Federal Court of Appeal | Cour d'appel fédérale

Date: 20220525

Docket: A-472-19

Citation: 2022 FCA 91

CORAM: **WOODS J.A.**
LASKIN J.A.
LEBLANC J.A.

BETWEEN:

ALBERT D. SMITH

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Edmonton, Alberta, on May 17, 2022.

Judgment delivered at Ottawa (Ontario), on May 25, 2022.

REASONS FOR JUDGMENT BY: THE COURT

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REASONS FOR JUDGMENT OF THE COURT

[1] This is an appeal of a decision of the Federal Court, dated December 10, 2019, dismissing the appellant's appeal of an Order of a prothonotary (the Prothonotary) striking out, without leave to amend, the appellant's Statement of Claim on the grounds that it discloses no reasonable cause of action and that it is an abuse of the process of the court.

[2] The appeal was heard on May 17, 2022, in Edmonton, Alberta, as set out in a scheduling order issued on April 14, 2022 (the Scheduling Order). At the outset of the hearing, the appellant indicated that he was not ready to proceed with the merits of the appeal as he thought the hearing was only to set the "real" hearing date. This is why, he said, he did not "bring his people" and left his file in "his locker". He argued that the process leading up to the scheduling of the appeal was confusing and did not make sense to him. He said he should have checked with the Chief Administrator's office for clarification, but confessed he did not.

[3] The Court then suspended the hearing in order to verify the content of the Court file. The Court file shows that the Scheduling Order was served on the appellant by mail and email. The Order clearly set out the date, time and location of the hearing. It suffers from no ambiguity whatsoever.

[4] This appeal is the appellant's appeal. As required by the *Federal Courts Rules*, SOR/98-106 (the Rules), the appellant filed a requisition for hearing, denoting an understanding of the procedure governing appeals before our Court. According to subrule 347(1), such a requisition is made so "that a date be set for the hearing of the appeal", and for no other purposes. The process that follows the filing of a requisition for hearing is meant to find a date that is suitable not only for the Court but also for each party appearing before it. There is no such thing in the Rules as a hearing to set the date of the hearing of an appeal.

[5] When the hearing resumed, the Court advised the appellant that the matter would proceed, as scheduled, since both parties had been formally informed of the date, time and

location of the hearing of this appeal and since the appellant's excuse for not proceeding with the hearing was not a valid one. The Court then offered the appellant the opportunity to make oral submissions he might wish to make in addition to the submissions contained in his Memorandum of Fact and Law. The appellant insisted on having a new hearing date. The Court also provided the appellant with the opportunity to file additional written submissions that it would consider along with the material already on record, including the appellant's Memorandum of Fact and Law and the material that he included in the Appeal Book. Again, the appellant insisted on having an adjournment. As a result, the Court advised the parties that it would consider the appeal based on the record before it, as constituted by the parties, and took the matter under advisement.

[6] In *UHA Research Society v. Canada (Attorney General)*, 2014 FCA 134, 2014 CarswellNat 1888 (WL Can) (*UHA Research*), Stratas J.A. provided a useful reminder of the importance of scheduling orders. As he pointed out, a scheduling order "is no different from any other order of the Court—it is an instrument of law, on its terms mandatory and effective" (*UHA Research* at para. 8). In other words, it is not a trivial matter and it will not be set aside "unless there are significant new developments, marked changes in circumstances, or compelling reasons of fairness", which is a "significant threshold" (*UHA Research* at paras. 9-10). Our colleague also underscored the prejudice which may result from a last-minute adjournment: the time allocated for the hearing will in all likelihood "go unused, resulting in a waste of the Court's resources", and when it travels, as is the case here, the Court's transportation and accommodation arrangements, often made long in advance, will most likely have to be altered at the expense of the public purse (*UHA Research* at para. 14).

[7] Here, we are satisfied that the appellant was given proper notice that the appeal was to proceed on May 17, 2022 and was given a fair opportunity to make his case before the Court. It is worth, at this stage, underscoring the fact that the appellant's Statement of Claim in this matter is a two-page handwritten document and that his Memorandum of Fact and Law in this Court is a four-page handwritten document, with only one page devoted to submissions. The Appeal Book contains 44 pages. In such a context, the appellant should normally have been in a position to address what he believes is wrong with the Federal Court's decision.

