Federal Court of Appeal | Cour d'appel fédérale

**Date: 20211202**

**Docket: A-8-20**

**Citation: 2021 FCA 234**

**CORAM:** **PELLETIER J.A.**
**RENNIE J.A.**
**GLEASON J.A.**

**BETWEEN:**

**JENNY DESIREE EVANS**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA and MARY-JO MCDONALD**

**Respondents**

Heard at Vancouver, British Columbia, on December 1, 2021.

Judgment delivered at Vancouver, British Columbia, on December 2, 2021.

REASONS FOR JUDGMENT BY: GLEASON J.A.

CONCURRED IN BY: PELLETIER J.A.
RENNIE J.A.

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## REASONS FOR JUDGMENT

**GLEASON J.A.**

[1] The appellant appeals from the decision of the Federal Court in *Evans v. Canada (Attorney General)*, 2019 FC 1592 (*per* Lafrenière, J.), in which the Federal Court dismissed the appellant's application for judicial review of the decision of the Social Security Tribunal – Appeal Division (the Appeal Division) in *J. E. v. Minister of Employment and Social Development and M. M.*, 2018 SST 749. In that decision, the Appeal Division refused leave to

appeal from the earlier decision of the Social Security Tribunal – General Division (the General Division) in *M. M. v Minister of Employment and Social Development and J. E*, 2018 SST 1400. The Appeal Division determined that the appellant's grounds for appealing the decision of the General Division had no reasonable chance of success on appeal and therefore denied her application for leave to appeal.

[2] In the decision under appeal before this Court, the Federal Court was tasked with determining whether the decision of the Appeal Division was reasonable. The Federal Court concluded that it was because it was reasonably open to the Appeal Division to have concluded that none of the three grounds of appeal raised by the appellant had a reasonable chance of success.

[3] More specifically, as concerns the first two grounds advanced by the appellant, namely, that the General Division ignored the use of false information and ignored evidence, the Federal Court held that it was reasonable for the Appeal Division to have refused leave in respect of them because they sought to have the Appeal Division reweigh the evidence before the General Division, which is not the role of the Appeal Division. Rather, by virtue of section 58 of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34, the Appeal Division may intervene in respect of evidentiary issues only where the General Division is alleged to have based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it. The Federal Court found that the first two issues raised by the appellant were not of this nature but rather were requests to have the Appeal

Division reweigh the evidence and reach a different conclusion, which is not something the Appeal Division can do.

[4] As concerns the final ground advanced by the appellant, the Federal Court determined that the appellant had not established that she was denied the opportunity to testify before the General Division and that the Appeal Division therefore did not err in refusing this ground of appeal.

[5] Before us, many of the appellant's submissions seek to have this Court reweigh the evidence and re-decide the case afresh. This is not our role. We are instead called upon to decide whether the Federal Court erred in finding the Appeal Division decision was reasonable.

[6] I see no error in the Federal Court's determinations and, largely for the reasons it gave, am of the view that this appeal must be dismissed.

[7] In short, it is not the role of the Appeal Division to re-decide factual issues, which is what the appellant sought in her first two grounds of appeal, and it was open to the Appeal Division to have refused leave in respect of the appellant's allegation of having been denied the opportunity to testify before the General Division. It is common for proceedings before administrative tribunals like the General Division to be informal and for administrative decision-makers to intervene and ask questions or to direct parties to address what is relevant. Based on the materials before us, I cannot conclude that the General Division prevented the appellant from testifying or from presenting her case.

[8] The appellant also submitted before us that the Federal Court and both the Appeal and General Divisions erred in failing to apply the definition of adult interdependent partner contained in the Alberta *Adult Interdependent Relationships Act*, SA 2002, c. A-4.5 (the AIRA). However, it does not appear that the appellant raised this argument before any of the Federal Court, the Appeal Division or the General Division. They therefore cannot be faulted for failing to address it. Even more importantly, the definitions in the AIRA are irrelevant to the appellant's claim for survivor and death benefits under the *Canada Pension Plan*, R.S.C. 1985 c. C-8, which contains it own definitions of common-law partner and survivor in sections 2 and 42.

[9] I would therefore dismiss this appeal, without costs, as none were sought by the Attorney General of Canada and none were incurred by Ms. McDonald, who did not file materials.

"Mary J.L. Gleason"
J.A.

"I agree.
J.D. Denis Pelletier J.A."

"I agree.
Donald J. Rennie J.A."

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

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| **DOCKET:** | A-8-20 |
| **STYLE OF CAUSE:** | JENNY DESIREE EVANS v. ATTORNEY GENERAL OF CANADA and MARY-JO MCDONALD |
| **PLACE OF HEARING:** | VANCOUVER, BRITISH COLUMBIA |
| **DATE OF HEARING:** | DECEMBER 1, 2021 |
| **REASONS FOR JUDGMENT BY:** | GLEASON J.A. |
| **CONCURRED IN BY:** | PELLETIER J.A.<br>RENNIE J.A. |
| **DATED:** | DECEMBER 2, 2021 |

**APPEARANCES:**

| | |
|---|---|
| Jenny Desiree Evans | FOR THE APPELLANT |
| Sandra Doucette | FOR THE RESPONDENT |
| Mary-Jo McDonald | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| A. François Daigle<br>Deputy Attorney General of Canada | FOR THE RESPONDENT |