

NOVA SCOTIA COURT OF APPEAL
Citation: *Doncaster v. Field*, 2012 NSCA 44

Date: 20120502
Docket: CA 388212
Registry: Halifax

Between:

Ralph Ivan Doncaster

Applicant

v.

Jennifer Lynn Field

Respondent

Judge: The Honourable Justice M. Jill Hamilton

Application Heard: April 5, 2012, in Halifax, Nova Scotia, In Chambers

Held: Motion for a stay pending appeal is dismissed.

Counsel: Patrick J. Eagan, for the appellant
Janet M. Stevenson, for the respondent

Decision:

[1] Ralph Ivan Doncaster applies for a stay pending appeal, of two aspects of Justice J. Edward Scanlan's interim order dated March 13, 2012. He seeks supervised access with his three young daughters and the right to travel on the number 2 highway in the location where his children live with their mother, Jennifer Lynn Field, and where his daughters' school is located. Mr. Doncaster's appeal is set to be heard on September 14, 2012.

Background

[2] It appears the parties married in 1998 and separated in January of 2011. Their oldest child is a twelve-year-old son. Their three daughters are 10, 8 and 7 respectively. Following separation, until the beginning of 2012, the children lived with each parent on alternating weeks.

[3] On January 2, 2012 Mr. Doncaster was charged with assaulting their son pursuant to s. 266 of the **Criminal Code**, R.S.C., 1985, c. C-46. Mr. Doncaster agrees he punched their son four times on his left arm, after their son denied being responsible for misplacing the TV remote control on New Year's Eve, causing them to miss the countdown.

[4] On January 4, 2012, Ms. Field made an application to Family Court concerning the interim custody of the children. Affidavits were filed.

[5] On January 30, 2012 Mr. Doncaster was acquitted of the criminal charge of assaulting their son.

[6] The parties appeared before the Honourable Judge Corinne Sparks on February 1, 2012, on Ms. Field's application. She scheduled the matter to return to Family Court on March 7 for an interim hearing with evidence. On an interim basis, Judge Sparks ordered joint custody, with Mr. Doncaster having unsupervised access with the children at specified times, but no overnight access, and counselling for the children.

[7] The anticipated March 7 hearing before Judge Sparks did not take place. Instead the parties appeared before Justice Scanlan on March 5. This appearance was scheduled and held after Mr. Doncaster filed a petition for divorce and a

motion for interim custody in the Nova Scotia Supreme Court in Truro on February 3. Mr. Doncaster sought to have the children live with him every second week.

[8] The evidence introduced before Justice Scanlan included affidavits of the parties; their cross-examination; the testimony of Cst. Cheryl Ponee, an officer at the Enfield detachment of the RCMP; the evidence of Patricia Thomson, a social worker with the Department of Community Services (“Department”), Child Welfare Office and the Department’s half-inch thick file on the family.

[9] Constable Ponee provided evidence of many criminal charges laid against Mr. Doncaster since the beginning of 2012, all relating to his family situation. Some involved his family directly. Others arose from his actions with respect to his daughters’ school. Still others arose from his actions with respect to a family who were friends of Ms. Field. Constable Ponee testified that her understanding was that Mr. Doncaster’s actions alone caused their daughters’ school to change its entrance and dismissal times and to introduce a system whereby everyone has to be buzzed into the school, because the parents and teachers were frightened of Mr. Doncaster and his constant threats to show up at the school. She also testified of her understanding that Mr. Doncaster inundated the family who were friends of Ms. Field with emails about his personal family matters, made photocopies of a summons involving the wife, which included the names and address of her four children, and put these copies on cars parked outside of the restaurant where the wife works, threatening her employment and making her employer fear for the safety of himself and his family. She testified that (with respect to Ms. Field’s friends) Mr. Doncaster told the wife and the husband’s elderly mother who lives in Newfoundland, that the husband was getting sexual favours on the road, told the husband he was going to take care of the wife while the husband was on the road and told a local building supply store that the husband stole wood from them.

[10] Patricia Thomson testified about the family doctor’s referral to the Department when Mr. Doncaster sought a referral to a psychiatrist in regards to ongoing anger and emotional issues relating to his past physical aggression with two of his children. Her understanding was that the doctor noted that it had not yet been determined if Mr. Doncaster had a mental health issue or a personality disorder. She further testified about her involvement following the New Year’s Eve incident. She concluded, as a result of this involvement, that “the children were at risk of substantial physical harm from their father” but testified that the Department took no further steps at that time because they were satisfied Ms. Field was taking

appropriate steps in Family Court to protect the children. In reaching her conclusion that the children were at risk, she considered information provided to her about Mr. Doncaster leaving the children alone in the middle of the night for short times; the family doctor indicating their son was frightened of his father; Mr. Doncaster kicking the door to their son's bedroom off its hinges; pushing his youngest daughter because he was upset she interrupted him while he was working on a vehicle, causing her to fall and hit her head; self-medicating, using his girlfriend's children's medication and his sister's stepchild's medication, to control his anger and temper caused by his self-diagnosed ADHD; indicating he was not going to abide by the protection of property ban relating to their daughters' school and emailing the Girl Guide organization with details of Ms. Field's application for a peace bond, causing them to be concerned about their leaders' safety and the safety of the other children.

