Federal Court  Cour fédérale

Date: 20201019

Docket: T-52-20

Citation: 2020 FC 976

Toronto, Ontario, October 19, 2020

PRESENT: Mr. Justice A.D. Little

BETWEEN:

ANTONINA SENNIKOVA

Applicant

and

SOCIAL SECURITY TRIBUNAL APPEAL DIVISION

Respondent

ORDER AND REASONS

[1] Mr Nikolai Sennikov commenced this motion under Rule 109 of the *Federal Courts Rules*, SOR/98-106, for leave to intervene in this judicial review proceeding.

[2] For the following reasons, Mr. Sennikov's motion to intervene is dismissed. This conclusion does not prevent the applicant, Ms Sennikova, from asking the Court to permit Mr Sennikov to represent her at the hearing of her application for judicial review.

[3] The applicant has filed an application in this Court for judicial review of a decision of Social Security Tribunal – Appeal Division dated December 20, 2019, which refused leave to appeal from a decision of the Social Security Tribunal – General Division.

[4] On this motion, the applicant's husband, Mr Sennikov, seeks an order permitting him to intervene in the proceeding under Rule 109 "with all rights and obligations of the Party acting in person including rights of appeal". His Notice of Motion advises that his participation as a party in this proceeding will assist the Court in dealing with issues raised by the applicant in her application. In the Notice of Motion, he advises that he created all documents signed by the applicant and that he can answer any questions regarding details and basis of those documents. In addition, he advises that he has been the applicant's representative, including before the Social Security Tribunal, and that he lives at the same address and has a common budget with his wife. Further, he is a trained lawyer with a diploma in jurisprudence from Kazakhstan and can make submissions on the applicable law. Lastly, he advises that the applicant may be unable to make representations on her own behalf at the hearing due to health problems and he has the permission of his wife to represent her at the hearing.

[5] The respondent objects. The respondent's position is that Mr Sennikov is not a lawyer in Canada. In the respondent's submission, it is not appropriate for Mr Sennikov to be an intervener because he does not meet the relevant legal test to intervene. In addition, the respondent submits that granting the requested order would have the effect of giving the applicant two opportunities to file written submissions to the Court. The proposed submissions of Mr Sennikov as intervener are substantially the same as the applicant's written submission, already filed. According to the

respondent, the proper motion for the applicant is under Rule 119 to permit Mr Sennikov to represent her at the oral hearing. The respondent further contends that a motion under Rule 119 should be heard by the judge hearing the judicial review application.

[6] The criteria for the Court to apply on a motion to intervene under Rule 109 were set out in *Rothmans, Benson & Hedges Inc. v. Canada (Attorney General)*, [1990] 1 F.C. 74 (Rouleau, J), at pp. 79-80 (para 12), aff'd [1990] 1 FC 90 (CA) (Hugessen, JA), at p. 92 (para 3). The criteria were confirmed by a panel of the Federal Court of Appeal in *Sport Maska Inc. v. Bauer Hockey Corp.*, 2016 FCA 44, [2016] 4 FCR 3 (Nadon JA), at paras 20, 37 and 41-42 and recently by Justice Locke in *Canada (Public Safety and Emergency Preparedness) v. Lopez Gaytan*, 2020 FCA 133, at para 6. The criteria are:

a) Is the proposed intervener directly affected by the outcome?

b) Does there exist a justiciable issue and a veritable public interest?

c) Is there an apparent lack of any other reasonable or efficient means to submit the question to the Court?

d) Is the position of the proposed intervener adequately defended by one of the parties to the case?

e) Are the interest of justice better served by the intervention of the proposed third party?

f) Can the Court hear and decide the cause on its merits without the proposed intervener?

[7] These criteria are not exhaustive. The Court may ascribe weight to each individual factor as is appropriate in the particular case: *Sport Maska Inc.*, at para 41.

[8] The central issue to be decided on a motion to intervene is whether the proposed intervention will assist the Court in determining a factual or legal issue raised by the proceeding: Rule 109(2)(b). Another important consideration is whether the intervener will bring further, different and valuable insights and perspectives to the Court that will assist it in determining the matter: *Prophet River First Nation v. Canada (Attorney General)*, 2016 FCA 120 (Stratas, JA), at para 6.

[9] On this motion, I do not believe that the addition of Mr Sennikov as an intervener will materially assist the Court to determine any factual or legal issue arising on the application. Permitting Mr Sennikov to intervene in this proceeding will not add a different perspective for the judge hearing the merits of the judicial review application. Based on the materials he filed on this motion, Mr Sennikov's interests are the same as the applicant's. His arguments as intervener on the judicial review application (which he filed to support of this motion) would be substantially the same as the applicant's submissions, which have already been filed and which Mr Sennikov apparently drafted himself. Mr Sennikov's position is adequately advanced in those submissions.

[10] To add Mr Sennikov as an intervener would also complicate the hearing; enable two submissions to be filed when one will satisfy the common, private interests of both spouses; and unnecessarily increase both the costs of this proceeding for the respondent and the time spent on the matter by the respondent and the Court.

[11] In my view, therefore, the interests of justice are not better served by the addition of Mr Sennikov as an intervener in this proceeding as be proposes.

[12] Accordingly, Mr Sennikov's motion is dismissed. The respondent did not request costs and no costs order will be made.

[13] For clarity, nothing in these reasons prevents the applicant from commencing a motion under Rule 119 of the *Federal Courts Rules* to request that the Court permit Mr Sennikov to represent her at the hearing of the judicial review application. In my view, that request should be determined by the judge hearing the judicial review application.

ORDER in T-52-20

THE COURT ORDERS AS FOLLOWS:

1. Mr Sennikov's motion for leave to intervene in this proceeding under Rule 109 of the *Federal Courts Rules* is dismissed, without costs.

"Andrew D. Little"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-52-20
STYLE OF CAUSE:	ANTONNIA SENNIKOVA v SOCIAL SECURITY TRIBUNAL APPEAL DIVISION

MOTION IN WRITING CONSIDERED AT TORONTO, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

JUDGMENT AND REASONS:	LITTLE J.
DATED:	OCTOBER 19, 2020

APPEARANCES:

Antonina Sennikova	FOR THE APPLICANT SELF-REPRESENTED
Samantha Pillon	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Antonina Sennikova	FOR THE APPLICANT SELF-REPRESENTED
Samantha Pillon Attorney General of Canada	FOR THE RESPONDENT