

IN THE COURT OF APPEAL OF MANITOBA

Coram: Mr. Justice Marc M. Monnin
Mr. Justice Christopher J. Mainella
Mr. Justice James G. Edmond

BETWEEN:

<i>JANET ANN MAY PALAMAR</i>)	<i>F. Sadiq</i>
)	<i>for the Appellant</i>
)	
<i>(Petitioner) Appellant</i>)	<i>K. P. Mikos</i>
)	<i>for the Respondent</i>
<i>- and -</i>)	
)	<i>Appeal heard:</i>
<i>ROBERT JOHN PALAMAR</i>)	<i>October 10, 2025</i>
)	
<i>(Respondent) Respondent</i>)	<i>Judgment delivered:</i>
)	<i>January 12, 2026</i>

On appeal from *Palamar v Palamar*, 2025 MBKB 7 [*Palamar*]

MONNIN JA

Introduction

[1] This is an appeal from a judgment of a Court of King's Bench appeal judge (the appeal judge) dismissing a petition for divorce and answer under rules 24.01(1) (dismissal for delay resulting in significant prejudice) and 24.02(1) (dismissal for long delay) of the MB, *King's Bench Rules*, Man Reg 553/88 [the *Rules*]. This appeal raises the applicability and use of rule 24 in the family law context. As I will explain, in my view, rule 24 does not allow

for the dismissal of the answer in these proceedings. For the reasons that follow, the appeal is allowed.

Background

[2] The petitioner (the wife) and the respondent (the husband) commenced cohabitation on November 1, 1995 and married on July 26, 1997. There are two children of the marriage who are now adults. The wife currently resides in Manitoba while the husband lives in Ontario. The parties separated on May 21, 2018. The wife petitioned for divorce on November 9, 2018 (the petition). Apart from seeking a divorce, she also sought sole custody, child support, equal division of family property, spousal support and partition or sale, as well as financial disclosure.

[3] The husband filed an answer on November 18, 2019 (the answer), agreeing to, amongst other things, the partition or sale, equal division of property, financial disclosure and the divorce. He contested custody, child support and spousal support and sought joint custody.

[4] The parties are registered owners in joint tenancy of a commercial building in Manitoba from which the wife has operated a business. There are two registrations against the title: one being a mortgage to a credit union and the other being a certificate of judgment in favour of a bank for approximately half the value of the building against the husband's interest.

[5] In March 2024, the wife filed a notice of motion that requested an order dismissing the answer (the motion). While the grounds alluded to in the motion simply referred to the *Rules*, the motion before the associate judge proceeded on the basis that the significant delay caused by the husband's

conduct met the criteria required under rules 24.01(1) and 24.02(1). As well, the wife sought an order pursuant to rule 24.06(1) that the dismissal of the answer for delay serve as a defence to any subsequent action on the part of the husband.

[6] At the hearing of the motion, the wife argued that rule 24 applied to allow her request to strike the answer. The husband's position was that the delay was as a result of the wife's conduct and did not satisfy the requirements of the rule. The husband did not take the position that rule 24 should not apply to the dismissal of the answer or that the petition filed by the wife should be dismissed.

[7] The associate judge, relying upon *Duncan v Magnusson*, 2023 MBKB 33 [*Duncan*] and *Ruchotzke v Ruchotzke*, 2022 MBQB 153 [*Ruchotzke*], dismissed the answer pursuant to rules 24.02(1) and 24.01(1). As well, the associate judge ruled that the dismissal of the answer would serve as a defence to any subsequent action brought by the husband, subject only to the Court's *parens patriae* authority to address any unresolved issues in relation to the parties' children, including child support.

[8] The husband appealed and raised as a legal issue that, if the answer should be dismissed, the petition for divorce should also be dismissed. At the appeal judge's urging, the parties were asked to consider the applicability of rule 24.06(1) given that both parties wanted a divorce and there was a concern that not all of the issues remaining between the parties would be addressed if one or more of the pleadings were dismissed.

