NOVA SCOTIA COURT OF APPEAL
Citation: *Ryan v. Pullin*, 2003 NSCA 81

Date: 20030731
Docket: CA 172980
Registry: Halifax

Between:

Theodore Augustine Ryan

Appellant

v.

Joanne Helen (Ryan) Pullin

Respondent

Judge:	The Honourable Mr. Justice Jamie W. S. Saunders
Application Heard:	July 31, 2003, in Halifax, Nova Scotia, in Chambers
Written Decision:	August 5, 2003
Held:	Application dismissed with costs of $150.00 including disbursements payable to the Respondent, as per oral reasons of Saunders, J.A.
Counsel:	Theodore Augustine Ryan, Self-Represented Appellant Joanne (Ryan) Pullin, Self-Represented Respondent

Decision: (Orally)

[1] The applicant, Theodore Augustine Ryan, appears in chambers today seeking to quash an execution order of this court dated May 30, 2003. The amount of the execution order totals $1,506.10, which includes the claim amount of $1,072, as well as other fees of $334.10. His application is opposed by his former wife, the respondent, Joanne Helen (Ryan) Pullin.

[2] The record indicates that the execution order was granted pursuant to a decision of this court dated April 16, 2002, which is indexed as *Ryan v. Ryan*, 2002, NSCA 51, wherein Justice Bateman awarded costs in the amount of $1,000 to the respondent.

[3] About a year later, in an affidavit sworn April 15, 2003, Ms. Pullin asked this court to issue an execution order to enforce the collection of that outstanding judgment. In finding that the judgment of April 16, 2002 was duly entered against the judgment debtor, the deputy prothonotary issued the aforementioned execution order.

[4] Before moving to the substance of Mr. Ryan's application this morning, I want to deal first with a preliminary matter arising from his reference to *Civil Procedure Rule 53* and whether a judge of this court sitting in chambers has jurisdiction to quash an execution order of the Court of Appeal.

[5] Rule 53.13(1) provides:

> **53.13.** (1) Where the court is satisfied that,
>
> (a) special circumstances exist that render it inexpedient to enforce an order for the payment or recovery of money;
>
> (b) the applicant is for any reason unable to pay any money payable or recoverable under an order;
>
> (c) for any other just cause;

> the court may order the issue or enforcement of an execution order to be stayed, either absolutely or for such period and subject to such conditions as the court thinks just.

[6] Civil Procedure Rule 1.05(e) provides the definition of “court” as:

> (e) "court" means,
>
> > (i) in the Nova Scotia Court of Appeal, the court or a judge or the judges thereof, whether sitting in court or chambers;

[7] Accordingly, I find that it is within my jurisdiction to hear Mr. Ryan’s application.

[8] I have carefully considered the affidavits and supporting material filed by both Mr. Ryan and Ms. Pullin. In my view the applicant’s affidavit offers no evidence which would allow me to find that the execution order should be stayed pursuant to *Civil Procedure Rule* 52.13(1). I find that Ms. Pullin’s execution order issued by this court was properly entered, certified and executed, and ought to remain enforceable.

[9] At ¶’s 3 and 4 of Mr. Ryan’s affidavit and in his submissions this morning, the applicant provided details of the seizure from one of his personal bank accounts. He complained that he received no notice of the seizure prior to his discovery of the missing funds on July 19 and his subsequent conversation with the bank manager two days later, confirming the execution of the order.

[10] I remind the parties that Rule 53.02(1)(b) provides that an execution order in due form shall direct the sheriff to seize property that is in the possession of another at the time of the seizure. The bank account was in the possession of the bank. Consequently in accordance with that Rule, the sheriff was obliged to serve the order on the bank manager in order to seize those funds. As the bank was in possession and not the applicant, the sheriff was not required to serve or otherwise

notify Mr. Ryan. There is no evidence before me this morning to suggest the sheriff in any way improperly served the order upon the bank.

[11] In Ms. Pullin's affidavit filed in opposition to Mr. Ryan's application, she swears that further execution proceedings were begun to enforce another judgment. She refers to an execution order dated May 9, 2003, in the amount of $7,459.59. Ms. Pullin is entitled to pursue enforcement proceedings to collect money owing to her as a judgment creditor. I make no findings this morning, nor give any directions with respect to that second execution order.

[12] I also note that in her affidavit she purports to claim other relief. For example, at ¶ 12 she respectfully asks this court to:

> . . . consider my request to reduce my maintenance payments of $326.00 per month to $200.00 per month as a method of Mr. Ryan repaying this debt to myself.

and in ¶ 13 she swears:

> I would also like to request that this Honourable court consider that these new orders what ever (sic) they shall be, be made adjustable by the Sheriff's office without the cost of Mr. Ryan or myself doing new execution orders.

[13] Such additional claims are not properly before the court this morning and I do not intend to address them.

[14] Mr. Ryan is also obviously entitled to initiate enforcement proceedings against Ms. Pullin for any judgment or judgments awarded in his favour. He has a judgment against his former wife which is dated December 10, 2001 and is referred to as Exhibit "C" in his affidavit totaling approximately $1,200. While the applicant may be upset with the enforcement proceedings initiated by Ms. Pullin, she is well within her rights to do so, just as Mr. Ryan is able to pursue those same enforcement procedures for his own benefit.

[15] Finally, Mr. Ryan has proposed that the sum endorsed in Ms. Pullin's execution order should in some way be offset by his own judgment against her.

While such an idea might seem sensible, this court is not a collection agency, nor is it in the business of quantifying the pluses and minuses in a kind of ongoing ledger between parties with competing execution orders. In any event, such a proposal is untenable and not supported by the law. A set-off is a formal plea which may be included in a defence or counterclaim. It is not a calculation or adjustment that a member of this court can make in circumstances such as these.

[16] Having listened to your submissions, it is apparent to me that the relationship between you continues to be acrimonious, which is regrettable. Each of you has obtained one or more orders for costs based on a history of divorce and child custody and care proceedings. These are all subject to the same enforcement procedures available to judgment creditors under our *Nova Scotia Civil Procedure Rules*.

[17] In conclusion, I must say that much of the content of your affidavits and your submissions is extraneous and irrelevant to today's application which is limited to Mr. Ryan's attempt to quash the one execution order. I do not intend to deal with each of your complaints against the other alleging a failure to abide by the terms of the corollary relief judgment, or other transgressions, as those would be matters properly taken up in the Family Division of the Supreme Court.

[18] For these reasons I dismiss Mr. Ryan's application with costs of $150 inclusive of disbursements, payable to the respondent.

Saunders, J.A.