

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Cummings*, 2014 NSCA 61

Date: 20140610
Docket: CAC 416755
Registry: Halifax

Between:

Wanda Cummings

Appellant

v.

Her Majesty the Queen in right of Nova Scotia,
The Provincial Court of Nova Scotia,
The Attorney General of Nova Scotia
representing Her Majesty the Queen in Right of the
Province of Nova Scotia, and
The Nova Scotia Department of Justice

Respondents

Judge: Scanlan, J.A.

Motion Heard: June 5, 2014, in Halifax, Nova Scotia in Chambers

Held: Registrar's motion for dismissal granted.

Counsel: Appellant in person
Marian Fortune-Stone, Q.C., for the respondent Her Majesty
the Queen
Sheldon Choo, for the respondent Attorney General of Nova
Scotia

Decision:

[1] In this proceeding the Registrar requests that Ms. Cumming's appeal be dismissed due to failure to perfect the appeal as per Court Rules.

[2] For the reasons set out below I would grant the motion.

Introduction

[3] This matter comes before the Court by way of Registrar's motion to have the appeal dismissed. I preface my remarks by noting that there has been a plague of cases in this Court and lower courts wherein litigants appear to engage the judicial assets of this province for a purpose other than to resolve legitimate legal disputes. They often drag innocent by-standers into the quagmire and inevitably consume a disproportionate share of judicial resources, with little regard to the intended application of Court Rules and processes. Sometimes the victims they leave in their wake are innocent parties or affected persons who deserve to have their issues dealt with in a reasonably efficient and fair manner. Inevitably the courts and the public who funds those courts are victims of protracted, dare I suggest, vexatious litigation. There are Rules of court that would allow parties to take steps to curtail the abuse of vexatious litigants. For some reason which I do not understand, those Rules are seldom, if ever, used. In the absence of parties using the Rules of Court to curtail vexatious litigants, the Court must control its own processes to ensure that efficient use is made of scarce court (public) resources.

[4] The laws and Rules of Court intend to provide a forum for aggrieved parties to have valid disputes litigated in a responsible and efficient manner. In criminal proceedings the **Criminal Code**, rules of evidence and **Civil Procedure Rules** are intended to offer an accused full opportunity of defence so as to allow for a fair trial on the merits.

[5] The processes in place are not intended to provide a forum for justice participants to embark upon a mind-numbing series of applications and appeals without regard to the merits or costs.

[6] In the recent past this Court has dealt with litigants who have wasted valuable court resources and the resources of affected parties. I am referring to cases like; **Liu v. Atlantic Composites Ltd.**, 2014 NSCA 58; **Macdonald v. First**

Financial GP Corp., 2013 NSCA 60; **Doncaster v. Chignecto-Central Regional School Board**, 2013 NSCA 59; and **Leigh v. Belfast Mini-Mills Ltd.**, 2011 NSSC 320. The last mentioned case, **Leigh**, involved Ms. Cummings, the appellant in the present proceeding.

[7] In this appeal Ms. Cummings remains undeterred by the decision of Justice Duncan in 2011 NSSC 320 . She is equally undeterred by the anvil dropped by the Supreme Court of Canada on May 15, 2014, when that Court refused leave to appeal a decision of this Court ([2014] S.C.C.A. 200) in a proceeding reported as 2013 NSCA 110.

[8] Ms. Cummings appeared on June 5, 2014, to resist the Registrar's motion for dismissal. She suggests that she should be permitted to proceed with her appeal. The documents Ms. Cummings filed in preparation for this contested motion suggest to me that she will not follow any court direction in any event, even if this appeal were to proceed. The materials she has filed suggest to me that she is insisting on arguing every case in every court she has encountered.

[9] The Attorney General of Nova Scotia filed a brief in support of the Registrar's motion for dismissal. The Crown also endorsed that request for dismissal.

[10] Ms. Cummings is a self-represented litigant who is extremely familiar with the court processes and the **Civil Procedure Rules**. She is well aware of the consequences of non-compliance in regards to perfection and filing deadlines and documents required to perfect an appeal. In spite of numerous appearances, Ms. Cummings failed to perfect the appeal in the present case.

[11] Ms. Cummings appeared before Justice Saunders on February 27, 2014, on a Registrar's motion to dismiss Ms. Cummings appeal for non-perfection and non-compliance with the Rules. Justice Saunders adjourned the motion until June 5 pending an appeal by Ms. Cummings to the Supreme Court of Canada. Ms. Cummings had been appealing an interlocutory decision of Justice Fichaud to the Supreme Court of Canada rather than perfecting her appeal. The leave application to the Supreme Court of Canada simply prolonged the present appeal. Had Ms. Cummings complied with the decision of Justice Fichaud this matter would likely have been set down and heard long ago.

[12] All courts have finite resources. This appeal alone has had three reported decisions of the Court of Appeal and a motion for date and directions is not even

scheduled yet. What is even more disconcerting in this case is that the issues Ms. Cummings wants to litigate have been rendered moot because the proceedings in Provincial Court have caught up and passed her. The trial has been completed, she has been sentenced and the appeal period long since expired.

[13] In **Islam v. Sevgur**, 2011 NSCA 114, Justice Saunders summarized the principles that should govern a court's discretion to dismiss an appeal for failure to perfect the appeal. He noted a number of considerations that are important when dealing with a motion such as now before the Court. He said:

[36] ... I would expect the appellant to produce evidence that it would not be in the interests of justice to dismiss the appeal for non-compliance. While in no way intended to constitute a complete list, some of the factors I would consider important are the following:

- (i) whether there is a good reason for the appellant's default, sufficient to excuse the failure.
- (ii) whether the grounds of appeal raise legitimate, arguable issues.
- (iii) whether the appeal is taken in good faith and not to delay or deny the respondent's success at trial.
- (iv) whether the appellant has the willingness and ability to comply with future deadlines and requirements under the Rules.
- (v) prejudice to the appellant if the Registrar's motion to dismiss the appeal were granted.
- (vi) prejudice to the respondent if the Registrar's motion to dismiss were denied.
- (vii) the Court's finite time and resources, coupled with the deleterious impact of delay on the public purse, which require that appeals be perfected and heard expeditiously.
- (viii) whether there are any procedural or substantive impediments that prevent the appellant from resuscitating his stalled appeal.

[14] I would add to that list by saying, if the issue has been rendered moot then the Registrar's motion should be granted.

[15] In this case, in the midst of the trial proceedings in Provincial Court, Ms. Cummings sought to have the Supreme Court intervene by way of judicial review. Supreme Court Justice M. Heather Robertson refused the judicial review and remitted the matter back to the Provincial Court. Ms. Cummings was not satisfied with the decision of Justice Robertson so she appealed to this Court. Justice

Fichaud refused to stay the Provincial Court proceeding and Ms. Cummings sought leave to appeal that decision to the Supreme Court of Canada. That leave has been refused. All of the proceedings in the Court of Appeal relate to the refusal by Justice Robertson to intervene in the Provincial Court proceeding.

[16] As I noted above, on August 23, 2013, Ms. Cummings was found guilty of the offence in the original charge. A fine of \$170 was imposed. Ms. Cummings was given until January 1, 2015, to pay the fine. The conviction has not been appealed. The time to appeal the decision of the Provincial Court has long since expired.

[17] To allow this appeal to continue would be a waste of the Court's finite time and resources. It is time to show Ms. Cummings to be shown the door just as it was time in the **Doncaster, Macdonald and Liu** matters. This case would do nothing more than chew up, and waste, the scarce resources of this province and this Court.

[18] The Registrar's motion shall be granted. The appeal shall be dismissed.

Scanlan, J.A.