

**NOVA SCOTIA COURT OF APPEAL**  
**Citation:** *LeBlanc v. LeBlanc*, 2024 NSCA 13

**Date:** 20240126  
**Docket:** CA 529910  
**Registry:** Halifax

**Between:**

Elena LeBlanc

Appellant

v.

Alain LeBlanc

Respondent

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

**Motion Heard:** January 25, 2024, in Halifax, Nova Scotia in Chambers

**Written Decision:** January 26, 2024

**Held:** Motion dismissed, without costs

**Counsel:** Elena LeBlanc, appellant, by telephone  
Alain LeBlanc, respondent, by telephone

## **Decision:**

### **Introduction**

[1] On January 17, 2024 Mrs. LeBlanc filed a motion seeking an extension of time to file a Notice of Application for Leave to Appeal and Notice of Appeal from a Costs Order.

[2] The Costs Order was issued on September 20, 2023 by Justice Robert Gregan of the Supreme Court of Nova Scotia, Family Division. It ordered Mrs. LeBlanc to pay Alain LeBlanc \$4,750 forthwith.

[3] Under *Civil Procedure Rule* 90.13(3) Mrs. LeBlanc had 10 clear business days in which to file her Notice of Application for Leave to Appeal and Notice of Appeal. She is significantly out of time.

[4] As Chambers judge I have the discretion under *Civil Procedure Rule* 90.37(12)(h) to extend the time for a late-filing.

[5] For reasons that follow, I have concluded that exercising my discretion to extend the filing time in this case is not in the interests of justice. Accordingly, I am dismissing Mrs. LeBlanc's motion.

### **The Costs Order**

[6] September 20, 2023, the date of the Costs Order, was the third day of an application brought by Mrs. LeBlanc that had been before Justice Gregan for two full days in June 2023 – June 5 and 12. I have listened to the audio-recording for September 20, 2023.

[7] In summary form, the following occurred on September 20: Mrs. LeBlanc advised Justice Gregan she was not proceeding with her application as the issues had been resolved. Her application was therefore dismissed. Justice Gregan heard submissions on costs. Mrs. LeBlanc said she was willing to pay Mr. LeBlanc for his lost wages due to attending court but otherwise, in her submission, the application had been necessary at the time and no additional costs should be ordered. She concluded by saying that if Justice Gregan thought she should pay costs she would pay what he ruled.

[8] Justice Gregan recessed. He returned and delivered an oral decision. He said he had decided costs should be awarded. He said there had been a number of appearances in court, as well as case management and settlement conferences. Witnesses had been subpoenaed and had attended. He recited principles from this Court on costs: a successful party should be awarded costs and a costs award must do justice between the parties. (*Armoyan v. Armoyan*, 2013 NSCA 136, para. 10)

[9] Justice Gregan noted:

- Mr. LeBlanc missed time from work.
- Mrs. LeBlanc has an outstanding costs award from Justice Murray.
- Unsuccessful litigants should be aware there are costs consequences.
- Tariff C of the *Civil Procedure Rules* is the more appropriate scale for costs than Tariff A. This was an application.
- He disagreed the application was necessary and noted it had been discontinued by Mrs. LeBlanc. He found that due to the dismissal at Mrs. LeBlanc's initiative he would use the minimal amount of the Tariff and awarded \$2000 for each of the June dates in court and \$750 for the partial day on September 20, 2023.

### **The Factors to Be Considered on the Motion**

[10] The factors to be considered in the exercise of discretion to grant an extension of time are well-established: the applicant must have demonstrated a *bona fide* intention to appeal within the appeal period; they must have a reasonable excuse for the delay; the question of prejudice to the opposing party must be addressed; and the merits of the proposed appeal assessed. "Ultimately, the discretion must be exercised according to what the interests of justice require" (*R. v. R.E.M.*, 2011 NSCA 8, para. 39; *Farrell v. Casavant*, 2010 NSCA 71).

[11] These principles were reviewed with Mrs. LeBlanc during the hearing of her motion.

