

NOVA SCOTIA COURT OF APPEAL
Citation: *Kampa-Brousseau v. Plouffe*, 2015 NSCA 55

Date: 20150602
Docket: CA 427067
Registry: Halifax

Between:

Sabine Kampa-Brousseau

Appellant

v.

Stephen Paul Plouffe

Respondent

Editorial Notice

Email addresses and telephone numbers have been removed from this
electronic copy of the judgment.

Judge: Farrar, J.A.
Motion Heard: May 28, 2015, in Halifax, Nova Scotia in teleChambers
Held: Registrar's motion to dismiss granted.
Counsel: Appellant in person
Respondent in person

Decision:

[1] This matter was originally scheduled for a Registrar's motion to dismiss on April 30, 2015, before Justice Duncan Beveridge. The matter was subsequently adjourned to May 21, 2015 and, at the request of the appellant, further adjourned to May 28, 2015. The appellant requested another adjournment on May 28 which was refused. After hearing argument from the appellant, who is self-represented, and Mr. Plouffe, who is also self-represented, I granted the Registrar's motion to dismiss and indicated I would provide written reasons. These are those reasons.

Background

[2] This appeal arises out of (to put it mildly) an ongoing post-divorce discord between the parties which culminated in the appellant bringing a motion for contempt against the respondent for failure to comply with Court orders arising out of the divorce. The motion was heard by Justice Moira Legere Sers over three days, April 17, 2013; June 6, 2013; and September 12, 2013 in Port Hawkesbury, Nova Scotia. In a comprehensive 35-page decision dated February 19, 2014, Justice Legere Sers found Mr. Plouffe had breached previous court orders and found him in contempt. However, she also found that he had purged the contempt by subsequently complying with the orders. She declined to order damages or costs. A detailed background can be found in Legere Sers, J.'s decision reported at 2014 NSSC 60.

[3] On May 1st, 2014, the appellant filed a Notice of Appeal. The grounds as set out in the Notice of Appeal are as follows:

- (1) Decision was concluded before Trial process started
- (2) Trial was manipulated by Respondent and his Counsel with information which was not stated at Contempt Trial date on 12 September 2013 and that influenced to make Judges decision
- (3) Justice has been unethical and unjust served in the whole proceedings towards appellant
- (4) Justice decisions conclude breaching orders and committing crime of theft is allowed to harm the appellant and cause damages to her salvation, without any punishment towards respondent by the courts of law granted

- (5) Judges conclusion taken from a premeditated mix up of information received from Respondent to be deliberately confused on her decisions and orders.
- (6) Corruption in Justice and through Justice proceedings
- (7) Judges decision is based on creativity of a fictions made up that has been cut and pieced together with no actual relativity to appellants actual case all throughout proceedings and influenced by respondent and hi counsel as well Justice Administration Personal
- (8) Respondent and his Counsel manipulated Judges decision by using backdoor feedback without advising appellant of any during the time of trial nor before or after of any other information.
- (9) Consistent conflict of interest during trial process
- (10) Appellant sustained of unethical abusive Behavior from Justice and Respondent and his Counsel

[4] The Registrar's customary letter was sent to the appellant on May 8, 2014 indicating that the Notice of Motion for Date and Directions and a Certificate of Readiness was to be filed by August 27, 2014.

[5] A Notice of Motion for Date and Directions, a Certificate of Readiness and an Affidavit addressing deficiencies in the Certificate of Readiness were filed by the appellant with the Court on September 24, 2014, and the matter was set down for telephone Chambers on October 1, 2014. As a result of being unable to contact Mr. Plouffe that day the matter was adjourned to October 15, 2014.

[6] The matter was heard in telephone Chambers before Justice Cindy Bourgeois on October 15, 2014. At that time, the date of December 17, 2014, was set for filing of the Appeal Book. Another telephone Chambers was scheduled for January 14, 2015, to determine the status of the filing of the Appeal Book and to set hearing dates.

[7] The matter was heard by me on January 14, 2015, at which time the appellant sought an extension of time to file her Appeal Book. However, she did not give any indication as to when it would be available. Mr. Plouffe did not consent to the extension.

[8] On January 14, 2015 it was explained to the appellant that if she wished to extend the filing date it was going to be necessary for her to make a motion in Chambers with supporting affidavit as to why the Appeal Book had not been filed. To date no such application has been made.

