

**NOVA SCOTIA COURT OF APPEAL**  
**Citation: C.A.V. v. L.C.M., 2020 NSCA 72**

**Date:** 20201028  
**Docket:** CA 498644  
**Registry:** Halifax

**Between:**

C.A.V.

Appellant

v.

L.C.M.

Respondent

**Judge:** Derrick, J.A.

**Motion Heard:** October 28, 2020, in Halifax, Nova Scotia in Chambers

**Written Decision:** November 5, 2020

**Held:** Registrar's motion to dismiss appeal granted

**Counsel:** C.A.V., appellant in person  
L.C.M., respondent in person

**Decision:**

*Introduction*

[1] On October 28, 2020, I heard a Registrar’s motion to dismiss C.A.V.’s appeal pursuant to s. 90.43(3) and (4) of the *Civil Procedure Rules*. The basis for the motion was C.A.V.’s failure to perfect her appeal by a date set following an earlier Chambers hearing. Specifically, C.A.V. was directed by Justice Van den Eynden on September 25 to file, by October 14, 2020, an appeal book that was compliant with the *Rules*.

[2] At the conclusion of the tele-Chambers hearing on October 28, I granted the motion with written reasons to follow. These are my reasons.

[3] I will note that my reasons address the facts and issues relevant to the Registrar’s motion; they are not a review of all the correspondence and motions generated by C.A.V. since the filing of her Notice of Appeal. Such a review is unnecessary. In brief, C.A.V. has been an active and prolific filer of motions and correspondence.

*Background*

[4] On June 22, 2020, C.A.V. filed a Notice of Appeal in relation to an Order of Justice Cindy Cormier of the Nova Scotia Supreme Court, Family Division, issued July 3<sup>rd</sup>, 2020. The Order followed a hearing on February 24<sup>th</sup>, 2020 of an application by C.A.V. to terminate child support payable by her to L.C.M. and fix the arrears at zero. C.A.V. claimed Justice Cormier made errors in dismissing her application and calculating a total amount of child support arrears owing to L.C.M. of \$48,616.00.

[5] On June 26, 2020, C.A.V. filed a motion to obtain a date for her appeal and directions on filing the appeal book and factums. Justice Bourgeois heard the motion - a motion for date and directions, in Chambers on July 15 along with several other motions brought by C.A.V. Justice Bourgeois ordered C.A.V. to file a *Civil Procedure Rules*-compliant appeal book by August 28. She directed the matter to return to tele-Chambers on September 9 “to address the completeness of the Appeal Book and the setting of dates, if appropriate”.

[6] On July 18, C.A.V. submitted an appeal book for filing. It was missing documentation required under the *Rules*, including a transcript of the proceedings

from the court below. C.A.V. filed a motion asking to be relieved of the obligation to include the transcript in the appeal book. I heard that motion in Chambers on August 19. On August 21, I issued an Order that dispensed with the requirement for the transcript.

[7] Some of the documentation missing from C.A.V.'s incomplete appeal book included copies of C.A.V.'s Notices of Motion from November 2019, January 2020, and February 2020 that Justice Cormier treated as "requests to vary the relief sought in her original Support Variation Application filed in 2018, and/or her Notice of Variation Application filed in 2019..." Justice Cormier took this approach to C.A.V.'s motions in order to "properly constitute the real issues" before her. (*C.A.V. v. L.C.M.*, 2020 NSSC 168, at para. 9)

[8] While by no means an exhaustive list, other documents C.A.V. did not include in the filing on July 18, 2020 of what she purported to be her appeal book were: various Affidavits; Income Tax Returns for 1995-2016 (Justice Cormier had noted in her decision that the returns were incomplete); Child Status and Financial Statement forms; two letters from the Department of Community Services dated June 11, 2018 referring to income assistance received by C.A.V.; and pre-trial conference memoranda for September 17 and November 5, 2019.

[9] On August 28, C.A.V. sought to file an electronic appeal book she entitled "Supplemental Appeal Book". It was not accepted. C.A.V. was advised by the Registrar in writing on August 31 and September 1 that the "Supplemental Appeal Book" did not comply with *CPR* 90.30 nor the Court of Appeal's Practice Directive on electronic filing. C.A.V. was advised she had not filed a *Rules*-compliant appeal book by August 28 as ordered, with the result that she would need to have the Court's permission to file after that date.

[10] C.A.V. filed a motion on September 1 for an extension of time to file the appeal book. This motion and the issue of the compliance of the appeal book with the *Rules* were addressed before Justice Van den Eynden in tele-Chambers on September 23.

