

Date: 19980526

Docket: CA 144303

NOVA SCOTIA COURT OF APPEAL
Cite as: Howell v. Brathwaite, 1998 NSCA 126

Chipman, Hallett and Pugsley, JJ.A.

BETWEEN:

WANDA LEE HOWELL

Appellant

- and -

FRANK BRATHWAITE

Respondent

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)
) John W. Morgan
) for the Appellant
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) Joseph R. Wall
) for the Respondent
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) Appeal Heard:
) May 26, 1998
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) Judgment Delivered:
) May 26, 1998
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THE COURT:

Leave to appeal is granted but the appeal is dismissed with costs as per oral reasons for judgment of Chipman, J.A.; Hallett and Pugsley, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by:

CHIPMAN, J.A.:

This is an application for leave and, if granted, an appeal from a decision of Edwards, J. in Chambers granting the application of the respondent for an order for a production of additional documentary material and for the appellant's re-attendance at a medical examination to be conducted by the physician retained on behalf of the respondent.

We have considered the record, the written and oral arguments of counsel and the decision of Edwards, J.

In acting only upon the affidavits and exhibits before him and in reaching the conclusions that he did, Edwards, J. was exercising a discretion that rested with him on this interlocutory application. The appellant has not shown that in so doing, he erred in law or worked a manifest injustice.

Leave to appeal is granted. The appeal is dismissed, except as hereinafter provided, with costs to the respondent in any event of the cause in the amount of \$1,000.00, inclusive of disbursements. We vary the order for costs made by Edwards, J. to provide that the costs awarded by him are not payable on or before July 1, 1998, but simply in the event of the cause.

Chipman, J.A.

Concurred in:

Hallett, J.A.

Pugsley, J.A.