

NOVA SCOTIA COURT OF APPEAL

Citation: *Near v. Costello*, 2015 NSCA 1

Date: 20150108

Docket: CA 426381

Registry: Halifax

Between:

Derek John Near

Appellant

v.

Nathalie Marie Costello

Respondent

Judge: Justice David P.S. Farrar

Motion Heard: January 8, 2015, in Halifax, Nova Scotia, in Chambers

Held: Motion allowed.

Counsel: Appellant Derek John Near, not appearing
Steven G. Zatzman, Q.C., for the respondent

Decision:

Background

[1] Mr. Near appeals the decision and Order of Justice Elizabeth Jollimore dated January 27 and March 3, 2014, respectively. He was self-represented at the hearing below and is self-represented on this appeal. His Notice of Appeal takes issue with the trial judge ordering costs of \$1,000 and retroactive child support. He also asks that ongoing payments be made in quarterly installments.

[2] The matter came on before Scanlan, J.A. in Chambers on August 20, 2014, for the setting of dates for filing of the Appeal Book and facta and setting a date for the hearing. At that time Mr. Near indicated that the Appeal Book would be ready by September 26, 2014.

[3] Justice Scanlan ordered that the Appeal Book be filed by October 16th, the appellant's factum was due October 30th, the respondent's factum November 28th and the hearing date was set for January 22nd, 2015 at 2 p.m.

[4] By my count, Mr. Near, with the consent of the respondent, was granted four extensions to file the Appeal Book. As noted above, it was originally scheduled to be filed on October 16th. That was extended to October 31st, it was then extended to November 21st, then to December 5th and finally to December 10th.

[5] Mr. Near was also granted three extensions to file his factum, the last one being December 10th, 2014. To date he has not filed the Appeal Book nor has he filed a factum.

[6] On December 15th, 2014, the respondent filed a Notice of Motion pursuant to *Civil Procedure Rule* 90.43 to dismiss this appeal on the basis that the appellant has failed to perfect the appeal pursuant to Rule 90.43(1)(e) by not filing and delivering the Appeal Book and the appellant's factum within the time provided. The respondent also seeks costs of the proceeding if dismissed.

[7] Mr. Near did not appear on the motion. He has not filed any documentation in response to the Notice of Motion nor has any explanation been given for his failure to perfect the appeal.

[8] Justice Jamie W.S. Saunders in **Islam v. Sevgur**, 2010 NSCA 114, summarized the principles that should govern a court's discretion to dismiss an appeal for failure to perfect the appeal or grant an extension of time to comply with the Rules. I will not repeat all of the principles outlined by Justice Saunders but will address the ones pertinent to this motion.

Whether there are good reasons for the appellant's default, sufficient to excuse the delay

[9] There were no reasons provided by the appellant to explain his default. It follows that there is not sufficient reason to excuse the failure to perfect the appeal.

The appellant's willingness to comply with future deadlines

[10] The appellant has demonstrated an unwillingness to comply with deadlines and requirements under the Rules. He has shown that, despite numerous extensions, he is not prepared to adhere to deadlines. I am not satisfied that if future deadlines were imposed that they would be met.

Prejudice to the respondent if the motion was denied and effective use of Court resources

[11] The respondent has been more than accommodating to Mr. Near in consenting to the extensions of time. However, it is understandable that when he failed to meet the last deadline, December 10, 2014, the respondent was not prepared to consent to any further adjournments.

[12] Our Rules require the "just, speedy and inexpensive determination of every proceeding" (Rule 1.01). In light of Mr. Near's failure to comply with any deadline and his failure to provide any reason for doing so, Ms. Costello should not be put to any further expense with respect to the matter nor should any further judicial resources be expended.

Conclusion

[13] The respondent's motion to dismiss the appeal is allowed with costs to the respondent in the amount of \$500.00.

Farrar, J.A.