

In the Court of Appeal of Alberta

Citation: Chisholm v Fehlberg Estate, 2026 ABCA 331

Date: 20261019

Docket: 2603-0063AC

Registry: Edmonton

Between:

Leigh Anne Chisholm

Applicant

- and -

**The Estate of Dieter Fehlberg,
Registrar of Titles, and Muhammad Arshad**

Respondents

**Reasons for Decision of
The Honourable Justice Karan M. Shaner**

Application for Permission to Appeal

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Introduction

[1] The applicant, Leigh Anne Chisholm, seeks permission to appeal an order I granted dismissing her application to extend time to file notice of appeal to a panel of this Court. *Chisholm v Fehlberg Estate*, 2026 ABCA 282.

Background

[2] In 2023, a judge of the Court of King’s Bench granted an order that, among other things, directed property held in the estate be transferred into the name of a third party (the 2023 order). The applicant appealed from that order, but she did not pursue the appeal and, therefore, it was struck. In 2026 the applicant brought two applications before the same judge (the 2026 applications). The first was a Surrogate Court application in which she sought a determination that the 2023 order was void for want of jurisdiction. The second was a civil proceeding in which the applicant asked that the land transferred under the 2023 order be restored to its state immediately before that order was granted. Both applications were dismissed. The chambers judge determined he was *functus* and that the two applications were collateral attacks on the 2023 order. Accordingly, he dismissed the applications (the 2026 orders). The applicant missed the deadline to appeal the 2026 orders and brought an application before me to extend time to file notice of appeal.

[3] I heard the extension application on August 20, 2026. I dismissed the application and awarded costs to the respondents. The application turned on whether the proposed appeals stood a reasonable chance of success. I found the applicant had not identified any legal or factual error that could form the basis of an arguable appeal from the 2026 orders and concluded the proposed appeals were without merit. Allowing them to proceed would not serve in the interests of justice. On September 4, 2026, the applicant filed this application for permission to appeal my order to a panel of this Court, pursuant to rr 14.5(1)(a) and 14(2) of the *Alberta Rules of Court*, Alta Reg 124/2010 [Rules].

Discussion

[4] Permission to appeal a single judge’s decision should be granted only where there is a “compelling reason” to require the parties reargue an issue before a panel of three judges of this Court. *Ouellette v Law Society of Alberta*, 2021 ABCA 283 at para 14. Simply wanting to reargue the same matters is not a sufficient reason to grant permission to appeal. *Alberta Health Services v Wang*, 2017 ABCA 261 at para 4. Permission may be granted if the

applicant can establish: a misapprehension of important facts; a possible error of law; an unreasonable exercise of discretion; or there is a question of general importance. ***Settlement Lenders Inc v Blicharz***, 2016 ABCA 109 at para 1, leave to appeal to SCC refused, 70287 (20 October 2016).

[5] The applicant argues that the record contradicts my finding that she failed to identify any legal or factual errors that could form the basis of an appeal. The interpretation she suggests is incorrect. While the applicant's materials identify the reasons she disagrees with the outcomes of the 2026 applications, and why she feels the appeals have merit, she did not identify any error that would undermine the legal and factual conclusions the chambers judge relied upon to dismiss the 2026 applications. Put simply, she did not demonstrate a legal basis for the proposed appeals.

[6] The applicant also argues I erred in law by determining the merits of the appeals (i.e. whether the applications that led to the 2026 orders were a collateral attack on the 2023 orders). She asserts I should have considered only whether the grounds of the proposed appeals were "reasonably arguable". It is well-settled that a single judge of this Court sitting in chambers is required to perform a merits assessment on applications for extension of time, as it is not appropriate to permit appeals with no chance of success to proceed. ***Ouellette et al v Law Society of Alberta***, 2021 ABCA 99 at para 94; ***Grivicic v Alberta Health Services (Tom Baker Cancer Center)***, 2016 ABCA 47 at para 11; ***Dahlseide v Dahlseide***, 2013 ABCA 434 at para 7. An appeal will stand a reasonable chance of success or be reasonably arguable where it is not hopeless or frivolous. ***Stoddard v Montague***, 2006 ABCA 109 at para 21; ***RD v LT***, 2020 ABCA 179 at paras 19, 22. The assertions must be grounded in the record, and it is not enough to merely submit that there was an error warranting intervention. ***Stavro Melathopoulos Architect Ltd v Webber Academy Foundation***, 2018 ABCA 38 at paras 14-15.

[7] The chambers judge characterized the 2026 applications as a collateral attack on the 2023 order. The applicant disagreed with that finding. Accordingly, in determining whether the appeal was reasonably arguable for the purposes of the extension application, it was necessary for me to consider the doctrine of collateral attack. This doctrine bars a proceeding when a party seeks to avoid complying with an order by challenging the order and its enforceability in a separate forum, with a focus on whether another forum is the proper way to challenge the decision. ***Resler v Anglin***, 2026 SCC 23 at para 28. The chambers judge determined the proper forum for challenging the 2023 order was an appeal to this Court. In examining his reasons, particularly his articulation and application of the doctrine of collateral attack to the circumstances of this case, I was unable to find any legal or factual error that could allow me to conclude the proposed appeals have a reasonable chance of success.

[8] The applicant points to r 9.15, which, among other things, permits a judge to set aside or vary an order or judgment made without notice to an affected person, or following a trial or hearing, when an affected person did not appear because of an accident or mistake or because of insufficient notice of the trial or hearing. She argues the chambers judge should have applied this

rule in assessing the 2026 applications, and that had it been applied, the applications could not have been characterized as a collateral attack. The applicant further argues the chambers judge's failure to consider and apply r 9.15 gives rise to a serious question of general importance which will affect future applications. Both arguments fail. The applicant attended the hearings that resulted in both the 2023 and 2026 orders. She cannot bring herself within the parameters of r 9.15.

[9] The applicant argues that I exercised my discretion unreasonably in finding the respondents would suffer prejudice if the appeals were allowed to proceed. I disagree. Substantively, the applicant attempted to challenge the 2023 order through the 2026 applications after failing to pursue an appeal. The 2023 order has been in place three years. The passage of time directly prejudices the respondents, as the substance of the 2026 applications relate to the directions laid out in the 2023 order, which have been executed.

Disposition

[10] The application for permission to appeal is dismissed.

[11] The Court will prepare the resulting order and r 9.4(2)(c) is invoked.

Written submissions filed on September 4, 10 and 18, 2026

Reasons filed at Edmonton, Alberta
this 19th day of October, 2026

Shaner J.A.

Submissions:

Applicant L.A. Chisholm

T.J. King
for the Respondent The Estate of Dieter Fehlberg

J. Flanders
for the Respondent Registrar of Titles

Respondent M. Arshad (no written submissions)