

NOVA SCOTIA COURT OF APPEAL
Citation: *Doncaster v. Field*, 2016 NSCA 91

Date: 20161213
Docket: CA 448454
Registry: Halifax

Between:

Ralph Ivan Doncaster

Appellant

v.

Jennifer Lynn Field

Respondent

Judges: MacDonald, C.J.N.S.; Hamilton and Beveridge, JJ.A.

Appeal Heard: October 6, 2016, in Halifax, Nova Scotia

Held: Appeal dismissed with \$1,500.00 costs (inclusive of disbursements) payable to the respondent, per reasons for judgment of MacDonald, C.J.N.S.; Hamilton and Beveridge, JJ.A. concurring

Counsel: Ralph Ivan Doncaster, appellant in person
Janet M. Stevenson, for the respondent

Reasons for judgment:

[1] The parties are embroiled in a longstanding family law dispute, resulting in numerous hearings at all levels of court. In this appeal, Mr. Doncaster challenges orders requiring him to post security before applying to vary existing custody/access and maintenance orders. He has, for several years now, been denied any access to his children.

[2] Justice Jamie Campbell of the Supreme Court issued the orders, requiring security of \$8,000 for the proposed custody/access review and \$3,000 for the proposed maintenance or “any other matter”. He was concerned that Mr. Doncaster already owes tens of thousands of dollars in unpaid costs awards and child support, leaving Ms. Field with dim prospects for recovery, should she receive yet another costs award. The judge was also sceptical of Mr. Doncaster’s purported inability to pay. He did not mince his words (2015 NSSC 310):

[3] Ralph Doncaster and Jennifer Field have been engaged in epically nasty divorce litigation over the course of some years. That happens. Some divorces go septic. Few in Nova Scotia, have consumed what this one has, in terms of legal expenses, emotional resources, court time and judicial attention. There have been ten written decisions from the Court of Appeal on the divorce alone not to mention criminal and civil cases that relate directly or indirectly to the parties and their children. There have been 12 published Supreme Court decisions on the divorce and 9 others that relate to matters touching upon the divorce. Mr. Doncaster has been before the Provincial Court numerous times, sometimes in matters involving Ms. Field and their children.

[4] Now, Mr. Doncaster wants to make a motion seeking a variation of the corollary relief judgment arising from Justice Bourgeois’ 7 March 2013 decision, to allow him to have access to the parties’ children. Ms. Field has requested security for costs and the imposition of conditions to be complied with before that motion should be heard.

[5] An informed member of the public who cared to read the many reported decisions that involve Ralph Doncaster could reasonably conclude that he has been able to use the courts as a means by which to harass and harangue Ms. Field, without much real practical cost to himself. Sometimes he is self-represented. Sometimes he has legal counsel. His ability to use technical legal procedures, his ability to cite legal precedents in and out of context, his ability to creatively draw others into the morass, his stubbornness and his willingness to appeal almost every decision, have made him a formidable, frustrating and unpredictable opponent. His failure to pay costs has made him a virtually untouchable one.

[6] The high cost of legal representation can in some cases be an access to justice issue. In other cases, legal fees can act as a deterrent to aggressive litigants. An award of costs is one of the protections that people have from those who would use the court system less as way to resolve a dispute than as a way to perpetuate one. Clausewitz famously said that war was the continuation of politics/diplomacy by other means. Family litigation should not be allowed to be the continuation of inane, repetitive, vengeful, mean spirited and abusive bickering by other means.

[7] Mr. Doncaster has been ordered to pay costs. He has now \$81,000 in costs awarded against him that have not been paid. Of that amount \$50,000 relates to the original divorce proceeding. That award of costs is under appeal. Justice Farrar of the Court of Appeal has ordered Mr. Doncaster to pay security for costs in the amount of \$15,000 with respect to the appeal of the award of costs. That has been paid.

[8] The matter for today is whether he should be required to pay security for costs before the matter of the amendment of the corollary relief judgment can be heard. The reasons set out by Justice Farrar apply to the rules as they relate to security for costs on appeals.

There is abundant evidence to establish that Mr. Doncaster has behaved in an insolvent manner and has failed to pay costs in related proceedings. I am satisfied that the respondent has established “special circumstances” which would justify an award of costs.

[9] Security for costs can be awarded under Civil Procedure Rule 45. A judge can make an order if the responding party will have undue difficulty in realizing on a judgment for costs, provided that the difficulty arises not only from the lack of means of the other party and if it is unfair to allow the claim to continue without an order for security for costs.

...

