

Federal Court of Appeal



Cour d'appel fédérale

Date: 20190404

Docket: A-64-18

Citation: 2019 FCA 70

[ENGLISH TRANSLATION]

**CORAM: NADON J.A.
PELLETIER J.A.
DE MONTIGNY J.A.**

BETWEEN:

MARIA-ATHENA PARADISSIS

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Montréal, Quebec, on April 3, 2019.

Judgment delivered at Montréal, Quebec, on April 4, 2019.

REASONS FOR JUDGMENT BY:

PELLETIER J.A.

CONCURRED IN BY:

NADON J.A.
DE MONTIGNY J.A.

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REASONS FOR JUDGMENT

PELLETIER J.A.

[1] Ms. Paradissis is appealing the decision of Justice Boyle (the case management judge) of the Tax Court of Canada dismissing her appeal of an assessment issued against her pursuant to section 160 of the *Income Tax Act*, R.S.C. 1985, c. 1 (5th Supp.). The judge issued the order in question following the failure of Ms. Paradissis' counsel to comply with several orders setting dates for completing certain steps and determining the schedule for proceeding with the appeal.

[2] Counsel admits that he did not comply with the orders in question, but maintains that he did nonetheless send the relevant documents to the Minister's counsel, so the Minister suffered no prejudice.

[3] Counsel submits that the case law of the Supreme Court and of this Court has established "that a party must not be deprived of his rights on account of an error of counsel where it is possible to rectify the consequences of such error without injustice to the opposing party" (*Bowen v. City of Montreal*, [1979] 1 SCR 511 at 519). Since the Respondent is not alleging any prejudice, counsel submits that the case management judge erred in law by dismissing his client's appeal.

[4] Notwithstanding this case law, it must be acknowledged that the courts must be able to enforce their proceedings and orders. The case law on which counsel is relying deals with specific cases in which there was a professional error or malpractice. Here, the case management judge was faced with counsel who had not complied with orders issued on May 31, 2016, February 27, 2017, April 3, 2017 and July 17, 2017. This last order required counsel to serve his list of documents on or before August 16, 2017, failing which Ms. Paradissis' appeal would be dismissed. The list of documents was not produced, and, by his own admission, counsel had not taken any steps to move the case forward between August 16, 2017 and January 17, 2018, the date on which the case management judge, on his own initiative, dismissed Ms. Paradissis' appeal.

[5] There is no evidence suggesting that Ms. Paradissis inquired of her counsel about the progress of her case. Although we cannot reproach a client for trusting her counsel, the fact remains that the parties have a certain duty of vigilance and cannot simply sit back and do nothing when their file makes no progress over the years (see *Samson v. Canada*, 2016 FCA 169 at par. 8; *Donovan v. Canada*, [2000] F.C.J. No. 933 at par. 8). In the present case, the notice of appeal was filed (following an order granting an extension of time to do so) on October 6, 2016. When the case management judge issued the order in question on January 17, 2018, the parties were still at the exchanging of lists of documents stage. The case management judge rightly asked counsel at the show cause hearing held on February 27, 2017 whether his client truly intended to proceed with her appeal (Appeal book at pages 47, 48 and 49).

[6] In view of the deference that we owe to case management judges (*Turmel v. Canada*, 2016 FCA 9 at par. 10, 12), who have intimate knowledge of the file and whose decisions on case management questions are, as here, discretionary decisions subject to the standard of palpable and overriding error, I am not convinced that there is any reason to intervene. I would dismiss the appeal with costs.

[7] Before concluding, I would like to emphasize that it was wrong of counsel to appear in order to plead his own guilt before us and before his client, who was present at the hearing. Counsel's presence was an impediment to the Court, which failed to ask certain questions that, in other circumstances, would surely have been asked.

"J.D. Denis Pelletier"

J.A.

"I agree.

M. Nadon J.A."

"I agree.

Yves de Montigny J.A."

Certified true translation
Erich Klein

FEDERAL COURT OF APPEAL

SOLICITORS OF RECORD

DOCKET: A-64-18

STYLE OF CAUSE: MARIA-ATHENA PARADISSIS
v. HER MAJESTY THE QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 3, 2019

REASONS FOR JUDGMENT BY: PELLETIER J.A.

CONCURRED IN BY: NADON J.A.
DE MONTIGNY J.A.

DATED: APRIL 4, 2019

APPEARANCES:

Dominique Pion FOR THE APPELLANT

Antonia Paraherakis FOR THE RESPONDENT

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