[11] At the conclusion of the hearing, Justice Scanlan, among other things, ordered that Mr. Doncaster have no contact or access with his children, prohibited him from driving on the section of the number 2 highway where Ms. Field and the children live and where their daughters' school is located. He also ordered Mr. Doncaster to have a full assessment of himself performed by the IWK hospital, including a parental capacity and psychological assessment.

[12] In his reasons, given orally and not reported, Justice Scanlan found Mr. Doncaster was abusive to Ms. Field and the children during the marriage. He was critical of Mr. Doncaster's methods of disciplining the children. He referred to the New Year's Eve incident involving their son. He referred to an alleged incident in the Autumn of 2011 where Mr. Doncaster kept their son home from school and basically locked him in his room for the day without food or drink because he did not agree with his father. The judge noted the evidence that their son had talked of killing himself as an option for dealing with his father's discipline. He also found Mr. Doncaster had inappropriately put their six-year-old daughter on the back deck, in the dark, alone, to discipline her for getting up at night. He noted the significant actions taken by their daughters' school to change its operations because the parents and teachers were frightened as a result of Mr. Doncaster's constant threats of showing up at the school even after the school had obtained a protection of property order prohibiting him from being at the school.

[13] The judge stated his concern that Mr. Doncaster may have more serious health problems than the ADD or ADHD he diagnosed himself as having. He

concluded that he would not order any access until he knew the nature of Mr. Doncaster's psychological or psychiatric problems and hoped this would not take too long to determine. He stated:

- There is enough information before me to question, very, very seriously as to Mr. Doncaster's emotional stability and it isn't something that's just come up since January 1st. It's been longstanding.
- And so far as I'm concerned, it would be contrary to the best interests of the children that there be any access until we understand the full dynamics.
- Because Mr. Doncaster I've seen enough to suggest to me that by any standard that we, in this country would ever accept as being rational and reasonable and acceptable, you do not meet that standard.

[14] In his notice of appeal Mr. Doncaster alleges the judge erred in many ways – by failing to adequately consider the impact on the children of not having access with him, by making an order not sought by the respondent, by relying on hearsay evidence, by failing to consider less drastic means to protect the children, by determining he abused the children and the respondent, by misapprehending the evidence concerning his mental health, by over-emphasizing his past parenting style, by giving insufficient reasons, by imposing too broad a restriction on his use of the number 2 highway and by ordering an assessment of his mental health by a facility that does not perform such assessments.

[15] Two affidavits were filed in connection with the stay application, Mr. Doncaster's, sworn March 14, 2012, and Sgt. Craig Burnett's, sworn March 30, 2012. Both were cross-examined on their affidavits.

[16] On cross-examination Mr. Doncaster agreed that when he was recently in court on one of the charges against him, he requested and was granted an assessment to determine if he is fit to stand trial. His counsel argues that I should not be concerned with this in assessing the merit of his application, because his request is not an admission that he feels he is not fit to stand trial.

[17] Sergeant Burnett also works out of the RCMP Enfield Detachment. He swore that he was the supervising officer for numerous complaints investigated by the Enfield RCMP involving Mr. Doncaster. He swore that his Detachment has investigated thirty matters involving Mr. Doncaster since early January of 2012 and

that, in all but two, he is the suspect or charged person. He indicated that despite undertakings given by Mr. Doncaster in court since the beginning of March, 2012 not to send emails to anyone in Nova Scotia, not to be within 100 metres of their daughters' school and not to have any contact with any employee or staff of that school, Mr. Doncaster sent emails to persons in Nova Scotia, told the RCMP he was going to serve a subpoena on someone who resided within 100 metres of the school and attempted to serve a subpoena on the school's principal at her home. Sergeant Burnett also swore:

35. There are numerous criminal charges against Mr. Doncaster that are currently before the courts and range from mischief, trespass at night, criminal harassment and many breaches of court orders.
36. As a result of the several investigations regarding Mr. Doncaster, the RCMP have assessed Mr. Doncaster's domestic situation and have concluded that it is one of "high risk for lethality".
37. The factors taken into account in making this assessment are Mr. Doncaster's unpredictable nature, the numerous, escalating criminal behaviour exhibited by him and his overt and continual lack of respect for the judicial system.
38. This designation allows law enforcement partners, such as victim services, probation services, corrections, police, etc. to share information with respect to a domestic matter where there is real potential harm to persons within the domestic relationship.