[18] Mr. Doncaster has unpaid costs awards and unpaid child support. He does appear to be experiencing some degree of financial difficulty. His unwillingness to pay costs awards is not related solely to his claimed impecuniosity. He is able to pay when it is in his immediate self-perceived interest to do so. He has been able to access \$15000 to allow him to continue with his appeal. It is clear in this case that in the absence of an award for security for costs Ms. Field would have extraordinary and undue difficulty in recovering any costs from Mr. Doncaster.

[3] Justice Campbell also set some further conditions that have not been appealed.

[4] In challenging the \$8,000 order, Mr. Doncaster highlights the fact that he is urgently trying to gain at least some access to his children, and this security order represents a roadblock. In other words, it is in his children’s best interests that they

enjoy access to both parents and their interests should trump Ms. Field's need for security which, in any event, he simply cannot afford.

[5] Regarding the \$3,000 order, Mr. Doncaster feels that \$1,000 would be more in line with the jurisprudence. But, more fundamentally, he challenges the fact that it is open ended, applying to "any other [proposed] matter".

[6] For the reasons that follow, I would dismiss the appeal.

[7] Firstly, it is important to note that, in issuing this relief, Justice Campbell was exercising his discretion and as such is entitled to significant deference. We would not intervene short of an error in principle or a substantial injustice. See *Ellph.com Solutions Inc. v. Aliant Inc.*, 2012 NSCA 89 at ¶ 27 and ¶ 28.

[8] Furthermore, while it is deeply regrettable that these children have no contact with their father, the reasons for this go well beyond the boundaries of this appeal.

[9] Regarding the \$8,000 order, the judge (at ¶ 23) was aware of the "highly unusual" fact that Mr. Doncaster has no access to his children. However, he remained convinced that this order was appropriate:

[25] Ms. Field should not be required to be exposed to more litigation of that kind especially given that she would be very unlikely to recover on any award of costs. While the best interests of the children are paramount there is a balancing of interests required. Mr. Doncaster should not have *carte blanche* to drag Ms. Field into that litigation simply by claiming that the best interests of the children are involved.

[10] This reflects no error in principle and, with the judge being unconvinced about Mr. Doncaster's inability to pay the order, no substantial injustice. As to the amount, the judge projected a complicated two-day hearing:

[28] Mr. Field should not be exposed to litigation unless she can be assured that she can collect on an award of costs. Given the nature of the issue to be resolved and the history of the procedural complications that have characterized them at almost every turn, security for costs should be paid in the amount of \$8000 with respect to any motion for custody or access. That is based on the potential that the matter will expand into at least two days with expert evidence likely required from both parties.

[11] I cannot fault this logic.

[12] As to the \$3,000 award, the judge reasoned:

[31] Mr. Doncaster has made a motion for variation of child support. He should not be permitted to proceed with any further motions, including variation of support obligations, until some other outstanding issues have been resolved as well. He still has not paid costs awarded to Ms. Field. He still owes a substantial amount in child support. He has made a bankruptcy proposal. Before any more motions of any kind can be heard at Mr. Doncaster's instigation he should be required to disclose information that relates directly to those outstanding issues and to post security for costs.

[32] The security for costs on other issues will not be as substantial as the amount involved with custody and access issues. In any matter not relating to custody or access Mr. Doncaster will be required to post security for costs in the amount of \$3000 for each motion.

[13] I see no error in principle. Nor could there be a substantial injustice, given the limited amount and as noted the judge's scepticism about Mr. Doncaster's purported inability to pay it.

[14] Finally, I dismiss Mr. Doncaster's concern that this aspect of the order is too open ended. Here is the impugned provision:

2. In any matter not relating to custody or access, Ralph Doncaster shall be required to do the following before any motion is heard:

(a) Post security for costs in the amount of \$3,000 for each motion...

[15] It is clear from reading the decision as a whole that this direction applies only to matters that may result out of this ongoing domestic dispute. For example (at ¶ 32), the judge noted that "the security for costs on other issues will not be as substantial..." Had the judge been referring to prospective matters unrelated to this instant domestic dispute, he would not have used the word "issues". Furthermore, to order security for costs for a prospective unrelated matter, he would have to invoke his inherent jurisdiction under, for example, *Rule 88*. Yet, aside from a fleeting reference (at ¶ 27) to the court controlling its own process, he embarked upon no such analysis.

Disposition

[16] I would dismiss the appeal with \$1,500.00 costs (inclusive of disbursements) payable to the respondent.

MacDonald, C.J.N.S.

Concurred in:

Hamilton, J.A.

Beveridge, J.A.