NOVA SCOTIA COURT OF APPEAL
Citation: *Crowe v. A'Court*, 2023 NSCA 68

Date: 20230929
Docket: CA 519650
Registry: Halifax

Between:

Ashley Elizabeth Crowe

Appellant

v.

Ryan Paul A'Court

Respondent

Judge:	The Honourable Justice Carole A. Beaton
Appeal Heard:	September 25, 2023, in Halifax, Nova Scotia
Subject:	Appeal; Appeal - Uncontested Motion for Divorce; *Civil Procedure Rule* 59.44(7)(d); Default Judgment; Divorce; Family - divorce
Cases Considered:	*Doncaster v. Field*, 2016 NSCA 25; *Morin v. Royal Bank of Canada*, 2023 NSCA 26; *P.N. v. Nova Scotia (Community Services)*, 2020 NSCA 70; *Slawter v. Bellefontaine*, 2012 NSCA 48; *Taylor v. Braund*, 2018 NLCA 3
Summary:	The respondent failed to file an Answer when served with a petition for divorce. The appellant then filed a motion seeking an uncontested divorce. Rather than grant it, the judge set the matter for hearing and instructed court staff to notify the respondent of that hearing. The respondent then retained counsel and filed a motion to extend the time for filing an Answer, which motion was granted at a telephone appearance. The judge also ordered the motion for an uncontested divorce dismissed.

Issues: Did the hearing judge err in (i) setting an uncontested divorce motion for a court appearance, and (ii) granting a motion to extend the time for filing an Answer, thereby denying the appellant procedural fairness?

Result: The record does not reflect any error by the judge. He properly exercised his discretion in *Civil Procedure Rule* 59.44(7)(d) to set for hearing a motion for uncontested divorce, and in also permitting the respondent to file an Answer out of time. Neither decision resulted in procedural unfairness to the appellant.

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Judges:	Bryson, Bourgeois and Beaton, JJ.A.
Appeal Heard:	September 25, 2023, in Halifax, Nova Scotia
Held:	Leave to appeal granted and the appeal dismissed without costs, per reasons for judgment of Beaton, J.A.; Bryson and Bourgeois, JJ.A. concurring
Counsel:	Dianne E. Paquet, for the appellant Allison Kouzovnikov, for the respondent

Reasons for judgment:

[1] Ashley Crowe appeals from a decision of Justice Robert Gregan of the Nova Scotia Supreme Court (Family Division) (the "judge"). Applying *Civil Procedure Rule* 59.44(7)(d), the judge directed court staff to contact the respondent, Mr. A'Court, to advise the appellant's filing of an Uncontested Motion for Divorce (Default Judgment) would be set for a court conference before him, despite the respondent not having filed an Answer to the Petition for Divorce within the requisite time period. The respondent then retained counsel and sought, by motion by correspondence, to extend the time for filing an Answer. At the ensuing conference appearance, the judge granted that request and ordered dismissal of the motion for an uncontested divorce.

[2] The appellant seeks to have the dismissal order rescinded, asking this Court to now grant the uncontested motion for divorce and corollary relief order and divorce order as originally submitted with that motion.

[3] The appellant contends the judge erred in providing notice to the respondent and in permitting the late filing of an Answer, which the appellant also says was not filed in proper form. The appellant says the judge did not consider the prejudice to her.

[4] The judge's exercise of discretion is entitled to deference by this Court, absent any error in principle, misapprehension of evidence or patent injustice (*Doncaster v. Field*, 2016 NSCA 25 at para. 25). The appellant's arguments ultimately go to the issue of procedural fairness. There is no standard of review applied when procedural fairness is raised on appeal (*Morin v. Royal Bank of Canada*, 2023 NSCA 26 at para. 36; *P.N. v. Nova Scotia (Community Services)*, 2020 NSCA 70 at para. 68).

[5] When presented with the motion to proceed on an uncontested basis, the judge was entitled to exercise his discretion, found in *Civil Procedure Rule* 59.44(7)(d), to instead give directions for a hearing. The *Rule* provides:

> **59.44 Uncontested motion for divorce**
>
> **(7)** A court officer must deliver a motion for a divorce to a judge, and the judge must do one of the following:
>
> (a) determine the motion;

> (b) direct the court officer to notify the party making the motion, and the responding party who is entitled to notice, of what further evidence or information the judge requires to determine the motion;
>
> (c) dismiss the motion, or part of it;
>
> (d) give directions for a hearing.

[6] The word "hearing" as found in Rule 59.44(7)(d) should be interpreted flexibly, given the myriad of circumstances that could arise before a judge.

[7] The judge relied upon the principles discussed in *Slawter v. Bellefontaine*, 2012 NSCA 48 to explain that he was satisfied the nature of the relief sought could not be considered on an uncontested basis, given the proposed corollary relief judgment seemed to differ from the claims made in the Petition, and thus it was necessary to provide further information to the Court and, in turn, to the respondent about the nature of the relief sought.

[8] The record reveals the draft corollary relief order submitted on the motion for uncontested divorce contained relief which was in some respects different from that claimed in the Petition. As argued by the respondent in his factum, "procedural fairness requires that the respondent have knowledge of the claims sought by the petitioner".

[9] The record does not reflect any error by the judge in proceeding in the manner in which he did. Having exercised his discretion to require the matter be set down for an appearance, the judge was entitled to then consider the motion to extend the time for filing of an Answer. While the respondent arguably could have tended more quickly to the eventual filing of the Answer, nonetheless each party had ample opportunity to explain to the judge their positions on that motion before he decided it (per *Taylor v. Braund*, 2018 NLCA 3 at para. 118 and para. 125).

[10] There is no basis upon which to now second-guess, nor to interfere with the judge's decisions. Accordingly, leave to appeal is granted and the appeal is dismissed. Each party will bear their own costs.

Beaton, J.A.

Concurred in:

Bryson, J.A.

Bourgeois, J.A.