

Federal Court of Appeal



Cour d'appel fédérale

Date: 20141007

Docket: A-425-13

Citation: 2014 FCA 223

**CORAM: TRUDEL J.A.
WEBB J.A.
BOIVIN J.A.**

BETWEEN:

MARVIN LONGBOAT

Appellant

and

**ATTORNEY GENERAL OF CANADA
AND ESTATE OF CASSIE BOMBERRY**

Respondents

Heard at Toronto, Ontario, on October 7, 2014.
Judgment delivered from the Bench at Toronto, Ontario, on October 7, 2014.

REASONS FOR JUDGMENT OF THE COURT BY:

TRUDEL J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on October 7, 2014).

TRUDEL J.A.

[1] This is an appeal from a decision of the Federal Court dismissing Mr. Longboat's appeal brought under section 47 of the *Indian Act*, R.S.C. 1985, c. I-5 (the Act) of a Ministerial Order (removal order) removing him as administrator of the estate of his late uncle George Bomberry who died intestate on May 7, 1994. Section 42 of the Act provides that “all jurisdiction and

authority in relation to matters and causes testamentary, with respect to deceased Indians, is vested exclusively in the Minister.”

[2] Mr. Longboat alleges several errors in the judgment below and seeks an order from this Court reinstating him as administrator of the estate.

[3] The gist of his submissions is that McVeigh J. (Federal Court Judge) did not turn her mind to the test applicable at common law to the appointment and removal of administrators. Pursuant to this test, two important considerations must inform the Minister's decision when he chooses to remove an administrator: the welfare of the beneficiaries and the protection of the property or assets of the estate. Had the Federal Court Judge assessed the removal order and the appellant's actions in this light, she would have reached the conclusion that the Ministerial Order was unreasonable for failing to meet the threshold imposed by the common law test. There was no clear evidence on record that the appellant had endangered the estate's property or caused prejudice to the beneficiaries.

[4] The appellant explains that part of the estate includes undivided parcels of land located on reserve. His goal as administrator, in line with what he sees as the best interests of the land and the beneficiaries, was to facilitate an orderly and fair partition of the lands between the heirs to the estate to avoid the problems associated with “fractionation”. It is the appellant's view that “allowing the undivided interests to pass to the beneficiaries without a suitable partition arrangement would lead to haphazard use or unfortunate neglect of the property due to the inability of the joint interest-holders to use the property without unanimous consent” (appellant's

memorandum of fact and law at paragraph 66). The time needed to build a consensus amongst the heirs and to alleviate family tensions, as well as the death of three of the beneficiaries, explains why the estate had yet to be settled 16 years after his uncle's death.

[5] Moreover, the appellant argues that he did not receive from the Minister the support needed to reach an agreement with family members. He further contends that the Minister breached his rights to procedural fairness by making the removal order without providing him with copies of the letters of complaint which formed the basis of the decision.

[6] The Federal Court Judge reviewed the Minister's decision on a standard of reasonableness, concluding at paragraph 44 of her reasons:

At the end of the day, nearly 16 years after his appointment as administrator, the Appellant failed to both distribute the estate assets and follow the orders of the Minister, as he was required to do under the Regulations. Under such circumstances, removal of the Appellant as administrator amounts to a reasonable use of the Minister's discretion under the Act.

[7] Having carefully considered the record and the appellant's oral submissions, we are in substantial agreement with the Federal Court Judge's reasons. She carefully assessed the facts of this case, noting the right of the beneficiaries to be put in possession of their share of the estate and the length of Mr. Longboat's administration before his removal, despite several requests made by the Minister urging the appellant to settle the estate.

[8] The Federal Court Judge found that the Minister had done his best to assist and support the appellant over the course of the years. The record supports her finding.

[9] As well, the record shows that during this time the Minister received several complaints (including one from all but one of the heirs; see paragraph 33 of the reasons). The Federal Court Judge was satisfied that Mr. Longboat was well aware of the complainants' concerns.

[10] It is clear that Mr. Longboat's goal to reach an agreement with all the heirs as to the use of the lands was the driving force behind his conduct as administrator. Reaching this agreement was a noble goal but, at the same time, the legal heirs were not receiving their respective share of the estate and were unhappy about it. The appellant's main duty as administrator was to proceed to the distribution of the estate properly and efficiently. In view of the circumstances described above, it was reasonable for the Minister to conclude that Mr. Longboat was not discharging his duties in this manner and to order the appellant's removal as administrator of the estate. The Federal Court Judge came to that conclusion and we see no reason to interfere with her judgment.

[11] As a result, the appeal will be dismissed with costs.

“Johanne Trudel”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-425-13

STYLE OF CAUSE: MARVIN LONGBOAT v.
ATTORNEY GENERAL OF
CANADA, AND ESTATE OF
CASSIE BOMBERRY

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: OCTOBER 7, 2014

REASONS FOR JUDGMENT OF THE COURT BY: TRUDEL J.A.
WEBB J.A.
BOIVIN J.A.

DELIVERED FROM THE BENCH BY: TRUDEL J.A.

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