

NOVA SCOTIA COURT OF APPEAL

Hallett, Roscoe and Bateman, JJ.A.

Cite as: Andrew v. Andrew, 1996 NSCA 40

BETWEEN:

IAN RICHARD ANDREW

Appellant

) Heidi Foshay Kimball
) for the Appellant

- and -

CAROL ELIZABETH ANDREW

Respondent

) Valerie Romkey
) for the Respondent

) Appeal Heard:
) January 26, 1996

) Judgment Delivered:
) January 26, 1996

THE COURT:

The appeal is dismissed with costs as per oral reasons for judgment of Roscoe, J.A.; Hallett and Bateman, JJ.A., concurring.

The reasons for judgment of the Court were delivered orally by

ROSCOE, J.A.:

This is an appeal from a decision of a Supreme Court judge in Chambers who proceeded on an application to enforce arrears of maintenance in the absence of

the appellant, who had been personally served with notice of the application.

The appellant's solicitor had telephoned the respondent's counsel to ask that the matter be adjourned because of a conflict in her schedule. That request was refused because the respondent wanted to leave the province as soon as possible to visit her parents who were both ill. The appellant's solicitor then wrote to the Chambers judge and advised of her unavailability and asked that the matter be adjourned. She did not receive a response from the Chambers judge. The appellant was aware that his counsel would not be attending the hearing.

Neither the appellant nor anyone acting on his behalf attended at the hearing, nor was any affidavit evidence filed on his behalf. Counsel for the respondent advised the Chambers judge that they wished to proceed. The transcript demonstrates that the Chambers judge was satisfied that the appellant had received notice of the hearing and that he was steadily employed as a police officer. It is also apparent that he had read and accepted the evidence in the affidavit filed by the respondent dealing with why it was necessary to have a garnishee and why she was requesting the use of insurance policy funds to pay university tuition for one of the children.

It was within the discretion of the Chambers judge to determine whether an adjournment would be granted as requested by the appellant's counsel or to proceed as he did. See **Civil Procedure Rule** 37.11(1). We find no error in the exercise of his discretion nor in the orders made by him on the application. The appeal is therefore dismissed with costs in the amount of \$1,000.00, plus disbursements, taking into account the two previous attendances in Appeal Court Chambers on the application to stay.

Roscoe, J.A.

Concurred in:

Hallett, J.A.

Bateman, J.A.