[11] Early in the tele-Chambers call with Justice Van den Eynden, C.A.V. became angry and hung up the phone. (C.A.V. had also hung up in the midst of tele-Chambers calls on July 15, August 10, and September 9.)

[12] Tele-Chambers continued in C.A.V.'s absence with L.C.M. still on the line. Justice Van den Eynden's directions to C.A.V. on the appeal book issues were

communicated to her in a letter dated September 25 from Deputy Registrar McClare. The letter confirmed that:

- It was C.A.V.'s responsibility to move her appeal forward and perfect it in a manner consistent with her obligations under the *Civil Procedure Rules*.
- The appeal had not yet been perfected and C.A.V.'s refusal to reasonably participate in Court matters such as tele-Chambers was not helpful.
- An appeal book compliant with the *Rules* was not filed on or before August 28 as ordered by Justice Bourgeois on July 16.
- C.A.V. had been advised that the "Supplemental Appeal Book" containing some 282 pages, and sent to the Registrar electronically, had not been accepted for filing.
- The "Supplemental Appeal Book" C.A.V. had attempted to file did not comply with the e-filing requirements of the Court, was incomplete, and contained extensive extraneous materials that were not part of the record from the court below. Specifically, with a few exceptions, pages 77 to 282 were not part of the record before Justice Cormier.
- C.A.V. was given until October 14 to file a compliant and complete appeal book. She was to ensure it included no extraneous materials.
- If C.A.V. filed a compliant appeal book on or before October 14, her motion for an extension of time to file her appeal book late would be entertained at a subsequent tele-Chambers date.
- If C.A.V. failed to file a compliant appeal book as required, her appeal would not be perfected and she would risk a motion to dismiss her appeal.

[13] C.A.V. did not file a *Rules*-compliant appeal book by October 14.

[14] The Registrar's motion to dismiss C.A.V.'s appeal was made on October 19. Her motion, a covering letter, and a memorandum outlining the history of the file were sent to C.A.V. on October 19 by email. They were also copied to L.C.M. by email.

[15] In accordance with *Civil Procedure Rule* 31.16(4), both parties are deemed to have received notice of the motion on October 19. The Registrar thereby satisfied the required five clear day's notice pursuant to *CPR* 90.43(3). The motion to dismiss was set to be heard in tele-Chambers on October 28.

[16] L.C.M. supported the Registrar's motion.

*The October 28 Motion in Tele-Chambers*

[17] C.A.V. responded to the Registrar's motion to dismiss by filing a document entitled "Appellant's Legal Brief" on October 23. In it, C.A.V. maintained that she had filed an "original appeal book" on July 20 and that the filing requirement of August 28 set by Justice Bourgeois was for "an optional Supplementary Appeal Book".

[18] There is no support in the record for C.A.V.'s contention that the August 28 filing date was for "an optional Supplementary Appeal Book".

[19] C.A.V. also stated in her Brief that:

8 ...if the Court of Appeal refused to acknowledge or accept the Motion Respondent and Appeal Appellant's more detailed Supplementary Appeal Books. [sic] I will rely on my original Notice of Appeal, Certificate of Readiness and Appeal Book legally filed...

[20] C.A.V. went on to say:

9. **THAT** the Motion Respondent and Appeal Appellant submits that there is nothing in law to legally justify the Registrar's Motion pursuant to Rule 90.43(3) or (4);

10. **THAT** the Motion Respondent and Appeal Appellant submits that the Registrar's Motion scheduled for October 28, 2020 is a nothing burger;

...

14. **THAT** the Motion Respondent and Appeal Appellant has made all her submissions in writing and will not be subject to anymore courtroom illegal foolishness therefore the Court can proceed in its apparent alleged criminality in my absence;

[21] On October 27, Deputy Registrar Brown emailed the Registrar, C.A.V., and L.C.M., with a reminder that the motion to dismiss was being heard the next day at 10:30 a.m. All parties were again provided with the dial-in information for the tele-

Chambers call. The email ended with a statement addressed to C.A.V. that she should be aware “should you not attend, the hearing of the motion will proceed in your absence”.

[22] C.A.V. responded by email to Deputy Registrar Brown on October 28 at 7:56 a.m.. She stated she was “fully aware that you won’t stop”. She accused the Court of “turning proceedings into a joke” and indicated she would not be participating. She concluded by saying:

Therefore I give my permission for the Court and the respondent to eat their nothing burger without me.

I rely on my legal written submissions in all aspects of this appeal, including those submitted for today’s matter.

[23] The Registrar’s motion proceeded on October 28. I did a roll call at the start of the call. Only the Registrar and L.C.M. responded. I waited approximately ten minutes and did another roll call. There were again only responses from the Registrar and L.C.M. I then heard the motion. Before granting the motion, I made a final inquiry to see if C.A.V. was present and wished to participate. There was no response that indicated she was on the call.

