

NOVA SCOTIA COURT OF APPEAL

**Cite as: Bignell v. Bignell, 1995 NSCA 211**  
Freeman, Hart and Jones, J.J.A.

**BETWEEN:**

SANDRA LYNN BIGNELL

Appellant

- and -

PATRICK JAMES BIGNELL

Respondent

Lynn M. Henry  
for the Appellant

William R. Corkum  
for the Respondent

Appeal Heard:  
November 21, 1995

Judgment Delivered:  
November 21, 1995

**THE COURT:** Appeal allowed per oral reasons for judgment of Jones, J..A; Freeman and Hart, J.J.A. concurring.

The reasons for judgment of the Court were delivered orally by:

JONES, J.A.:

This is an appeal from a divorce judgment and corollary relief judgment. The

parties were married in 1973 and separated in 1982. There is one child of the marriage. The respondent filed a petition for divorce on April 17, 1993. The appellant was personally served with the petition on May 26, 1993. No answer was filed by the appellant. The appellant's counsel contacted the respondent's solicitor and secured an agreement for an unspecified extension of time in which to file an answer pending negotiations to settle corollary relief matters. On April 8, 1994, the respondent's solicitor advised appellant's solicitor by ordinary post that he intended to proceed. The appellant's solicitor contacted the respondent's solicitor. The respondent's solicitor advised that he had not filed any papers and did not propose to do so.

On April 13, 1995 the respondent's solicitor filed documents proposing to process the matter as an undefended action. No notice was served on the appellant. A decree and corollary relief judgment were issued out of the Supreme Court on May 15, 1995. The sole issue on this appeal is whether the respondent complied with **Rule 57.15** of the **Civil Procedure Rules**. That **Rule** provides as follows:

57.15 (1) A petitioner may include in the notice of petition a notice that in default of answer the proceeding will be set down, within thirty (30) days of the default, for hearing, at a sitting of the court held at the place proposed by the petitioner in the petition, and where the proceeding is so set down for hearing, no further notice of the hearing shall be necessary.

(2) In all other cases, a notice of hearing in Form 57.15A or 57.15B shall be served on the respondent spouse and all persons named in the petition and alleged to have committed an adultery, and, where the person to be served is not represented by a solicitor, service shall be effected by mailing the notice by ordinary mail at least ten (10) days prior to the date of the hearing, unless the court orders otherwise.

In our view it was incumbent upon the respondent to serve a notice of hearing on the appellant before proceeding with the application for a decree under **Rule 57.15(2)** of the **Rules**. See **Anderson v. Anderson**, [1995] N.S.J. No. 27 C.A. No. 104845. The appeal is allowed and the judgments for divorce and corollary relief are set aside without costs. The matter is remitted to the Supreme Court.

J.A.

Concurred in:

Freeman, J.A.

Hart, J.A.

