C.A. No. 121156

NOVA SCOTIA COURT OF APPEAL
Cite as Skoke v. Ryan, 1996 NSCA 3

BETWEEN:

BETTY ALEXANDRA SKOKE and ROSEANNE SKOKE Roseanne M. Skoke Appellants	for the Appellants
- and -	
STEVEN EDWARD RYAN, KAREN RYAN and LARRY RYAN Respondents	David G. Coles for the Media Intervenor Application Heard: January 25, 1996
- and -	
THE ATTORNEY GENERAL OF NOVA SCOTIA, representing Her Majesty the Queen in right of the Province of Nova Scotia	Decision Rendered: January 26, 1996
- and -	
Intervenor	
CANADIAN BROADCASTING CORPORATION Media Invervenor	

DECISION ON APPLICATION FOR MEDIA COVERAGE

BEFORE: **Justice Nancy J. Bateman in chambers.**

BATEMAN, J.A.:

This is an application by the Canadian Broadcasting Corporation for an order authorizing televised coverage of certain appeal proceedings.

As was outlined in **R. v. MacDonnell and Atlantic Television Systems,** (C.A.C. No. 118082, January 15, 1996) which is the decision on the first, contested, broadcast application, this Court has recently approved a pilot project permitting television and other photographic and audio coverage of its proceedings, by order of the Court. The Court has adopted "Rules and Guidelines", governing the process during the pilot project. A media outlet may apply to the Court, on notice to the parties, for an order permitting coverage. A party may file a notice of objection to the application. When an objection is made, the matter is heard by a judge in Chambers.

A media outlet applying for an order for coverage must arrange "pooled coverage" with all other interested media outlets. There will be only a single television camera in the courtroom, however, permission to broadcast the proceedings is not limited to the media applicant.

Rule and Guideline 9 provides:

> Television and other media coverage of proceedings of the Court of Appeal *shall be deemed to be in the public interest*. It shall be grounds for refusal of an order permitting coverage if the prejudice, disadvantage, hardship or other valid reason apprehended by a party resulting from coverage of the appeal or application outweighs the interest of the public in the granting of the order, or if media coverage of the proceedings to which the application applies is shown not to be in the public interest. (emphasis added)

Guideline 7 provides in part that "the chambers judge may grant or refuse an order permitting coverage, or may grant the order subject to conditions". **Guideline 14** says that "an order permitting coverage may contain such restrictions upon coverage within the courtroom as the judge granting the order . . .shall determine".

This appeal involves an application for access by an unwed father. A judge of the Supreme Court dismissed an appeal from a Family Court judge who granted an Order permitting the father and his parents access to a child born out of wedlock. The appellants are the mother and the grandmother of the child, who are the child's joint custodians. The mother of the child is 18 years old, and the child is 2 years old. As a constitutional issue has been raised, the Attorney General is a party to the appeal. The media intervenor seeks authority to broadcast the appeal from the decision of the Supreme Court judge. The appellants object to the application to broadcast the proceedings. The respondents, the father and paternal grandparents and the Attorney General, take no position on the application.

The appellants agree that the substantive legal issues raised on the appeal are in the public interest but submit that the "media coverage would prejudice, disadvantage and cause unnecessary hardship for the Appellants." The appellants further submit that the public interest can be served by public disclosure of the judicial decision or by media commentary "relating specifically to the substantive legal issues." The appellants submit that the overriding consideration in all family law proceedings is the best interests of the child and that it is not in the best interests of the child in these proceedings "to bring public media attention to the facts and circumstances of this case." The appellants submit that it is in the child's best interests "to have the personal facts and circumstances kept private to ensure that no prejudice, hardship, or disadvantage is created" for the child, now or in future.

Appeal proceedings are open to the public, subject to any publication bans which may exist. The parties before me have not advised that a ban was imposed by the Family or Supreme Court. It is, however, incumbent upon all media outlets contemplating any form of coverage of this appeal to determine whether a ban exists and, if so, to publish only within the limits of that ban.