[24] I am satisfied that C.A.V. was either not present on the October 28 tele-Chambers call, which is how it appeared to me, or if she was, resolutely decided not to respond or participate in any way. Not attending was consistent with the statements in her Brief and her email of October 28.

*Civil Procedure Rules 90.43(3) and (4)*

[25] *CPR* 90.43 defines what is meant by a “perfected appeal”. It is an appeal in which the appellant has complied with specified requirements including the “filing and delivery of the appeal book and of the appellant’s factum”. An appellant who has not filed and delivered the appeal book has not perfected her appeal.

[26] *CPR* 90.43(3) and (4) state the following:

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

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

[27] The *CPR*'s set out clearly what is to be included in the appeal book. C.A.V. was repeatedly told, by Justice Bourgeois initially, and then Justice Van den Eynden, and by Deputy Registrar Morse on August 31, that what she had filed was not complete or compliant.

### *Analysis*

[28] In *An Jager v. Jager*, 2019 NSCA 9, Justice Bourgeois explained the factors to be considered on a Registrar's motion to dismiss an appeal:

**19** Rule 90.43(3) places an obligation on the Registrar to monitor appeals filed with the Court and act when they have not been perfected. When a motion to dismiss is brought, 90.43(4) provides a chambers judge with the discretion to provide further directions to move a stalled appeal towards conclusion, or grant dismissal.

**20** In *Islam v. Sevgur*, 2011 NSCA 114, Justice Saunders summarized the principles governing a chambers judge's discretion to dismiss for failure to perfect the appeal. He wrote:

[36] The approach I take in such matters is this. Once the Registrar shows that the rules for perfecting an appeal have been breached, and that proper notice of her intended motion has been given, the defaulting appellant must satisfy me, on a balance of probabilities, that the Registrar's motions ought to be denied. To make the case I would expect the appellant to produce evidence that it would not be in the interests of justice to dismiss the appeal for non-compliance. While in no way intended to constitute a complete list, some of the factors I would consider important are the following:

- (i) whether there is a good reason for the appellant's default, sufficient to excuse the failure.
- (ii) whether the grounds of appeal raise legitimate, arguable issues.
- (iii) whether the appeal is taken in good faith and not to delay or deny the respondent's success at trial.
- (iv) whether the appellant has the willingness and ability to comply with future deadlines and requirements under the **Rules**.
- (v) prejudice to the appellant if the Registrar's motion to dismiss the appeal were granted.

- (vi) prejudice to the respondent if the Registrar's motion to dismiss were denied.
- (vii) the Court's finite time and resources, coupled with the deleterious impact of delay on the public purse, which require that appeals be perfected and heard expeditiously.
- (viii) whether there are any procedural or substantive impediments that prevent the appellant from resuscitating his stalled appeal.

[37] It seems to me that when considering a Registrar's motion to dismiss, a judge will wish to weigh and balance this assortment of factors, together with any other circumstances the judge may consider relevant in the exercise of his or her discretion.

**21** As noted by Justice Saunders, the above factors do not constitute a finite list. Further, the unique circumstances of each appeal will make certain factors more or less relevant to the exercise of a chambers judge's discretion.

[29] I find that C.A.V. has failed to satisfy me that her appeal should not be dismissed:

- (i) C.A.V. has not provided any good reason for her failure to file a *Rules*-compliant appeal book. She has simply defied the requirements that have been plainly spelled out to her.
- (ii) I am not satisfied that C.A.V.'s grounds of appeal raise legitimate, arguable issues. I will address this factor in more detail shortly.
- (iii) C.A.V. has not established the appeal has been brought in good faith and not to frustrate the trial result.
- (iv) I have absolutely no confidence in C.A.V.'s willingness to comply with future deadlines and requirements under the *Rules*. Her conduct and communications indicate she is resistant to complying with the *Rules*.
- (v) The prejudice to C.A.V. in granting the motion is outweighed by the prejudice to L.C.M. that will be occasioned if C.A.V. is permitted to continue her campaign of resisting the direction of the Court.
- (vi) There is prejudice to L.C.M. in allowing C.A.V.'s appeal to continue when she has had ample time to attend to the straightforward matter of filing a *Rules*-compliant appeal book. He is entitled to finality in this matter.



- (vii) The Court's "finite time and resources" have been taxed by C.A.V.'s obstructionist tactics and refusal to perfect her appeal.
- (viii) C.A.V. has not produced any evidence suggesting she has been prevented from filing an acceptable appeal book because of "procedural or substantive impediments".

