

COURT OF APPEAL FOR ONTARIO

CITATION: Lanark (County) v. Morrow, 2012 ONCA 64

DATE: 20120131

DOCKET: C54014

Weiler, Armstrong and Rouleau JJ.A.

BETWEEN

County of Lanark

Applicant (Respondent in Appeal)

and

Steven James Morrow and Joan Lorene Morrow

Respondents (Appellant in Appeal)

Donald R. Good, for the appellant

William R. Hunter, for the respondent

Heard and released orally: January 13, 2012

On appeal from the judgment of Justice Michael J. Quigley of the Superior Court of Justice, dated June 27, 2011.

ENDORSEMENT

[1] The appeal is dismissed. The appellant alleges that there were disputed facts that precluded the matter being decided by way of application. We disagree. While there may have been a number of disputed peripheral facts, the facts necessary for the application judge to dispose of the matter were not in dispute.

[2] The respondent County acknowledges that the dismissal of this appeal does not preclude the appellant from bringing an action to claim damages as a result of the actions of the County in lowering the culvert on the Lee property or in otherwise increasing the flow of water across his property. We make no comment as to whether such an action is justified.

[3] The appellant also appealed the costs award made by the application judge.

[4] With respect to the costs of the initial application we are of the opinion that having regard to the proportionality principle, leave to appeal should be granted and the costs award to the County should be reduced to \$12,000. The costs of the application for stay are awarded to the County and are fixed in the amount of \$2,500. The costs of the appeal are awarded to the County fixed in the amount of \$8,000. All costs are inclusive of disbursements and applicable taxes.

“K.M. Weiler J.A.”
“Armstrong J.A.”
“Paul Rouleau J.A.”