NOVA SCOTIA COURT OF APPEAL
Citation: ***Doncaster v. Canada (Attorney General)***, 2013 NSCA 150

Date: 20131217
Docket: CAC 413496
Registry: Halifax

Between:

Ralph Ivan Doncaster

Appellant

v.

Jennifer Lynn Field and Attorney General of Canada

Respondents

Judges:	Hamilton, Fichaud and Bryson, JJ.A.
Appeal Heard:	November 27, 2013, in Halifax, Nova Scotia
Held:	Leave to appeal denied, per reasons for judgment of Fichaud, J.A.; Hamilton and Bryson, JJ.A. concurring
Counsel:	Ralph Doncaster, Appellant in Person Sarah Drodge for the Respondent Attorney General of Canada The Respondent Jennifer Lynn Field not appearing

Reasons for judgment:

[1] This is an application for leave to appeal from a decision of the Summary Conviction Appeal Court. That Court refused to overturn an order of the Provincial Court that required Mr. Doncaster to enter into a peace bond for the protection of his estranged wife and children.

Background

[2] Mr. Doncaster and Ms. Field are separated spouses. They have four children, currently in Ms. Field's care.

[3] On January 30, 2012, Ms. Field swore an Information seeking a peace bond against Mr. Doncaster. Provincial Court Judge Gabriel heard the matter on April 26, 2012. Ms. Field testified and was cross-examined by Mr. Doncaster's counsel. Mr. Doncaster did not testify.

[4] By a ruling on April 26, 2012, after the hearing, Judge Gabriel ordered Mr. Doncaster to enter into a recognizance with conditions, or peace bond, under s. 810 of the *Criminal Code*, for a period of twelve months. Judge Gabriel's oral decision included the following:

> There is the evidence of several requests for the police to attend at Ms. Field's property. The concern expressed by not only Ms. Field as a result of Mr. Doncaster lingering on the property or showing up at times other than what he was supposed to, that there were concerns, police concerns. In February 13th Mr. Doncaster attended the Field residence at 1 a.m. banging on windows and doors and basically raising a ruckus that brought Ms. Field's home to the attention of her neighbours in the neighbourhood. … Ms. Field's evidence is uncontradicted that he attended the house, banged on the windows and doors, raising a ruckus at a time when he knew the children, at least the children, if not Ms. Field would be in bed. …
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> Mr. Doncaster's – the description offered by Ms. Field's counsel to the effect that Mr. Doncaster's actions are relentless, ongoing and escalating, if that description is an apt one, to which I would add, is almost single-minded. … He feels he has no obligation to pay any attention to the things that the court has said or the conditions that the court has laid down in relation to or that he may be subjected to under other orders. He has visited the home at times when he has

> been told not to. His behaviour has reached a point where the court, having jurisdiction over family members, has terminated his access with his children for now.
>
> All of these actions are those of a man whose behaviour is escalating. …
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> On the evidence presented to me today I am more than satisfied that Ms. Field has demonstrated that not only the subjective, that she has a subjective fear of potential harm for her children, but also an objective basis for that fear on the basis of Mr. Doncaster's actions, not only that he will inflict harm to her, but to her children. In fact I would offer the commentary that he has already damaged his children, perhaps irreparably as a result of his actions to date and his actions that appear to be continuing. I am at liberty to infer from the proximity of the repeated telephone calls, when they occurred after the court had given a direction by Judge MacKinnon that he was not to contact certain people, the fact that they commenced almost immediately to the people that were affected by Judge MacKinnon's directive and that they occurred to Ms. Field simultaneous with calls to Constable Ponee and to another individual at the police department. I'm at liberty to infer that Mr. Doncaster was the origin of those particular phone calls and I do draw that inference although it's not necessary for me to do so in order to reach the decision that I have here today because there's ample other evidence upon which to base, to ground the application that Ms. Field seeks.
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> This is a truly alarming situation that Mr. Doncaster doesn't seem to have any appreciation for or understanding as to how his actions could possibly have brought people in the community and at the schools and Ms. Field, and his children to a point where they actually fear him. And it's truly alarming that he doesn't have any appreciation for the fact that these actions could have that effect on people. This isn't about his rights. This isn't about anything. This is about the actual fear, the actual damage that he's in the process of inflicting on his children and whether that causes him to smile or not when I make the comment.
>
> …
>
> The application is granted. Mr. Doncaster will enter into a recognizance to keep the peace and be of good behaviour for a period of 12 months.

[5] Mr. Doncaster appealed that ruling to the Supreme Court of Nova Scotia, sitting as the Summary Conviction Appeal Court ("SCAC"). He sought to quash Judge Gabriel's ruling that he enter into the peace bond. In the SCAC, he acted on his own behalf. Mr. Doncaster challenged the constitutionality of ss. 810(3)(a) and (b) of the *Criminal Code*. The Attorney General of Canada intervened to address the constitutional issue. Justice Bourgeois heard the appeal on September 18, 2012 and received final written submissions on October 10, 2012. The judge's decision

of January 15, 2013 rejected Mr. Doncaster's arguments and dismissed his appeal (2013 NSSC 18). On March 19, 2013, Justice Bourgeois ordered Mr. Doncaster to pay costs to Ms. Field (2013 NSSC 110).

