biased.

(3) Adverse Possession: Justice Muise misapplied the legal test for adverse possession, wrongly finding permissive use and incorrectly ruling that minor, periodic visits by the Respondent interrupted exclusivity and continuity of the Appellants' long-established possession.

(4) Prescriptive Easement: Justice Muise erred in law by improperly limiting the scope of the established prescriptive easement to foot traffic and fishing activities only, contrary to substantial evidence of broader historic use.

(5) Proprietary Estoppel: Justice Muise erred by requiring an overly explicit promise rather than applying the correct test for proprietary estoppel based on implicit encouragement, detrimental reliance, and unconscionability, thus wrongly dismissing the claim.

(6) Damages and Relief: The damages awarded to the Respondent and relief ordered against the Appellants are unjust and legally unfounded, especially given the Appellants' established rights through adverse possession or proprietary estoppel.

(7) Miscarriages of Justice: Cumulatively, Justice Muise's errors amount to a miscarriage of justice warranting reversal or, alternatively, a new trial.

[10] In support of the stay motion, Crystal submitted her affidavit sworn May 1, 2025 and a written brief filed out of time on May 7. At the hearing of the motion, Ms. Tynes confirmed that Crystal had brought the stay motion on behalf of herself and her brothers, Brian and Michael. Brian and Michael did not file anything themselves on the motion.

[11] The respondent did not seek to cross-examine Crystal.

[12] In her affidavit, Crystal merely notes, but does not address, the grounds of appeal. She focuses on what she says are hardships and obstacles associated with the order to remove the Fish House by May 1, 2025. She says it has been impossible to comply with the trial judge's Order due to road closures caused by "seasonal wash-outs and ice conditions" on the "primary roads providing access to the Fish House". She attached a copy of a notice from the Nova Scotia Department of Public Works that indicated "Spring Weight Restrictions" were in effect from March 11 to midnight on April 27, 2025.

[13] Crystal says other obstacles to moving the Fish House have included being advised by "professional building-moving companies" that it was not feasible to move the Fish House in the period of April 28 to May 1, 2025 "given road conditions, permitting requirements, and logistical constraints involved". She also says she is unable to disconnect power to the Fish House as Nova Scotia Power has informed her that she is not listed as the account-holder. She claims: "I am not authorized to arrange the disconnection that is a prerequisite to safe removal of the structure".

[14] Crystal provided no corroboration for these assertions. She also did not indicate what she has done, if anything, to address these obstacles to complying with the Order.

[15] Crystal concludes her affidavit with the following statements:

> 9. THAT immediate payment of the Damages Award would cause me serious financial hardship and jeopardize my ability to prosecute the appeal.
>
> 10. THAT enforcement of the Order prior to determination of the appeal would cause irreparable harm, including the potential loss of the Fish House and the investments made therein, and would render the appeal moot.

[16] Ms. Tynes indicated at the hearing that Crystal's financial circumstances are dire and her brothers also have no money. Crystal did not provide any documentation in support of her claim of impecuniosity.

[17] In her affidavit Crystal undertakes to comply with the requirement in the trial judge's Order to remove the Fish House and its contents and "will enter the Respondent's property only to remove, or arrange the removal of, the Fish House and its contents, or for activities directly related to this appeal". This was amplified by Ms. Tynes's submissions at the hearing. She proposed that if a stay is not granted an alternative remedy would be an order permitting Crystal additional time—48 days—to remove the Fish House and enter the respondent's property for this purpose. The respondent rejected an extension of this nature when it was proposed by the appellants in the lead up to the stay motion.

[18] There is no evidence the appellants took any steps following the release of the trial judge's decision in January 2025 to address what are now described as problems associated with the removal of the Fish House.

The Legal Principles Governing Motions for a Stay

[19] A stay is a discretionary remedy and not often granted. The filing of a Notice of Appeal does not suspend the enforcement of the order being appealed from. As stated in *Westminer Canada Ltd. v. Amirault* (1993, 125 N.S.R. (2d) 171 (C.A.)):

> Unless a stay is granted, the orders are to be paid forthwith. Stays deprive successful parties of their remedies, and they are not granted routinely in this province. They are equitable remedies and the party seeking the stay must satisfy the court it is required in the interests of justice.

