

NOVA SCOTIA COURT OF APPEAL
Citation: *R. v. Doncaster*, 2013 NSCA 119

Date: 20131017
Docket: CAC 410878
Registry: Halifax

Between:

Ralph Ivan Doncaster

Appellant

v.

Her Majesty The Queen

Respondent

Judge: The Honourable Justice Joel E. Fichaud
Motion Heard: October 10, 2013, in Halifax, Nova Scotia, in Chambers
Held: Respondent's motion that appeal be dismissed is granted.
Counsel: Marian Fortune-Stone, Q.C. for the Respondent
Appellant in person

Decision:

[1] The Respondent moves to dismiss the appeal because the Appellant failed to perfect his appeal as directed by the chambers judge.

[2] On October 12, 2012, Provincial Court Judge Lenehan convicted Mr. Doncaster of entering on property where entry is prohibited by notice, contrary to s. 3(1)(e) of the *Protection of Property Act*, R.S.N.S. 1989, c. 363, as amended. Mr. Doncaster appealed to the Supreme Court of Nova Scotia, as the Summary Conviction Appeal Court. On December 21, 2012, Supreme Court Justice Coady dismissed Mr. Doncaster's summary conviction appeal. On January 8, 2013, Mr. Doncaster filed a Notice of Appeal to the Court of Appeal.

[3] On April 13, 2013, Mr. Doncaster filed a Notice of Motion that a judge of this Court give direction for filings and the hearing.

[4] On May 2, 2013, Justice Saunders of this Court heard Mr. Doncaster's motion. The transcript of May 2, 2013 includes:

THE COURT: And so all I'll do today is oblige you to file the book, appeal book, by May 31st ...

MR. DONCASTER: Mm-hmm.

THE COURT: ... and file your Appellant's Factum by the last day of June. We'll say Friday, June 28th.

MR. DONCASTER: Okay.

[5] The circumstances that led to this offence had arisen from the breakdown of Mr. Doncaster's marriage. Many other legal proceedings have arisen from these circumstances. On May 2, 2013, Justice Saunders, in addition to setting dates for this appeal, heard several motions related to those proceedings. Justice Saunders' decision of May 6, 2013 (2013 NSCA 59) discussed these various matters and, in an Appendix, listed 103 proceedings in various courts, involving Mr. Doncaster.

[6] By July 11, 2013, Mr. Doncaster had not filed the appeal book or the appellant's factum. On July 11, 2013, the Respondent ("Crown") applied for an order dismissing Mr. Doncaster's appeal for non-perfection.

[7] On July 25, 2013, Justice Beveridge heard that motion. Mr. Doncaster attended. Justice Beveridge (1) granted Mr. Doncaster's request to amend his Notice of Appeal, (2) extended the dates for Mr. Doncaster to file the appeal book to August 2, 2013 and the Appellant's factum to August 23, 2013, and (3) dismissed the Crown's motion to dismiss the appeal. Justice Beveridge's reasons, and exchanges with Mr. Doncaster, included the following:

THE COURT: Mr. Doncaster, I am going to dismiss the Crown's motion to have your appeal dismissed for failure to comply with the directions of Justice Saunders setting the dates for the filing of the Appeal Book and factum. And in doing so, I want some things to be very clear to you, sir.

MR. DONCASTER: You're going to set some strict rules. I understand.

...

THE COURT: Okay. Mr. Doncaster, what I'm going to do is the Notice of Application for leave to appeal that is in Tab 4 of Mr. Fiske's affidavit. That's your final form of your Amended Notice of Appeal?

MR. DONCASTER: Yes, My Lord.

THE COURT: Then I will grant leave for you to file this amended Notice of Appeal. And, Mr. Doncaster, how many days do you need to file that amended Notice of Appeal and serve the Crown with it?

MR. DONCASTER: Monday should be fine, my Lord.

THE COURT: Mr. Doncaster, I'll make it to the end of the month. That's July 31st.

MR. DONCASTER: Okay.

THE COURT: That's a Wednesday.

MR. DONCASTER: Sure. That's plenty. Yeah.

...

THE COURT: Your factum, sir, how long after the filing of the Appeal Book do you need to file your factum?

MR. DONCASTER: Would three weeks be ... initially, I was asking for a month afterwards, given the ... I know we've slipped some time date lines here, but I'd ask for three weeks. So the 23rd?

THE COURT: August 23rd? As you've pointed out in your submissions, Mr. Doncaster, I can only imagine that this has some tangential relevance you perceive to other proceedings, so the delay that has been occasioned here and that the delay that you have to August 23 for the appellant's factum is to your prejudice. If you can do it earlier than that, then it's up to you. But I will set August 23rd because that's what you requested.