[9] It was also explained to her that it was her responsibility to proceed with her appeal and that failure to do so could result in either Mr. Plouffe or the Registrar making a motion to dismiss.

[10] The matter was adjourned without day.

[11] There was no further activity on the appeal until April 13, 2015, when the Registrar made a motion to dismiss the appeal pursuant to Rule 90.43(3) and (4) returnable April 30, 2015.

[12] The appellant appeared before Justice Duncan Beveridge on April 30, 2015, and despite being more than three months since her January 15 appearance in telephone Chambers, had done nothing to get the transcript from the proceeding below or to prepare the appeal book.

[13] She said she had made inquiries with a court reporting service and that the total cost of the transcript would be \$1,500 plus tax. The court reporting service would not start without a deposit of \$750. Ms. Kampa-Brousseau had known this for many months, however, she said she could not afford to pay. She did not have a plan for obtaining the transcript nor a timetable for when she would be able to afford to have it transcribed.

[14] She also advised that she wanted counsel to assist her in the appeal, including the preparation of the Appeal Book. She advised that a Mr. Janis Lambert may be prepared to assist her with the appeal.

[15] Although she had not met him as at April 30, 2015, she had skyped with him. He, Ms. Kampa-Brousseau advised, was a UK lawyer who practices here and in the United States. She said she was supposed to pick him up at the airport within ten days. According to her, Mr. Lambert had agreed to act for her *pro bono*.

[16] Justice Beveridge warned her at that time that she was at real risk of having her appeal dismissed as she was either unwilling or unable to comply with the requirements of the **Civil Procedure Rules** or directions of the Chambers judge.

[17] Justice Beveridge adjourned the matter to May 21, 2015, and he directed Ms. Kampa-Brousseau to report on the status of Mr. Lambert, whether she had obtained a Court log and her efforts to be able to produce the transcript on that date.

[18] On Wednesday, May 20, 2015 the Registrar's office received a communication, purportedly, from Mr. Lambert. I will reproduce the communication in its entirety. The grammatical, typographical and misspellings appear in the original document:

From: Lambert West [xxx]

Sent: Wednesday, May 20, 2015 11:30 AM

To: McClare, Sarah J

Subject: [PROBABLE SPAM] Reschedule court date

The Law courts, 15 Upper Water Street, Halifax ,NS BJ 1S7, Canada.

Dear Mrs Sarah,

I am barister Janis Lambert husband to Mrs Sabine I am writing in respect of the court between Sabine Kampa Brousseau Vs Stephen Paul Plouffe I want to make an appeal if the date can change to next week in other for me to make my available to advocate for her. Presently, I am handling a case her in Europe Greece I will make my trip back home this weekend

Yours sincerely

JANIS

Send from Yahoo Mail on Android

[19] In a remarkable turn of events, Mr. Lambert, who Ms. Kampa-Brousseau said that she had only skyped with previously, was now identifying himself as her husband.

[20] As a result of the receipt of Mr. Lambert's correspondence, I adjourned the matter to May 28, 2015. On May 20 the Court wrote to Mr. Lambert as follows:

From: Brown, Cherri R.

Sent: May 20, 2015 12:45 PM

To: Lambert West [xxx]

Cc: Sabine Kampa [xxx]; Stephen Plouffe [xxx]; Anselm, A.E.; McClare, Sarah J

Subject: RE: Reschedule court date

Dear Mr. Lambert:

Your email was forwarded to me for response. Ms. McClare has taken your request for an adjournment of tomorrow's court appearance, scheduled for Thursday, May 21 2015, to the Chambers judge for review. Please be advised that the Chambers judge has granted your request and has adjourned the Registrar's motion to dismiss the appeal to next Thursday. Therefore, the motion will be **rescheduled for regular chambers on Thursday, May 28 2015 at 10:00**

am. The docket will be updated to indicate your representation of the appellant Ms. Kampa-Brousseau. The motion will be removed from the Chambers docket scheduled for tomorrow, May 21 2015.

You may be required to complete an "Agent Representation" form for next week's court appearance.

Yours truly,

Cherri Brown
Deputy Registrar

[21] Nothing further was heard from Mr. Lambert and on May 26, the Registrar sent another message to Mr. Lambert as follows:

From: Anselm, A.E.