### **Mrs. LeBlanc's Submissions**

[12] Mrs. LeBlanc supported her motion with her affidavit. She swore/solemnly affirmed to the following:

- She says she thought she had 80 days in which to file, not 10.
- She formed a genuine intention to appeal on September 20, 2023.
- She pursued legal aid because her three appeals in 2023 were unsuccessful.
- She hesitated to proceed with an appeal because the “two appeals” she did in 2023 “were very much a drain on my energy, time, resources, finances, and then there was no justice...so this time I wanted to seek legal advice and think it through before proceeding...”.
- There were “multiple health crises” which needed her “immediate attention and resulted in a change to [her] planned timeline”. She refers in her affidavit to her mother having a fall and her husband contracting pneumonia so he could not take the children for his regular visits.
- She thought her husband might concede the Costs Order did not do justice between them.
- Mrs. LeBlanc says she must proceed with the appeal “in the interest of Law and Justice Between the Parties”. She says the Costs Order is “wrong” and she has to appeal as she cannot afford it.

[13] Mrs. LeBlanc reiterated some of these points in her oral submissions on the motion. She described having wanted to focus on her children rather than undertaking another appeal. She said this had contributed to the delay. She said she had thought, “I can’t do this anymore”. But she came around to the view she had to contest the costs award because it was “harsh and punitive” and “too high” especially for “low income people”. Additionally, she expressed dissatisfaction with how the courts have dealt with her matters.

### **Mr. LeBlanc’s Submissions**

[14] Mr. LeBlanc did not have much he wanted to say. In an email to the Court he noted that he had not issued the Costs Order. He said Mrs. LeBlanc’s dispute was with respect to the Order, not him. He also indicated that he was ill for only two days in December 2023 when he could not take the children.

[15] At the motion hearing, Mr. LeBlanc simply said he thought the delay that led to Mrs. LeBlanc missing the filing deadline was too long.

### **Analysis**

[16] On appeal, considerable discretion is afforded to trial judges' costs awards.

[17] When I balance the factors to be considered, and weigh the interests of justice, I am not satisfied Mrs. LeBlanc should be granted an extension of time to file a Notice of Application for Leave to Appeal and Notice of Appeal from Justice Gregan's Costs Order.

[18] I find Mrs. LeBlanc did not have a *bona fide* intention to appeal within the appeal period. She says she wanted to think it through before proceeding. She has talked about focusing on her children and not wanting to put her time and energy into another appeal. She had priorities that did not include appealing. She formed the intention to appeal long after the filing deadline had passed.

[19] I also find she has not advanced a reasonable excuse for the delay. Mrs. LeBlanc is no stranger to the appeal process. She knows there are time limits that apply to proceedings in the Court of Appeal. There is no evidence she inquired about the deadline that applies in relation to a costs appeal.

[20] I find there is prejudice to Mr. LeBlanc if he has to now respond to a stale appeal. He would have been expecting that matters relating to the proceedings from June and September 2023 were concluded. He is entitled to finality.

[21] Furthermore, there is nothing to indicate the costs appeal has any merit. Mrs. LeBlanc saying the Costs Order is "wrong" and "too high" does not establish merit. Mrs. LeBlanc has shown no basis, either in her written materials or her submissions at the hearing of her motion, for a finding the judge made an error and this Court should intervene.

[22] To secure leave to appeal costs, Mrs. LeBlanc would have to demonstrate there is an arguable issue – one that would result in the appeal being allowed (*Ward v. Murphy*, 2022 NSCA 20, para. 90).

[23] Mrs. LeBlanc's proposed Notice of Application for Leave to Appeal and Notice of Appeal does not contain any grounds that have the potential for overturning the Costs Order. In my opinion leave would be denied in this case.

[24] The interests of justice are not served by a proposed appeal that lacks merit being afforded an extension of time. As stated in *R.E.M.*:

[45] ...the ultimate question is whether or not the interests of justice require the extension of time to be granted. It cannot be in the interests of justice to extend

time in order for a prospective appellant to pursue an appeal that has no merit. To do so wastes prosecutorial and judicial resources and reflects negatively on the administration of justice.

[25] I decline to extend the time for Mrs. LeBlanc to file a Notice of Application for Leave to Appeal and Notice of Appeal from Justice Gregan's Costs Order.

**Disposition**

[26] Mrs. LeBlanc's motion is dismissed, without costs.

Derrick, J.A.