

2009 CarswellAlta 341, 2009 ABCA 95, [2009] A.W.L.D. 1295, [2009] W.D.F.L. 1502

2009 CarswellAlta 341, 2009 ABCA 95, [2009] A.W.L.D. 1295, [2009] W.D.F.L. 1502

Hashman v. Hashman

Kenneth Hashman (Respondent / Respondent) and Einat Hashman (Appellant / Applicant)

Alberta Court of Appeal (In Chambers)

C. O'Brien J.A.

Heard: March 11, 2009

Judgment: March 11, 2009

Docket: Calgary Appeal 0801-0314-AC

© Thomson Reuters Canada Limited or its Licensors. All rights reserved.

Counsel: Einat Hashman, Appellant for herself

D.P. **Castle** for Respondent

Subject: Family; Property; Civil Practice and Procedure

Family law --- Family property on marriage breakdown — Order for division of property — Interest on order.

Cases considered by C. O'Brien J.A.:

Xu v. Shou (2008), 2008 CarswellAlta 1684, 2008 ABCA 368, 440 A.R. 248, 438 W.A.C. 248 (Alta. C.A. [In Chambers]) — followed

C. O'Brien J.A.:

1 This is an application by Ms Hashman to restore her appeal to the list so that she can proceed with her appeal. She also requests additional relief.

2 In the judgment of *Xu v. Shou*, 2008 ABCA 368, 440 A.R. 248 (Alta. C.A. [In Chambers]), Madam Justice Paperny summarized the law in this regard, and I quote:

Rule 515.1(9.1) provides that an appeal can be restored by order of the court or on consent of all parties. The test for restoring an appeal that has been struck, and not deemed abandoned, is summarized in [707739 Alberta Ltd. v. Phillips](#), 2000 ABQB 139, [2000] 6 W.W.R. 280 and provides that a court must consider all relevant factors in exercising its discretion to restore an appeal. A mere slip or inadvertence to appear on the part of counsel will generally not prevent the restoration of the appeal to the list, unless the appeal appears

to lack any merit, the appellant shows no intention of proceeding, the delay is great such that prejudice is evident and/or an appellant can offer no reasonable explanation for a lengthy delay in taking step to restore an appeal.

3 In this case, the appeal is from the order of Madam Justice Erb, made on October 8, 2008. The order essentially severed the divorce from the corollary relief and matrimonial property issues, directed that examinations be conducted before the end of 2008, and scheduled the trial commencing March 9, 2009. I understand that neither the examinations, nor the trial, have proceeded. The divorce judgment was granted on October 29, 2008.

4 Accordingly, the appeal is moot in many aspects. Nor have I heard from Ms Hashman as to the precise nature and grounds of the appeal, or the reasons for the delay in timely advancing it, nor am I persuaded that there is any merit, whatsoever, in the appeal. Indeed, from the nature of some of the relief sought by Ms Hashman, it appears to me that she, unfortunately, is labouring under a mistaken apprehension as to the scope and extent of the jurisdiction of this Court.

5 In these circumstances, I have no alternative but to dismiss the application.

END OF DOCUMENT