MR. DONCASTER: Yeah. Yeah.

...

THE COURT: Thank you, Mr. Doncaster. Ms. Fortune-Stone, I don't think that I'd be prepared to say, you know, without anything further, the appeal ... application for leave to appeal be dismissed. I think that it would be fair to say, Mr. Doncaster, that if you fail to comply with these dates, absent some very good reason, something much more substantial than what I saw today, your application for leave to appeal will be dismissed.

MR. DONCASTER: That's fair.

THE COURT: Is that clear?

MR. DONCASTER: That's fair.

THE COURT: Okay.

MR. DONCASTER: Yes.

[8] Mr. Doncaster filed the Amended Notice of Appeal on July 25, 2013, two volumes of Appeal Books on July 25 and 31, 2013, and a Supplement to the Appeal Book on September 5, 2013.

[9] By September 11, 2013, Mr. Doncaster still had not filed or served his factum, despite the extended date having passed on August 23, 2013.

[10] On September 11, 2013, the Crown filed another Notice of Motion to dismiss Mr. Doncaster's appeal, further to Rule 91.20(2)(c):

91.20 (2) A judge of the Court of Appeal may dismiss an appeal in which the appellant fails to comply with this Rule 91, such as failing to comply with a Rule, or directions given under a Rule, on any of the following subjects:

...

(c) filing and delivering a transcript, appeal book and appellant's factum.

[11] The Crown's Notice said the motion would be heard on September 19, 2013, at 10 AM "at Summit Place, 5th Floor, 1601 Lower Water Street, Halifax, Nova Scotia".

[12] On September 12, 2013, Mr. Doncaster sent an email to the Registrar of the Court of Appeal, stating that he had received the Crown's Notice of Motion, that he was unavailable on September 19, but "September 26th, however, would be convenient for me". Accordingly, at the chambers hearing on September 19, 2013, I adjourned the Crown's motion to September 26, 2013 at 10 AM.

[13] On September 20, 2013, the Deputy Registrar of the Court of Appeal sent an email to Mr. Doncaster, stating:

Please be advised that the motion filed by the Crown for the above appeal scheduled for Chambers on Thursday, September 19, 2013 at 10:00 am has been adjourned to Chambers on Thursday, September 26, 2013 at 10:00 am at 5th Floor Summit Place.

On September 21, 2013, Mr. Doncaster replied, by email, “Thank you for the information”.

[14] On September 26, 2013, at 10 AM, I convened chambers in the courtroom on the 5th floor of Summit Place, 1601 Lower Water Street, *i.e.* the location stated in the Crown’s Notice of Motion of September 11, 2013, served on Mr. Doncasater, and restated in the Deputy Registrar’s email of September 20, 2013, received by Mr. Doncaster. Starting at 10 AM on September 26, I dealt with motions on other matters. Then I called the Crown’s motion to dismiss Mr. Doncaster’s appeal. The Crown was present, represented by counsel. Mr. Doncaster was absent. Counsel for the Crown said she was unaware of any explanation from Mr. Doncaster for his non-attendance. I requested that counsel for the Crown check her email to determine whether there had been any communication from Mr. Doncaster that could explain his absence. The Crown’s counsel exited the courtroom to check, then returned and said she had received nothing from Mr. Doncaster. So, on September 26, the Crown’s motion proceeded in Mr. Doncaster’s absence.

[15] Mr. Doncaster had not filed a factum. Given Mr. Doncaster’s failure to appear on the motion, I said I would allow the Crown’s motion to dismiss Mr. Doncaster’s appeal.

[16] Later in the morning of September 26, 2013, during the hearing of another chambers motion, Mr. Doncaster appeared in the courtroom. He said that he had gone to another courthouse at 10 AM.

[17] On September 27, 2013, the Deputy Registrar notified the parties that, given the circumstances – *i.e.* Mr. Doncaster’s confusion as to the location of the courtroom – I would not sign an Order from the proceedings of September 26, and

instead would reschedule the Crown's motion for October 4, 2013. Mr. Doncaster notified the Court that he was unavailable on October 4, 2013 and suggested that the motion proceed on October 10, 2013.

[18] Accordingly, the Crown's motion to dismiss was rescheduled for October 10, 2013. On that date, Mr. Doncaster appeared, and both parties made submissions.

[19] By October 10, 2013, over six weeks had passed since the extended date of August 23, 2013 for Mr. Doncaster's factum. Justice Beveridge had fixed August 23 at Mr. Doncaster's request. Thirty days had passed since the Crown's motion to dismiss for non-perfection, based on Mr. Doncaster's failure to file his factum by August 23.

