

COURT OF APPEAL OF
NEW BRUNSWICK



COUR D'APPEL DU
NOUVEAU-BRUNSWICK

71-21-CA

COLEEN MARGARET JACKSON

APPELLANT

- and -

MICHAEL ANDREW HAMILTON

RESPONDENT

COLEEN MARGARET JACKSON

APPELANTE

- et -

MICHAEL ANDREW HAMILTON

INTIMÉ

Motion heard by teleconference:
The Honourable Justice Quigg

Date of hearing:
June 30, 2021

Date of decision:
June 30, 2021

Counsel at hearing:

For the Appellant:
Joseph Wilfred John FitzPatrick

Michael Andrew Hamilton on his own behalf

Motion entendue par téléconférence :
l'honorable juge Quigg

Date de l'audience :
le 30 juin 2021

Date de la décision :
le 30 juin 2021

Avocats à l'audience :

Pour l'appelante :
Joseph Wilfred John FitzPatrick

Michael Andrew Hamilton en son propre nom

Decision

[Orally]

[1] In April 2006, the parties executed a Separation Agreement whereby Michael Andrew Hamilton agreed to pay Coleen Margaret Jackson spousal support in the amount of \$300 per month, payable on the first day of each month, until further agreement of the parties or a court order. There were no further agreements or orders terminating spousal support.

[2] On December 27, 2020, Mr. Hamilton filed a Petition for Divorce indicating at Section 9(a) there were no domestic contracts, separation agreements, minutes of settlement or other financial arrangements.

[3] On March 8, 2021, Ms. Jackson filed a Notice of Intent to Defend indicating she intended to defend the proceeding. No Answer was filed by Ms. Jackson's counsel on her behalf.

[4] On May 18, 2021, Mr. Hamilton filed a Trial Record which did not include the Notice of Intent to Defend.

[5] On June 1, 2021, unaware of the Notice of Intent to Defend and the existing Separation Agreement, a judge of the Court of Queen's Bench signed a Divorce Order, in chambers.

[6] On June 1, 2021, a Deputy Registrar of the Court of Queen's Bench signed the Divorce Judgment which is to be effective July 2, 2021.

[7] On June 29, 2021, realizing the procedural issues that had occurred, counsel for Ms. Jackson filed a Notice of Appeal respecting the effective date of the Divorce Judgment. Ms. Jackson requests the effective date be extended and the appeal be allowed.

[8] The grounds of appeal are:

1. The Respondent misled the Court and omitted the material fact that the spouses had entered into a Separation Agreement, resulting in a substantial wrong or miscarriage of justice;
2. The Respondent's ineffective assistance of counsel resulted in a substantial wrong or miscarriage of justice, namely the matter being considered an undefended proceeding.

[9] Section 21(4) of the *Divorce Act*, R.S.C. 1985, c. 3 (2nd Supp.) (*Act*), states:

**Appeal to appellate court
Extension**

21(4) An appellate court or a judge thereof may, on special grounds, either before or after the expiration of the time fixed by subsection (3) for instituting an appeal, by order extend that time.
[Emphasis added.]

**Appel à une cour d'appel
Prorogation**

21(4) Une cour d'appel ou un de ses juges peuvent, pour des motifs particuliers, et même après son expiration, proroger par ordonnance le délai fixé par le paragraphe (3).
[C'est moi qui souligne.]

[10] Based on the fact that Mr. Hamilton did not include the Separation Agreement as part of the Petition for Divorce or include the Notice of Intent to Defend in the Trial Record I am convinced there are "special grounds" as contemplated under s. 21(4) of the *Act* and I am granting an order to extend the effective date of the Divorce Judgment to September 30, 2021. I remain seized of this matter to hear further motions for direction or otherwise.

[11] 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.