

COURT OF APPEAL OF
NEW BRUNSWICK



COUR D'APPEL DU
NOUVEAU-BRUNSWICK

97-23-CA

B E T W E E N :

E N T R E :

O.C.

O.C.

APPELLANT

APPELANT

- and -

- et -

J.C.

J.C.

RESPONDENT

INTIMÉE

O.C. v. J.C., 2024 NBCA 78

O.C. c J.C., 2024 NBCA 78

Motion heard by:
The Honourable Justice French

Motion entendue par :
l'honorable juge French

Date of hearing:
June 17, 2024

Date de l'audience :
le 17 juin 2024

Date of decision:
June 24, 2024

Date de la décision :
le 24 juin 2024

Counsel at hearing:

Avocats à l'audience :

O.C. on his own behalf

O.C. en son propre nom

J.C. on her own behalf

J.C. en son propre nom

DECISION

I. Introduction

[1] On May 12, 2023, Mr. C. was found in contempt of various court orders by a Judge of the Court of King's Bench and in an Amended Contempt Order issued on September 6, 2023, he was ordered to pay Ms. C. a total of \$35,085.52 (comprised of \$18,700.42 in unpaid amounts under three previous orders, plus interest) in monthly instalments of \$400 per month commencing June 1, 2023.

[2] Mr. C. appealed to this Court and, on February 29, 2024, he filed a Notice of Motion for an extension of time to perfect his appeal. His motion was scheduled to be heard on March 22, 2024.

[3] On March 18, 2022, Mr. C. advised the Registrar's Office that he was in the intensive care unit and requested the hearing be adjourned, and it was adjourned with the consent of Ms. C. In May 2024, after the Registrar's Office heard from Mr. C., his motion was scheduled to be heard on June 17, 2024, by videoconference or alternatively by telephone. On June 10, 2024, Mr. C. requested the hearing be adjourned "with no time frame." Ms. C. objected to a further adjournment. She maintains he is simply trying to further delay the obligation to pay her in accordance with the Amended Contempt Order.

[4] At the hearing on June 17, 2024, Mr. C. did not appear to advance his request for an adjournment or otherwise speak to his motion.

[5] For the reasons set out below, the request for an adjournment is denied and the request for an extension of time to perfect is granted, without costs. The time to perfect the appeal is extended to July 24, 2024, failing which the Registrar is directed to dismiss the appeal without further order of this Court.

II. The Amended Contempt Order

[6] In an order issued on October 31, 2010, the parties were divorced, and an order was made regarding the division of their assets and debts. Apart from what was recovered from the subsequent sale of their home, it appears nothing was paid under this order.

[7] In 2022, Ms. C. filed a motion seeking a finding of contempt for, among other things, Mr. C.'s failure to pay the amounts ordered by Justice Ouellette, on October 31, 2010, and also by (1) Justice Boisvert, on June 30, 2009; and (2) Justice Cyr, on October 3, 2011. Following a one-day hearing in April 2023, Mr. C. was found in contempt. The Contempt Order of June 2023 was amended by the Amended Contempt Order to particularize the \$35,085.52 payable to Ms. C. in installments of \$400 per month (from June 2023). It appears no amounts have been paid.

[8] Notably, the Amended Contempt Order provides that if Mr. C. fails to comply with the order, Ms. C. may "bring such default to [the] attention" of the Court of King's Bench, which may consider his further contempt. Mr. C. has not requested this Court stay that order, and it remains enforceable despite his appeal.

III. The Motion for an Extension of Time to Perfect

[9] In support of his motion for an extension of time to perfect his appeal, Mr. C.'s supporting affidavit states, in its entirety: "I am working on my appeal and need a bit more time to perfect my appeal."

[11] On March 18, 2020, Mr. C. advised the Registrar's Office that he had been admitted to "the ICU" and was requesting an adjournment of his motion. No affidavit or other evidence was provided. Ms. C. agreed to his request and the hearing was adjourned.

[12] In May 2024, after Mr. C. contacted the Register's Office regarding the perfection of his appeal, he was asked if he was seeking a date for his motion. He replied

by email to the Registrar, stating “I was in to see my doctor this week, I had a bit of a relapse and was put on a lot of meds for another two weeks. She wrote a note saying that I should stay away from anything having to do with the courts for at least a month due to the stress.” In a second email, he sent a copy of a letter from Dr. Marie Andree Arsenault dated May 7, 2024, which stated, in its entirety: “For medical reason[s] this person is unable to attend court procedures for one month.” No affidavit or other evidence was provided respecting his medical condition or circumstances.

