

BATEMAN, J.A.:

This is an appeal by David Allen Hill from Divorce and Corollary Relief Judgments granted on the 16th day of April, 1997.

BACKGROUND:

Mr. Hill was served with the Notice of Petition and Petition of Divorce on December 24, 1996. He did not respond nor file a Statement of Financial Information, notwithstanding a Notice requiring that he do so. The divorce went ahead on an uncontested basis. The relief requested in the Petition included an unequal division of assets and child support fixed in accordance with the Federal Guidelines. Ms. Hill attached to her Affidavit in support of the Divorce Order and Corollary Relief Judgment, a copy of Mr. Hill's income tax filing from 1995, which was the most current information available to her. In accordance with an agreement of the parties, Mr. Hill had been paying child support of \$250 per month, which was disclosed in Ms. Hill's Affidavit. Ms. Hill asked that the existing amount of child support be confirmed or that it be fixed by the Court conforming to that amount prescribed by the Child Support Guidelines. Ms. Hill is a recipient of social assistance. The Court fixed

the child support in accord with the Guidelines, assuming Mr. Hill's income to be as disclosed in the 1995 income tax filing.

ISSUES:

Mr. Hill, who is not represented by counsel, raises a number of issues in his Notice of Appeal. Of those issues, the only one that is relevant to an appeal relates to service of the Notice of Petition and Petition for Divorce. In this regard, Mr. Hill submits that service was not made in accordance with the **Civil Procedure Rules**, and, therefore, that the Judgments should be set aside.

ANALYSIS:

Mr. Hill does not deny that he was served with the documents. They were served, however, by the respondent/petitioner Lucille Wilma Hill. **Civil Procedure Rule 57.10(2)** provides that service be made by a person "other than the petitioner".

There had been unsuccessful attempts by a process server to serve Mr. Hill in Ontario where he was living and working at the time. In an Affidavit Lucille Hill deposes that, hearing that her husband was in this province, she attended at the residence where Mr. Hill was staying on December 24, accompanied by a friend, Tina

Duke. She provided Mr. Hill with the original Notice of Petition and Petition of Divorce. Ms. Hill deposes that, in fact, she can't remember whether the documents were handed to Mr. Hill by Tina Duke or herself. Later that day, realizing that she had given him the original of the documents, she returned to the residence, with a friend, Tracey Preeper, and retrieved the originals from Mr. Hill, exchanging them for copies. Mr. Hill signed the originals but declined to provide particulars of his permanent address. Tracy Preeper's Affidavit is on file confirming that she accompanied Ms. Hill to retrieve the signed originals; indeed, that Mr. Hill threw them at Ms. Hill after signing.

Civil Procedure Rule 2.01 provides that a failure to comply with the **Rules** shall not nullify a proceeding unless the Court otherwise orders. The purpose of service is to ensure that a party is aware of a legal proceeding. Mr. Hill was provided with the documents and was aware that his wife had commenced divorce proceedings. More than three months elapsed between the service and the granting of the divorce. Mr. Hill took no steps to set aside the service, nor respond to the proceedings. It is fair to speculate that he was content to let matters go ahead and was only motivated to appeal upon learning that the child support obligation had been substantially increased.

I am satisfied that it is appropriate to apply the curative effect of **Rule 2.01**. Mr. Hill's concerns about the quantum of child support can be addressed in an Application to Vary, should his financial situation be other than as assumed by the judge granting the Corollary Relief Judgment.

It is unnecessary to deal with the other grounds of appeal.

DISPOSITION:

The appeal is dismissed, but in the circumstances, without costs.

Bateman, J.A.

Concurred in:

Chipman, J.A.

Jones, J.A.

NOVA SCOTIA COURT OF APPEAL

BETWEEN:

DAVID ALLEN HILL)	
)	
Appellant)	
- and -)	
)	
LUCILLE WILMA HILL)	REASONS FOR
)	JUDGMENT BY:
Respondent)	BATEMAN, J.A.
)	
)	
)	