[18] Ms. Field opposes the stay on the basis it will put the children at risk of further harm from their father.

Law

[19] My authority to grant a stay is provided for in **Civil Procedure Rule 90.41** (1) and (2):

- 90.41 (1)** The filing of a notice of appeal shall not operate as a stay of execution or enforcement of the judgment appealed from.

- (2) A judge of the Court of Appeal on application of a party to an appeal may, pending disposition of the appeal, order stayed the execution and enforcement of any judgment appealed from or grant such other relief against such a judgment or order, on such terms as may be just.

[20] In **Godin v. Godin**, 2011 NSCA 19, Justice Farrar of this Court set out the legal principles to be applied on a stay motion involving custody and access:

[9] The parties agree that, where custody and access are an issue, the legal test for a stay of execution is distilled from considerations of irreparable harm and the balance of convenience to focus on the best interests of the children. Justice Fichaud in **Reeves v. Reeves**, 2010 NSCA 6, succinctly summarized the principles as follows:

[21] ...The stay applicant must have an arguable issue for her appeal. But, when a child's custody, access or welfare is at issue, the consideration of irreparable harm and balance of convenience distils into an analysis of whether the stay's issuance or denial would better serve, or cause less harm to, the child's interest. ...

[10] In **Minister of Community Services v. B.F.**, 2003 NSCA 125, Cromwell, J.A. (as he then was) at ¶ 20 sets out the applicant's burden on a stay motion involving the custody of children:

[20] ...The applicants must show a risk of harm produced by the combination of the continuing in force of the order under appeal and the delay until the result of the proposed appeal is known. This risk is that if the stay is withheld, their rights and the interests of the children will be so impaired by the time of final judgment that it will be too late to afford complete relief. On the other hand, this risk must be balanced with the risk of harm to the children if the stay is granted. The risk to be considered is that of harm to the children that could result from staying an order that may be affirmed on further review to be both lawful and in their best interests:

...

[21] Thus, as long as there is an arguable issue raised on appeal, the determining factor is whether the stay's issuance would better serve, or cause less harm to, the children's interests.

[22] As stated in **Godin**:

[18] An appellate judge considering a stay motion in custody matters shows considerable deference to the trial judge's findings. The determination of the child's best interests is a delicate fact-driven balance at the core of the rationale for appellate deference (**Nova Scotia (Minister of Community Services) v. D.M.F.**, 2004 NSCA 113 (¶ 15)).

See also, **Slawter v. Bellefontaine**, 2011 NSCA 90, ¶ 26.

Analysis

[23] It is difficult to assess whether Mr. Doncaster's grounds of appeal raise an arguable issue at this stage. For the purpose of his stay application, I am prepared to assume they do.

[24] Mr. Doncaster has the burden of proving that granting the stay would better serve, or cause less harm, to the children. I agree with his argument that contact with both parents is usually in the best interests of children. However the evidence before me satisfies me that this is not the usual situation.

[25] Based on the evidence before him, Justice Scanlan determined after an almost five-hour hearing, that Mr. Doncaster's mental health must be assessed before he has access with the children, to ensure their safety. The evidence before him included that of Patricia Thomson, whose opinion was that the children are at risk of substantial physical harm from their father. It also included the evidence of Cst. Ponee concerning the numerous charges against him relating to his family situation and her understanding of the widespread fear his actions have caused. The fact his daughters' school substantially changed its operations in response to Mr. Doncaster's actions speaks volumes. Justice Scanlan's decision is entitled to deference on a stay application.

[26] The evidence before me suggests nothing has changed. Sergeant Burnett opines that the domestic situation of this family is one of "high risk for lethality". Mr. Doncaster recently requested and obtained an order from the judge dealing with one of his criminal charges, that he be assessed to determine if he is fit to stand trial. Mr. Doncaster indicates he has started the process of having the type of assessment Justice Scanlan ordered prepared, but at this time I have no additional evidence before me concerning his mental health. Mr. Doncaster's counsel indicates his client recognizes that he has not exercised good judgment in the past.

[27] Mr. Doncaster has not satisfied me that granting the stay would better serve, or cause less harm to, the children's interests.

[28] I dismiss Mr. Doncaster's application for a stay.

Hamilton, J.A.