

NOVA SCOTIA COURT OF APPEAL

Citation: *Daye v. Savoie*, 2022 NSCA 38

Date: 20220505

Docket: CA 513059

Registry: Halifax

Between:

Stephanie Daye

Applicant

v.

Alain Savoie

Respondent

Judge: Wood C.J.N.S.

Motion Heard: Motion by written submission (*Civil Procedure Rule 90.38*)

Held: Motion dismissed with costs

Counsel: Stephanie Daye, in person
Hannah Rubenstein, for respondent

Decision:

[1] Stephanie Daye and Alain Savoie were involved in divorce proceedings in the Supreme Court of Nova Scotia (Family Division). There were settlement conferences which resolved some of the issues in dispute. One aspect of the parties' agreement was incorporated in a consent order issued on January 22, 2021 (the "Order"). The Order set timelines for conveyance of a rental property to Ms. Daye. If she did not complete the acquisition of the property within the specified time periods, Mr. Savoie would pay her an agreed sum *in lieu* of the transfer.

[2] On March 3, 2022, Ms. Daye filed an affidavit with this Court requesting an extension of the time period to challenge the Order. The appeal period expired 30 days after the date of issuance.

[3] After reviewing the evidence filed by both parties and conducting a hearing, the Honourable Justice Anne S. Derrick dismissed Ms. Daye's motion for an extension of the appeal period (2022 NSCA 27). In her decision, Justice Derrick outlined the correct law to be applied and concluded Ms. Daye had not demonstrated she had a *bona fide* intention to appeal within the appeal period, nor did she provide a satisfactory explanation for her delay. In her decision Justice Derrick also explained why Ms. Daye's proposed appeal was without merit. She found no compelling or exceptional circumstances which would justify setting aside the Order.

[4] Ms. Daye has made a motion in writing to the Chief Justice for leave to have Justice Derrick's decision reviewed by a panel of the Court pursuant to *Civil Procedure Rule* 90.38. Subsection 6 sets out the options available on the motion:

(6) The Chief Justice may do any of the following on a motion for leave to review:

- (a) dismiss the motion for leave to review;
- (b) set the motion down for hearing;
- (c) grant leave to review the order of the judge in chambers if the Chief Justice is satisfied that the judge acted without authority under the rules, or the order is inconsistent with an earlier decision of a judge in chambers or the Court of Appeal, or that a hearing by a panel is necessary to prevent an injustice.

[5] The decision of Justice Derrick accurately sets out the applicable law for a motion to extend an appeal period. There is no suggestion she was acting without authority, or the decision was inconsistent with an earlier decision of the court and, therefore, the only potential basis for ordering a panel review of her decision is to prevent an injustice.

[6] An applicant for a review of a chambers decision by a panel bears a very high burden to show why it is necessary. This additional opportunity to pursue a motion will only be given in exceptional circumstances, when the potential for injustice is clear and significant (*R. v. T.M.*, 2022 NSCA 28).

[7] I have listened to the audio recording of the hearing before Justice Derrick and carefully reviewed the materials submitted by Ms. Daye. These provide no basis for challenging Justice Derrick's conclusions. Ms. Daye did not establish a *bona fide* intention to proceed with an appeal within the 30-day period, nor provide a satisfactory explanation for her delay. Looking for legal counsel is no excuse for waiting almost a year before initiating an appeal proceeding. In addition, the transaction contemplated by the Order was completed in November 2021 and Ms. Daye received the agreed amount.

[8] Ms. Daye's arguments concerning the merits of her potential appeal were made to Justice Derrick and dismissed. There is nothing in her written motion that demonstrates a panel review of Justice Derrick's decision is necessary to prevent an injustice. Ms. Daye has not met the high threshold required to justify re-considering the motion for an extension of the appeal period.

[9] Ms. Day's motion for a review pursuant to *Civil Procedure Rule 90.38* is dismissed, with costs payable to Mr. Savoie in the amount of \$250.

Wood C.J.NS.