NOVA SCOTIA COURT OF APPEAL
Citation: ***Harris v. Harris***, 2010 NSCA 94

Date: 20101119
Docket: CA 324354
Registry: Halifax

Between:

Victor Garnet Harris

Appellant

v.

Paulette Louise Harris

Respondent

Judges:	Oland, Hamilton and Farrar, JJ.A.
Appeal Heard:	November 9, 2010, in Halifax, Nova Scotia
Held:	The appeal is dismissed without costs. The matter is remitted to the Supreme Court to take into consideration the change in circumstances evidenced by the additional facts set out in this decision.
Counsel:	Appellant in person Respondent in person

Reasons for judgment:

Background

[1] The appellant, Victor Harris, appeals the decision of Supreme Court Justice Charles Haliburton delivered orally on January 6, 2010 dismissing his application to vary or rescind an Order for Security for Costs granted by Chief Justice Kennedy on October 8, 2007.

[2] This was Mr. Harris's second attempt to set aside the order for security for costs. Justice Gregory Warner had previously dismissed a similar application [2009 NSSC 272]. The decision of Justice Warner extensively sets out the history of this matter dating back to when the parties separated in February, 1991. I will not repeat the detailed history, however, I will refer to it briefly, to give context to this appeal.

[3] The parties were divorced by a Corollary Relief Judgment dated May 12, 1992. Under the corollary relief judgment Mr. Harris was ordered to pay child support for the couple's three children. Between June, 1996 and December 5, 2002, Mr. Harris made seven applications to vary the child support provision of the corollary relief judgment. These were heard by five different judges. With the exception of two occasions, when the orders were varied with the consent of Ms. Harris to cease child support for the oldest two children, the applications were dismissed.

[4] Between February, 2003 and October 7, 2007, Mr. Harris made nine applications to reduce or terminate child support for the third child, with the ninth being heard by Chief Justice Kennedy. All nine applications were dismissed. On the application before Chief Justice Kennedy, Ms. Harris sought, and received, security for costs in the amount of $10,000.

[5] One of the applications (the sixth in the sequence of nine) was unsuccessfully appealed to this Court (2006 NSCA 79).

[6] In addition to the applications to vary child support, the appellant commenced an action by Originating Notice (Statement of Claim) against Ms.

Harris advancing several claims. Again, without going into detail, the action was struck pursuant to Nova Scotia **Civil Procedure Rule** (1972) 14.25.

[7] The appellant and his current spouse also commenced related proceedings against the Attorney General of Canada and Attorney General of Nova Scotia. The actions against both were dismissed either by summary judgment or by striking of the pleadings.

[8] Some 20 months after Chief Justice Kennedy's order for security for costs, the appellant sought leave to extend the time for filing a notice of appeal from that order. The application was dismissed (2009 NSCA 77).

[9] Finally, Mr. Harris applied for substituted service of the notice of appeal in this proceeding on Ms. Harris. Again, the application was dismissed by this Court (2010 NSCA 21).

[10] This cursory glance of the voluminous record of litigation amassed between these parties gives one a clear sense of the bitterness and hostility that exists, and has existed over the years, between the parties.

The Present Appeal

[11] Justice Haliburton dismissed Mr. Harris' application to vary or rescind Chief Justice Kennedy's order for security for costs on the basis that no change in circumstances had been shown since the dismissal of his 2009 application before Justice Warner for the same relief. Mr. Harris comes before us appealing Justice Haliburton's decision, listing 15 grounds of appeal and seeking 14 different forms of relief.

[12] At the hearing of this matter on November 9, 2010, Mr. Harris sought leave to file an amended notice of appeal. The amended notice of appeal, among other things, seeks an additional three remedies against Ms. Harris, two against the governments of Nova Scotia and Canada, and an increase in costs from $1,000 to $3,000 from the original relief sought. The amended notice of appeal was not filed with the Court and was not provided to Ms. Harris or those governments prior to the hearing of the appeal.

