

NOVA SCOTIA COURT OF APPEAL
Citation: *Mohammed v. Hanson*, 2018 NSCA 38

Date: 20180503
Docket: CA 475077
Registry: Halifax

Between:

Zanib Mohammed

Applicant

v.

Simeon Hanson

Respondent

Judge: The Honourable Justice Joel Fichaud in chambers

Appeal Heard: May 2, 2018 in Halifax, Nova Scotia

Held: Motion for extension of time to file a notice of appeal
granted

Counsel: The Applicant on her own behalf
The Respondent on his own behalf

Reasons:

[1] Ms. Mohammed applies for an extension of time to file a notice of appeal.

[2] Ms. Mohammed and the Respondent, Dr. Simeon Hanson, are parents of a daughter, aged eight. Ms. Mohammed resides in England, as does their daughter. Dr. Hanson, a psychologist, moved to Canada and resides in Wolfville. Ms. Mohammed obtained a child maintenance order from an English court, and applied in Nova Scotia to enforce the order under reciprocal enforcement legislation.

[3] On July 6 and August 16, 2017, Judge DeWolfe of the Family Court heard Ms. Mohammed's application in Kentville. Ms. Mohammed did not appear at that hearing. Dr. Hanson appeared and testified. Neither was represented by counsel. Judge DeWolfe's signed decision and formal Order were dated December 1, 2017. The Judge accepted Dr. Hanson's testimony and dismissed Ms. Mohammed's motion for reciprocal enforcement.

[4] Ms. Mohammed learned of the outcome in December 2017, confirmed in January by a communication from her Member of Parliament. But the Family Court Order and paperwork to Ms. Mohammed was formally transmitted through the Reciprocal Enforcement of Maintenance Offices (REMO) of Nova Scotia and England. On February 2, 2018, the English REMO wrote to Ms. Mohammed informing her of the appeal process in Nova Scotia and saying:

Although the Order for dismissal was issued on 01 December 2017, it is important to note that the papers were not received by the UK authorities until 17 January, 2018. Given the circumstances, I have asked the Canadian authority to confirm whether they would accept an extension to the deadline of 30 days for the filing of an appeal.

[5] The time limit for filing an appeal had expired when the documents arrived at the English REMO on January 17.

[6] Ms. Mohammed corresponded with the English REMO, confirming her interest in filing an appeal. On March 7, 2018, the English authority wrote Ms. Mohammed stating:

I am writing further to your email below and attachment letter which I have linked to the file.

However, following our email to you dated 6 February, we have now received a response from the Nova Scotia Court of Appeal as follows:

Ms. Mohammed may find information on the Nova Scotia Court of Appeal forms here:

http://www.courts.ns.ca/Appeal_Court/NSCA_forms.htm

The time for filing an appeal has passed but, she may make a motion to extend the time for filing an appeal; the documents and instructions for doing so may be found under the heading:

“MATERIAL FOR BOTH CIVIL AND CRIMINAL MATTERS”

on the hyperlinked webpage, provided above, at item #2.

[7] Ms. Mohammed obtained a transcript of the proceeding before Judge DeWolfe, including Dr. Hanson’s testimony. Ms. Mohammed says that, until she obtained this material, she was unable to draft a notice of appeal that could identify grounds of appeal.

[8] On April 9, 2018, Ms. Mohammed submitted her draft notice of appeal to the Court of Appeal, accompanied by a motion for an extension of time to file the notice of appeal. For the motion, Ms. Mohammed filed an affidavit that attached various documents, including those I have cited, that set out her perspective of the process history.

[9] Dr. Hanson was served with the documents filed by Ms. Mohammed for the extension motion. Dr. Hanson filed a responding affidavit. He points out that Ms. Mohammed chose not to appear at the hearing before Judge DeWolfe, and that Ms. Mohammed was aware of the outcome – *i.e.* that the Nova Scotia Family Court had dismissed her motion to enforce – within the appeal period. He also notes that the interval between the formal notice to Ms. Mohammed of the Family Court’s ruling and her initial filing in the Court of Appeal exceeded the time period for filing a notice of appeal. Dr. Hanson opposes Ms. Mohammed’s motion to extend.

[10] Rule 90.37(12)(h) says a chambers judge may order “that any time prescribed by this Rule 90 be extended or abridged before or after the expiration thereof”. In the exercise of this discretion, the chambers judge is to consider various factors, particularly intent to appeal within the time period and reasons for the delay, but ultimately the issue is whether the extension is in the interests of justice: *R. v. Roberge*, [2005] 2 S.C.R. 469, para. 6; *R. v. F.H.*, 2016 NSCA 70, paras. 11-12; *Allen v. Nova Scotia (Workers’ Compensation Appeals Tribunal)*, 2011 NSCA 72, para. 17; *MacNutt v. Acadia University*, 2016 NSCA 76, para. 17.

[11] Ms. Mohammed was unrepresented by counsel, had limited financial resources and was unfamiliar with the legal process in Canada. Her point of contact was with the English REMO, who corresponded with the Canadian authorities and remitted material to Ms. Mohammed. This routing involved delays outside Ms. Mohammed's control. Though she was aware of the outcome within the appeal period. I accept her assertion that she needed the documentation in order to draft a notice of appeal that would identify coherent grounds of appeal. I accept that Ms. Mohammed intended to appeal within the time limit for filing a notice of appeal. She acted reasonably, in her circumstances, to file an application for an extension and draft notice of appeal on April 9, 2018.

[12] Nothing indicates that the delay has prejudiced Dr. Hanson.

[13] In my respectful view, it is in the interests of justice that Ms. Mohammed have an extension to file a notice of appeal.

[14] I will order that Ms. Mohammed's time for filing a notice of appeal be extended to include the date that she filed the draft notice of appeal signed on April 9, 2018, and that this draft notice of appeal be taken as the effective Notice of Appeal in this proceeding. The costs of this motion will be in the cause.

Fichaud, J.A.