[20] The discretionary power to enter a stay is structured by the "*Fulton*" test (*Fulton Insurance Agencies Ltd. v. Purdy*, 1990 NSCA 23). Under the *Fulton* test, the party seeking the stay carries the burden of showing, on a balance of probabilities: (1) an arguable issue for appeal; (2) they would experience irreparable harm if the stay was to be denied; and (3) the balance of convenience favours a stay. The balance of convenience concerns the question of whether the appellant will suffer greater harm if there is no stay than the respondent will suffer if a stay is granted.

[21] In the event the applicant for a stay cannot satisfy the primary test's three criteria, exceptional circumstances may justify the granting of a stay on the basis of it being "fit and just" to do so (*Colpitts v. Nova Scotia Barristers' Society*, 2019 NSCA 45 at para. 23). In this case there is nothing to indicate "exceptional circumstances" for granting a stay.

[22] In any event, where the primary test addresses all the relevant considerations, "it is inappropriate to resort to the secondary test" (*Zinck v. Stewart*, 2024 NSCA 96 at para. 16).

[23] *Fulton* establishes that the "fairly heavy burden" borne by the applicant is warranted "considering the nature of the remedy which prevents a litigant from realizing the fruits of his litigation pending the hearing of the appeal" (*Fulton* at para. 27).

[24] The parties agree these principles govern the motion.

Applying the Legal Principles

[25] Arguable Issue: The first branch of the *Fulton* test requires an assessment of whether the appellants have advanced grounds of appeal that, if established, qualify as having "sufficient substance to be capable of convincing a panel of the court to allow the appeal…" (*Westminer*, at para. 11).

[26] I previously set out the appellants' grounds of appeal. Ms. Tynes indicated at the hearing that the "core" issue in the appeal is judicial bias. In her motion brief, she said the following in support of the judicial bias ground of appeal:

> Here, the record presents a possible case for reasonable apprehension of bias. At the interlocutory hearing on their injunction motion, Justice Muise summarily branded Ms. Tessier's evidence "obtuse" after only a few questions. This dismissal demonstrates a closed mind well before her testimony was fully explored. Ms. Tessier did file a formal complaint against Justice Muise on March 9th, 2024. The appellants also bring [sic] a motion to introduce fresh evidence what will demonstrate when Ms. Tessier made her concerns about Judicial Bias known. Finally, Justice Muise's credibility findings systematically favored the Respondent's witnesses while discounting Ms. Tessier and her witnesses even where their testimony was corroborated.

[27] The content of the above paragraph is not in evidence before me on the motion. However as stated, the allegation of judicial bias appears to have no foundation. Mr. Cooke, who represented the respondent in the proceedings before the trial judge, advised that the appellants were successful on the interlocutory injunction motion. That cuts against the suggestion the trial judge was "predisposed" against Crystal.

[28] It is not disputed that at no point did the appellants bring a motion before the trial judge to recuse himself. I accept that the Notice of Appeal was the first instance when the respondent and his counsel heard of any complaint being made against the trial judge.

[29] As noted by Mr. Cooke, the appellants' assertion, as stated in the Notice of Appeal, that the trial judge "harshly discounted" their witnesses, is not borne out by a review of the decision being appealed from. The trial judge undertook a careful witness-by-witness analysis in assessing credibility. He did not find all the witnesses who testified on behalf of the appellants to lack credibility. Indeed, he concluded that Brian Stanton's evidence was credible and, except where he expressed uncertainty, reliable. He found that Michael Stanton "seemed to honestly

believe the evidence he was giving was true. He did not appear to be trying to mislead, deceive or evade questions. He readily admitted what he did not remember and where he was giving rough estimates". The trial judge found the evidence of two other witnesses who testified for the appellants to be credible and reliable.

