IN THE SUPREME COURT OF NOVA SCOTIA
Citation: Wentzell v. Wentzell, 2004 NSSC 107

Date: 20040602
Docket: 1201-40888
Registry: Halifax

Between:

Ralph Borden Wentzell

Petitioner

v.

Lorraine Ellen Wentzell

Respondent

Judge: The Honourable Justice Arthur J. LeBlanc

Heard: June 4, 2003, in Halifax, Nova Scotia

Counsel: Jean DeWolfe, Esq., for the petitioner

By the Court:

[1] In a decision dated February 27, 2004, and filed March 3, 2004, I declined to confirm the order of Holmes J. in this matter. My reasons for judgment indicated that the applicant, Mrs. Wentzell, had failed to establish that Ryan was in full-time attendance at a school in order to qualify for child support payments until June 1996. I indicated that Mrs. Wentzell had failed to file the additional affidavit which Holmes J. had directed that she file in his order of August 6, 2002. It was an error on my part to state that the affidavit had not been filed. On a review

of the file, it is clear that Mrs. Wentzell filed an affidavit on August 20, 2002. However, it is equally evident from the file material, including the affidavit, that the material which was to accompany the affidavit was not filed with the B.C. Supreme Court. I am satisfied that although the affidavit in question was in fact filed as directed, its substance fails to meet the conditions set out by Holmes J., namely “a record indicating the child Ryan David Wentzell’s attendance at an educational facility.” This would require a transcript of marks, which Holmes J. directed Mrs. Wentzell to file with the Court. According to the transcript of the August 6, 2002, hearing, she agreed to do so. The only document provided with the August 20 affidavit is a copy of a letter from the school principal indicating that “Ryan Wentzell was registered as a full time student” from September 1993 to June 1996. This is the same letter that was referred to in my decision filed March 3, 2004.

[2] I refer to Civil Procedure Rule 15.07:

> Clerical mistakes in judgments or orders, or errors arising therein from any accidental mistake or omission, or an amendment to provide for any matter which should have but was not adjudicated upon, may at any time be corrected or granted by the court without appeal.

[3] Gruchy J. discussed the application of Rule 15.07 in *Wesco Distribution-Canada v. Stannair Energy Management Group* (2001), 199 N.S.R. (2d) 208 (S.C.) at para. 19:

> ... Rule 15.07 is known as the slip rule and is usually the vehicle used by the court to correct accidental slips or omissions.... [The rule] does go beyond an accidental slip or omission and does give the court authority to amend an order to provide what actually should have been provided in the first instance....

[4] I also refer to *Brown v. Hughes*, [2002] N.S.J. No. 518 (C.A.) (2002 NSCA 158) at para. 8 and *Wood v. Wood* (1982), 56 N.S.R. (2d) 217 (S.C.-T.D.).

[5] As a result, although it was an error on my part to state that Mrs. Wentzell had failed to file an affidavit, there is no basis upon which to vary or amend my decision not to confirm the order of Holmes J.

J.