

Federal Court of Appeal



Cour d'appel fédérale

Date: 20130910

Docket: A-363-12

Citation: 2013 FCA 205

**CORAM: NADON J.A.
GAUTHIER J.A.
WEBB J.A.**

BETWEEN:

VLASTA STUBICAR

Appellant

and

**DEPUTY PRIME MINISTER AND MINISTER OF
PUBLIC SAFETY AND EMERGENCY PREPAREDNESS**

Respondents

Heard at Ottawa, Ontario, on September 10, 2013.

Judgment delivered from the Bench at Ottawa, Ontario, on September 10, 2013.

REASONS FOR JUDGMENT OF THE COURT BY:

NADON J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Ottawa, Ontario, on September 10, 2013)

NADON J.A.

[1] This is an appeal from the decision of Madame Justice Tremblay-Lamer dated August 2, 2012 which dismissed, with costs payable forthwith to the respondent, the appellant's motion for an extension of the time within which to file an appeal of the order of Madame Prothonotary Aronovitch dated June 21, 2012.

[2] By her decision, the prothonotary directed that this file (Federal Court File T-19-12) and Federal Court Files T-1436-11 and T-2061-11 were to continue as specially managed proceedings to be case managed by the same case management judge.

[3] For the record, I note that the appellant failed to meet the deadline of July 3, 2012 to appeal the prothonotary's order and hence her motion to extend the time in which to do so.

[4] The appellant says that the judge erred, in dismissing her motion, because she misapplied the common law test for granting an extension of time. She also says that, contrary to the way in which the respondent proceeded to raise the case management issue, i.e. by way of a letter, a motion was required and thus the prothonotary should not have held in favour of case management.

[5] Although the judge did not spell out why the relevant test had not been met, we are satisfied that she did apply that test. That is what she says she did. Whether she applied it correctly is obviously a different question.

[6] The test (see *Canada (Attorney General) v. Hennelly*, [1999] F.C.J. No. 846 at para. 3 (F.C.A.)) requires an applicant to show that a reasonable explanation for the delay exists, a continuing intention to pursue the matter, the application has merit and no prejudice to the respondent arises from the delay.

[7] We all agree that an appeal from the prothonotary's decision directing case management cannot possibly succeed. This is fatal to the appellant's motion to extend. Consequently, we need

not examine the other requirements of the test (see *Exeter v. Canada (Attorney General)*, 2011 FCA 253 at paras. 8, 18).

[8] In so concluding, we are agreed that the issue of case management was properly before the prothonotary. Although not raised by motion, both the respondent and the appellant were able to provide detailed submissions as to the appropriateness of case management. Further, Rule 384 of the *Federal Courts Rules* in any event allows the court at any time to order that proceedings be case managed.

[9] In our reading and understanding of the file at issue, we cannot see any basis upon which we could conclude that the case management order was improper or not supportable. We would go further and say that we agree entirely with the prothonotary that case management was necessary in the circumstances.

[10] The fact that the prothonotary ordered that the files be managed by the same case management judge, contrary to the appellant's assertions, is not a reviewable error. Although only the Chief Justice under Rule 383 may direct which judge or prothonotary will case manage a given file, that does not preclude a prothonotary or a judge from directing that files be case managed by the same judge or prothonotary where they view this as necessary.

[11] As to costs, we see no basis to intervene with regard to the judge's discretionary order that they be payable forthwith to the respondent.

[12] The appeal will therefore be dismissed with costs of \$1,500.00 payable to the respondent.

“M. Nadon”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-363-12

STYLE OF CAUSE: Vlasta Stubicar v. Deputy Prime
Minister and Minister of Public Safety
and Emergency Preparedness

PLACE OF HEARING: Ottawa

DATE OF HEARING: September 10, 2013

REASONS FOR JUDGMENT OF THE COURT BY: (NADON, GAUTHIER, WEBB
J.J.A.)

DELIVERED FROM THE BENCH BY: NADON J.A.

APPEARANCES:

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(SELF-REPRESENTED)

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Sharon Johnston

FOR THE RESPONDENT

SOLICITORS OF RECORD:

N/A

FOR THE APPLICANT

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FOR THE RESPONDENT