Guideline 21 provides:

> Statutory publication bans and those ordered by another court with respect to a party or witness in a proceeding which is the subject of a coverage order shall be deemed to be in effect in the Court of Appeal unless revoked by an order of the Court, and shall be observed in all broadcasts or other publication of proceedings in the Court.

Counsel for the media intervenor submits that to deny filming and broadcast of the appeal, while allowing the print media to report, denies the intervenor freedom of expression through film. He cites **Re Ontario Film and Video Appreciation Society v. Ontario Board of Censors** (1983), 147 D.L.R. (3d) 58 (Ont.H.C.) aff'd (1984), 45 O.R. (2d) 80 (C.A.). That case concerned not a news report, but the question of censorship of movies. The media intervenor submits that the case is relevant in that it recognizes that film is a mode of expression, in particular the mode of expression of this media intervenor. He submits that to deny the right to film is to discriminate against the television media. While I recognize that film is the primary mode of expression of this media intervenor, if the filming of the actual appeal proceeding is not permitted, the C.B.C. may, nevertheless, report on the appeal.

Counsel for the intervenor cites, as well, the following passage from **A.G.N.S v. McIntyre** (1982), 49 N.S.R. (2d) 609 (S.C.C.), at p.618:

> Many times it has been urged that the "privacy" of litigants requires that the public be excluded from court proceedings. It is now well established, however, that covertness is the exception and openness the rule. Public confidence in the integrity of the court system and understanding of the administration of justice are thereby fostered. As a general rule, the sensibilities of individuals involved are no basis for exclusion of the public from judicial proceedings.

The appellants are not, however, requesting a publication ban. The issue is not whether this proceeding will be open to the public, but whether the "prejudice, disadvantage, hardship" or other concerns apprehended by the appellants resulting from

the proposed coverage outweighs the presumption that the filming of this appeal is in the public interest.

This appeal is not limited to the constitutional issue. The grounds of appeal include, as well, the issue of the merits of the Family and Supreme Court decisions as those decisions involve the circumstances particular to these parties. This is not an appeal limited to an academic argument on the constitutionality of the legislation. The factums canvas the evidence in some detail. I expect that the parties and the court will refer to that material on the appeal hearing. This evidence outlines very personal matters between these families including details of the relationship between the parents of this child. These are indeed intimate and private matters which would not normally become public nor in which the public has a legitimate interest.

Counsel for the media intervenor submits that the appellant cannot ask that I consider the precise nature of the evidence underlying this appeal as she did not refer to it with sufficient specificity in the affidavit filed in support of her objection. I disagree with that submission. To do otherwise would be to suggest that these applications are to be considered in a vacuum, and not on the backdrop of the particulars of the appeal. To require a litigant, who is objecting to a media application on the basis that the case involves private matters, to restate, in detail, the very matters about which she seeks to avoid publicity, would be unfair indeed. The relevant material already forms part of this Court's record. Additionally, I am satisfied that the appellant has referred to the relevant matters in her affidavit with sufficient particularity that the media intervenor is not taken by surprise. Obviously the Court, in considering an application, must consider the nature and specifics of the appeal, to the extent necessary.

The appellants' objection is directed to the anticipated *additional* publicity that this appeal will receive, if television coverage is permitted. The appellant Roseanne Skoke is a member of Parliament representing Central Nova. While this proceeding does not

relate to any issue arising from her duties as a member of Parliament, she fears that, due to her public position, this matter will receive undue public attention and that televised coverage of the full proceeding will reach a much wider audience than would occur through the usual means of publication.