[13] At the hearing of this matter we reserved decision on whether to grant leave to file the amended notice of appeal. For the following reasons, I would deny Mr. Harris' request for leave to file the amended notice of appeal:

1. It was not filed within the time set forth in the **Civil Procedure Rules**;

2. It was never served on Ms. Harris, the governments of Nova Scotia and Canada, nor provided to this Court in accordance with the **Rules**;

3. No reasons were given for this failure to file the amended notice of appeal within the time frame set out in the **Rules** nor was any reason given for why it is necessary to file it at the present time; and

4. the additional grounds of appeal are absolutely irrelevant to any issues that were before the Justice Haliburton on the original application.

[14] Parenthetically, I pause here to note that the 15 grounds of appeal listed in the original notice of appeal are also irrelevant to the issues arising from Justice Haliburton's order.

[15] In the parties' facta and on the hearing of this appeal, additional facts, arising after the filing of the notice of appeal, came to our attention which have an impact on the matters in issue between the two parties. The additional facts should bring an end to this unpleasant history of litigation which has been described on various occasions by different judges as frivolous, vexatious or without merit; all terms which appear to be appropriate in the circumstances.

[16] In April, 2010, Ms. Harris requested that the Director of Maintenance Enforcement cease to enforce the order for child support which is at the heart of these proceedings. By a Payor Notice of Withdrawal dated July 5, 2010, the maintenance enforcement program advised Mr. Harris that the terms of his maintenance order had been satisfied and it would no longer be enforcing the order. Ms. Harris and Mr. Harris confirmed these facts, on the record, on the hearing of the appeal. Ms. Harris also confirmed that she no longer wishes to have child support from Mr. Harris.

[17] Mr. Harris in his factum and at the hearing, requested an order allowing him to vary the Corollary Relief Judgment so that he could change the beneficiary on his life insurance policy from his three children to a person of his choice. This was not an issue before Justice Haliburton (or any other justice for that matter).

[18] Again, Ms. Harris acknowledged and confirmed before us that she is prepared to consent to Mr. Harris changing the beneficiaries on his whole life insurance policy from their three children. She confirmed that she is prepared to sign whatever documentation is necessary to confirm her consent.

[19] The relief sought by the appellant on this appeal, among other things, is to allow the appeal, rescind the order for security for costs, terminate child support and terminate his requirement to have his children as beneficiaries on his life insurance policy.

[20] Ms. Harris's acknowledgement that she is prepared to consent to the termination of child support and the change in beneficiaries makes those issues on this appeal moot.

[21] It follows that, if there is no longer an obligation for Mr. Harris to pay child support, any issue with respect to the filing of security for costs to vary child support is also moot.

[22] As a result, I would dispose of the appeal as follows:

1. Remit to the Supreme Court the determination of whether it is appropriate to issue an order terminating child support and allowing Mr. Harris to change the beneficiaries on his life insurance policy from his children to a person of his choice, taking into consideration the change in circumstances evidenced by Ms. Harris' acknowledgements in this Court and the parties' stated willingness to sign a consent order to this effect.

2. The remainder of the appeal, including the other relief requested by Mr. Harris is dismissed without costs to either party.

[23] I would also ask the Supreme Court to consider including a provision in the order requiring Mr. Harris to seek leave of the Court should he wish to commence action against Ms. Harris, in the future, with respect to anything arising out of their marriage or the proceedings relating to it. Such consideration would, of course, be left to the discretion of the justice considering the matter.

[24] There is one other matter. It came to our attention on November 12, 2010, three days after hearing the appeal, that Mr. Harris had sent to Ms. Harris' interrogatories dated November 10, 2010. Mr. Harris purported to issue the interrogatories out of this court.

[25] There is no provision in the **Civil Procedure Rules** which would allow the issuance of interrogatories out of this Court. I appreciate Mr. Harris is a self represented litigant, however, being self represented does not innoculate against the Court's process, nor entitle one side to harass the other with useless, unwarranted and vexatious interventions. The appeal has been dispensed with, the interrogatories are not appropriate, are not properly filed, and need not be answered by Ms. Harris.

Farrar, J.A.

Concurred in:

Oland, J.A.

Hamilton, J.A.