

**NOVA SCOTIA COURT OF APPEAL**

**Citation: S.S. v. D.S., 2011 NSCA 14**

**Date:** 20110202

**Docket:** CA 335120

**Registry:** Halifax

**Between:**

S.S.

Appellant

v.

D.S. and Minister of Community Services

Respondents

**Publication Ban:** pursuant to s. 94(1) of the **Children and Family Services Act**

**Judge:** The Honourable Justice David P.S. Farrar

**Motion Heard:** January 20, 2011, in Halifax, Nova Scotia, in Chambers

**Held:** Motion to dismiss the appeal is granted and appeal dismissed.

**Counsel:** appellant in person  
respondent D.S. not appearing  
Lindsay McDonald, for the respondent Minister of Community  
Services

**PUBLISHERS OF THIS CASE PLEASE TAKE NOTE THAT s. 94(1) OF THE CHILDREN AND FAMILY SERVICES ACT APPLIES AND MAY REQUIRE EDITING OF THIS JUDGMENT OR ITS HEADING BEFORE PUBLICATION.**

**SECTION 94(1) PROVIDES:**

**94(1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.**

**Decision:**

[1] This is a Registrar's motion to dismiss the appellant's appeal pursuant to **Civil Procedure Rules** 90.43(3) and (4) of the **Civil Procedure Rules** for failing to perfect the appeal within the time lines. After the Registrar filed her motion, the respondent, Minister, made a motion for an order of costs against the appellant, or in the alternative, ordering the appellant to return to the Minister the entirety of the transcript of the proceedings produced by the Minister.

[2] After hearing argument from Ms. S. and the solicitor for the Minister, I allowed the Registrar's motion and dismissed the appeal. I also dismissed the Minister's motion for costs. The respondent D.S. was not present.

[3] I advised the parties that I would file written reasons for my decision, what follows are those reasons.

[4] Justice Moira Legere Sers of the Nova Scotia Supreme Court (Family Division) heard evidence over 23 days spanning from February, 2010 to July, 2010, that served as both a Final Disposition Hearing under the **Children and Family Services Act**, S.N.S. 1990, c. 5 (**CFSA**) and a custody and access hearing under the **Divorce Act**, R.S.C. 1985, c. 3 (2nd Supp.). The trial judge's decision dismissing the **CFSA** proceeding and granting sole custody to the father, with access to Ms. S. is reported as 2010 NSSC 308. Two separate orders were issued, both dated August 17, 2010. One for the dismissal of the protection proceedings; the other pursuant to s. 16 of the **Divorce Act**.

[5] Ms. S. filed a handwritten notice of appeal on August 27, 2010, naming her husband and the Children's Aid Society of Inverness/Richmond as respondents (the Notice of Appeal was subsequently amended to name the Minister of Community Services as a respondent instead of the Children's Aid Society). The notice of appeal purported to appeal from both the child protection proceeding and the divorce proceeding. As a remedy the appellant sought co-parenting or sole custody.

[6] A lengthy telephone Chambers appearance took place on September 8, 2010. At that time, the appellant was advised that as this was an appeal pursuant to s. 49 of the **CFSA**, that the hearing must proceed within the time frames set out in the

**CFSA.** Directions were given to the appellant on the steps necessary to proceed with her appeal. A further telephone Chambers appearance was set for September 29, 2010.

[7] The appellant provided to this Court and the respondents an amended notice of appeal on September 15, 2010.

[8] On September 29, 2010, the telephone Chambers appearance was held as scheduled. On that date the appellant said that she was not appealing the dismissal of the **CFSA** proceedings. Despite this, the appellant continued to assert, up to and at the time of the present motion, that she was appealing the previous proceedings involving the Children's Aid Society.

[9] The appellant was given two weeks to serve the parties with an amended notice of appeal to identify the order she was appealing.

[10] The appellant was also directed to notify the other parties of the documents that had been entered as exhibits at trial that she did not have so that they might assist her in obtaining the documents.

[11] The appellant agreed to file her appeal book by November 30, 2010. A further telephone Chambers appearance was set for October 22nd, 2010.

[12] On October 13, 2010, the appellant sent by fax a letter to the Registrar of the Court of Appeal and the parties which included a new version of her notice of appeal.

[13] On the October 22, 2010, telephone Chambers appearance the hearing date was set for January 31st, 2011. The date for filing of the appellant's factum was set at December 20, 2010; the respondent's factum was to be filed by January 10, 2011. The date for the appeal book remained the same; November 30th, 2010.

[14] The appellant was provided with the hearing transcript on October 29, 2010, by the Minister as required by s. 49(4) of the **CFSA**.

[15] On November 29, 2010, the appellant requested an extension to December 7 to file the appeal book. The extension was granted. An extension to file her factum was not requested nor granted.

[16] On Friday, December 10, 2010, the appellant wrote the Registrar complaining of the lack of co-operation from the other parties in helping her source the exhibits to be included in the appeal book. She also cited financial impediments to being unable to copy and file the appeal book. She requested an extension of dates to file the appeal book, facta and an adjournment of the hearing date.

[17] A telephone Chambers appearance was arranged with the parties on December 15, 2010. The appellant was advised:

1. the hearing would proceed as scheduled on January 31, 2011;
2. she was to file her appeal book and factum; and, if necessary, she would be permitted to file a supplementary appeal book containing documents she acquired later; and
3. she was to immediately provide to the other parties the list of exhibits that she did not have to see if they could assist her in obtaining them.

[18] On December 21st, 2010, the Registrar was advised by the respondent Minister that she had not received the list of the appellant's missing exhibits, the transcript, any portion of the appeal book or the appellant's factum. Nor did the appellant file her appeal book or factum with the Court as required.

[19] When the dates for filing the appeal book and factum passed, the appellant took no initiative to bring the matter to the attention of this Court, or to request an adjournment supported by reasons.

[20] Between December 21st, 2010, and December 31, 2010, repeated attempts were made by court staff to contact Ms. S. by email and telephone without a response.

[21] On December 31, 2010, the appellant sent an email to the Registrar citing financial reasons for failing to file her appeal book. She did not request an extension on the filing dates or an adjournment of the appeal. Nothing further was received from the appellant.

[22] By notice of motion dated January 5th, 2011, the Registrar moved for a dismissal of the appeal on the basis that it had not been perfected within the time allowed by the **Civil Procedure Rules**.

[23] The appellant did not file any documentation in response to the Registrar's motion. As previously noted, the Minister filed a motion requesting costs. The appellant was served with the Minister's motion on January 11, 2011. She did not respond or file any documents on that motion.

[24] The appellant attended the motion on January 20, 2011, citing her lack of funds as the reason for failing to copy the appeal book. She also indicated that she was still missing some exhibits.

[25] The solicitor for the Minister was also in attendance and indicated she had not received a list of missing exhibits from the appellant, despite this Court, on two occasions, directing the appellant to do so.

[26] I was not satisfied with the appellant's explanation for her failure to comply with the schedule of filings nor was I provided with a basis to conclude that she would meet future filing dates if I adjourned the proceeding with new filing dates.

[27] By any objective standard, this file has long past any reasonable margin for tolerance in enforcing compliance with the **Rules**. Notwithstanding the Registrar's and counsel for the Minister's repeated efforts to accommodate the appellant and her circumstances, not to mention the Court's own investment of time and resources, the appellant, with respect, seems incapable of understanding what needs to be done and when it needs to be done.

[28] The record is replete with this Court's repeated attempts to explain to the appellant what needed to be done to perfect her appeal.

[29] The **Rules** are written in plain language so that legal proceedings may be determined through a process that is accessible, affordable, timely and fair. The efficient progression of cases through the system requires that the **Rules** be respected and enforced. Otherwise, the purpose of the **Rules** is frustrated.

[30] I am not satisfied that a further delay in this matter would result in the appellant honouring the procedural obligations facing any litigant in Nova Scotia.

[31] The Registrar's motion to dismiss, in these circumstances, is justified and the motion is granted. I order that the appellant's appeal is dismissed. However, in the circumstances, there shall not be any order as to costs.

Farrar, J.A.