

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: *Hatfield v. Mader*, 2011 NSCA 45**

**Date:** 20110516  
**Docket:** CA 333604  
**Registry:** Halifax

**Between:**

Linda Hatfield

Applicant

v.

Darren Mader and Susan Mader

Respondent

**Judge:** The Honourable Justice Peter M. S. Bryson

**Motion Heard:** May 5, 2011, in Chambers

**Held:** Motion granted

**Counsel:** Appellant, in person  
Vincent A. Gillis, for the respondents

## **Decision:**

### **Introduction**

[1] Linda Hatfield has appealed the decision of the Honourable Justice Cindy Bourgeois awarding property to Mr. and Mrs. Mader on the basis of adverse possession. The parties are neighbours and Ms. Hatfield is Mr. Mader's paternal aunt.

[2] On May 5, 2011, Ms. Hatfield brought two motions; one for fresh evidence and the second for a stay of execution of the orders granted by Justice Bourgeois following her decision.

[3] Mr. and Mrs. Mader have brought a motion for security for costs.

[4] At the hearing, I advised Ms. Hatfield that the practice of the Court is for the panel hearing the appeal on its merits to consider her motion for fresh evidence and, accordingly, that I would not entertain that motion. Mr. Gillis, on behalf of the Maders, advised the Court that his clients did not oppose a stay provided they could record the orders granted by Justice Bourgeois pursuant to the *Land Registration Act*, S.N.S. 2001, c. 6. They agreed not to execute the orders pending the appeal. Mr. Gillis further advised that if his clients could record the orders, they would withdraw their motion for security for costs.

[5] Ms. Hatfield advised the court that she did not agree to the condition on which the Maders would consent to a stay.

[6] At the conclusion of the hearing, I said that I would order a stay, allow the Maders to record their Orders, and that I would dismiss the motion for security for costs. I also said that I would issue written reasons. These are those reasons.

### **Background**

[7] Following a 14-day trial, and subsequent arguments with respect to costs, Justice Bourgeois issued two orders. The first order dated February 9, 2011 grants a "declaration of adverse possession" against Ms. Hatfield and in favour of the Maders for certain lands depicted in a survey attached to the order. The Maders were also granted a permanent injunction barring Ms. Hatfield from entering the lands, requiring her to remove fences and a storage shed from the lands, to pay damages of \$100 and to pay \$2,500 for trespass. The order also grants a

permanent right-of-way over a driveway and requires Ms. Hatfield to remove a gate across that driveway.

[8] In a second order, March 15, 2011, Justice Bourgeois granted costs of \$28,000.00 plus disbursements to the Maders.

### **Test for a Stay**

[9] Ordinarily the court would entertain a stay pursuant to *Rule* 90.41 and apply the test in *Fulton Insurance Agency Ltd. v. Purdy* (1990), 100 N.S.R. (2d) 341 (C.A.). But that is not really necessary here because the Maders agree to a stay of Justice Bourgeois's decision, provided they can record (but not execute upon) her orders. Ms. Hatfield would not agree to this term or condition but she was not able to say how it might prejudice her.

[10] If the *Fulton* test were applied, the condition requested by the Maders is something that would be weighed by the court in the balance of convenience. That is why prejudice to Ms. Hatfield could be relevant. But she claimed none, despite some questioning by the court on this motion and on a previous conference call with the parties.

### **Conclusion**

[11] In the result, I am prepared to grant the stay requested by Ms. Hatfield but on the condition that the orders of Justice Bourgeois be recorded, but not executed.

[12] Since the Maders advised that they would not pursue their motion for security for costs if the foregoing order was made, and because the recording of the orders provides the Maders with some measure of security in any event, I dismiss the Maders motion for security for costs.

[13] Costs of these motions will be for the panel hearing the appeal to decide.

Bryson, J.A.