[9] The appeal judge took the position that "it would be fair, reasonable and proportionate to allow the [h]usband to raise [a] new legal argument on

appeal” (*Palamar* at para 46). He concluded that the three-year delay applied to both the petition and the answer and therefore dismissed both. As to whether the dismissal amounted to a defence to any further action, the appeal judge concluded that the dismissal would not be a defence to future litigation respecting potential child support arrears or the commercial building. He awarded costs of the entire litigation to that point to the wife.

[10] The wife appeals to this Court, arguing that the appeal judge erred in allowing a new argument to be raised before him at the appeal hearing and in dismissing both the petition for divorce and the answer. The husband’s position in this appeal is that the appeal judge properly allowed the new argument to be raised and correctly interpreted the applicability of rule 24.

[11] At the appeal hearing before this Court, the panel raised with counsel a concern that rule 24, notwithstanding jurisprudence to the contrary, does not allow for a petitioner to move to strike an answer on the basis of delay. Thus, the motion was improperly brought before the associate judge and the appeal judge.

[12] For the reasons that follow, I am of the view that the use of rule 24 by a petitioner to strike an answer is not a proper use of that rule.

Rule 24

[13] As explained by this Court in *Buhr v Buhr*, 2021 MBCA 63 [*Buhr*], changes to the *Rules*, including rule 24, were part of an overhaul intended to expedite and bring finality to civil proceedings (see *Buhr* at para 33). Rule 24.02, which imposed a “drop-dead rule” (*Buhr* at para 33) for dismissal where there had been three or more years of inactivity, was a fundamentally

different approach to delay than the then current rule 24.01, which required a balancing of factors, including prejudice. *Buhr* was this Court's first opportunity to examine rule 24.02, which had come into force on January 1, 2018. It was not a case arising from the Court of King's Bench Family Division but, rather, a claim for damages as a result of sexual assault. For ease of reference, I have attached rule 24 as an appendix to these reasons.

[14] As to the applicability of rule 24.02 to proceedings in the Family Division, it was first raised in *Ruchotzke*. That case involved motions by both parties to dismiss the pleadings for long delay. In response to a petition for divorce, the respondent had filed an answer and petition for divorce himself. As noted by the motion judge in *Ruchotzke*: "While Rule 70 governing family proceedings does not contain a provision for dismissal of an action for delay, the Rules generally apply to family proceedings 'except where [Rule 70] provides otherwise, expressly or by implication'" (at para 19) (footnotes omitted). While a petition was included by the rule, given the wording of rule 1.03, the motion judge noted that neither party had addressed whether it also included an answer, noting that it was, in essence, akin to a statement of defence and a counterclaim.

[15] The motion judge referred to the case of *Esler v Busch*, 2022 MBQB 76, a decision of an associate judge, which held that an answer was covered by rule 24. On appeal, a Family Division judge agreed with that outcome; namely, that an answer could be dismissed on a motion for delay under rule 24.04 as it was akin to a statement of defence and counterclaim (see *Esler v Busch*, 2022 MBQB 171 [*Esler*]). Rule 24.07 stipulates that rules 24.01 to 24.06 apply, with necessary changes, to counterclaims.

[16] The next decision from the Family Division is that of *Duncan*, where a petitioner moved to dismiss the respondent's answer and petition for divorce for delay under rule 24. After review of the then current jurisprudence and, particularly, *Ruchotzke*, the motion judge opined that rule 24.02 applied to proceedings in the Family Division and dismissed the respondent's answer and petition.

[17] In my view, there is merit to the position that rule 24 allows for a motion for dismissal for delay to be brought by a respondent where a petitioner has not advanced the action and the facts meet the requirements of either rule 24.01 or rule 24.02. However, the conclusion that rule 24 also allows for dismissing an answer is based on the erroneous conclusion that, as an answer may contain requests for relief, it is akin to a counterclaim and, thus, contemplated by rule 24.07. That was the finding in *Esler* and has been relied upon since. In my view, it is incorrect.