[6] The peace bond expired in April 2013.

[7] Mr. Doncaster filed with the Court of Appeal an Application for Leave to Appeal and Notice of Appeal from the SCAC. In this Court, acting on his own behalf, he moved to tender fresh evidence that was not before Judge Gabriel or the SCAC. He requests leave to appeal and, if leave is granted, asks that the decisions of Judge Gabriel and the SCAC be overturned and that Ms. Field be ordered to pay him costs.

Analysis

[8] This is an appeal proceeding under s. 839 of the *Code* from a decision of the SCAC. Section 839(1) states that an appeal to the Court of Appeal "may, with leave of that court or a judge thereof, be taken on any ground that involves a question of law alone".

[9] In *R. v. Pottie*, 2013 NSCA 68, para 21, this Court reviewed the authorities and summarized the principles that govern whether to grant leave to appeal. Those principles include:

- Leave to appeal should be granted sparingly. A second appeal in summary conviction cases should be the exception and not the rule.
- Leave to appeal should be limited to those cases in which the appellant can demonstrate exceptional circumstances that justify a further appeal.
- A second level of appeal is an appeal of the SCAC justice. It is to see if he or she made an error of law. The second level of appeal is not meant to be a second appeal of the provincial court decision.

[10] Mr. Doncaster seeks to overturn Judge Gabriel's direction that Mr. Doncaster enter into a recognizance, or peace bond, under s. 810 of the *Code*. This is not an appeal from a ruling that Mr. Doncaster breached the terms of a

recognizance or peace bond. The peace bond expired in April 2013, over six months ago. The instrument that this appeal seeks to vacate no longer exists.

[11] There is no live controversy respecting the former peace bond.

[12] Neither is there any special circumstance that would support the exercise of the Court's discretion to hear a moot issue, according to the principles in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342, pp. 358-63. This matter isn't about exalted legal principles, despite Mr. Doncaster's efforts to chase those trails. I reiterate Judge Gabriel's comment that the proceeding concerns "actual fear, the actual damage that he's in the process of inflicting" on his estranged family. That is what the peace bond aimed to alleviate for twelve months.

[13] A motion for a peace bond is not a criminal charge, and the judge's decision is not a conviction. Rather, the peace bond is an undertaking to satisfy stated conditions during the term of the recognizance: *Neale v. Reid* (1996), 152 N.S.R. (2d) 272 (C.A.), para 2. Once the term expires, the peace bond is spent. In *Neale*, this Court considered whether to grant leave to appeal from a decision of the Summary Conviction Appeal Court, that, as in the Doncaster case, had dismissed an appeal from a trial judge's direction that the appellant enter into a peace bond under s. 810 of the *Criminal Code*. Justice Freeman (paras 6-7) noted that "the question is moot" and denied leave to appeal.

[14] Similarly, whether Judge Gabriel should have issued the now lapsed peace bond is moot. This is not one of the "exceptional" cases when this Court "sparingly" grants leave to appeal, as discussed in *Pottie*.

[15] Justice Bourgeois ordered Mr. Doncaster to pay costs to Ms. Field for Mr. Doncaster's appeal to the SCAC. In the Court of Appeal, Mr. Doncaster seeks to appeal that costs award.

[16] The SCAC's authority to order costs stems from s. 826 of the *Criminal Code*:

> **826.** Where an appeal is heard and determined or is abandoned or is dismissed for want of prosecution, the appeal court may make any order with respect to costs that it considers just and reasonable.

In *R. v. Ouellette*, [1980] 1 S.C.R. 568, at p. 578, Justice Beetz for the Court said the identically worded s. 758 (predecessor to s. 826) indicated that "Parliament

wished to confer on the Supreme Court the widest possible discretion regarding costs, a discretion limited only by what is just and reasonable".

[17] An appeal to this Court under s. 839(1) is limited to a "question of law alone". In *Regina v. Masurak* (1961), 132 C.C.C. 279 (Sask.C.A.), at p. 280, the Court referred to the identically worded s. 730 (predecessor to s. 758 in *Ouellette* and the current s. 826), and said:

> Whether an order is made as to costs pursuant to this section, is, in my opinion, a question of discretion for the learned District Court Judge, and not a question of law. *Vide Bertrand v. The Queen*, 107 Can. C.C. 239, [1953] 1 S.C.R. 503.
>
> The application for leave to appeal is therefore dismissed.

To similar effect: *R. v. Simpson (J.)* (1998), 172 N.S.R. (2d) 182 (C.A.), at para 11.

[18] Similarly, Justice Bourgeois' decision to award costs to Ms. Field, in the context of this matrimonial dispute, was an exercise of discretion. Mr. Doncaster's appeal from that award does not involve a question of law alone.

[19] As none of Mr. Doncaster's grounds warrant leave to appeal, his fresh evidence motion has no anchorage, and should be dismissed.

Conclusion

[20] I would dismiss the motion to offer fresh evidence and deny leave to appeal.

Fichaud, J.A.

Concurred: Hamilton, J.A.