NOVA SCOTIA COURT OF APPEAL
Citation: *LeBlanc v. LeBlanc*, 2023 NSCA 18

Date: 20230315
Docket: CA 515006
Registry: Halifax

Between:

Elena LeBlanc

Appellant

v.

Alain LeBlanc

Respondent

Judge:	The Honourable Justice Carole A. Beaton
Motion Heard:	March 15, 2023, in Halifax, Nova Scotia in Chambers
Written Decision:	March 24, 2023
Held:	Motion dismissed without costs
Parties:	Elena LeBlanc, appellant on her own behalf Alain LeBlanc, respondent on his own behalf

Chambers Decision:

[1] Mrs. LeBlanc filed a motion in Chambers pursuant to *Civil Procedure Rule* 90.39(2) seeking permission of a judge of the Court to extend the time for filing an Amended Notice of Appeal. Specifically, she seeks to file a document entitled “Further Amended Notice of Appeal” (hereinafter "Further Notice"). Mrs. LeBlanc requires the Court’s permission to do so as she is outside of the time period in which a party may, of their own accord, file an amended notice of appeal (*Rule* 90.39(1)).

[2] The motion was heard on March 15, 2023. At the conclusion of the hearing, I dismissed the motion and advised written reasons for doing so would follow. These are those reasons.

[3] Mrs. LeBlanc filed a Notice of Appeal on May 6, 2022, seeking to appeal a December 23, 2021 order of Justice C. Murray of the Supreme Court of Nova Scotia - Family Division. Mrs. LeBlanc later amended the Notice of Appeal when she filed an Amended Notice of Appeal (hereinafter “Amended Notice”) on August 4, 2022. It is on the basis of that Amended Notice that the hearing of the appeal, already rescheduled once previously, is now on the docket for hearing on May 10, 2023.

[4] Mrs. LeBlanc’s motion to extend the time for filing another modified notice of appeal, in the form of a Further Notice, was accompanied by her Affidavit in support of the motion (which included confirmation of service of the motion upon Mr. LeBlanc) along with a draft proposed Further Notice. While the affidavit goes into considerable detail and addresses a number of issues, it does not provide any information regarding:

(a) the specific reason(s) for filing the motion;

(b) the purpose or necessity of securing permission to file a Further Notice at this advanced stage of the appeal;

(c) the substantive difference(s) between the Amended Notice now on file and the proposed Further Notice.

[5] In *R. v. J.T.*, 2022 NSCA 21, Derrick J.A. identified the test to be applied on a motion such as this:

> [10] It is well established that the authority to permit an amendment to a Notice of Appeal is found in *Civil Procedure Rule* 90.39(2). The governing considerations are whether (a) the amendment is reasonably necessary, and (b) the extent to which it will result in prejudice to the respondent (*Lane* v. *Carsen Group*, 2003 NSCA 42; *R.* v. *DeYoung*, 2017 NSCA 13). In *R.* v. *Rouse*, 2020 NSCA 28, Justice Bryson held a proposed amendment that "is not plainly unsustainable or fails to present an arguable issue" should be granted (para. 18).

(See also *Nyiti* v. *Cape Breton University*, 2009 NSCA 54, at para. 5, a case where the same kind of motion was dismissed).

[6] In *R. v. Marriott*, 2012 NSCA 76, Fichaud, J.A. discussed the exercise of the Court's discretion to grant the motion, as found in *Rule* 90.39(2):

> [5] The judge's exercise of discretion under Rule 90.39(2) should be governed by whether: (1) the amendment is arguable on its face, (2) the amendment is reasonably necessary for the administration of justice by enabling the presentation and determination of a material issue between the parties, and (3) the interval between the original, and properly timed notice of appeal and the amendment would cause irreparable prejudice to the respondent. On the first point, if the amendment is arguable on its face, the merits of the amendment are for the panel on the appeal, not the motions judge. Another way to express the second point is to say that the amendment must be sought in good faith, and not for an ulterior purpose. On the third point, the mere fact that the respondent will now have to reply to the issue in the amendment does not constitute prejudice. […] (citations omitted)

[7] It appears the first two criteria set out in *Marriott* correspond to the "reasonably necessary" question described in *J.T.* and the third consideration corresponds to the "prejudice" test set out in *J.T.*

[8] In response to the motion, Mr. LeBlanc offered only the rhetorical question and comment: "Where does it end? It seems to have no ending here." I inferred him to mean he is of the view Mrs. LeBlanc will continue to make motions seeking to make further changes to her various documents filed in relation to this appeal.