[20] Yet, by October 10, 2013, there still was no Appellant's factum.

[21] Instead, Mr. Doncaster made three submissions.

[22] **First:** Mr. Doncaster asked for permission to further amend his Notice of Appeal. At the hearing of July 25, 2013, Justice Beveridge allowed Mr. Doncaster to amend his Notice of Appeal based on the following exchange:

THE COURT: ... That's your final form of your Amended Notice of Appeal?

MR. DONCASTER: Yes, my Lord.

[23] Mr. Doncaster could have included his latest proposed amendment in what he told the Court was his "final" Amended Notice of July 25, 2013. My assessment of Mr. Doncaster's presentation and demeanour is that his latest proposed amendment is a lever for another extension to file his factum. I decline Mr. Doncaster's request to further amend his Notice of Appeal.

[24] **Second:** Mr. Doncaster excuses his failure to file his factum because he has ADHD, is self-represented, has other court proceedings underway and has difficulty with time management. These are the reasons he gave to Justice Beveridge on July 25, 2013. At that hearing, Mr. Doncaster was given an extension to the date that Mr. Doncaster requested – August 23, 2013, after which Justice Beveridge then warned:

THE COURT: ... if you fail to comply with these dates, absent some very good reason, something much more substantial than what I saw today, your application for leave to appeal will be dismissed.

MR. DONCASTER: That's fair.

THE COURT: Is that clear?

MR. DONCASTER: That's fair.

THE COURT: Okay.

MR. DONCASTER: Yes.

[25] To condone Mr. Doncaster's repeated missed deadlines would prejudice the efficient administration of justice. The waste of the Court's limited resources, and the resources of other parties, confounds the object of the *Civil Procedure Rules* (Rule 1.01) - to achieve the "just, speedy, and inexpensive determination of every proceeding": *Islam v. Sevgur*, 2011 NSCA 114, paras 36, 39, per Saunders, J.A.. At the July 25 hearing, Justice Beveridge read extensively from the *Islam* decision, for Mr. Doncaster's benefit. Rule 1.01 is a feeble postulate if the Court just draws concentric lines in the sand, receding to the horizon.

[26] Mr. Doncaster had warning that if he failed to file a factum by August 23, 2013, without a more substantial excuse than he advanced on July 25, then his appeal would be dismissed. His excuses on October 10, 2013 were no more substantial than before. As Mr. Doncaster acknowledged to Justice Beveridge on July 25, in those circumstances it is "fair" that his appeal be dismissed.

[27] **Third:** Mr. Doncaster referred to *R. v. Liberatore*, 2010 NSCA 26 (MacDonald, C.J.N.S. as motion judge) and 2010 NSCA 33 (Panel). Mr. Liberatore had been sentenced to two years' incarceration. He appealed his conviction. He missed his filing date for the appellant's factum. Justice Bateman, in chambers, dismissed the appeal for non-perfection. Mr. Liberatore applied, under Rule 90.38, to the Chief Justice for a referral to a panel. For the motion to

the Chief Justice, Mr. Liberatore filed his counsel's affidavit stating that the failure to file a timely factum had been entirely the fault of counsel, and not that of Mr. Liberatore. The Chief Justice's decision (paras 12 and 15) said that counsel's *mea culpa* had not been before Justice Bateman, and Justice Bateman had properly dismissed the appeal based on the information that was before her. But the Chief Justice said that, given counsel's acknowledgement of fault, the interests of justice required that the matter be referred to a panel. The Panel's decision (para 50) also acknowledged the reasonableness of Justice Bateman's decision, on the information that had been before her, but overturned her dismissal of the appeal based on the newly received acknowledgement of responsibility by Appellant's counsel.

[28] On October 10, 2013, Mr. Doncaster said that, if I allow the Crown's motion to dismiss for non-perfection, then he would apply to the Chief Justice for review, as was done in *Libertore*.

[29] My ruling on this motion is based solely on my view of its merit, or lack of it. The prospect of a review or appeal has no bearing on my analysis.

[30] On the merits, there is no similarity between *Liberatore* and this case. Here there is no appellant's counsel to shoulder responsibility. Mr. Doncaster has actively represented himself throughout. He proposed and agreed to the dates. He has had an extension and an admonition as to the consequences of his failure to meet the extended deadline. He acknowledged that consequence would be "fair".

[31] **Conclusion:** I grant the respondent's motion. Mr. Doncaster's appeal stands dismissed for non-perfection – failure to file the Appellant's factum by the directed date - under Rule 91.20(2)(c).

Fichaud, J.A.