[18] An answer in practice and in fact is more of a statement of defence in that it responds to a petition filed by the petitioner. It may contain a request for additional relief, but sometimes an answer is simply a response to the petition. To the extent that an answer is an exposition of the defence, it is not envisaged by rule 24 to be the subject of a motion for delay by the petitioner, just as a statement of defence cannot be the subject of a motion for dismissal for delay brought by a plaintiff. That is not contemplated by rule 24 and is not within its scope. The attempt to bring an answer within rule 24 is inconsistent with its purpose and scope.

Origin of Rule 24.02 or the Long-Delay Rule

[19] As this Court has pointed out in previous decisions (see *Buhr*), the origin of rule 24 stems from rule changes in Alberta, which form the basis of changes to the *Rules* in our jurisdiction. Alberta has very similar provisions to Manitoba with respect to rule 24.02 in their general rules of court section, which apply to all proceedings. It is explicitly stated in the family law rules section that the general rules within part 4 (in which the delay provisions are found) apply to family proceedings (see *Alberta Rules of Court*, Alta Reg 124/2010 [the *AB Rules*]).

[20] It should be noted that, in Alberta, the documents used in divorce proceedings follow closely to those used in general civil proceedings in Manitoba. Instead of a petition, a litigant seeking a divorce would file a statement of claim for divorce. Instead of an answer, a respondent would file a statement of defence and, if necessary, a counterclaim for divorce (see part 12 of the *AB Rules*).

[21] As to an application for dismissal for long delay, rule 4.33 of the *AB Rules* requires a party seeking such relief to become an applicant and the “‘respondent’ means a party who has filed a commencement document”. The definition section in the appendix to the *AB Rules* defines a “commencement document” narrowly; namely, a statement of claim, an originating application, a counterclaim, a third party claim and a claim under the *Family Law Act* (see *Danis-Sim v Sim*, 2024 ABCA 297 at para 26). In other words, the ability to bring such a motion is limited to seeking relief against the party who has commenced the action. Therefore, the rule upon which our rule 24 is patterned

does not contemplate that proceedings can be taken to dismiss the document filed in response to a statement of claim (or, in this case, a petition).

[22] Other jurisdictions, which do not have a rule equivalent to rule 24, have rules using the nomenclature of “Want of prosecution” (BC, *Supreme Court Family Rules*, BC Reg 169/2009, part 21, r 21-2(5); see also *Rules of the Supreme Court, 1986*, SNL 1986, c 42, Schedule D). In British Columbia, the ability to seek to have a family law case dismissed for want of prosecution is given only to a respondent. As the wording suggests, a want of prosecution refers to the lack of advancement of a proceeding by the party seeking relief.

[23] Similarly, Saskatchewan has a want of prosecution rule that is only available to a defendant (see *The King’s Bench Rules* (Saskatchewan), r 4-46(5)). As to Ontario, the civil procedure rules do not apply to family proceedings (see ON, *Rules of Civil Procedure*, RRO 1990, Reg 194, r 1.02(1)(2)); while there is a discretionary delay rule, it is only available to defendants (see r 24.01).

[24] While this is not a complete canvass of the provisions throughout the country, the general thrust is that there is a recognition that a party commencing a proceeding cannot, as a result of a responding party’s delay, seek to strike a pleading filed in response to its commencement document under a delay rule. This reinforces my view that rule 24 does not contemplate the motion that was brought by the petitioner in this case.

[25] Rule 70 of the *Rules* should be amended to reflect the specific needs of family law litigation. In any event, rule 24 does not allow the motion brought by the wife in this case. For that reason, I am of the view that the appeal should be allowed.

New Ground of Appeal

[26] A secondary issue raised before this Court is that the appeal judge erred by allowing a new ground on appeal; namely, the ability of the husband to seek the dismissal of the petition under rule 24.02 (the drop-dead rule), something that had not been raised before the associate judge and something for which no motion has been filed. In my view, the issue is not one of a fresh ground of appeal but, rather, the granting of relief that has not been requested (see the *Rules*, r 70.31(3)). There is no motion filed by the respondent either before the associate judge or before the appeal judge seeking a dismissal of the petition for delay under rule 24 and it should not have been entertained (see *Asiwaju v Adetoro*, 2024 MBCA 47; *Aquila v Aquila*, 2016 MBCA 33 at para 27).