[30] The trial judge did not accept the evidence of Crystal and two of her friends, Lindsay Trask and Brenda Merritt. He took 22 paragraphs to review Crystal's evidence, 15 paragraphs to review Ms. Trask's, and 14 paragraphs to review Ms. Merritt's. He gave detailed reasons with reference to the evidence for finding these witnesses lacked credibility and were not reliable. His decision does not show he made "one-sided, inherently biased" credibility and reliability assessments as claimed in the Notice of Appeal.

[31] As for the grounds of appeal asserting errors in the trial judge's conclusions on adverse possession, prescriptive easement and proprietary estoppel, the appellants' motion brief states that the renovations done to the Fish House "proceeded…in reliance on permission from Mr. [Stanley] Stanton, longstanding permissive use and equitable assurances". This is indeed what the trial judge found on the evidence: that Stanley Stanton had permitted the appellants' access to his land to use the Fish House and that, when the relationship broke down in 2019, the permission was withdrawn.

[32] These grounds of appeal are essentially attacks on the trial judge's factual findings masquerading as claims of legal error. The trial judge's 328 paragraph decision comprehensively reviewed the evidence and the law relating to the issues raised by the parties. A judge's findings of fact are owed considerable deference on appeal. This is particularly true of credibility assessments (*Hodgkinson v. Simms*, [1994] 3 S.C.R. 377 at para. 53).

[33] At the hearing of the motion, Ms. Tynes indicated the damages ground of appeal was a complaint that the damages were excessive. A trial judge's damage award is afforded significant deference. Damages awarded at trial will not be altered on appeal unless there is no evidence on which the trial judge could have reached their conclusion, they proceeded on a mistaken or wrong principle, or the result at trial was wholly erroneous, justifying appellate intervention (*Urquhart v. MacIsaac*, 2019 NSCA 25 at para. 43; *Poulain v. Iannetti*, 2016 NSCA 93 at para. 34).

[34] There is nothing before me to support this ground of appeal.

[35] There is nothing in the trial judge's decision or Order that could be characterized as a miscarriage of justice.

[36] I have not found anything in the grounds of appeal that can be characterized as an arguable issue. The grounds amount to recitals of what the appellants disagree with in the trial judge's decision and reassert what was argued at trial. The appellants simply do not like the result and want to relitigate the issues. The new allegation of judicial bias is made out of thin air. There is a strong presumption in favour of judicial impartiality which places a heavy burden on a party seeking to establish a reasonable apprehension of bias (*R. v. Nevin*, 2024 NSCA 64 at para. 49). There is nothing to support it being made out against the trial judge.

[37] The deference shown on appeal to findings made by the trial judge will be a very substantial obstacle for the appellants. There is nothing to indicate the trial judge made clear, material errors in his factual findings.

[38] I do not see grounds that could be capable of convincing a panel of this Court to allow the appeal. The ultimate determination of the merits of the appeal will of course be for the panel assigned to hear it with the full record from the court below.

[39] Even if an arguable issue could be extracted from the appellants' grounds of appeal, I am satisfied they have failed to show irreparable harm.

[40] Irreparable Harm: In *Colpitts*, Justice Beveridge described what is meant by irreparable harm:

> 48 Irreparable harm is informed by context. This was described by Cromwell J.A., as he then was, in *Nova Scotia v. O'Connor*, 2001 NSCA 47:
>
> [12] The term "irreparable harm" comes to us from the equity jurisprudence on injunctions. In that context, it referred to harm for which the common law remedy of damages would not be adequate. As Cory and Sopinka, JJ. pointed out in *R.J.R.-MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at 341, the traditional notion of irreparable harm is, because of its origins, closely tied to the remedy of damages.
>
> [13] However, in situations like this one which have no element of financial compensation at stake, the traditional approaches to the definition of irreparable harm are less relevant. As Robert J. Sharpe put it in his text, Injunctions and Specific Performance (Looseleaf edition, updated to November, 2000) at s. 2.450,

> "... irreparable harm has not been given a definition of universal application: its meaning takes shape in the context of each particular case."

