

NOVA SCOTIA COURT OF APPEAL
Citation: *McPherson v. Nielsen*, 2015 NSCA 59

Date: 20150616
Docket: CA 432654
Registry: Halifax

Between:

Drew McPherson

Appellant

v.

Grainne Nielsen

Respondent

Judge: Farrar, J.A.

Motion Heard: June 11, 2015, in Halifax, Nova Scotia in Chambers

Held: Registrar's Motion for Dismissal denied.

Counsel: Appellant in person
Andrea Isabelle, for the respondent

Background:

[1] This matter was originally scheduled for a Registrar's motion to dismiss on June 4, 2015 before me. I heard the matter on that date and rendered an oral judgment allowing the Registrar's motion and dismissing the appeal. Mr. McPherson was not in court that day nor did he provide any written submissions on the motion.

[2] However, Mr. McPherson, who is in custody on a criminal matter, had been brought to the courthouse that day and was in the cells downstairs. As a result of a miscommunication, he was not brought to the courtroom to answer to the motion. When I became aware of this issue, I advised counsel for the respondent and Mr. McPherson that I would not be issuing the order and adjourned the matter to Thursday, June 11, 2015 at 10 a.m. to hear the motion.

[3] The matter was heard on June 11, 2015. Mr. McPherson was present and made submissions on his own behalf.

[4] At the conclusion of the submissions by Mr. McPherson and counsel for the respondent I reserved decision indicating I would provide written reasons. These are my reasons.

Decision

[5] This appeal arises out of a dismissal of Mr. McPherson's action against Dr. Grainne Nielsen by Mr. Justice Jamie Campbell on a summary judgment motion. Justice Campbell also awarded costs of \$3,750.00 payable forthwith.

[6] Mr. McPherson filed a Notice of Appeal on October 22, 2014. The Registrar's customary letter was sent to the appellant before December 2, 2014 indicating that the notice of motion and date for motion and directions and a certificate of readiness was to be filed by February 18, 2015.

[7] On March 11, 2015, another letter was sent to Mr. McPherson reminding him of his obligation to make a motion for date and directions.

[8] Hearing nothing from Mr. McPherson, the Registrar, on May 21, 2015, filed a motion to dismiss.

[9] Throughout this period of time Mr. McPherson was in custody on remand awaiting trial on criminal charges. He is self-represented on this appeal. He is also self-represented in the criminal trial which, at the time of my hearing of this motion, was ongoing in the Supreme Court of Nova Scotia.

[10] When Mr. McPherson appeared before me on June 11 he was asked to explain the reasons why he had not made a motion for date and directions or filed a certificate of readiness. He explained while he is in prison that he has no access to a computer which would allow him to access forms or other information which he could then print off, complete and file. He said to dismiss his appeal at this time would result in an injustice to him.

[11] He anticipates his incarceration will end in the near future and therefore requested that I extend the times for complying with the **Rules**.

[12] Counsel for the respondent supported the Registrar's motion and asked that it be granted and the appeal dismissed.

[13] Normally, in a situation such as this, where there has been a significant delay, I would grant the Registrar's motion. However, Mr. McPherson has persuaded me that he had an adequate excuse for failing to comply with the **Rules**. I accept his explanation that while in custody it is difficult for him to access a computer and to file documents. As a result, I am going to set filing dates in this matter and, if Mr. McPherson fails to meet these dates, it will result in the Registrar's motion being granted.

[14] I direct the following:

1. The Appeal Book is to be filed on or before September 1, 2015. (As this was a summary judgment application heard in Chambers, the Appeal Book should not be particularly difficult to assemble and file);
2. Mr. McPherson is to file his factum on or before September 25, 2015;
3. If he has complied with these timelines, the respondent's factum is to be filed by October 16, 2015.

[15] I am going to set the date of November 26, 2015, at 10 a.m. for the hearing of the appeal in this matter. If counsel or Mr. McPherson have difficulty in attending on that date they may apply in teleChambers to reschedule.

[16] To be abundantly clear, failure by Mr. McPherson to comply with any of these timelines will result in an order being issued granting the Registrar's motion and dismissing this appeal without further notice to either party.

Farrar, J.A.