Conclusion

[27] For these reasons, I am of the view that the appeal should be allowed. The matter should be referred to the Court of King's Bench Family Division triage list as soon as possible. Given the outcome, I would order that costs are in the cause in the Court of King's Bench and in this Court.

Monnin JA

I agree: _____ Mainella JA

I agree: _____ Edmond JA

APPENDIX

Rule 24 of the MB, King's Bench Rules, Man Reg 553/88:

MOTION FOR DISMISSAL FOR DELAY

Dismissal for delay

24.01(1) The court may, on motion, dismiss all or part of an action if it finds that there has been delay in the action and that delay has resulted in significant prejudice to a party.

Presumption of significant prejudice

24.01(2) If the court finds that delay in an action is inordinate and inexcusable, that delay is presumed, in the absence of evidence to the contrary, to have resulted in significant prejudice to the moving party.

What constitutes inordinate and inexcusable delay

24.01(3) For the purposes of this rule, a delay is inordinate and inexcusable if it is in excess of what is reasonable having regard to the nature of the issues in the action and the particular circumstances of the case.

Dismissal for long delay

24.02(1) If three or more years have passed without a significant advance in an

MOTION POUR REJET DE L'ACTION

Rejet pour cause de retard

24.01(1) Le tribunal peut, sur motion, rejeter une action, en tout ou en partie, s'il estime qu'elle a fait l'objet d'un retard ayant causé un préjudice important à une partie.

Présomption de préjudice important

24.01(2) Lorsque le tribunal estime que le retard dont une action fait l'objet est inhabituel et inacceptable, ce retard est présumé, en l'absence de preuve contraire, avoir causé un préjudice important à la partie ayant présenté la motion.

Retard inhabituel et inacceptable

24.01(3) Pour l'application de la présente règle, tout retard est inhabituel et inacceptable lorsqu'il excède ce qui est raisonnable compte tenu des circonstances et de la nature des questions du litige.

Rejet pour cause de long retard

24.02(1) Lorsqu'au moins trois ans s'écoulent sans que

action, the court must, on motion, dismiss the action unless

- (a) all parties have expressly agreed to the delay;
- (b) the action has been stayed or adjourned pursuant to an order;
- (c) an order has been made extending the time for a significant advance in the action to occur;
- (d) the delay is provided for as the result of a case conference, case management conference or pre-trial conference; or
- (e) a motion or other proceeding has been taken since the delay and the moving party has participated in the motion or other proceeding for a purpose and to the extent that warrants the action continuing.

Excluded time

24.02(2) A period of time, not exceeding one year,

des progrès importants n'aient lieu dans le cadre d'une action, le tribunal la rejette sur motion, sauf dans l'un des cas suivants :

- a) toutes les parties ont expressément accepté le retard;
- b) il a été sursis à l'action ou l'action a été ajournée en conformité avec une ordonnance;
- c) une ordonnance prolongeant le délai pouvant s'écouler avant que des progrès importants n'aient lieu dans le cadre de l'action a été rendue;
- d) le retard découle d'une conférence de cause ou de gestion de cause ou d'une conférence préparatoire au procès;
- e) une motion a été présentée ou une autre instance a été entreprise depuis le retard et la partie ayant présenté la motion ou entrepris l'instance y a participé à des fins ou dans une mesure justifiant la poursuite de l'action.

Période exclue

24.02(2) La période de temps écoulée entre la signification

between service of a statement of claim and service of a statement of defence is not to be included when calculating time under subrule (1).

Excluded time — period under disability

24.02(3) Any period of time when a person is under disability is not to be included when calculating time under subrule (1).

Transitional — no application to motions before January 1, 2019

24.02(4) The court may only apply subrule (1) in a motion to dismiss an action for delay that has been brought after January 1, 2019.

Notice to Public Guardian and Trustee

24.03 A party who brings a motion to dismiss an action brought by, or on behalf of a person who is under disability for delay must serve the notice of motion and all supporting materials on the Public Guardian and Trustee.

