

In the Court of Appeal of Alberta

Citation: Terrigno v Farrell, 2023 ABCA 323

Date: 20231109
Docket: 2301-0092AC
Registry: Calgary

Between:

Rocco Terrigno, Mike Terrigno, Antonietta Terrigno and Maurizio Terrigno

Appellants

- and -

Druh Farrell

Respondent

The Court:

The Honourable Justice Frans Slatter
The Honourable Justice Dawn Pentelechuk
The Honourable Justice Anne Kirker

Memorandum of Judgment

Appeal from the Decision of
The Honourable Justice M.H. Bourque
Dated the 22nd day of March, 2023
Filed the 19th day of April, 2023
(2023 ABKB 170; Docket: 1701-06436)

Memorandum of Judgment

The Court:

Introduction

[1] This is an unusual case. The appellants wish to bring part of an action against the respondent to an end without it being adjudicated and to recover costs for the steps taken in relation to the claim they are no longer interested in pursuing. If the claim were simply discontinued, without an agreement between the parties the respondent would ordinarily be entitled to a costs award against the appellants: *Alberta Rules of Court*, Alta Reg 124/2010, Rule 4.36(4); Stevenson & Côté, *Alberta Civil Procedure Handbook*, vol 1 (Edmonton: Juriliber, 2024) at 4-119. To avoid this outcome and leave open the possibility of obtaining a costs award against the respondent, the appellants sought to have their claim declared moot, except as to costs.

[2] The chambers judge refused to declare the claim moot. The appellants argue he erred in law. They ask this Court to replace the decision with a finding of mootness and to approve a discontinuance on that basis, leaving the issue of costs for the trial court.

Background

[3] The claim in issue forms part of a four-times amended Statement of Claim. In addition to alleging defamation (allegations of abuse of public office were removed with the amendments) and claiming damages therefore, the appellants alleged that the respondent, who is now a former City of Calgary councillor, contravened the pecuniary interest provisions in Part 5 of the *Municipal Government Act*, RSA 2000, c M-26. The pleading asks for a declaration to this effect as well as “[a] determination that the [respondent] has ceased to be qualified to remain a councillor” and “[a] declaration that the [respondent] is disqualified from City of Calgary Municipal Council and is required to vacate her position”.

[4] A case management justice directed that the pecuniary interest claim be determined first: see *Terrigno Investments Inc v Farrell*, 2019 ABCA 426 at para 5, and a three-day special chambers hearing was scheduled for that purpose. Before the application was heard, a municipal election took place. The respondent did not run for re-election and thus ceased to be a City councillor. The appellants subsequently brought their application to have the pecuniary interest claim declared moot.

Decision

[5] The chambers judge determined the claim was not moot because the *MGA* “expressly provides otherwise” and because a live controversy which affects or may affect the rights of the parties continues to exist: *Borowski v Canada (Attorney General)*, [1989] 1 SCR 342 at 353, 57 DLR (4th) 231; see also, *Bellatrix Exploration Ltd v BP Canada Energy Group ULC*, 2021 ABCA 148 at para 10. He made no error in reaching his conclusion.

[6] As the chambers judge correctly noted, the provisions of the *MGA* governing the disqualification of councillors provide that an application for declaratory relief under s. 175(2) of the *MGA*, may, pursuant to s. 175(4), continue notwithstanding an intervening election in which the person sought to be disqualified from council does not run. The appellants argue that s. 175(4) has no application in this case because the election in which the respondent did not run took place *after* the application was filed. The provision, they say, applies only when an election is held *before* that occurs. We disagree.

[7] Section 175(4) states:

An application under this section may be started or continued whether or not an election has been held between the time the disqualification is alleged to have occurred and the time the application is or was commenced and whether or not the person in respect of whom the application is being brought

- (a) resigns before or after the election,
- (b) was re-elected in the election,
- (c) was not re-elected or did not run in the election, or
- (d) has completed a term of office.

None of the words of the provision can be interpreted in isolation. They must be read in their entire context and as working together to give effect to the purpose of the statutory scheme governing the disqualification of councillors: *R v McColman*, 2023 SCC 8 at para 35, citing, among other authorities, *Rizzo & Rizzo Shoes Ltd (Re)*, [1998] 1 SCR 27 at para 21, 154 DLR (4th) 193. That purpose is to protect democratic governance. Section 175(4) contemplates applications starting, *or continuing*, regardless of whether there is an election, and regardless of whether the councillor continues or ceases to hold office. To promote its intended goal, the Legislature has said that a claim like the one in issue is not moot even if by the common law test it might be regarded as such.

[8] In this case, however, even the common law test is not met. The issues remain tangible and concrete, not only because of their substance and the declaratory relief that remains available under s. 175(2)(b) of the *MGA*: see *Judicature Act*, RSA 2000, c J-2, s. 11, but because of the costs the

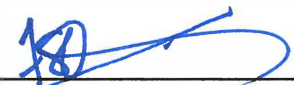
appellants acknowledge they seek to recover. They intend to claim costs “for having been successful at ridding this city of this councillor.” They assert the respondent did not run again because they “exposed her misconduct” and say they “would certainly have been successful” in showing she had the requisite pecuniary interest to establish a breach justifying her removal from public office. The respondent denies these allegations. The appellants’ costs claim implicates the merits of the pecuniary interest allegations made.

[9] The new evidence the appellants seek to have admitted is irrelevant to answering the question raised in this appeal. The fresh evidence application is therefore dismissed, as is the appeal.

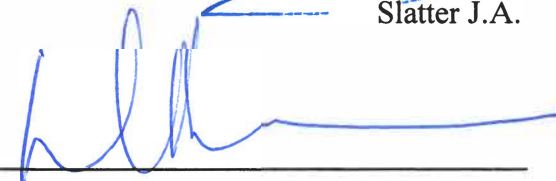
Appeal heard on November 6, 2023

Memorandum filed at Calgary, Alberta
this 9th day of November, 2023





Slatter J.A.



Pentelchuk J.A.



Kirker J.A.

Appearances:

C.M.A. Souster

for the Appellants, Rocco Terrigno, Antonietta Terrigno, Maurizio Terrigno

J.M. Keyes

for the Appellant, Mike Terrigno

D.M. Pick

for the Respondent