

In the Court of Appeal of Alberta

Citation: Bright Days Premium Child Care Inc v Spring Creek Mountain Village Inc, 2026 ABCA 244

Date: 20260720
Docket: 2601-0157AC
Registry: Calgary

Between:

Bright Days Premium Child Care Inc.

Applicant

- and -

Spring Creek Mountain Village Inc.

Respondent

**Oral Reasons for Decision of
The Honourable Justice Tamara Friesen**

Applications to Extend Time to File Notice of Appeal and a Stay Pending Appeal

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[1] As this is an oral decision, I reserve the right to edit it for grammar and clarity and to add appropriate citations should the parties wish to order a transcript.

Decision

[2] The applicant, Bright Days Premium Child Care Inc., seeks an extension of time to file its Notice of Appeal having filed it six days late. It also seeks a stay of the decision of the chambers judge. The dispute originates from an agreement between Bright Days and Spring Creek in which Spring Creek would provide space for Bright Days to open a much-needed daycare site. Things did not go as planned and in November of 2025 Bright Days' lease was terminated.

[3] On April 16, 2026, the chambers judge heard an application by Bright Days for a preservation order regarding specific assets located at the respondent's property, the former site of Bright Days' daycare.

[4] The chambers judge allowed the applicant to retrieve certain items from the location but refused to grant the preservation order in relation to other assets, which I understand were a few things such as blinds and cabinets. I'll refer to these as the 'disputed assets' as the parties have this morning.

[5] The chambers judge in applying the test for injunctive relief described in *RJR-MacDonald Inc v Canada (Attorney General)*, [1994] 1 SCR 311 at 334, 1994 CanLII 117 ultimately found, among other things, that Bright Days had not established that they would suffer irreparable harm without such an order. The judge found that any loss suffered by the applicant flowing from the loss of the disputed assets could be quantified by a future monetary damages award, should Bright Days be successful in the underlying lawsuit. The order also provided the director of Bright Days an opportunity to inspect the premises on April 22nd. On April 21st, the respondent served the order on the applicant. The applicant attended the premises on April 26th in accordance with the deadline set out in the order. On April 29th, the applicant attempted unsuccessfully to vary the April 16th order by way of a further application in chambers. The applicant did not file its Notice of Appeal to this Court until May 22nd of 2026, six days past the deadline.

[6] Therefore, in order for the appeal to proceed and a stay to be considered, the applicant requires an extension of time to file the Notice.

[7] For the following reasons, the request for an extension is denied.

[8] The test for receiving an extension of time to file a Notice of Appeal is well settled. It requires an applicant to demonstrate they had a bona fide intention to appeal while the right to appeal existed, they have a reasonable explanation for the delay, no serious prejudice will be

suffered by the respondent by granting the extension, the applicant has not benefited from the judgment, and finally, that the appeal has a reasonable prospect of success.

[9] I accept and the respondent agrees that Ms. Waddell on behalf of Bright Days always intended to appeal the decision. Ms. Waddell's evidence is that she was simply confused about deadlines. She mistakenly thought the April 29th application might have changed the appeal timeline. While I accept this explanation, I note as the respondent has also noted that self-represented litigants are subject to the same requirements as counsel and misunderstanding the rules is not typically sufficient to justify an extension. This is further complicated because Ms. Waddell is not actually entitled to represent Bright Days.¹

[10] The respondent further argues this appeal will cause it prejudice. It asserts there is a critical childcare shortage in Canmore where the subject property is located and that it is proceeding with the development, or as I understand it now, running a daycare at the site.

[11] It says the threatened appeal creates prejudice, delays implementation and undermines the finality of the judgment in the court below.

[12] I do not need to make a definitive ruling on either of these two factors because the appeal itself stands no reasonable prospect of success.

[13] To satisfy the final criterion set out in the *Cairns* test (*Cairns v Cairns*, 1931 CanLII 471 (AB SCAD)), the appeal must be *prima facie* meritorious, or arguable. Part of this preliminary merits analysis therefore considers the standard of review that this Court would ultimately apply to the chambers judge's decision.