[30] The requirement for C.A.V. to file a *Rules*-compliant appeal book is not onerous. The documentation involved was readily accessible to her or in her possession. She was not required to bear the expense of obtaining a transcript of the proceeding before Justice Cormier.

[31] I will return now to the issue of whether C.A.V. raised "legitimate, arguable issues" in her grounds of appeal. I addressed this in my decision denying her a stay of proceedings, a motion I heard in Chambers in August.

[32] In my stay decision (*C.A.V. v. L.C.M.*, 2020 NSCA 55), I set out C.A.V.'s grounds of appeal:

**34** The starting point for assessing whether C.A.V. has an arguable ground of appeal is her Notice of Appeal where she has set out four grounds:

1. Cormier J. erred in law by failing to exercise her jurisdiction over the subject matter within Section S.17 of the Divorce Act -- R.S.C. 1985, c.3 (2nd Supp.), further ignoring the world renowned judicial ruling by Sopinka J. on Jurisdiction as well as the judicially respected R. Variation and Termination of Support Orders by Julien D. Payne and Marilyn A. Payne, all of which were properly before the court.
2. Cormier J. erred in fact and law, exceeding her jurisdiction when ignoring evidence and the legislated table amounts within Federal Child Support Guidelines SOR 97-175 -- DIVORCE ACT relying instead on common law not filed by either party and her work skills as a former child protection lawyer to effectively confuse, distort or otherwise malign the facts further failing to acknowledge anywhere in her 47 page decision that the appellant is collecting income assistance by way of disability benefits and that the disability is a diagnosis of P.T.S.D. Directly caused by Department of Justice Canada. This has been undisputed and unquestioned evidence throughout the proceedings.
3. Cormier J. [erred] in law and exceeded or otherwise, abused her 'discretion' jurisdiction by ordering the appellant to pay monies 127% above the legislated table amounts for child support, imputing income against the appellant when the evidence, undisputed and unquestioned since the file

opened in June 2018 shows that the appellant's earnings have remained consistently below poverty line since 2003.

4. In the absence of law, jurisdiction, rationalization and reason, Cormier J's judicial work amounts to a cruel, unreasonable and arbitrary use of power and control and is appearing as a protected criminal offence.

[33] I found C.A.V. made assertions in her grounds of appeal that would not be arguable. In the stay motion I noted that C.A.V. “did not illuminate her grounds of appeal or offer any insights” into how they qualified as having “sufficient substance to be capable of convincing a panel of the court to allow the appeal...” (*Amirault v. Westminster Can. Ltd.* (1993), 125 N.S.R. (2d) 171 (C.A.) at para. 11)

[34] C.A.V.'s grounds of appeal have to be viewed in relation to the record. I commented on this in my stay decision:

**40** In her decision, Justice Cormier characterized the evidence presented by C.A.V. as consisting of "hearsay statements, unqualified opinions, conjecture, and unsworn letters from third parties" (at para. 39). She also noted the evidence C.A.V. did not supply:

[43] C.A.V. has claimed she was diagnosed with Post Traumatic Stress Disorder, and as a result, she was unable to work. C.A.V. did not file evidence with the court to confirm if, or when, C.A.V. was diagnosed with any mental, emotional, or physical condition. There are no medical reports of how any diagnosis may have impacted on C.A.V.'s past or present ability to earn an income, or may impact on C.A.V.'s future ability to earn an income. In addition, C.A.V. failed to provide full disclosure of the particulars of a Teacher's pension income of \$49,000 per year reportedly available to her in 2027.

[35] There is nothing before me that changes what I found when I dismissed C.A.V.'s motion for a stay. She has failed to show how her grounds of appeal are likely to succeed even if her appeal was to be perfected.

[36] C.A.V. has had ample opportunity to perfect her appeal. She has chosen not to do so. She was told repeatedly she had to comply with the *Rules* and was afforded time to accomplish this. She seems to have viewed the requirements under the *Rules* as not applicable to her. Her actions have led to the Registrar's motion and the dismissal of her appeal.

*Costs*

[37] At the conclusion of the Registrar's motion, L.C.M. asked me to award costs against C.A.V. He hoped an award of costs might act as a disincentive to her. He did not specify an amount. He was obviously fatigued by C.A.V.'s numerous motions and filings that followed her Notice of Appeal.

[38] The Registrar's Notice of Motion did not seek costs. In the circumstances of C.A.V. having no notice of a possible costs award, I decline to order any costs.

*Disposition*

[39] The Registrar's motion to dismiss C.A.V.'s appeal is granted.

Derrick, J.A.