Federal Court of Appeal | Cour d'appel fédérale

CANADA

Date: 20100121

Docket: A-570-08

Citation: 2010 FCA 20

CORAM: **LÉTOURNEAU J.A.**
NOËL J.A.
PELLETIER J.A.

BETWEEN:

EMILE MARGUERITA MARCUS MENNES

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard by videoconference between Ottawa, Toronto and Campbellford, on January 19, 2010.

Judgment delivered at Ottawa, Ontario, on January 21, 2010.

REASONS FOR JUDGMENT BY: LÉTOURNEAU J.A.

CONCURRED IN BY: NOËL J.A.
PELLETIER J.A.

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REASONS FOR JUDGMENT

LÉTOURNEAU J.A.

Issues on appeal

[1] The appellant who is self-represented seeks the reversal of the decision of Layden-Stevenson J. of the Federal Court (judge) as she then was. By that decision, the judge dismissed the appellant's motion to rescind her decision dated December 10, 2004 (*Canada v. Mennes*, 2008 FC 1182) which declared the appellant to be a vexatious litigant under subsection 40(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[2] On appeal, the appellant submits that the vexatious litigant order was obtained by fraud, predicated on misrepresentations made at the hearing on October 5, 2004 by Crown counsel. He also complains that the learned judge was biased, the evidence of which being that she completely ignored his uncontradicted evidence.

Analysis of the decision and grounds of appeal

[3] I agree with the judge that there is no merit in the appellant's allegation of fraud. The allegation rests solely on a twelve-line comment, taken out of context, made by Crown counsel in the course of a two-day hearing. As the judge said at paragraph 13 of her reasons for judgment, "when the comments are placed in context, they refer to the failure of Mr. Mennes to adhere to appropriate and prescribed procedure". They do not and cannot support an allegation of fraud.

[4] A review of the transcript and the judge's reasons for judgment shows that the appellant's allegedly uncontradicted evidence was discussed at the hearing and subsequently analysed by the judge. She did not ignore that evidence. The weight that ought to be attributed to it was for her to decide and this Court has no authority to second-guess her assessment in this regard. It is obvious that the appellant does not agree with the decision that she rendered. However, a decision adverse to a party does not in and of itself lead to a conclusion of bias on the part of the decision-maker against that party. Nor does a disappointment with the result.

[5] The appellant's position now taken in this respect is at odds with the favourable comments he made, and the satisfaction he expressed to the judge, at the end of the hearing. At page 789 of volume V of the appeal book, the appellant said:

> I thank the Court for the opportunity to be heard in a real way for the first time. I won't spend another second.

[6] Paragraphs 18 and 19 of the 2004 decision of the judge gives a telling history of the appellant's vexatious litigation:

> [18] The affidavit evidence discloses 64 separate proceedings dating from February 1987 to August 2002. Most of these files are concentrated in two periods, the first from 1987 to 1992, and the second from 1998 to the present. Mr. Mennes commenced only three proceedings between 1993 and 1997. Of the 64 files, 34 belong to the Federal Court, 26 are files from the provincial courts of British Columbia, two are from the provincial courts of Ontario and two are leave applications to the Supreme Court of Canada.
>
> [19] Of the 34 files (detailed in the affidavits) in the Federal Court, 15 were applications, 11 were actions and eight were appeals. Nine were struck out at a preliminary stage, six were dismissed by the Court after some form of hearing, three were dismissed by the Court for delay, five were discontinued by Mr. Mennes, ten reflect a lack of prosecution at some stage in the proceeding without final disposition. One appeal was found in favour of Mr. Mennes. Additionally, since August 2002, when the Rodgers affidavit was sworn, Mr. Mennes has initiated another ten proceedings in the Federal Court. These include five new actions and five new applications.

[7] It was certainly not unreasonable for the judge to conclude that "to characterize the proceedings that I have reviewed as 'nothing more than ordinary litigation with its attendant errors in judgment' is inconceivable. The evidence demonstrates, without doubt, that Mr. Mennes has persistently instituted vexatious proceedings or has conducted proceedings in a vexatious manner".

Costs

[8] In order to save time and additional costs, the parties at the hearing requested that costs be fixed by this Court in issuing its judgment. After consideration of the parties' submissions, I would fix the costs at $1,200.

Conclusion

[9] For these reasons, I would dismiss the appeal with costs in favour of the respondent in the amount of $1,200.

"Gilles Létourneau"
J.A.

"I agree
Marc Noël J.A."

"I agree
J.D. Denis Pelletier J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-570-08
STYLE OF CAUSE:	EMILE MARGUERITA MARCUS MENNES v. HER MAJESTY THE QUEEN
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CONCURRED IN BY:	NOËL J.A. PELLETIER J.A.
DATED:	January 21, 2010

APPEARANCES:

Emile Marguerita Marcus Mennes	ON HIS OWN BEHALF
Shain Widdifield Matthew Sullivan	FOR THE RESPONDENT

SOLICITORS OF RECORD:

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