

NOVA SCOTIA COURT OF APPEAL
Citation: *Kedmi v. Korem*, 2012 NSCA 65

Date: 20120612
Docket: CA 381259
Registry: Halifax

Between:

Iris Kedmi

Appellant

v.

Nahman Korem

Respondent

Judge: The Honourable Justice Duncan R. Beveridge

Motion Heard: June 7, 2012, in Halifax, Nova Scotia, In Chambers

Held: Motion by the appellant for a stay is dismissed

Counsel: Appellant, in person
Candee McCarthy, for the respondent

Decision:

[1] Ms. Kedmi is self represented. She filed a notice of appeal on February 20, 2012 from what she described as an order of the Honourable Justice M. Clare MacLellan, made on January 25, 2012.

[2] On June 7, 2012, I heard Ms. Kedmi's motion for a stay. At the conclusion of the hearing, I dismissed her request. I explained to Ms. Kedmi why. I nonetheless promised to provide her written reasons. I will be brief.

[3] The appellant and respondent appeared before Justice MacLellan on January 23, 2012 to commence a divorce trial scheduled to last seven days. Both were represented by counsel. The appellant's lawyer requested a settlement conference. The respondent agreed.

[4] Two and a half days later the appellant and respondent reached a consent agreement. They went to court where the agreement was read into the record. The appellant's counsel was to be responsible for drafting the order. The appellant then dismissed her counsel and filed a notice of appeal claiming her trial counsel had been incompetent and that the order will likely be too vague to be enforced.

[5] Further draft orders were exchanged between the appellant and counsel for the respondent. They were unable to agree on the terms of the order. Justice MacLellan ruled that she would issue the order. The order has not yet been issued. The appellant presently has a motion before the Supreme Court (Family Division) scheduled to be heard by Justice MacLellan on July 30, 2012 to settle the terms of the order.

[6] A judge of the Court of Appeal has a broad discretion to grant relief to an appellant from the effects of enforcement of an order pending an appeal. Rule 90.41(2) provides:

90.41 (2) A judge of the Court of Appeal on application of a party to an appeal may, pending disposition of the appeal, order stayed the execution and enforcement of any judgment appealed from or grant such other relief against such a judgment or order, on such terms as may be just.

[7] This Rule recognizes that there may be circumstances where it is necessary to stay the enforcement of an order of a lower court or tribunal to ensure that the appellant's statutory right to challenge a lower court decision is not rendered meaningless.

[8] Ms. Kedmi expressed familiarity with some of the case law referred to by counsel for the respondent such as *Soontiens v. Giffin*, 2011 NSCA 1, where the well known test articulated by Hallet J.A. in *Purdy v. Fulton Insurance Agencies Ltd.* (1990), 100 N.S.R. (2d) 341 was again explained. To be successful the applicant must establish, on a balance of probabilities, that she has an arguable issue raised by her appeal; she will suffer irreparable harm should the stay not be granted and her appeal is ultimately successful; and that she will suffer greater harm if the stay is not granted than the respondent if the stay is granted. In addition, there may be unique and rare cases where exceptional circumstances nonetheless make it fit and just to grant a stay even if the appellant cannot satisfy the criteria.

[9] The fundamental problem with the application by Ms. Kedmi is that there is no order or pending processes flowing from what was apparently a consent agreement. In these circumstances, absent an order, there is nothing to stay.

[10] Neither party sought costs. None will be ordered.

Beveridge, J.A.