

Federal Court



Cour fédérale

Date: 20100323

Docket: T-68-09

Citation: 2010 FC 330

Toronto, Ontario, March 23, 2010

PRESENT: The Honourable Mr. Justice Mainville

BETWEEN:

NICOLE (NORA) HÉROLD

Applicant

and

**HER MAJESTY IN RIGHT OF CANADA ET AL
CANADA REVENUE AGENCY (CRA) AND
THE PARTIES TO THE OFFENCES: EMPLOYMENT INSURANCE (EI),
HUMAN RESOURCES AND SOCIAL DEVELOPMENT CANADA (HRSDC),
SUDBURY TAX CENTRE**

Respondents

REASONS FOR JUDGMENT AND JUDGMENT

[1] Nicole (Nora) Hérold (the applicant) is appealing two orders dated February 2, 2010, signed by Prothonotary Mireille Tabib. One of those orders allowed a motion to amend the pleadings submitted by the applicant and established a timetable to ensure the proper course of proceedings. The other order dismissed a motion by the applicant to strike out the respondents'

pleadings and receive the respondents' pre-trial conference memorandum with the list of the witnesses and documents.

[2] Some background is in order here. The applicant filed an action in this Court on February 14, 2009, to be reimbursed for amounts which she alleged the respondents unfairly deducted from her wages, pension and unemployment compensation. The applicant also seeks an amount of \$600,000 from the respondents for injury, interest and punitive damages. In their defence, the respondents submit that the deductions concern the payment of student loans that were granted to the applicant and never repaid. Moreover, the respondents are claiming in turn an amount of \$9,509.28 from the respondent for the repayment of those loans. The applicant states that she has already repaid those loans and that the respondents' seizures and other proceedings are abusive, which justifies her claim for the amount of \$600,000.

[3] The applicant submitted a first motion to amend her pleadings, which was dismissed by Prothonotary Tabib on October 22, 2009, on account of the numerous flaws and errors in the amendment pleadings. However, that dismissal was subject to applicant's right to file a new motion to amend her pleadings [TRANSLATION] "in accordance with the conditions stipulated in the body of this order."

[4] By order dated November 26, 2009, Prothonotary Tabib dismissed a second motion by the applicant to amend her pleadings for reasons similar to the first dismissal. At that time, the prothonotary noted that the many difficulties encountered in the conduct of the file were due to

[TRANSLATION] “to the fact that the applicant is self-represented and unfamiliar with the rules of practice and procedure applicable to proceedings before the courts of law”.

[5] As noted above, by an order dated February 2, 2010, Prothonotary Tabib accepted a third motion by the applicant for leave to amend her pleadings, despite her failure to comply with certain rules of the Court. The prothonotary also established a new timetable taking into account the amendments to the applicant’s pleadings. Yet, the applicant is appealing this order, which granted her motion.

[6] To begin with, I note that it is quite unusual for a party to appeal an order that is essentially in that party’s favour. When the Court questioned the applicant on the matter, she conceded that she was not dissatisfied with the result of the order, but rather with the reasons in support thereof. Yet, it is clear that the reasons for an order cannot be appealed when the conclusions of that order are satisfactory to the appellant. The principle is so well known in law that it does not warrant my discussing it any further.

[7] In this case, the appeal of that decision will therefore be dismissed.

[8] As for the second decision appealed, the applicant is seeking to have the respondents’ pleadings dismissed on the grounds that she has already repaid her student loans and that, in this case, the respondents have no valid defence to put forward or claims to make against her. The prothonotary dismissed that motion for the reason that it was clearly frivolous and without merit. The prothonotary did not err in so deciding. The applicant’s point of view is not the only one

which will be argued before the Court on the merits of this case, and the respondents will not be denied their right to full answer and defence. This is a fundamental principle that is at the very heart of our justice system.

[9] In that second decision, the prothonotary also dismissed another motion filed by the applicant to obtain the respondents' memorandum with the list of their witnesses and documents, owing, among other things, to the applicant's motion to amend her pleadings, which rendered the decision moot. I see no error in the prothonotary's decision in that regard.

[10] In this case, the appeal of the second decision will also be dismissed.

[11] The costs of these appeals will be in the cause.

JUDGMENT

THE COURT ORDERS AND ADJUDGES that the two appeals of the orders made by Prothonotary Mireille Tabib on February 2, 2010, are dismissed, and that the costs of these appeals will be in the cause.

“Robert Mainville”

Judge

Certified true translation
Sarah Burns

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-68-09

STYLE OF CAUSE: NICOLE (NORA) HÉROLD v. HER MAJESTY IN
RIGHT OF CANADA ET AL CANADA REVENUE
AGENCY (CRA) AND THE PARTIES TO THE
OFFENCES: EMPLOYMENT INSURANCE (EI),
HUMAN RESOURCES AND SOCIAL DEVELOPMENT
CANADA (HRSDC), SUDBURY TAX CENTRE

PLACE OF HEARING: Toronto, Ontario

DATE OF HEARING: March 22, 2010

**REASONS FOR JUDGMENT
AND JUDGMENT:** MAINVILLE J.

DATE OF REASONS: March 23, 2010

APPEARANCES:

Nicole(Nora) Hérold FOR THE APPLICANT (Self-represented)

Derek Edwards FOR THE RESPONDENTS

SOLICITORS OF RECORD:

N/A FOR THE APPLICANT

John H. Sims, Q.C.
Deputy Attorney General of Canada FOR THE RESPONDENTS