

COURT OF APPEAL FOR YUKON

Citation: ***Bonnefoy v. Travill***,
2012 YKCA 4

Date: 20120605
Docket: CA10-YU663

Between:

Linda Alice Bonnefoy

Appellant
(Plaintiff)

And

Michael Bernard Travill

Respondent
(Defendant)

Before: The Honourable Mr. Justice Tysoe
(In Chambers)

On appeal from: Supreme Court of Yukon, May 27, 2010
(*Bonnefoy v. Travill*, Whitehorse Registry No. 05-D3773)

Oral Reasons for Judgment

Appellant: Appearing on her own behalf

Respondent: Appearing on his own behalf

Place and Date of Hearing: Whitehorse, Yukon
June 4, 2012

Place and Date of Judgment: Whitehorse, Yukon
June 5, 2012

(Application to extend time to appeal)

[1] **TYSOE J.A.:** Ms. Bonnefoy brings an application to extend the time to appeal the order of Mr. Justice Foisy dated May 27, 2010, made in a matrimonial proceeding between the parties in which Ms. Bonnefoy is the Petitioner and Mr. Travill is the Respondent. Mr. Justice Foisy ordered as follows:

1. The Petitioner shall have access with [the child] in Haines Junction or Burwash Landing commencing with the Petitioner picking [the child] up from school in Whitehorse at 3:05 p.m. each Friday and returning [her] to the Respondent's residence in Whitehorse by 5:00 p.m. each Sunday.
2. With respect to summer holidays, [the child] shall reside with the Respondent from the last full day of school June 15, 2010 to August 1, 2010. [The child] shall reside with the Petitioner from Sunday August 1, 2010 to Saturday August 28, 2010 and the Petitioner shall return [the child] to the Respondent's residence at 5:00 p.m. on that day. On the request of [the child] and the consent in writing of the Respondent, [the child] shall have access with the Petitioner at other times during the summer.
3. Any peace officer, including any R.C.M.P. officer having jurisdiction in Yukon, who on reasonable and probable grounds believes that ... the Petitioner, is in breach of the terms of this Order may upon being provided with a copy of this Order, apprehend [the child] and return her to the custody and care of ... the Respondent.
4. The Respondent's application with respect to contempt of court is adjourned *sine die*.

[2] Ms. Bonnefoy filed a notice of application for leave to appeal on October 4, 2010, which was outside the 30-day appeal period prescribed by s. 10 of the *Court of Appeal Act*, R.S.Y. 2002, c. 47. As a result, an extension in the time to bring the appeal was necessary in order for the appeal to continue.

[3] Ms. Bonnefoy applied in December 2010 for an extension in the time to appeal and for indigent status. The chambers judge dismissed the application for indigent status on the basis that the Yukon Court of Appeal did not have jurisdiction to hear appeals from interim access orders, and she did not specifically deal with the extension application.

[4] Ms. Bonnefoy applied for a review of the dismissal of her application for indigent status. The Court held that the chambers judge had erred in holding that the Yukon Court of Appeal did not have jurisdiction to hear the appeal. On behalf of

the Court, Madam Justice Rowles referred the indigent status application and the extension application to the chambers list.

[5] The trial in the matrimonial proceeding was scheduled to commence on June 6, 2011. Ms. Bonnefoy rescheduled the two applications for April 8, 2011. Her application for the extension was dismissed by Madam Justice Saunders because in view of the time set aside for a trial, “it is not in the interests of justice that an appeal go forward on an interim order.”

[6] The trial did not take place in June of 2011 because Mr. Justice Groves felt that it could not proceed in view of Ms. Bonnefoy’s state of mind. He adjourned the trial for a minimum of one year and directed that Ms. Bonnefoy could not reschedule the trial or bring any further applications unless she provided a letter from a medical practitioner that she was capable of representing herself or capable of instructing counsel. He ordered that Mr. Travill was to have interim sole custody and the primary residence of their daughter and that Mr. Travill was to have sole discretion with respect to permitting Ms. Bonnefoy access to their daughter.

[7] Ms. Bonnefoy did, with the assistance of counsel, bring on another application on December 20, 2011. At that time, Mr. Justice Groves ordered that Ms. Bonnefoy was to have one supervised access visit with the parties’ daughter of up to four hours every second weekend, and a second supervised access visit of up to three and a half hours every second Monday.

[8] The test for an application to extend the time to bring an appeal was set out in the well known decision of *Davies v. Canadian Imperial Bank of Commerce* (1987), 15 B.C.L.R. (2d) 256 at 259-260 (C.A.). Various factors are to be considered, but the decisive question is whether it is in the interests of justice that an extension be granted.

[9] The situation at the present time is not all that different from the circumstances before Madam Justice Saunders in April 2011 when she held that it was not in the interests of justice for an appeal of an interim order to continue. In

addition, it is my view that the proposed appeal has become moot, and that there is no prospect that a division of this Court would hear the appeal.

[10] Item 1 of the May 27, 2010 order has been superseded by the subsequent orders dealing with access. Item 2 of the order has expired with the passage of time. Item 3 of the order is limited to breaches of the order and expired when the substantive provisions of the order ceased to have effect. Item 4 of the order simply adjourned the aspect of Mr. Travill's application for Ms. Bonnefoy to be held in contempt of court.

[11] Ms. Bonnefoy says that the appeal should proceed because she wants the kidnapping allegations against her to be removed from the police records. She maintains that these accusations are adversely affecting her life and her ability to earn an income. As I endeavoured to explain to Ms. Bonnefoy during her submissions, the Court of Appeal hears appeals from the orders made by the Supreme Court, not from the reasons of the judge or the evidence that may have been before the judge. As the May 27, 2010 order is now spent, there is no longer an operative order from which an appeal can be usefully heard.

[12] In addition, in an appeal involving two private individuals, the Court of Appeal does not have the ability to order the police to remove allegations that may be noted in their records. The continuation of this appeal would not serve the purpose for which Ms. Bonnefoy wishes to pursue it, and it is not in the interests of justice to continue an appeal for a purpose that will not be achieved by its continuation. It will be open to Ms. Bonnefoy at the trial on the custody and access issues to introduce evidence in answer to these allegations.

[13] As I am not satisfied that it is in the interests of justice for this appeal to proceed, I dismiss Ms. Bonnefoy's application for an extension in the time to bring the appeal.

"The Honourable Mr. Justice Tysoe"