[13] Based on the information provided by Mr. C., the motion was scheduled for hearing on June 17, 2024, by videoconference, or telephone.

[14] On June 6, 2024, Ms. C. sent an email to Mr. C. (and the Registrar’s Office) advising that she had “yet to receive your affidavit dated Feb 26/24 and any other document[s]” for the hearing on June 17, 2024 at 11 AM.

[15] On June 10, 2024, after Ms. C. initiated another email exchange, Mr. C. responded by email, advising that: “As of today I will be asking for an adjournment with no timeframe due to the fact that I find myself in the hospital with (sic) foreseeable plan as to what seems to be causing all the health problems” (underlining added). Ms. C. did not consent to this request for a further adjournment.

IV. The Hearing

[16] Mr. C. did not appear at the hearing of his motion, at 11 AM on June 17, 2024. Ms. C. participated by videoconference.

[17] During a recess, the Registrar’s Office attempted to contact Mr. C. In a telephone call to his residence, the Registrar’s Office was advised by his spouse/partner that Mr. C. was at the hospital, and she would be picking him up by 2 p.m. With this information, the hearing was adjourned to 3:30 p.m. The Registrar’s notice of the new time for the hearing advised Mr. C. that an order respecting his motion could be made in his absence.

[18] At approximately 1:30 p.m., Mr. C. telephoned the Registrar's Office to advise that while he was no longer at the hospital, he was "too weak" to participate at 3:30 p.m., presumably by either videoconference or telephone. Additionally, he sent an email to the Registrar with a photograph of a handwritten note that stated "This patient is unable to attend court proceedings of any kind for the foreseeable future. (approximately 3 to 6 months). This will be reviewed by the family physician or gastroenterologist if needed." It appears to be signed by Dr. M.A. Doucet and is dated June 11, 2024. Mr. C.'s email states that "due to the nature of the illness it is not prudent to move forward at this time."

[19] Mr. C. did not file an affidavit or provide any other information in relation to his request for an adjournment based on his medical condition or circumstances.

[20] Ms. C. maintained Mr. C.'s motion should not be adjourned and his request for an extension of time to perfect his appeal should be dismissed.

[21] While she understood he was in the intensive care unit for 2 days in mid-March, and she agreed to his request for an adjournment at that time, she submits he has long used medical issues/excuses to delay court proceedings.

[22] She contends Mr. C. is simply continuing his longstanding pattern of ignoring court orders and is now trying to delay the enforcement of the Amended Contempt Order.

V. Conclusion and Disposition

[23] Mr. C. has not provided any evidence that permits the Court to assess whether a further, even brief, adjournment is warranted to permit him a further opportunity to be heard on his request to adjourn the motion. Even if the letter and note provided by Mr. C. were admissible, neither they nor the information disclosed by Mr. C. provide a record that allows this Court to conclude that he is unable to address the Court

by phone regarding his circumstances. Further, had there been a misunderstanding about the hearing at 11 a.m., Mr. C. was afforded the opportunity at 3:30 p.m. on June 17, 2024, to speak to his request. His request for an adjournment is denied.

[24] Ms. C. made compelling submission for the denial of Mr. C.'s request for an extension of time to perfect his appeal; however, it appears he has continued to have had some, albeit unknown, medical issues since his release from hospital in mid-March 2024. Thus, it is in the interests of justice that he be given an extension of time to perfect. However, the record does not justify a lengthy extension.

[25] The request for an extension of time to perfect is granted, without costs. The time to perfect the appeal is extended to July 24, 2024, failing which the Registrar is directed to dismiss Mr. C.'s appeal without further order of this Court.

[26] To be clear, nothing about Mr. C.'s appeal or this decision operates to stay the Amended Contempt Order. It is enforceable in accordance with its terms.

[27] Considering the nature and effect of this decision, I direct, in accordance with s. 24(2) of the *Official Languages Act*, S.N.B. 2002, c. O-0.5, that it be published in the first instance in English and, thereafter, at the earliest possible time, in French.