

In the Court of Appeal of Alberta

Citation: McLeod v McLeod, 2026 ABCA 41

Date: 20260213
Docket: 2401-0358AC
Registry: Calgary

Between:

Allen McLeod and Sharon McLeod

Appellants

- and -

Maury McLeod

Respondent

The Court:

**The Honourable Justice Anne Kirker
The Honourable Justice Jane Fagnan
The Honourable Justice April Grosse**

Memorandum of Judgment Delivered from the Bench

Appeal from the Order by
The Honourable Justice S.A. Moore
Dated the 3rd day of December, 2024
Filed on the 7th day of February, 2025
(2024 ABKB 719, Docket: 1306 00921)

**Memorandum of Judgment
Delivered from the Bench**

The Court:

[1] The appellants appeal the dismissal under Rule 4.33 of their action, commenced in late 2013, seeking a replevin order for equipment or judgment for the value of equipment and profits, and related relief.

[2] The appellants allege their respondent son unlawfully transferred title to equipment. The sole issue on this appeal is whether a July 2019 letter from the appellants' former counsel to respondent's counsel providing Registrar of Motor Vehicles' records, as mandated in a May 2019 Consent Order, constituted a significant advance in the action. The documents related to the possession and ownership of equipment and were sought from the Registrar to verify information already in the appellants' possession. The letter indicated appellant's counsel was still seeking the appellants' instruction for a Judicial Dispute Resolution.

[3] For the purposes of the Rule 4.33 application, the respondent does not take issue with characterizing the Consent Order as a significant advance. The parties disagree as to whether provision of the documents in compliance with the Consent Order significantly advanced the action.

[4] There is no dispute that no new records were provided by the Registrar and therefore, no new records were provided with the letter. No new documentation was provided that had not already been in the parties' possession in 2014. Further, the letter stated, "with respect to your request to proceed with a JDR, we are still in the process of obtaining our clients' instructions and will respond to you as soon as possible". There was no further correspondence about the JDR. The respondent next heard from the appellants eight months later when their counsel sent a Notice of Withdrawal of Lawyer of Record.

[5] The appellants take the position that if the granting of a Consent Order is a significant step under Rule 4.33, then compliance with a step mandated by that Consent Order must also constitute a significant advance. Until the Registrar provided the ownership records, the appellants did not know whether new information was in the Registrar's possession, which titles had actually been transferred and when they were transferred. They say the provision of records clarified the parties' positions and narrowed the issues. Further, appellants' counsel's intention to attempt to schedule a JDR after the positions were clarified reflects the significance of the records.

[6] An applications justice and a chambers justice on appeal found provision of the documents, which were duplicative of documents the parties had exchanged five years prior through the Affidavit of Records process, did not constitute a significant advance.

[7] The interpretation of Rule 4.33 raises a question of law which is reviewed for correctness. 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 an extricable error of law: *Rahmani v 959630 Alberta Ltd*, 2021 ABCA 110 at para 15.

[8] A chambers justice's conclusion as to 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*, and is entitled to deference: *Ro-Dar Contracting Ltd v Verbeek Sand & Gravel Inc*, 2016 ABCA 123 at para 11.

[9] The timeline set out in the chambers justice's reasons is not in dispute, including questioning in 2015 and questioning on responses to undertakings in 2018.

[10] The chambers justice reviewed the law on Rule 4.33, noting that the onus was on the appellants to demonstrate a significant advance in the action.

[11] She observed that under the functional test the court must make a qualitative assessment as to whether the act of providing the opposing party with documentation or complying with a court order is a significant advance, citing *Ro-Dar* at para 21.

[12] She cited *Ursa Ventures Ltd v Edmonton (City)*, 2016 ABCA 135 at para 19 for the proposition that an advance is one that moves the action forward in an essential way considering its nature, value, importance and quality. Further, a functional approach is to be followed with any step to determine whether whatever was done or provided can be characterized as a significant advance in the action, moving the parties closer to resolution: *Ursa Ventures* at para 20.

[13] The chambers justice clearly understood the issues in dispute. Having considered the whole of the record, including the evidence of what occurred after provision of the documentation received from the Registrar, the chambers justice concluded that the letter in this case did not move the matter closer to trial or resolution.

[14] This Court in *Ursa* clarified that it does not matter whether or not the last step taken was mandated. This is a complete answer to the appellants' argument that compliance with the Consent Order must constitute a significant advance. The question is whether the substance of the step significantly advanced the action in a functional way in the context of the case. It was within the purview of the chambers justice to make that determination.

[15] The chambers justice's conclusion on this question is entitled to deference and we find no reviewable error. Despite counsel's capable arguments, the appellants have not established a basis for this Court to intervene.

[16] The appeal is dismissed.

Appeal heard on February 11, 2026

Memorandum filed at Calgary, Alberta
this 13th day of February, 2026

Kirker J.A.

Fagnan J.A.

Grosse J.A.

Appearances:

M.C. Freeman

A. Bordignon (no appearance)
for the Appellants

T.J. Wilde

for the Respondent