The Family Court Judge was concerned about the publicity in this matter as evidenced by his remarks. He writes in his Reasons for Decision dated January 11,1995:

> PUBLICITY:
>
> Since the rendering of the decision on December 23 to the solicitors for the parties (Elizabeth Van Den Eynden - counsel for the applicants, and Roseanne Skoke - counsel for the respondents), the Family Court has received requests from a number of news agencies for copies of the decision dated December 23.
>
> **The Family Court Act**, c. 159 R.S.N.S. 1989, provides at s. 10(2) as follows:
>
> > A Judge of the Family Court shall as far as possible guard against any publicity in proceedings in the Court.
>
> *Historically, the Family Court has taken the position that it is not in the best interests of the child and the extended families to publicize proceedings in the court.*
>
> Section 10(3) provides as follows:
>
> > The place in which proceedings in the Family Court take place shall not be deemed to be a public court and no person shall be permitted to be present other than the officers of the Court, the parties, their counsel, witnesses and such other persons as the presiding judge of the Court may require or permit to be present.
>
> *The Court does not consider that the rendering of more detailed reasons for the courts decision will be of benefit to the parties in view of the extensive publicity this case has generated.*

> This court finds that it is in the best interest of the child, Angellina, that the parties be focused on establishing mutually satisfactory routines through communication and cooperation in order to provide access in accordance with the Recommendation for Visitation Patterns by Dr. William F. Hodges, a copy of which was attached to the decision of December 23, 1994.
>
> *Consistent, with the equitable dispatch of the business of the Family Court, this court will exercise its discretion by not rendering any further detailed reasons for the decision of December 23, 1994.* (emphasis added)

Various statutes contain provisions which, in certain circumstances, permit a judge to prevent the publication information which would tend to identify a young person before the courts. Not uncommonly, judicial decisions involving sensitive matters concerning youths are released using initials, not names. Family Court proceedings are not commonly open to the public. These measures are reflective of the sensitivity of the courts to the importance of the privacy interests of young persons and families before the courts.

Counsel for the media intervenor submits that there is no provision in the **Guidelines** which exempts family law proceedings from coverage. He says that to deny television coverage here would create a precedent for refusing coverage of all family law appeals. He submits that if it was this Court's intention that family law proceedings not be televised, the **Guidelines** would contain an exception. In not excepting family law proceedings this Court, he submits, intended that there be media access, equally, to all proceedings in the Court of Appeal. It may be that family law proceedings should rarely be televised. That issue will be developed as future applications are heard. I do, however, find that there is some distinction between the weight to be accorded to the public interest in a criminal proceeding and that in a civil proceeding, particularly a family law matter. The latter is generally a dispute between private parties. I recognize that the general operation of the courts is always of public interest. While a constitutional issue

has been raised here, however, it forms only a part of the issues on appeal, the balance of which concern intensely private matters.

The principal parties involved here are young people. They are abiding by an order for access involving the child, which order is under appeal. It is essential, for the sake of the child, that they have an opportunity to interact without unnecessary intrusion into their personal affairs. I agree with the submission of the appellant that the prospect of television broadcast of the appeal proceeding can only add stress to an already strained relationship. To create additional stress for the parents and grandparents cannot impact positively on the child. In my view, it is appropriate, in this application, to be guided by the provisions of the **Family Court Act** which are directed at respecting the privacy of parties. The sound policy reasons which underpin section **10(2)** and **(3)** of that **Act** are equally applicable at all stages of the proceeding.

Counsel for the media intervenor says that the appellants have shown nothing particular to this case which demonstrates any undue hardship or prejudice outweighing the public interest in television broadcast. I disagree. Apart from my general reluctance to allow the televising of family proceedings, I am satisfied that the appellants have shown particular circumstances here that outweigh the public interest.

There has not been a request of this Court for a publication ban. Subject to any further order which may be made, the appeal is a public proceeding. The applicant and appellants acknowledge that there has already been publicity about this case. No doubt there will be more publicity. I recognize that, even without filming, the publicity will not, by law, be limited to the "substantive legal issues" and thus may well venture into the personal circumstances of these families. I can only hope that the media will be sensitive in this regard and permit these parties to retain some privacy and dignity, in the interests of this child's future. While the child is not yet of an age when she is aware of publicity, I am satisfied that the concerns of the appellants are legitimate and outweigh

the public interest in the filming of this proceeding. Whatever the result of the appeal, it cannot be in the child's interests that there be a filmed record of these highly personal, emotional and unfortunate circumstances.

Accordingly, the application of the media intervenor is dismissed.

J.A.