[8] Nor could the appellant seek an adjournment in the hope of "bringing his people" to the hearing, if what he meant by that is to bring witnesses to and file evidence at the hearing. If this is the case, then it denotes a profound misunderstanding of the nature of an appeal before the Court. An appeal is not a trial where the parties file documentary evidence or lead oral evidence in order to establish their respective positions. An appeal serves to determine, on the basis of the record that was before the court below, whether the decision appealed from is affected by an error of law or by a palpable and overriding error of fact or of mixed fact and law. In other words, no adjournment can be granted in this Court on the basis the appellant's comment suggests.

[9] As recently reiterated in *Dugré v. Canada (Attorney General)*, 2021 FCA 8, [2021] F.C.J. No. 50 (QL/Lexis) at paragraph 20, this Court has the powers necessary to ensure its effective functioning, including those necessary to manage its own proceedings. This is what the Court did in these unusual circumstances: managed its own proceedings, having regard to the fairness of the process.

[10] Having considered the material before us, we are all of the view, for the reasons that follow, that this appeal cannot succeed.

[11] As pointed out by both the Federal Court and the Prothonotary, the appellant's Statement of Claim is disjointed and difficult to follow. As far as we can understand it, the appellant appears to be seeking the return of land located at Peerless Lake, Alberta, and of a trailer and some related equipment that used to be located on that piece of land. The appellant says that he inherited the land, trailer and other equipment from his mother.

[12] The Federal Court reviewed the Prothonotary's decision on the standard that such orders "should only be interfered with when such decisions are incorrect in law or are based on a palpable and overriding error in regard to the facts" (*Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215, [2017] 1 F.C.R. 331 at para. 64 (*Hospira*)).

[13] The Federal Court found no such error in the Prothonotary's decision. In particular, it was satisfied that the Prothonotary had correctly determined that it was plain and obvious that the appellant's **S**tatement of Claim, even on the most generous reading, failed to disclose any viable cause of action against the respondent. It noted that the material tendered by the appellant suggested that if he had any claim in respect of his loss of property, that claim appeared to involve the Government of Alberta, not the Federal Crown. The Federal Court also found no error in the Prothonotary's decision not to hear the tapes tendered in evidence by the appellant since, according to subrule 221(2) of the Rules, no evidence shall be considered in determining whether to strike a pleading on the basis that it discloses no reasonable cause of action.

[14] The Federal Court further saw no reason to interfere with the Prothonotary's finding that the appellant's action in the present matter is an abuse of process because the substance of the claim is essentially the same as that in file T-604-18, where the appellant sued the respondent with respect to a trailer and a piece of property. The appellant's action in that matter was also quashed on a motion to strike as disclosing no reasonable cause of action. Finally, the Federal Court found that the tapes would not have assisted the Court in considering whether the appellant's action was an abuse of process.

[15] The role of this Court in this appeal is to determine whether the Federal Court, in concluding as it did, erred in law or based its decision on a palpable and overriding error in regard to other matters (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Hospira* at paras. 83-84).

[16] Other than seeking from this Court the return of his alleged property, the appellant does not articulate any claim against the Federal Court's decision. Again, his appeal material suffers from a significant lack of clarity. What is clear, though, is that the Federal Court reviewed the Prothonotary's decision using the proper standard of review, correctly found that the Prothonotary had applied the proper legal test for striking out a claim on the basis that it discloses no reasonable cause of action or on the basis that it is an abuse of the process of the court, and made no palpable and overriding error in sustaining the Prothonotary's finding that the appellant's Statement of Claim must be struck on both grounds, without leave to amend.

[17] As the Federal Court rightly pointed out, the Statement of Claim has no reasonable prospect of success, as there is nothing in it that could, one way or another, support a claim against the respondent. The Statement of Claim also appears to raise the exact same matter as that in file T-604-18. It was therefore entirely open to the Federal Court to find that the Prothonotary had committed no error in coming to the decision that the appellant's Statement of Claim does not disclose a reasonable cause of action and that it is an abuse of the process of the court.

[18] It was also entirely open to the Federal Court not to interfere with the Prothonotary's decision not to consider the appellant's tapes in determining whether the appellant's claim discloses a reasonable cause of action, since no evidence can normally be led on such issues. Finally, we find no basis to interfere with the Federal Court's finding that these tapes would not have assisted the Court in considering whether the claim was an abuse of process.

[19] For these reasons, we will dismiss the appeal but will do so without costs, as the respondent does not seek its costs on appeal.

"Judith Woods"
J.A.

"J.B. Laskin"
J.A.

"René LeBlanc"
J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-472-19
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REASONS DATED:	MAY 25, 2022

APPEARANCES:

Albert D. Smith	FOR THE APPELLANT SELF-REPRESENTED
Andrew Lawrence	FOR THE RESPONDENT

SOLICITORS OF RECORD:

A. François Daigle Deputy Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT