

NOVA SCOTIA COURT OF APPEAL

Citation: *Cummings v. Nova Scotia (Attorney General)*, 2014 NSCA 62

Date: 20140610

Docket: CA 415797

Registry: Halifax

Between:

Wanda Cummings

Appellant

v.

The Attorney General of Nova Scotia representing
Her Majesty the Queen in Right of the Province of Nova Scotia

Respondent

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
Duane Eddy, for the respondent

Decision:

[1] In this proceeding the Registrar asks that the appellant's appeal be dismissed due to her failure to perfect. For the reasons below I grant the motion.

Introduction

[2] This motion came before the court on June 5 and was heard at the same time as the Registrar's motion in relation to file no. CAC 416755. The comments that I made in the companion decision apply to the present case.

[3] This case has its genesis in a provincial court proceeding in which Ms. Cummings subpoenaed two non-party witnesses. Those subpoenas were struck down by Justice Pickup of the Supreme Court of Nova Scotia. Ms. Cummings appealed the decision to strike the subpoenas.

[4] The Rules of Court are intended to provide a forum for parties to litigate disputes. In criminal proceedings the **Criminal Code**, Rules of evidence and **Civil Procedure Rules** are intended to offer an accused full opportunity to have a fair trial on the merits. The Rules and processes in place are not intended to provide forum for justice participants to enter into a mind-numbing series of applications and appeals without regard to merit, cost or relevance.

[5] Ms. Cummings resisted the Registrar's motion suggesting that she should be permitted to proceed with her appeal. The Attorney General of Nova Scotia filed a brief in support of the Registrar's motion for dismissal and was supported through counsel for Her Majesty the Queen in Right of the Province of Nova Scotia (Watching Brief).

[6] Ms. Cummings, as an experienced litigant, is well aware of the consequences of non-compliance with court Rules and deadlines. In spite of numerous appearances, Ms. Cummings has failed to perfect the appeal in the present case. The documents she did file in opposition to the Registrar's motion do not suggest to me that she will follow court directions even if the matter were to proceed. The materials she filed suggest to me that she wants to re-argue every decision in every court that she has appeared in. These reasons alone would suggest to me that I should grant the Registrar's motion as requested.

[7] 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.

[8] In the companion decision today I noted that if cases are moot then that should be an additional consideration in these types of applications. The original proceedings before the Provincial Court have now concluded. The charges against Ms. Cummings giving rise to the issues on appeal were dismissed as of October 28, 2013. This renders the issue of the validity of the subpoenas moot. Ms. Cumming is no longer in jeopardy. It would be a waste of judicial resources, and public funds to allow this appeal to continue.

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

Scanlan, J.A.