[9] I consider first the question whether the amendments sought by Mrs. LeBlanc are reasonably necessary.

[10] *Rule* 90.06(1) enumerates the required contents of a Notice of Appeal. In part, it specifically requires:

> (c) a concise statement of all grounds of appeal, a citation of the statutory authority for the appeal, and a concise description of the order to be sought at the conclusion of the appeal;

[11] Mrs. LeBlanc's remarks during oral submissions provided further elaboration on the purpose of her motion. She submitted that a Further Notice is necessary to this appeal to enable her to identify and list certain additional statutory authorities. She submitted she intends to rely on those additional statutes in advancing her written and oral arguments on the issues raised in her Amended Notice. Mrs. LeBlanc seeks to list additional statutes in her Further Notice that do not now appear in her Amended Notice because she interprets *Rule* 90.06(1)(c) as requiring specific reference to <u>all</u> of the statutes she will reference in advancing her arguments on the appeal.

[12] Mrs. LeBlanc appears to be zealously attempting to further conform to a requirement she has already met. She has previously provided in her Amended Notice a reference to the statutory authority for the appeal, in this case the *Parenting and Support Act,* R.S.N.S. 1989, c. 160. That is the statute under which the order forming the subject of Mrs. LeBlanc's appeal was made. This Court's jurisdiction to hear an appeal from an order made under that *Act* is found in its s. 44. If Mrs. LeBlanc now wishes to draw a hearing panel's attention to other statutes in the course of oral or written argument she is free to do so; filing a Further Notice will not change how it is this Court derives its authority to consider the order under appeal.

[13] Having scrutinized the differences between the already filed Amended Notice and the Further Notice now proposed by Mrs. LeBlanc, I conclude there is no qualitative difference between them. A comparison of the two documents reveals:

> (a) Under the heading *Order appealed from*, the Further Notice adds superfluous information about the addresses and the middle names of each party; that information does not appear in the Amended Notice. The Further Notice also contains two additional comments that I have concluded have nothing to do with the grounds of appeal. One expresses Mrs. LeBlanc's stated intention to continue to file further draft amended notices of appeal, and one concerns the origins of her surname. None of this constitutes a reasonably necessary amendment.

(b) Under the heading *Grounds of Appeal*, the grounds remain, for all practical purposes, the same as between the Amended Notice and the Further Notice. Changes can be seen in the numbering of the paragraphs, whereby paragraphs found in the Amended Notice are divided and appear as two separate ideas in the Further Notice. The Further Notice also expands the grounds found in the Amended Notice to include commentary or examples. Those comments and examples do not in any meaningful way augment, expand upon or clarify the grounds of appeal. Such commentary, to the extent it might possibly be relevant, is more properly reserved for written or oral argument on the appeal. Again, none of this qualifies as a reasonably necessary basis for permitting further amendments to the Amended Notice.

[14] The changes sought to be made to the Amended Notice do not in any way assist in or augment "presentation and determination of a material issue between the parties" (*Marriott).*

[15] The circumstances here stand in contrast to those found in *R. v. Rouse*, 2020 NSCA 28. The changes suggested by Mrs. LeBlanc's Further Notice are not sustainable. I come to this conclusion as I am not persuaded they satisfy the "arguable issue" criterion discussed in *Rouse*, and furthermore, comparing them to the Amended Notice already on file reveals no meaningful difference between the two documents.

[16] In summary, I am not persuaded that the proposed amendments contained within the Further Notice are reasonably necessary. As a result, I need not consider the extent of any prejudice to the respondent that might be occasioned by granting the relief Mrs. LeBlanc seeks. The motion does not fulfill the first prong of the operative test – the "reasonably necessary" component – because the Further Notice is not substantively different from the wording and content of the Amended Notice already on file, nor does it add in any meaningful way to the earlier enumerated grounds of appeal.

[17] The motion to extend the time for filing a further amended Notice of Appeal is dismissed. While Mrs. LeBlanc was not successful on her motion, no costs were requested and none are awarded.

Beaton, J.A.