Court of King's Bench of Alberta

Citation: De Meyer v Pedora, 2025 ABKB 682

Date: 20251125
Docket: FL01 40990
Registry: Calgary

Between:

Stein De Meyer

Applicant/Cross-Respondent

- and -

Mary Louise Pedora

Respondent/Cross-Applicant

Reasons for Decision
of the
Honourable Justice M.H. Hollins

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[1] The parties received a family law arbitration award on July 23, 2025. Mr. De Meyer filed a document on August 21, 2025 to appeal that award. As explained herein, it was the wrong document. Ms. Pedora takes the position that this error cannot or should not be cured. If that is correct, Mr. De Meyer would be out of time to file a new document and so his appeal would be struck.

[2] For the reasons that follow, I disagree with the argument that this Court cannot or should not cure the filing defect. Mr. De Meyer's application to declare the arbitration appeal commenced within the applicable time limit is granted. Ms. Pedora's cross-application to strike the appeal is dismissed.

The Process of Appeal from an Arbitration Award

[3] The *Arbitration Act* allows appeals from awards if made within 30 days of receipt of the award. In this case, the award was received on July 23, 2025, making the deadline for appealing the award August 23, 2025; *Arbitration Act*, RSA 2000, c.A-43, s.46.

[4] The *Arbitration Act* does not specify the kind of document required to be filed to commence an appeal. Rule 3.2(5) *Alberta Rules of Court* says that, where the proceeding taken in this Court is an appeal but no procedure therefor is provided in the statute (here the *Arbitration Act*), the appeal must be made by Originating Application.

[5] The practice in this Court is to file the Originating Application in a family law arbitration appeal as a new Action with a civil action number assigned to it. The matter is then set for civil chambers, at which point it is scheduled for a special hearing, subject to preliminary challenges to the appeal.

What Happened Here

[6] In this case, Mr. De Meyer attended at the courthouse to file his documents for his appeal. He came with an Originating Application and a supporting Affidavit, both of which were proper documents under the above-described procedure. The Originating Application bore no Action Number, presumably because it was to be the commencing document in a new Action. The Affidavit mistakenly bore the number from the existing family law file, FL01-40990.

[7] When he attempted to file them, Mr. De Meyer was advised that his Affidavit contravened Practice Note 2 (para.27) because it was too long. He was directed to a courtroom and obtained a fiat on both the Originating Application and the Affidavit allowing them to be filed. He returned to the clerk's counter. When accepting the documents for filing, the clerk did not assign a new civil action number but rather crossed out the word "Originating" on the title of the document and filled in the existing FL01 number on the commencing document.

[8] The effect of these actions was to convert the Originating Application - which did conform with Rule 3.2(5) - to a family law Application, which did not.

The Arguments

[9] Ms. Pedora has taken the position that the filed document was a nullity and could not be cured. If so, Mr. De Meyer would be out of time to proceed with his appeal of the arbitration award. Mr. De Meyer argues that the court has the ability to cure this defect, relying on the following *Rules of Court (Alberta)*:

> Rule 3.2(6): If an action that is started in one form should have been started or should continue in another, the Court may make any procedural order to correct and continue the proceeding and deal with any related matter.

> Rule 1.5(1): If a person contravenes or does not comply with any procedural requirement, or if there is an irregularity in a commencement document, pleading, document, affidavit or prescribed form, a party may apply to the Court
>
> a) To cure the contravention, non-compliance or irregularity, or
>
> b) To set aside an act, application, proceeding or other thing because of prejudice to that party arising from the contravention, non-compliance or irregularity.

[10] In exercising any curative power under Rule 1.5, the Court must not, in doing so, cause any irreparable damages to any party. Further, granting relief under R. 1.5(1) must be in the overall interests of justice.

[11] Ms. Pedora says that to cure this defect would contravene Rule 1.5(6), which precludes taking any curative action that has the "effect of extending a time period that the Court is prohibited from extending". She relies on *Kwadrans v Kwadrans*, 2023 ABCA 203, a recent case of our Court of Appeal, as authority for the proposition that this court lacks jurisdiction to grant Mr. De Meyer the relief he seeks.

The Case Law

[12] Like this one, the *Kwadrans* case involved an attempt to appeal from a family law arbitration award. A divorce proceeding had been commenced prior to the issuance of the award. The husband/father filed a Notice to Attend Family Docket Court within the 30-day time limit but did not file a separate Originating Application. He proceeded in this manner believing that all family matters had to begin with an appearance in Family Docket Court (FDC).

