NOVA SCOTIA COURT OF APPEAL
Citation: ***Bellefontaine v. Schneiderman***, 2006 NSCA 96

Date: 20060803
Docket: CA 267824
Registry: Halifax

Between:

Danette Bellefontaine

Appellant

v.

Scott Schneiderman

Respondent

Judge:	The Honourable Justice Nancy Bateman in Chambers
Appeal Heard:	August 3, 2006, in Halifax, Nova Scotia
Held:	Application for extension of time to file notice of appeal dismissed.
Counsel:	appellant in person respondent in person

Reasons for decision:

[1] Dannette Lynn Bellefontaine has applied for an extension of time to appeal a Corollary Relief Judgment ("CRJ") incidental to divorce. The CRJ in question was issued February 23, 2006. It gave effect to the oral decision of Justice J.E. Scanlan delivered on June 1, 2005. The trial in question took place on February 10, April 28 and 29, 2005 and June 1, 2005. Both parties were represented by counsel at trial and until some time into the spring of 2006. Both are now self represented.

[2] The intended grounds of appeal allege that the judge misinterpreted the evidence of several witnesses and erred when he determined that the children should reside with the respondent father rather than the intended appellant mother. Ms. Bellefontaine requests that this Court, in allowing the appeal, order that the children reside with her or, in the alternative, remit the matter to the trial court for a new hearing on custody and the division of assets.

[3] A three-part test is generally applied by this Court on an application to extend the time for filing a notice of appeal, requiring that the applicant demonstrate (**Jollymore Estate Re** (2001), 196 N.S.R. (2d) 177 (C.A. in Chambers) at para. 22):

> (1) the applicant had a bona fide intention to appeal when the right to appeal existed;
>
> (2) the applicant had a reasonable excuse for the delay in not having launched the appeal within the prescribed time; and
>
> (3) there are compelling or exceptional circumstances present which would warrant an extension of time, not the least of which being that there is a strong case for error at trial and real grounds justifying appellate interference.

[4] Where justice requires that the application be granted, the judge may allow an extension even if the three part test is not strictly met (**Tibbetts v. Tibbetts** (1992), 112 N.S.R. (2d) 173 (C.A. in Chambers)).

[5] The children in question, a boy and a girl, are eleven and eight years old and, according to the CRJ, in the primary care of Mr. Schneiderman with one month's block summer access and other special occasion access by Ms. Bellefontaine. Mr. Schneiderman resides in Belnan, Hants County and Ms. Bellefontaine in Oklahoma, United States where she relocated from Nova Scotia in October 2005.

[6] Ms. Bellefontaine's affidavit of June 26, 2006, filed in support of her application, states that her lawyer did not receive notice that the CRJ had issued until April 7, 2006. She further deposes that her counsel mailed her a copy of the CRJ on April 19 and that she was unable to contact him until the last week of May. She says she was in contact with this Court about filing an appeal on June 19, 2006.

[7] She apparently attended at the Court to file this application when she arrived in Nova Scotia in late June to pick up the children for block summer access. This hearing of the application has been arranged to coincide with her return of the children to Nova Scotia.

[8] Mr. Schneiderman opposes the extension of time. He deposes that Ms. Bellefontaine was present in Court on June 1, 2005 when Scanlan, J. rendered the oral judgment. Attached to his affidavit are copies of letters confirming that it was Ms. Bellefontaine's counsel's obligation to prepare the CRJ. Notwithstanding repeated requests by counsel on Mr. Schneiderman's behalf, due to the extraordinary delay, it was his counsel who ultimately prepared the judgment, albeit, with the knowledge and consent of Ms. Bellefontaine's counsel.

[9] Attached to Mr. Schneiderman's affidavit, as well, is an email of July 14, 2005 from Ms. Bellefontaine's current husband advising that "We have accepted the courts decision and are trying to move on." Despite that conciliatory note it appears from the material attached to Mr. Schneider's affidavit that much ill will and posturing continues between the parties and their new partners.

[10] Ms. Bellefontaine clearly has not satisfied the three part test. Even allowing for some passage of time over the usual thirty day appeal period (after issuance of the CRJ) due to mail delays and communication difficulties over the distance. I am not persuaded that Ms. Bellefontaine had the requisite intent to appeal within a reasonably expanded period of time. She has offered no satisfactory excuse for not

having launched the appeal in a much more timely way, even should I accept her assertion that her counsel did not receive an issued version of the CRJ until April 7, 2006.

[11] However, even if Ms. Bellefontaine had satisfied the first two branches of the test, she fails on the third. I have reviewed the detailed written reasons for judgment. The judge's assessment of the credibility of the parties played a significant part in his resolution of the parenting arrangements. The intended grounds of appeal do not, on their face, suggest a strong case for error on the part of the trial judge requiring appellate interference.

[12] Finally, I am not persuaded that justice requires that the application be granted. Quite the contrary. Over a year has now elapsed under the current custodial regime. That is a significant period of time in the children's lives. It would be inappropriate and unsatisfactory for this Court, even should we be persuaded of error in the first instance, to simply ignore that passage of time and decide custody anew as if it was still June of 2005. Ms. Bellefontaine has since moved to another country as she was planning to do at the time of trial. Undoubtedly the circumstances of both parents and the children are substantially different from what they then were. Should Ms. Bellefontaine wish to alter the current parenting arrangements, the more appropriate route is an application to vary custody made in the Supreme Court of Nova Scotia. In such circumstances that Court will be in a position to hear current information about the children's and the parties' circumstances in order to better determine where the children's best interests lie.

[13] The application is dismissed but, in the circumstances, without costs.

Bateman, J.A.