Sent: May 26, 2015 4:08 PM

To: Brown, Cherri R.; Lambert West [xxx]

Cc: Sabine Kampa [xxx]; Stephen Plouffe [xxx]; McClare, Sarah J

Subject: CA: 427067: Sabine Kampa-Brousseau Vs. Stephen Paul PlouffeRE : Reschedule court date

Mr. Lambert:

Would you kindly provide me with your formal business address please? Also, can you kindly advise in which province you are currently licenced to practice?

Finally, I echo Ms. Brown's advised that Civil Procedure Rule 33 formalities regarding a Notice of New Counsel, an Appointment of Agent or some other related document would have to be filed with the Court at your earliest.

Thanks you for your attention to this matter.

Sincerely,

A.E. Anselm
Registrar, Nova Scotia Court of Appeal
Provincial Prothonotary, Supreme Court of Nova Scotia
The Law Courts
1815 Upper Water Street
Halifax, Nova Scotia, B3J 1S7
1-902-424-8962 (Phone)
1-902-424-0524 (Fax)

[22] Both the May 20 and May 26 communications were copied to the appellant and to date, no response has been received nor has the Court heard anything further from Mr. Lambert.

[23] Not surprisingly, on May 28 the Registrar received another request for an adjournment from the appellant. This time due to car problems. Again, I will set out the appellant's communication of May 28, 2015 in its entirety:

From: Sabine Kampa [mailto:xxx]
Sent: May 28, 2015 8:10 AM
To: Brown, Cherri R; McClare, Sarah J; Anselm, A.E.; Lambert West
Cc: Sabine Kampa
Subject: please note
Dear Registrar,

forgive me the late notice to be send today, as I had attended to be at court this morning and to take up the 3 hr drive down to Halifax today , yet as I am facing since last hour and half Engine problems with the Vehicle I was supposed to travel and only made it half ways down before it stalled out on me, and I can't get another driver in such short time lines up, as it is also my understanding the my Husband and Lawyer Mr. Janis Lambert who is to also for unforeseen reason unable to make his way to court today and believe he addressed the Court also already and I was at least attending to be present irregardless.

I would much like to ask the Judge and request the Courts patience and considerations in this as well allow for an extension or adjournment till next weeks possible court date available to book us in for an appearance then at Court. I much would appreciate to be granted a court date for the 4th of May 2015 for 10:00 am and meanwhile make certain that we both are able to attend. My deepest apologize again. Thank you in advance. Please inform me of the Judges decision in this. Thank you again.

Best regards,

Sabine

[24] As can be seen she now refers to Mr. Lambert as her husband. This email, in terms of style, grammatical and misspelling errors, is remarkably similar to the email purportedly received from Mr. Lambert.

[25] I refused to grant the adjournment and an email was sent to Ms. Kampa-Brousseau indicating I would hear her via telephone:

From: Anselm, A.E.
Sent: May 28, 2015 9:29 AM

To: 'Sabine Kampa'; Brown, Cherri R; McClare, Sarah J; Lambert West
Subject: Court of Appeal Chambers – Thursday 28 May 2015.

Ms. Kampa:

Thanks for your email of this morning. I am very sorry to hear of your car problems, and very much appreciate your efforts to advise the court in a timely fashion.

I can advise that at this point, the Court is unprepared to grant an adjournment, and the matter will be dealt with in chambers this morning as scheduled. If you would like, we can accommodate you by way of telephone conferencing, and you can participate in that way. If that is your desire, kindly advise me as soon as possible and provide me with the number at which you can be reached this morning for the telephone chambers calls.

I await your response.

Sincerely,

A.E. Anselm

Registrar, Nova Scotia Court of Appeal

Provincial Prothonotary, Supreme Court of Nova Scotia

The Law Courts

1815 Upper Water Street

Halifax, Nova Scotia, B3J 1S7

1-902-424-8962 (Phone)

1-902-424-0524 (Fax)

[26] In response the Registrar received the following reply from Ms. Kampa-Brousseau advising she had lost her voice:

From: Sabine Kampa [mailto:xxx]

Sent: May 28, 2015 9:48 AM

To: Anselm, A.E.; Brown, Cherri R; McClare, Sarah J; Lambert West

Subject: Court of Appeal Chambers – Thursday 28 May 2015.

Ms. Ansel,

Thank you for your reply of correspondence and consideration, much appreciate all your efforts as well, and my apology for not being able to be there today in person, as I also have lost some my Voice in process of all my other troubles as well, yet hope that I can be heard well by the courts when made available to speak by Tel-Conference in Chambers. As you requested from me, I am making my self available for the Tel-Conference today for 10:00 am with Judge in Chambers.