[13] The Chambers Justice decided that she could not "cure" this mistake by treating the Notice to Attend as an Originating Application. A Notice to Attend was not any type of commencing or originating document. Conflating the two, she held, was more than a technicality. In the result, she found that she had no jurisdiction to cure the defect under R.3.2(6), set out above.

[14] The Court of Appeal upheld this decision of the Chambers Justice. It agreed that the proper commencing document was an Originating Application and that a Notice to Attend could not be converted into an Originating Application because: (1) a Notice to Attend can be filed without any existing action number, implying that it contemplates a separate commencing document; (2) the Notice to Attend did not provide the wife/mother with any information regarding his grounds of appeal. This, it found, meant that treating the Notice to Attend as an Originating Application would effectively extend the time for the husband to appeal, contrary to R.1.5(6); *Kwadrans*, paras. 24-35.

[15] The *Kwadrans* case is, in the view of Ms. Pedora, a complete answer to Mr. De Meyer's application.

[16] Later in 2023, this Court had a somewhat similar case before it, *Kilcommons v Zapata*, 2023 ABKB 691. In the context of ongoing *Hague* proceedings, the father wished to bring a particular application under the *Hague Convention* that had to be brought within a specific time period. Rule 3(8) of the Alberta Rules of Court and Practice Note No. 6 required the application to be brought as an Originating Application in Form 7.

[17] Instead of using the Originating Application, the father sent an Application to the clerks for filing. Although he eventually obtained a fiat allowing the filing of his materials, the documents were ultimately filed beyond the time limit allowed for such an application under the *Convention*.

[18] However, Nation, J did not strike the application in *Kilcommons* but allowed the fiat to stand. She distinguished the *Kwadrans* case, *inter alia*, on the basis that the mother had received copies of the unfiled Application and Affidavit within the applicable time limit. She knew, not just that an application under the Convention was intended to be brought, but knew the substance of the grounds on which it was brought. She found no irreparable harm or prejudice to the mother and compelling potential prejudice to the father's position if he were deprived of the chance to advance the arguments he had attempted to preserve; *Kilcommons* at paras. 32-36.

[19] In my view, this case is similarly distinguishable from *Kwadrans* for a number of important reasons:

(a) This is not about whether a Notice to Attend can be "converted" into an Originating Application but rather whether an Application (which *began* its life as an Originating Application) can be returned to its intended form;

(b) Unlike a Notice to Attend, the Application and the supporting Affidavit gave Ms. Pedora the information she needed to prepare to defend the appeal of the arbitration award; and

(c) Similar to *Kilcommons*, Ms. Pedora will suffer no prejudice by being unable to exploit a mistake of this Court.

[20] This is not, as was argued, a case of overriding a statute. The *Arbitration Act* only speaks to the time limit for appealing an award. It is the *Rules of Court* which specify the type of notice to be used. Between Rule 3.2(5) and Rule 1.5, it is clear that this Court has the jurisdiction to relieve against the consequences of technical contraventions of the Rules, as opposed to statutes. If otherwise, the use of Rule 3.2(5) would be unimaginably narrow.

Conclusion

[21] One must hope that this is a unique case, involving human error that was not the fault of either party. Mr. De Meyer did all the right things (with the possible exception of using a family law action number on the Affidavit, albeit not on the Originating Application). He had the proper commencing document and attended to have it filed, including obtaining the fiat, within the time allowed. It was only through the unilateral actions of the clerk, a representative of our Court, that the proper document became an improper document.

[22] I hasten to add the clerk's error is also understandable, in what has become a labyrinth of filing forms and procedures, including the temporary use of Family Docket Court to triage family law matters. The treatment of family law arbitration appeals (judicial reviews) as civil matters has caused all of us some confusion. However, in my view, it would be not only unjust but impossible to explain to any reasonable bystander that a Justice of this Court does not have the ability to correct the Court's own error in order to avoid a miscarriage of justice.

[23] The application to declare the appeal from the arbitration award brought within time is granted. The cross-application to strike the appeal is dismissed. If counsel cannot agree on costs, they can contact my office for directions on written submissions.

Heard on the 11th day of September, 2025.
Dated at the City of Calgary, Alberta this 25th day of November, 2025.

M.H. Hollins
J.C.K.B.A.

Appearances:

Max Blitt, KC
for the Applicant/Cross-Respondent, Stein De Meyer

Sonja Lusignan
for the Respondent/Cross-Applicant, Mary Pedora