

In the Court of Appeal of Alberta

Citation: Lotoski v Lotoski, 2016 ABCA 73

Date: 20160316
Docket: 1501-0277-AC
Registry: Calgary

Between:

Marla Zoann Lotoski

Respondent/
Applicant on Cross-Application

- and -

Robert James Lotoski

Applicant/
Respondent on Cross-Application

**Oral Reasons for Decision of
The Honourable Mr. Justice Brian O’Ferrall**

Application for Stay of Order
Cross-Application for Security for Costs

**Oral Reasons for Decision of
The Honourable Mr. Justice Brian O’Ferrall**

[1] The applicant, Robert Lotoski, seeks a stay of an order of Justice Sisson made November 19, 2015.

[2] As I understand Justice Sisson’s order, it declared that the applicant’s outstanding child support arrears as ordered by previous judges stood at \$126,195.68 as of November 3, 2015. Justice Sisson also ordered that the applicant would be imprisoned for 75 days unless he paid the respondent \$20,000 towards those arrears and irrevocably assigned to the respondent his Canada Pension Plan and Old Age Security Benefits on or before December 4, 2015. However, by agreement of the parties, it was agreed that order be stayed until January 21, 2016.

[3] The test which must be met for a stay pending appeal is the well-known tripartite test from *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] SCR 311, 111 DLR (4th) 385. I find it unwise and unnecessary to delve too deeply into that test on the facts before me, since this matter is going to be heard shortly, but suffice it to say, that the applicant has not convinced me that the first branch of the test is met. That is, the applicant, Mr. Lotoski, has failed to convince me that there is a serious question to be tried.

[4] I caution everybody that I am a single appeal court judge sitting alone and that my views are determinative only of this stay application. They may not be the views of the Court. But my view is that the sole issue that the applicant raises on appeal is the question regarding whether Mr. Lotoski stood *in loco parentis*. Justice Sisson simply dealt with the child support arrears under these prior court orders and whether or not he ought to enforce payment of them.

[5] So the application for stay pending appeal is denied.

[6] Given the potential for Mr. Lotoski’s imprisonment if Justice Sisson’s order is not satisfied, I am exercising the discretion that is available to me to grant an extension of that existing stay for two weeks, until February 5, 2016, to allow for compliance with the order. Lest there be any misunderstanding, unless the \$20,000 is paid by then, February 5, 2016, the appellant will be liable to imprisonment for 75 days. Also, unless the pension benefits are assigned by then, the appellant will be imprisoned for 75 days.

[7] My order denying the stay pending appeal may be revisited if the parties agree to some other arrangement with respect to child support arrears pending the within appeal.

[8] With respect to the application for security for costs, I grant that application and order that that security of ten thousand dollars (\$10,000) be paid into court by Mr. Lotoski by February 5, 2016. If that security is not so paid, Mr. Lotoski’s appeal will be dismissed in its entirety without further order.

[9] Costs will follow the cause.

Application heard on January 20, 2016

Reasons filed at Calgary, Alberta
this 16th day of March, 2016

O’Ferrall J.A.

Appearances:

D. Harms
for the Respondent/Applicant on Cross-Application

D. Castle
for the Applicant/Respondent on Cross-Application