

NOVA SCOTIA COURT OF APPEAL
Citation: *Domoslai v. MacNeil*, 2016 NSCA 62

Date: 20160729
Docket: CA 436157
Registry: Halifax

Between:

Roderick J. Domoslai

Appellant

v.

Dawn K. MacNeil

Respondent

Judge: The Honourable Justice Joel E. Fichaud in chambers

Motion Heard: July 27, 2016, in Halifax, Nova Scotia (teleconference)

Held: Registrar's motion granted and appeal dismissed

Counsel: Roderick J. Domoslai on his own behalf
Ralph W. Ripley, for the respondent

Reasons for judgment:

[1] In the summer of 2012, Mr. Domsolai and Ms. MacNeil underwent divorce trial before Justice Darryl Wilson of the Supreme Court of Nova Scotia (Family Division). Justice Wilson issued a written decision on March 8, 2013 (2013 NSSC 88) followed by a Corollary Relief Order dated January 13, 2015.

[2] On February 9, 2015, Mr. Domsolai filed a notice of appeal to the Court of Appeal. His grounds include many alleged errors of fact and mixed fact and law.

[3] On February 23, 2015, the Registrar of the Court of Appeal sent Mr. Domsolai the customary letter that, within eighty days from the filing of the notice of appeal, the appellant must move to set down the appeal for hearing and the motion must be accompanied by a certificate of readiness.

[4] On June 5, 2015, Mr. Domsolai filed his Certificate of Readiness, certifying that he had ordered the transcript, the transcription service told him the transcript would be completed by March 31, 2016, and he would file an appeal book by April 30, 2016.

[5] On June 17, 2015, further to Mr. Domsolai's motion, Justice Farrar scheduled April 29, 2016 for the filing of the appeal book, May 30 and June 27, 2016 for the appellant's and respondent's factums and September 7, 2016 for the hearing of Mr. Domsolai's appeal,

[6] Mr. Domsolai has not filed the appeal book, or his factum.

[7] On June 1, 2016, the Registrar moved that the appeal be dismissed for non-compliance, further to Civil Procedure Rules 90.43(3) and (4).

[8] After an adjournment at Mr. Domsolai's request, on July 27, 2016, I heard the motion by teleconference.

[9] Mr. Domsolai has filed no sworn evidence for the motion. He said that the transcript is not prepared or underway and that, eight months ago, he told the transcription service to cease its preparation. He says he is involved with other litigation that is consuming his attention and resources. But he wants to proceed with this appeal, and asks that the Registrar's motion be dismissed.

[10] Rules 90.43(3) and (4) state:

90.43 (3) In an appeal not perfected before 80 days from the date of filing of the notice of appeal, or before any other time ordered by the judge, the registrar must make a motion to a judge for an order to dismiss the appeal on five days notice to the parties.

(4) A judge, on motion of a party or the registrar, may direct perfection of an appeal, set the appeal down for hearing, or, on five days notice to the parties, dismiss the appeal.

[11] In *Islam v. Sevgur*, 2011 NSCA 114, paras. 36-37, Justice Saunders said that, in response to a registrar's motion under Rule 90.43, the appellant should satisfactorily address a number of itemized factors.

[12] The pertinent factors will vary with the circumstances of each appeal. In Mr. Domsolai's case, they include: (1) that his grounds of appeal raise arguable issues, (2) a proposed deadline for his appeal book to include a transcript, (3) that he has the ability to comply with future deadlines, (3) that the prejudice to Mr. Domsolai from dismissal of the appeal outweighs the prejudice to Ms. MacNeil from whatever interval he proposes for a continuation, and (4) the impact, if any, on their children of the delayed resolution of the parental issues in this divorce proceeding.

[13] I have nothing from Mr. Domsolai on these points. I am left with a notice of appeal that was filed over seventeen months ago, grossly inaccurate projections in Mr. Domsolai's certificate of readiness, grounds of appeal that raise many factual issues for which a transcript is necessary, transcription cancelled by Mr. Domsolai, and no basis to conclude that Mr. Domsolai will be able to provide a transcript or proper appeal book on any projected date.

[14] Mr. Domsolai has not satisfied the onus that rests on a respondent to a Registrar's motion. I grant the Registrar's motion and dismiss the appeal, without costs.

Fichaud, J.A.