

**NOVA SCOTIA COURT OF APPEAL**  
Citation: *Hatfield v. Mader*, 2011 NSCA 44

**Date:** 20110516  
**Docket:** CA 347856  
**Registry:** Halifax

**Between:**

Linda Hatfield

Appellant

v.

Darren Mader and Susan Mader

Respondents

**Judge:** Justice Peter M.S. Bryson

**Motion Heard:** May 5, 2011, in Halifax, Nova Scotia, in Chambers

**Held:** Motion granted.

**Counsel:** appellant in person  
Vincent A. Gillis, for the respondent

**Decision:**

[1] The appellant, Linda Hatfield, applies both for an extension of time to file a notice of application for leave to appeal and notice of appeal (costs only) arising from decisions of Supreme Court Justices Cindy A. Bourgeois and Patrick J. Murray.

[2] In related proceedings, Justice Bourgeois found that the respondents, Mr. and Mrs. Mader, had established adverse possession over a strip of land lying on the common boundary between Ms. Hatfield and the Maders.

[3] On January 31, 2011, Justice Bourgeois made a decision with respect to costs. An order was taken out on March 15th. That decision was reduced to writing on April 5th. In the context of her submissions on costs, Ms. Hatfield requested relief from payment of costs owing to poverty, pursuant to *Rule 77.04*. While Justice Bourgeois determined that Ms. Hatfield's application was not timely, she did entertain it, but then dismissed it as she did not consider it appropriate in all of the circumstances. It appears that following this decision Ms. Hatfield renewed her application under *Rule 77.04* before Justice Murray. According to Ms. Hatfield's Notice of Appeal, Justice Murray dismissed the application on the basis that he was *functus officio*. But nothing is attached to the notice which would indicate what Justice Murray actually did. The notice of appeal does attach the April 5, 2011, written release of Justice Bourgeois's January 31st, 2011 oral decision.

[4] Ms. Hatfield is self-represented. It is clear from the notice of appeal that she does not consider that she was heard on the merits by either Justices Bourgeois or Murray. It seems from her submissions and affidavit material that Ms. Hatfield did not understand Justice Bourgeois had dealt with the substance of her application for relief from costs on January 31st. It also seems that Ms. Hatfield was under the impression that she could have the Court of Appeal review this matter without filing a separate notice of appeal.

[5] For his part, counsel for Mr. and Mrs. Mader does not oppose the request for an extension of time to file the notice of application for leave and notice of appeal with respect to the denial of relief from costs.

[6] The notice of application for leave to appeal and notice of appeal was filed on April 7th. Time began to run after the March 15th order. The appeal is only a few days out of time. No argument or evidence of prejudice is made on behalf of the Maders — indeed they do not oppose this motion. On the relatively modest evidence before the court, I cannot say there are no arguable issues. Moreover, it seems clear that Ms. Hatfield was under the impression that she was still free to argue the merits of her application before the Appeal Court. In that sense, she always intended to “appeal”. In the alternative, given that Ms. Hatfield is self-represented and appears to have been under a misapprehension about process, I would consider it, “in the interest of justice”, to grant an extension to her in this case, see *Glenelg Homestead Ltd. v. Wile*, 2004 NSCA 1 where Justice Cromwell afforded a similar accommodation to a self-represented party.

[7] Accordingly, leave is granted to file and pursue a notice of application for leave to appeal and appeal. As I informed the parties at the hearing, this matter is to be heard on October 11, 2011 at 10:00 a.m.. Ms. Hatfield is to file the appeal book by June 10, 2011. Her factum is to be filed by July 8, 2011 and the respondents’ factum is to be filed by August 5, 2011.

[8] There will be no costs of this motion.

Bryson, J.A.