[41] Irreparable harm “is harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other” (*R.J.R.-MacDonald v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at p. 341).

[42] Crystal says without a stay of the trial judge’s Order there will be irreparable harm arising from the loss of the Fish House and the hardship she will face if she has to pay the damages levied against her. I will look at each of these assertions in turn.

[43] In her motion brief, Crystal characterizes the Fish House as “a unique heritage asset”. She says that it is “not ordinary real property” as it is a “heritage structure painstakingly restored” by her and her late father. In her submission it is irreplaceable and that “Once dismantled, its original timbers, carpentry, and historic character cannot be restored”. She claims the “permanent loss of an irreplaceable cultural familiar asset is the very archetype of irreparable harm”.

[44] Justice Muise made a finding of fact that the Fish House was built to accommodate uses associated with commercial fishing and, before it was renovated, had fallen into a severely deteriorated condition. It was renovated to function as a cottage. It is not a heritage property. Crystal’s submission that it has sentimental value does not give it heritage status. On the one hand, Crystal says dismantling it will destroy its character; on the other hand she says a stay is required to preserve “the Appellants’ statutory and equitable rights to dismantle and reclaim their own historic structure”.

[45] Furthermore, Crystal seeks the equitable remedy of a stay of the trial judge’s Order to remove the Fish House without having taken any steps to explore a modification of the Order before it was issued. The Order was consented to as to form by her trial counsel (not Ms. Tynes) and Mr. Cooke. If removal of the Fish House requires special techniques or arrangements, this could have been raised while the trial judge retained jurisdiction over the matter.

[46] Crystal does not address a critical aspect of the context for this stay motion. By way of a With Prejudice letter dated May 2, 2025 to Ms. Tynes, Mr. Cooke advised that the respondent has undertaken not to disturb the Fish House until the appeal is heard and determined. I am satisfied the undertaking completely

addresses the irreparable harm issue as it relates to Crystal's concerns about the Fish House.

[47] As for Crystal's assertion that absent a stay of the damages award she will be financially unable to proceed with the appeal, there is nothing before me to substantiate this claim. Although as held by Fichaud, J.A. in *Amica Mature Lifestyles Inc. v. Brett*, 2004 NSCA 93 at para. 15, a financial burden caused by the requirement to pay damages that could prevent an applicant from advancing their appeal may constitute irreparable harm, I do not find a basis for irreparable harm in this case. As I mentioned earlier, Crystal has not provided any support for her claim of impecuniosity. I have no evidence about Brian's and Michael's financial circumstances. Furthermore, there is no indication the respondent would not be able to reimburse the appellants for any payments received were the appeal to be successful.

[48] The appellants have not established irreparable harm.

[49] Balance of Convenience: It is not necessary for me to determine the balance of convenience issue as the appellants' stay motion fails at both the arguable issue and irreparable harm hurdles. Were the balance of convenience a consideration, I would find in the circumstances it would favour the denial of a stay.

[50] Finally, I will address Ms. Tynes' suggestion that I have the power on a stay motion under *Civil Procedure Rule* s. 90.41(2)(b) to "grant such other relief against a judgment or order, on such terms as may be just, pending the disposition of the appeal".

[51] It is not necessary for me to address the scope of this Rule. This alternative relief was sought in the event the stay motion was dismissed to secure Crystal an extension of time to remove the Fish House. This would amount to a partial stay of the trial judge's order. I have found the requirements for a stay have not been satisfied which is fatal to the alternative relief the appellants requested.

Conclusion

[52] The appellants have failed to satisfy the requirements for obtaining a stay. Their motion is dismissed. Justice Muise's Order remains in full force and effect. The respondent has undertaken to leave the Fish House undisturbed until the appeal is heard and decided. I am satisfied that undertaking, reiterated by counsel on the respondent's behalf at the hearing of the stay motion, will be honoured.

[53] Costs are payable on the motion to the respondent in the amount of $750 inclusive of disbursements.

Derrick, J.A.