The number to reach me by Phone is: 902-XXX-XXXX and thank you again for making this at least possible. Again I am grateful for all your understanding and compassion as well efforts in this matter and much appreciated.

Truly yours,

Sabine Kampa

[27] The matter was heard by me by telephone Chambers. Ms. Kampa-Brousseau, in a weak and very raspy voice, attempted to explain why she had not taken steps to proceed with her appeal. Her explanation lacked any substance insofar as it related to her efforts to secure the Appeal Book or to move the matter forward. Instead, she simply said her case had merit and that it ought not to be dismissed.

[28] I inquired about Mr. Lambert. She said he was still in Greece on another case. She also advised that he was not her husband but that they were engaged to be married in October.

[29] Mr. Plouffe also attended by way of telephone. I asked him to explain his position on the request for a further extension of time to comply with the **Civil Procedure Rules**. He started to put forward his position and, in particular, the fact that this matter had been going on for over six years and that it was time for it to come to an end. He was abruptly interrupted by Ms. Kampa-Brousseau, who had, miraculously, recovered her voice. No longer was she speaking in a low, raspy voice but was speaking in a forceful, loud voice with no hint of any difficulty.

[30] When I remarked that her voice seemed to have miraculously recovered she reverted to again a low, raspy voice saying words to the effect – that happens when someone says something to her that makes her mad.

[31] I then asked Mr. Plouffe to continue with his submissions and admonished Ms. Kampa-Brousseau that she was not to interrupt him again.

[32] Once again, before he could complete his comments, he was interrupted by Ms. Kampa-Brousseau in a tone of voice that showed no difficulty in speaking.

[33] At that point I concluded the hearing and advised the parties that I was allowing the Registrar's motion to dismiss with reasons to follow.

Analysis

[34] Justice Jamie W.S. Saunders in **Islam v. Sevgur**, 2011 NSCA 114 summarized the principles that would govern a court's discretion to dismiss an appeal for failure to perfect the appeal or grant an extension. He held:

[36] The approach I take in such matters is this. Once the Registrar shows that the rules for perfecting an appeal have been breached, and that proper notice of her intended motion has been given, the defaulting appellant must satisfy me, on a balance of probabilities, that the Registrar's motions ought to be denied. To make the case I would expect the appellant to produce evidence that it would not be in the interests of justice to dismiss the appeal for non-compliance. While in no way intended to constitute a complete list, some of the factors I would consider important are the following:

- (i) whether there is a good reason for the appellant's default, sufficient to excuse the failure.
- (ii) whether the grounds of appeal raise legitimate, arguable issues.
- (iii) whether the appeal is taken in good faith and not to delay or deny the respondent's success at trial.
- (iv) whether the appellant has the willingness and ability to comply with future deadlines and requirements under the Rules.
- (v) prejudice to the appellant if the Registrar's motion to dismiss the appeal were granted.
- (vi) prejudice to the respondent if the Registrar's motion to dismiss were denied.
- (vii) the Court's finite time and resources, coupled with the deleterious impact of delay on the public purse, which require that appeals be perfected and heard expeditiously.
- (viii) whether there are any procedural or substantive impediments that prevent the appellant from resuscitating his stalled appeal.

[37] It seems to me that when considering a Registrar's motion to dismiss, a judge will wish to weigh and balance this assortment of factors, together with any other circumstances the judge may consider relevant in the exercise of his or her discretion.

Application of the Principles to this Case

- (i) *Whether there is a good reason for the appellant's default, sufficient to excuse the failure*

[35] Ms. Kampa-Brousseau's excuse for not filing the Appeal Book was that she could not afford it. However, she did not advise the Court she could not afford to produce the Appeal Book until her appearance before Justice Beveridge on April 30th. Nor did she give the Court any indication as to the amount of time it would take her to raise the money to pay for the Appeal Book or the time that it would take for it to be completed. However, I would add that if this were the only issue on the appellant's failure to perfect the appeal, I might have been persuaded to grant a further extension. However, as will be seen, that is not the only problem I have with the appellant's failure to perfect the appeal.

