

Federal Court of Appeal



CANADA

Cour d'appel fédérale

Date: 20100915

Docket: A-380-09

Citation: 2010 FCA 229

**CORAM: BLAIS C.J.
NADON J.A.
LAYDEN-STEVENSON J.A.**

BETWEEN:

HENRY NEUGEBAUER

Appellant

and

ANNA M. LABIENIEC

Respondent

Heard at Toronto, Ontario, on September 15, 2010.

Judgment delivered from the Bench at Toronto, Ontario, on September 15, 2010.

REASONS FOR JUDGMENT OF THE COURT BY:

LAYDEN-STEVENSON J.A.

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REASONS FOR JUDGMENT OF THE COURT

(Delivered from the Bench at Toronto, Ontario, on September 15, 2010)

LAYDEN-STEVENSON J.A.

[1] This appeal concerns the authorship of a literary work written in the Polish language, titled *Gesi puch*. The appellant, claiming to be the sole author of the book, filed an application in the Federal Court, pursuant to subsection 57(4) of the *Copyright Act*, R.S.C. 1985, c. C-42 (the Act) to expunge a Certificate of Registration of Copyright (Registration No. 1, 039,825) (the Registration). The Register at the Copyright Office lists the appellant and the respondent as authors of the book. Simpson J. (the judge) concluded that the Registration properly describes both parties as owners and

authors of the book and accordingly dismissed the appellant's application. The Federal Court decision (2009 FC 666) is reported at 349 F.T.R. 53; 75 C.P.R. (4th) 364. The appellant now appeals the judge's order.

[2] Despite the detailed and articulate submissions of the appellant's counsel, we are not persuaded that the judge's decision discloses any error of law or any other error that warrants the intervention of this Court. The judge's decision was largely dependant upon her assessment of the evidence. Her reasons contain a review of the evidence and her factual determinations arising from that evidence. There is no need for a judge to recite every item of evidence provided that the key facts are considered. In our view, the appellant's argument amounts to an attack on the judge's assessment of the facts. Factual and credibility determinations are entitled to significant deference in the absence of palpable and overriding error. There is no such error in this case because there is ample evidence in the record to support the judge's factual findings.

[3] Regarding the issue of costs in the court below, we agree that the judge's costs award should not have exceeded the amount of \$3,000 inclusive of disbursements and HST. Consequently, the appeal is allowed in part and the judge's order with respect to costs is set aside. The amount of costs in the Federal Court is fixed at \$3,000 inclusive of disbursements and HST. In all other respects, the appeal is dismissed without costs.

"Carolyn Layden-Stevenson"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-380-09

(APPEAL FROM AN ORDER OF THE HONOURABLE MADAM JUSTICE SIMPSON IN THE FEDERAL COURT, DATED JUNE 25, 2009, IN DOCKET NO. T-64-08)

STYLE OF CAUSE: HENRY NEUGEBAUER v. ANNA M. LABIENIEC

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: SEPTEMBER 15, 2010

REASONS FOR JUDGMENT OF THE COURT BY: (BLAIS C.J., NADON J.A., AND LAYDEN-STEVENSON J.A.)

DELIVERED FROM THE BENCH BY: LAYDEN-STEVENSON J.A.

APPEARANCES:

Jordana Sanft
Jill Daley

FOR THE APPELLANT

Anna M. Labieniec

FOR THE RESPONDENT (On her own behalf)

SOLICITORS OF RECORD:

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FOR THE APPELLANT

N/A

FOR THE RESPONDENT