

Citation 2004TCC811
Date: 20050112
Dockets: 2000-3255(IT)G
2000-3601(IT)I

BETWEEN:

DAVID A. DAWSON,
JOHN D. DAWSON,

Appellants,

and

HER MAJESTY THE QUEEN,

Respondent.

(Edited from the transcript of Reasons for Judgment delivered orally from the
Bench on November 19, 2004 at Winnipeg, Manitoba)

REASONS FOR JUDGMENT

Campbell J.

[1] This is an application by the Appellants, David and John Dawson, to set aside the judgment of Justice Bowie dated August 27, 2004. Justice Bowie's judgment dismissed both appeals for failure to appear.

[2] David Dawson appeared on his own behalf this morning and as agent for his son, John Dawson. This application of David Dawson is pursuant to Rule 140(2) of the General Procedure Rules, which specifies in very direct and clear language that the application to set aside or vary such an order must be made "...within 30 days after the pronouncement of the judgment or order". David Dawson is beyond that time limitation in bringing his application. In this respect alone by operation of the Rules, I am unable to set aside the judgment issued by Justice Bowie, but beyond the limitation there are other aspects of the Appellant's' argument which need to be addressed, simply because he has canvassed that issue in terms of the medical certificates and his own condition in bringing this application.

[3] In reviewing the various documents submitted in Exhibit A-1, as well as reviewing the transcript of Justice Bowie's hearing in August of this year, I do not have anything substantial beyond the evidence examined by Justice Bowie. He concluded that there was no definitive detailed information, either as to a diagnosis or prognosis, and that the medical certificate of Dr. Lam dated August 18, 2004 simply stated the Appellant was ill and unable to attend court.

[4] Prior to this certificate, which was reviewed by Respondent counsel, there was a referral for a CAT scan in April 2004, and a further certificate of Dr. Young on June 15, 2004, confirming the examination was normal.

[5] On September 24, 2004 a report from the Department of Radiology indicates that the post CAT scan is unremarkable. In a letter of Dr. Young to Dr. Lam dated October 8, 2004 it states, and I quote:

He has certainly had no further episodes of disturbed consciousness or awareness.

The certificate goes on to refer to the episodes the Appellant was having as:

...probably cardiovascular and perhaps hypotensive in origin.

[6] There is nothing remarkable in any of this documentation since the date of Justice Bowie's detailed reasons. Justice Bowie found that the certificate was deficient, and did not address why the Appellant could not be in court.

[7] Medical certificates, when offered for the purposes of obtaining an adjournment, such as this, should, at the very least, state in clear language what medical condition prevents that individual from attending court on that particular day at that particular time. Otherwise, they are meaningless.

[8] Even if I could find a way to get around the 30-day rule I am left with the problem that David Dawson simply has not provided additional information which might warrant revisiting Justice Bowie's decision. I am left with simply no reasonable explanation as to why David Dawson has been unable to proceed with his appeal on one of the many previously assigned dates. I believe there have been four adjournments prior to the matter coming before me this morning.

[9] It is also important to note that Justice Bowie had given the Appellant's lawyer time on the first day of the hearing in August to get the proper medical

information before the court, but the certificate that was offered was viewed by Justice Bowie as simply insufficient. I, too, share that view.

[10] Because I have nothing before me that convinces me that I should reopen the matter, I must dismiss the application of David Dawson.

[11] I turn now to the application of John Dawson, who is absent this morning. He was not present at the hearing in August 2004 held before Justice Bowie. That was the fifth time the matter had been before this court.

[12] Mr. Derwin, who was representing David Dawson in August, advised Justice Bowie that he had no authority to represent John Dawson. An affidavit of John Dawson was filed stating that he was out of town due to work commitments. Justice Bowie had that affidavit before him when he made his finding. I have nothing further in respect to his application, other than the submissions of his father, David Dawson.

[13] He did not appear before me, and when I asked Mr. David Dawson why he was not in attendance, I was advised only that his work takes him out of the city on regular intervals.

[14] Despite the affidavit and submissions of his father (his Agent) the history of the appeal clearly indicates no genuine interest and desire on John Dawson's part to move his appeal along in a timely manner and have it adjudicated. Taxpayers must bear some responsibility when they choose to represent themselves, to pay attention to court dates and times, and to exhibit an interest in having their appeal dealt with in a timely fashion. The history in these appeals is quite the opposite.

[15] I must therefore also dismiss the application of John Dawson.

[16] I make no order as to costs.

Signed at Ottawa, Canada, this 12th day of January 2005.

"Diane Campbell"

Campbell J

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COURT FILES NO.:	200o-3255(IT)G 2000-3601(IT)I
STYLE OF CAUSE:	David A. Dawson and John D. Dawson and Her Majesty the Queen
PLACE OF HEARING	Winnipeg, Manitoba
DATES OF HEARING	November 19, 2004
REASONS FOR JUDGMENT BY:	the Honourable Justice Diane Campbell
DATE OF ORAL JUDGMENT	November 19, 2004
APPEARANCES:	
Agent for the Appellant:	David A. Dawson
Counsel for the Respondent:	Tracey Telford
COUNSEL OF RECORD:	
For the Appellant:	
Name:	
Firm:	
For the Respondent:	John H. Sims, Q.C. Deputy Attorney General of Canada Ottawa, Canada