

NOVA SCOTIA COURT OF APPEAL
Citation: *Calvi v. Swinimer*, 2015 NSCA 88

Date: 20151001
Docket: CA 439771
Registry: Halifax

Between:

Morgan F Calvi

Appellant

v.

Hope Swinimer, Homeward Bound, in care of Hope Swinimer,
Hope for Wildlife, in care of Hope Swinimer

Respondents

Judge: The Honourable Justice Cindy A. Bourgeois

Motion Heard: September 23, 2015, in Halifax, Nova Scotia in Tele-Chambers

Held: Motion dismissed. Dates set.

Counsel: Morgan Calvi, Appellant in Person
Hope Swinimer, Respondent in Person

Decision:

[1] This matter came before me in tele-chambers on Wednesday, September 23, 2015. After hearing the parties, and reviewing the materials on file, I advised the parties of the outcome of the motion, gave further directions and promised written reasons to follow. These are my reasons.

[2] On May 28, 2015, Ms. Calvi filed a Notice of Appeal challenging an order made by Justice Pierre Muisse pursuant to the *Cyber-safety Act*. That order, on its face, appears to vary several provisions of an order earlier made by another justice in February, 2015, who in turn, confirmed an original order made by a Justice of the Peace the previous month. The Notice of Appeal raises no grounds of appeal in relation to the two earlier orders.

[3] As is the usual practice, the Registrar of this Court forwarded correspondence to Ms. Calvi after the filing of the appeal advising that as the appellant in this matter, the *Civil Procedure Rules* required that she file a Motion for Date and Directions no later than September 23, 2015, along with a Certificate of Readiness.

[4] Ms. Calvi did not file either of the above, instead, on September 15, 2015 she filed a Notice of Motion seeking an “adjournment of expiry date of date and directions”, which set the matter down for tele-chambers on September 23rd.

[5] Ms. Calvi asked this Court to relieve her from the obligations as an appellant to move her matter forward within the time lines set out in the *Civil Procedure Rules*. She wanted to adjourn the setting down of her appeal to some unspecified point in the future, and re-activate it when she deemed appropriate.

[6] In support of her request, Ms. Calvi filed a brief affidavit in which she explained the rationale for her request as follows:

I am also unwell. I would like this matter adjourned because I am following Justice’s Glen McDougall’s decision as to whether the Cyber-Safety Act is unconstitutional, that case is Halifax # 434423.

[7] Ms. Calvi filed written submissions which added nothing of significance to the above. The same can be said of her submissions on September 23rd. Ms. Swinimer participated in the telephone conference, and advised she was not in

favour of “putting the appeal on hold”, as she was anxious to have legal issues with Ms. Calvi resolved.

Disposition:

[8] Based on the evidence before me, I was not satisfied that Ms. Calvi’s request was appropriate. The need to move legal disputes towards a timely conclusion is an underlying pillar of our system of justice. It is reflected in *Civil Procedure Rule* 1.01 which provides:

These Rules are for the just, speedy, and inexpensive determination of every proceeding.

[9] With respect, the reasons provided by Ms. Calvi to adjourn without date the setting of her appeal do not justify overriding this fundamental principle. With respect to her health, her only sworn evidence is the statement noted above. Attached to her written submissions was a copy of a prescription pad note from a physician (the signature is illegible), dated July 6, 2015, noting: “This patient has some very significant medical problems which prevent her attending court”. This of course is not admissible evidence, and even if it was, it is lacking in detail with respect to the context for which it was written, and the nature and expected duration of Ms. Calvi’s medical difficulties.

[10] The second reason advanced for placing this appeal on hold, was that Ms. Calvi wanted to wait for the outcome of a matter apparently before the Supreme Court of Nova Scotia. Again, no detail was provided about what issues are exactly before that lower court, if it has been argued as of yet, and how it relates to Ms. Calvi’s appeal. I carefully reviewed the Notice of Appeal filed in this matter. Although she asserted that certain aspects of Justice Muise’s order violated her *Charter* rights, nowhere does Ms. Calvi plead that the *Cyber-safety Act* is unconstitutional. Further, it does not appear that Ms. Calvi raised that issue in relation to the previous court proceedings, nor complied with the requirements of notifying the Attorney General of a constitutional question. Although it may be appropriate in some circumstances to await the outcome of one matter before proceeding with another, Ms. Calvi did not satisfied me this is such a case.

[11] Based on the materials before me, I was not convinced that it was appropriate to delay hearing a Motion for Date and Directions. Having reached that conclusion, there was a quandary in the sense that Ms. Calvi was, given the lateness of making this motion, out of time for making a Motion for Date and

Directions. Of course, she could make another motion to extend the time for doing so, but that would necessitate yet another motion, and another appearance for these self-represented litigants.

[12] After hearing from the parties, and in particular Ms. Swinimer's desire to have matters moved along, I exercised my discretion to hear the Motion for Date and Directions immediately, set the matter down and gave filing instructions.

[13] I directed as follows:

- (a) Ms. Calvi shall file the Appeal book in this matter by January 8, 2016;
- (b) Ms. Calvi shall file her appellant factum by January 29, 2016;
- (c) The Respondents shall file their factum by February 26, 2016;
- (d) The hearing of this matter is scheduled for March 31, 2016 at 10 a.m. for a half-day.

[14] In the circumstance of this case, the motion is dismissed, without costs.

Bourgeois, J.A.