¹ At the outset of the hearing, I exercised my discretion to grant a limited audience to Lana Waddell to make submissions on behalf of Bright Days, while noting that Bright Days would require counsel to file further materials in the Court of Appeal. My reasons were as follows:

The statutes and jurisprudence are clear that while you may be granted a right of audience, you cannot be the one that is filing the materials. And that is the case whether you are the sole shareholder or not. And that is precisely for the reasons that Mr. Sikstrom has just set out. I understand the way the Court dealt with this issue in the case you referenced, *PurpleRung Foundation v Peace River (Town of) Subdivision and Development Appeal Board*, 2020 ABCA 341 at paras 11-12, and the same thing is going to happen today. So: you have already filed those materials, and they have been accepted. I have reviewed them. That is what happened in that case as well, and the court then proceeded. I am going to proceed today and grant you a right of audience today, but moving forward, you will have to obtain legal counsel to file your materials. So, we will proceed today, and then moving forward, it is up to the hearing justice or the panel every time whether you are granted an audience or not. It is not a perpetual grant, you have to keep making an application.

We revisited the issue after I issued my substantive decision and I clarified that my decision on the grant of audience and the requirement to hire legal counsel for any future filings with the Court of Appeal did not bind the Court of King's Bench. Both of those issues would need to be considered and determined afresh by a member of that Court.

[14] The decision not to grant the preservation order, a type of injunctive relief, is a discretionary decision and is entitled to a high level of deference on appeal. The applicant says its appeal is reasonably arguable because it raised an arguable question about whether damages would be sufficient to compensate it for its related losses, including losses relating to its grant. It argues that the chambers judge erred in finding the absence of irreparable harm because the disputed assets involve equipment for a childcare facility, market value does not reflect the actual value of the assets, and if the assets are used or incorporated by a subsequent tenant in the respondent's space, recovery or restoration of the assets may be permanently affected.

[15] The findings made by the chambers judge as to the nature of the assets are discretionary findings of fact. Again, discretionary decisions such as fact findings are subject to a high level of deference on appeal. The applicant has not demonstrated any palpable and overriding error relating to those findings nor has the applicant identified a reviewable error of law.

[16] Ms. Waddell's affidavit provides no evidence that these disputed assets are unique except that they are part of the childcare facility. Although she raises concerns over differences in value, irreparable harm for the purpose of a preservation order is determined by the nature of the harm, not its magnitude. As the chambers judge correctly stated, if the disputed assets are ultimately found to belong to the applicant and it is determined that the respondent wrongfully converted them, the respondent can be ordered to pay monetary damages to the applicant. The same reasoning applies to any impact the loss of the disputed assets might have on Bright Days' grant. It can be compensated through monetary damages.

[17] This proposed ground of appeal is simply not arguable on the record in this case.

[18] The applicant also argues that the chambers judge's decision to refuse to grant a preservation order rested on an incomplete or incorrect factual assumption about the daycare's current operational status and that this led him to commit an error with respect to the balance of convenience.

[19] Even if the chambers judge erroneously thought the daycare was already operating when he rendered his decision, that error would have had no impact on his ultimate decision. The fact remains that daycare services were and are needed in Canmore and the new daycare would be, and now is, using the disputed assets. Nothing of significance or relevance to the chambers judge's reasoning on this point turned on the precise date the daycare became operational. As such, this ground of appeal also has no reasonable prospect of success.

[20] The application to extend the time to file the Notice of Appeal fails on consideration of the final *Cairns* factor. The appeal stands no reasonable prospect of success. Despite the fact that the applicant missed the deadline for filing by only a few days, in all the circumstances, it would not be in the interests of justice to grant this extension of time.

[21] As a result, I do not need to consider the application for a stay as it has become a moot question.

[22] Costs for the applications today are to be awarded according to Column 3. However, I am going to modify the amount somewhat given what I heard from Ms. Waddell earlier in terms of financial pressures that she has been facing and order lump sum costs of \$5,000.00.

[23] Regarding preparation of the order: Mr. Sikstrom, I am invoking rule 9.4(2)(c) with modifications. It does not require her approval; however, I will ask you to send it to Ms. Waddell first. Ms. Waddell, you will then have 24 hours to respond with your suggestions and then Mr. Sikstrom will either incorporate your suggestions or he will forward your email or whatever you send to him together with his form of order. I will make the final decision based on his form of order and whatever comments you have provided.

Applications heard on July 2, 2026

Reasons filed at Calgary, Alberta
this 20th day of July, 2026

Friesen J.A.

Appearances:

Applicant Bright Days Premium Child Care Inc. (limited audience)

B. Sikstrom
for the Respondent