- (ii) *Whether the grounds of appeal raise legitimate, arguable issues*

[36] I earlier set out the grounds of appeal from the Notice of Appeal when reviewing the background leading up to the motion to dismiss. Quite frankly, the grounds of appeal are nonsensical. They do not speak to any error in the motion judge's findings. As I noted earlier, Justice Legere Sers provided a 35-page comprehensive, detailed, well-reasoned decision with respect to the issues before her. She also noted that Ms. Kampa-Brousseau wished to relitigate issues that were properly the subject of a variation application or an appeal of the corollary relief judgment. None of the grounds of appeal would, on their face, warrant appellate intervention.

[37] I am not persuaded that there are legitimate arguable issues in this appeal.

- (iii) *Whether the appeal is taken in good faith*

[38] I am not satisfied this appeal is taken in good faith. Justice Legere Sers made note of the chronic, irresolvable communication breakdown between the parties and the acrimony between them on their divorce. It is apparent from the trial judge's decision that Mr. Plouffe's actions in failing to obey court orders was intentional and obstructive. That's why she found he was in contempt. But by the time she rendered her decision, the contempt had been purged.

[39] It appears from Ms. Kampa-Brousseau's grounds of appeal and conduct that the sole purpose of her appeal is to continue the acrimony between the parties with no justifiable reason.

[40] I also consider Ms. Kampa-Brousseau's lack of good faith in dealing with the court to be a significant factor on this motion. I am not for a minute satisfied that Mr. Lambert exists or, if he does exist, that he is a barrister in the UK. One would expect that if a person was a barrister they would at least be able to spell the word. Further, his lack of response to the Court when asked to provide his address and particulars of where he is licensed to practice law speaks volumes.

[41] As well, the bizarre transition from speaking with Mr. Lambert on skype, to him becoming her husband within a period of three weeks and subsequently her advising the Court that he was her fiancée and that they were going to be married in October are simply incredulous.

[42] Add to this the supposed problems with her car and the loss of her voice which miraculously recovers when she is angered, leads me to conclude that Ms. Kampa-Brousseau has not been dealing with the Court in good faith and, in fact, has been misleading the Court in order to prolong this appeal.

[43] Her conduct has wasted the resources of the Court, its staff and the respondent Mr. Plouffe.

[44] I further conclude from Ms. Kampa-Brousseau's conduct, her misrepresentations to the court and her failure to meet court-imposed deadlines that she has a flagrant disregard for **Civil Procedure Rules**, the Court and Mr. Plouffe. I have no difficulty in concluding that this appeal is not being pursued in good faith.

(iv) *Whether the appellant has a willingness and ability to comply with future deadlines and requirements of the Rules*

[45] Ms. Kampa-Brousseau has not complied with the deadlines nor has she provided an adequate excuse for her failure to do so. I am not satisfied that Ms. Kampa-Brousseau would comply with any future deadlines. Setting another deadline would send the message that Ms. Kampa-Brousseau's conduct in misleading the Court would pay dividends. I am not prepared to do so.

(v) *Prejudice to the appellant if the Motion to Dismiss were granted*

[46] I have already commented on the merits of this appeal and Ms. Kampa-Brousseau's complete lack of good faith in pursuing it. The dismissal of the appeal at this stage, in light of these comments, would not cause any prejudice to the appellant.

(vi) *Prejudice to the respondent if the motion to dismiss were denied*

[47] The respondent, although self-represented, has had to expend time and effort in responding to the many Chambers appearances. More importantly, he has had this appeal hanging over his head for more than a year. To allow further time to Ms. Kampa-Brousseau to perfect the appeal would be unfair to Mr. Plouffe in light of the manner in which Ms. Kampa-Brousseau has proceeded to date.

(vii) *The Court's time and resources and effect of the delay*

[48] As commented on above, the Court has spent considerable time and resources on this appeal. In light of my view on the merits of the appeal and Ms. Kampa-Brousseau's lack of good faith, no further judicial resources should be expended on this matter.

(viii) *Whether there are any procedural or substantive impediments that would have prevented the appellant from resuscitating a stalled appeal*

[49] There are no procedural or substantive impediments which prevented Ms. Kampa-Brousseau from proceeding with her appeal.

Conclusion

[50] Having taken into consideration the principles that govern a Court's discretion to dismiss an appeal, I am satisfied that this is a proper case to allow the Registrar's motion and dismiss the appeal. Although it is tempting to award costs against Ms. Kampa-Brousseau in light of her conduct, because this is a Registrar's motion, I would decline to do so.

[51] The Registrar's motion to dismiss the appeal is allowed and the appeal is dismissed.

Farrar, J.A.