

In the Court of Appeal of Alberta

Citation: Kallis v Schiffner, 2026 ABCA 11

Date: 20260115
Docket: 2501-0211AC
Registry: Calgary

Between:

Michael Kallis

Respondent

- and -

**Randy Schiffner, Slade Schiffner, Brandon Schiffner,
Elayne Schiffner and Cameron Schiffner**

Appellants

The Court:

**The Honourable Justice Michelle Crighton
The Honourable Justice Jane Fagnan
The Honourable Justice April Grosse**

Memorandum of Judgment

Appeal from the Order by
The Honourable Justice C.B. Thompson
Dated the 23rd day of July, 2025
Filed on the 6th day of August, 2025
(2025 ABKB 443, Docket: 1401-04781)

Memorandum of Judgment

The Court:

[1] A chambers justice granted an appeal of an applications judge's order dismissing an action pursuant to Rule 4.33 of the *Alberta Rules of Court*, Alta Reg 124/2010.

[2] The interpretation of Rule 4.33 raises a question of law which is reviewed for correctness. Generally, the application of the law on Rule 4.33 to a set of facts is a finding of mixed fact and law, reviewable for palpable and overriding error absent some extricable error of law: *Rahmani v 959630 Alberta Ltd*, 2021 ABCA 110 at para 15.

[3] Whether an action has been “significantly advanced” involves an assessment and measurement of the effect of what happened in the action during the period of alleged delay in light of the facts and the objectives of the *Rules of Court*. The chambers justice's conclusion on that issue is entitled to deference: *Ro-Dar Contracting Ltd. v Verbeek Sand & Gravel Inc*, 2016 ABCA 123 at para 11.

[4] The chambers justice in this case adopted a functional approach under Rule 4.33 rather than a formulistic approach, following this Court's guidance in *Ursa Ventures Ltd v Edmonton (City)*, 2016 ABCA 135 at para 3 and *Rahmani v 959630 Alberta Ltd*, 2021 ABCA 110 at para 14. She observed that each case is unique and the content, value, and timing of the advance in the action said to “reset the clock” must be assessed within the context of that lawsuit. She noted that Rule 4.33 is not designed to regulate the efficient prosecution of actions, but rather to prune out actions that have truly died: *Ursa* at para 10.

[5] The justice did not err in finding that an affidavit of records may or may not significantly advance an action under the functional approach, citing *Ursa* at para 21. She noted that Alberta courts have likewise held that the provision or delivery of documents, in and of itself, may or may not materially advance an action under the functional approach. She cited *Armitage v Alberta*, 2021 ABQB 831 at paras 1, 14, 19 in which it was noted that the practicalities of modern litigation involve providing multiple records in electronic form rather than appearing in person to review paper copies individually.

[6] The justice undertook an analysis of the context and complexity of the action to assess whether provision of the electronic copies of the documents listed in the Affidavit of Records constituted a significant advance in the circumstances of this case. She considered, among other things, the nature of the litigation and various factors adding to its complexity, the description of the records listed in the 126-page Affidavit of Records, and the nature, value, quality, genuineness, and timing of what had occurred.

[7] The justice found the action involved a significant degree of complexity and the production was voluminous. She noted it was the first time copies of Schiffner’s records were provided to Kallis - despite the defendants’ lawyer having represented shortly before the Affidavit of Records was provided that he would provide a “stick” - and that the provision of the actual records completed Schiffner’s discovery of records in this case, citing *Ro-Dar Contracting Ltd v Verbeek Sand & Gravel Inc*, 2016 ABCA 123 at para 20.

[8] The justice also considered, as part of the context, the partial summary judgment application that was set in January 2020 for a June 2020 special chambers hearing. That hearing was derailed by court scheduling restrictions due to COVID. At the time the documents in question were requested and provided, the partial summary judgment application was extant.

[9] She ultimately found the timing of the provision of the electronic documents did not suggest a last-minute strategic activity to save the action about to be dismissed. In doing so, she addressed the argument that mischief might generally occur if last minute document provision is found to constitute a significant advance.

[10] The justice concluded that the provision of the documents increased by a measurable degree the likelihood that either the parties or a court would have sufficient information and be in a better position to rationally assess the merits of the parties’ positions and either settle or adjudicate the action, citing *Loncikova v Goldstein*, 2023 ABCA 358 at para 9.

[11] Her application of Rule 4.33 to the particular facts of the case before her is entitled to deference. She reviewed the relevant factors and drew reasonable conclusions.

[12] The appellant’s argument amounts to an assertion that provision of documents listed in an Affidavit of Records can never constitute a significant advance for the purposes of Rule 4.33. That assertion does not align with the functional approach.

[13] It is certainly open to a court to find that such a step does not constitute a significant advance for a variety of reasons. For example, a court may find in appropriate circumstances that a request for documents was not genuine and was made to avoid the consequences of Rule 4.33.

[14] While we do not endorse the chambers justice’s broad statement that a record is not produced by disclosing it in an Affidavit of Records and making the records available for inspection, it is not necessary in this case to determine when “production” occurs in all cases for the purposes an analysis under Rule 4.33.

[15] The chambers justice applied the functional approach to determine whether, in the context of this particular litigation, this action had truly died. We are not persuaded the chambers justice committed a reviewable error in her interpretation of Rule 4.33 or its application in the particular circumstances of this case.

[16] The appeal is dismissed. The parties cannot comply with the procedural directions in paragraphs 2 to 5 of the chambers justice's order due to the passage of time. Those paragraphs are set aside. Counsel are directed to return to the Court of King's Bench for a new litigation plan if they are unable to jointly formulate one within 60 days of this decision.

Appeal heard on January 7, 2026

Memorandum filed at Calgary, Alberta
this 15th day of January, 2026

Authorized to sign for: Crighton J.A.

Fagnan J.A.

Grosse J.A.

Appearances:

S.J. Weatherill
L. Feehan (no appearance)
for the Respondent

E.W. Halt, KC
J. Bolton
for the Appellants