Procedural order if action not dismissed

24.04 If the court refuses to dismiss an action for delay under rule 24.01 or 24.02, it may still make any procedural order it considers appropriate in the circumstances.

d'une déclaration et celle de la défense, jusqu'à concurrence d'un an, est exclue du calcul de la période prévue au paragraphe (1).

Exclusion — période pendant laquelle une personne est incapable

24.02(3) Le calcul de la période prévue au paragraphe (1) exclut toute période pendant laquelle une personne est incapable.

Disposition transitoire — application après le 1^{er} janvier 2019

24.02(4) Le tribunal ne peut appliquer le paragraphe (1) que si la motion visant le rejet d'une action est présentée après le 1^{er} janvier 2019.

Avis au tuteur et curateur public

24.03 La partie qui présente une motion de rejet d'une action intentée par un incapable ou en son nom pour cause de retard en fait signifier une copie accompagnée de tous les documents à l'appui au tuteur et curateur public.

Ordonnance de procédure en cas d'action non rejetée

24.04 Lorsqu'il refuse de rejeter une action pour cause de retard comme le prévoient les règles 24.01 ou 24.02, le tribunal peut néanmoins rendre toute ordonnance de procédure

qu'il juge indiquée dans les circonstances.

EFFECT OF DISMISSAL
ON CROSSCLAIM
OR THIRD PARTY CLAIM

EFFET DU REJET SUR LA
DEMANDE ENTRE
DÉFENDEURS OU SUR LA
MISE EN CAUSE

**Effect on crossclaim or
third party claim**

24.05 When an action against a defendant who has made a crossclaim or third party claim is dismissed for delay,

- (a) the crossclaim or third party claim is deemed to be dismissed with costs; and
- (b) the defendant may recover those costs and the defendant's costs of the crossclaim or third party claim from the plaintiff.

**Effet sur une demande entre
défendeurs ou sur une mise en
cause**

24.05 En cas de rejet pour cause de retard d'une action contre un défendeur qui s'est porté demandeur contre un autre défendeur ou dans une mise en cause :

- a) la demande entre défendeurs ou la mise en cause, selon le cas, est réputée rejetée avec dépens;
- b) le défendeur peut recouvrer ces dépens du demandeur, de même que ses propres dépens dans la demande entre défendeurs ou la mise en cause.

EFFECT ON SUBSEQUENT
ACTION

EFFET SUR UNE ACTION
SUBSÉQUENTE

Not a defence

24.06(1) The dismissal of an action for delay is not a defence to a subsequent action unless the order dismissing the action provides otherwise.

Défense non acceptée

24.06(1) Le rejet d'une action pour cause de retard ne peut être opposé en défense à une action subséquente, sauf disposition contraire de l'ordonnance de rejet.

Failure to pay costs

24.06(2) Where a plaintiff's action has been dismissed for delay with costs, and another action involving the same subject matter is subsequently brought between the same parties or their representatives or successors in interest before payment of the costs of the dismissed action, the court may order a stay of the subsequent action until the costs of the dismissed action have been paid.

APPLICATIONS TO
COUNTERCLAIMS,
CROSSCLAIMS AND
THIRD PARTY CLAIMS

Application

24.07 Rules 24.01 to 24.06 apply, with necessary changes, to counterclaims, crossclaims and third party claims.

**Défaut de paiement des
dépens**

24.06(2) Si l'action d'un demandeur a été rejetée avec dépens pour cause de retard et qu'une autre action relative au même objet est intentée subséquemment entre les mêmes parties, leurs représentants de la succession, ou leurs ayants droits avant le paiement des dépens de l'action rejetée, le tribunal peut ordonner le sursis de l'action subséquente jusqu'au paiement.

APPLICATION AUX
DEMANDES
RECONVENTIONNELLES,
AUX DEMANDES ENTRE
DÉFENDEURS ET AUX
MISES EN CAUSE

Application

24.07 Les règles 24.01 à 24.06 s'appliquent, avec les adaptations nécessaires, aux demandes reconventionnelles, aux demandes entre défendeurs et aux mises en cause.