

Date: 20150922
Docket: 14/54
Citation: *Moss v. Newfoundland and Labrador Housing Corporation*, 2015 NLCA 43

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

BONNIE MOSS

APPELLANT

AND:

NEWFOUNDLAND AND LABRADOR
HOUSING CORPORATION

RESPONDENT

MEMORANDUM OF DISPOSITION

Coram: Harrington J.A.

Application Heard: September 15, 2015
Decision Rendered: September 15, 2015 (Orally)
Written Reasons Filed: September 22, 2015

Counsel for the Appellant: Averill Baker
Counsel for the Respondent: Sharyl Rowsell

Corrected decision: The text of the original judgment was corrected on October 21, 2015. A description of the correction is appended.

Harrington J.A.:

[1] Newfoundland and Labrador Housing Corporation (respondent) applied pursuant to Rule 57.20(4) of the *Rules of the Supreme Court, 1986*

for an order deeming the within appeal to be abandoned and striking out the notice pursuant to Rule 57.17(1)(a) on the ground that the appellant had unduly delayed the preparation and perfection of the appeal.

[2] Counsel for the respondent noted that the decision of the trial division judge had been rendered June 25, 2014. Counsel for the respondent submitted that the appellant had not taken steps to perfect the appeal within 12 months of the filing of the decision of the trial division judge and that the appeal was now deemed abandoned. Notice was given by trial counsel, Averill Baker, on January 19, 2015 to respondent's counsel that she had been retained for the purpose of conducting the appeal. The notice of appeal was filed by Ms. Baker June 15, 2014, followed by the filing of a notice of appointment of counsel, June 2, 2015 and of a factum September 4, 2015.

[3] Counsel for the respondent argued that the notice of appointment of counsel would not constitute a last or meaningful step in the furtherance of the appeal and that the appeal ought to be treated as abandoned and ought not to be reinstated.

[4] Counsel for the appellant indicated that the appellant is of meagre means to pursue the appeal and legal aid does not support the pursuit of civil cases. The appellant lives in rental accommodation provided by the respondent and the issue in the case centers around a claim for injuries sustained as the result of a fall on land surrounding the apartment building where she lives. With respect to the liability issue, the respondent successfully argued at trial that, by the terms of the lease, the respondent does not accept any responsibility for the condition of the grounds adjacent to leased premises and therefore has no potential liability for any hazard or deficiency that may be linked to the injuries sustained by the appellant in a fall on land adjacent to her apartment.

[5] Counsel for the appellant outlined personal reasons affecting members of her family that had delayed the filing of a factum.

[6] In reviewing the jurisprudence tendered by counsel for the respondent, Chief Justice Green of this Court in the case of *EcoZone Engineering Ltd. v. Grand Falls-Windsor (Town)*, 2010 NLCA 15, 237 Nfld. & P.E.I.R. 79 wrote the following:

[35] The Court on an application such as this should be careful not to engage in a substantive weighing of the merits of the appeal, but should limit itself to articulating a sense as to the appeal's general overall strengths and weaknesses. If

it is perceived to be particularly weak, the presumption in favour of allowing cases to be heard on their merits, *ceteris paribus*, is likely to be significantly weakened in the face of undue delay that gives rise to prejudice. On the other hand, if it cannot be said to be weak there will be stronger arguments in favour of nevertheless allowing the appeal to be heard provided the degree of undue delay that is prejudicial is not significant.

[7] Chief Justice Green in applying this criteria concluded:

[36] ... I cannot conclude that the appeal in this case is so weak that it should be a factor weighing against the general principle that, other things being equal, an appeal should be determined on its merits.

[8] Based on the considerations outlined by Chief Justice Green in the *EcoZone* decision, I am satisfied that there is a *bona fide* intention to appeal as manifested by the fact that a factum has been filed and the appeal book is in the process of being prepared by counsel who has agreed to undertake the appeal to completion.

[9] I am satisfied that the record before me does not indicate a degree of such significant weakness or prejudice or undue delay that the appellant should be denied the right to proceed with her appeal.

[10] It is therefore ordered that the application to dismiss the appeal is denied and that there shall be no order as to costs.

M. F. Harrington J.A.

Correction Notice

Corrections made on October 21, 2015:

1. In paragraph 10, “that the costs of this application shall be costs in the cause on a party and party basis” was replaced with “that there shall be no order as to costs”.