

Federal Court of Appeal



Cour d'appel fédérale

Date: 20211201

Docket: A-413-19

Citation: 2021 FCA 230

**CORAM: GAUTHIER J.A.
WOODS J.A.
DAWSON D.J.C.A.**

BETWEEN:

ROBERT MORRISON

Appellant

and

HER MAJESTY THE QUEEN

Respondent

Heard at Vancouver, British Columbia, on November 16, 2021.

Judgment delivered at Ottawa, Ontario, on December 1, 2021.

REASONS FOR JUDGMENT BY:

DAWSON D.J.C.A.

CONCURRED IN BY:

**GAUTHIER J.A.
WOODS J.A.**

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REASONS FOR JUDGMENT

DAWSON D.J.C.A.

[1] Robert Morrison, the appellant, appealed to the Tax Court of Canada in April 2017 from an assessment made against him under the *Income Tax Act*, R.S.C., 1985, c. 1 (5th Suppl.). The assessment was made under subsection 160(1) of the Act in respect of a transfer to Mr. Morrison alleged to be made by a specified individual. As he was required to do by Rule 21(1)(a) of the *Tax Court of Canada Rules (General Procedure)*, SOR/90-688a, Mr. Morrison purported to state his “home address in full” in paragraph (a) of his notice of appeal and purported at the end of the

notice to set out his address for service and his telephone and fax numbers. The specified home address corresponded with his address for service.

[2] Thereafter, Mr. Morrison did not pursue his appeal. The Tax Court file contains correspondence from Mr. Morrison to counsel for the Crown dated October 13, 2017 in which he stated:

At one time i did believe it was a benefit to partake in tax court with regard to [case number 2017-1850(IT)G], and now i know it does cause harm, and loss to i and my family; if i did petition court, it was an error; i wish to beg for forgiveness and compensate for any wrong i cause by way of said error, I do not believe it is mandate of the Department of Justice or the Canada Revenue Agency to cause harm to i; if i owe you debt. please tender me a bill in writing, sign, and date it;

[3] Thereafter, a notice of status hearing issued that required Mr. Morrison to attend a status hearing to inquire into the status of the appeal.

[4] Mr. Morrison did not attend. As a result, by order dated June 15, 2018 (dismissal Order), the appeal was dismissed pursuant to Rule 125(8) of the Rules. The dismissal Order recited that:

Whereas no one appeared for the Appellant when this status hearing was called, although a notice of the time and place of the hearing had been sent to the Appellant at his last known address and not returned;

[5] The records of the Tax Court establish that:

- (i) On June 18, 2018 the dismissal Order was faxed to Mr. Morrison at the fax number set out in his notice of appeal. The communication result report stated that the fax was received

- (ii) The dismissal Order was sent to Mr. Morrison at his specified address for service by registered mail on June 18, 2018, but was returned to the Tax Court marked “Refused”
- (iii) The dismissal Order was sent to Mr. Morrison at his address for service by ordinary mail on July 3, 2018.

[6] Thereafter, on August 20, 2019 a requirement to pay was issued by the Canada Revenue Agency in respect of Mr. Morrison.

[7] On September 6, 2019, Mr. Morrison requested that the dismissal Order be set aside under Rule 140 of the Rules. Mr. Morrison provided an affidavit that in material part stated:

I did receive the following letters (attached marked Appendix 1, 2 and 3) on September 2, 2019

I did not receive or have any knowledge of “notice of status hearing” (see attached marked Appendix 1);

I did not receive property (monies) from 0729521 B.C Ltd. (Cf. appendix 2)

I do not have any knowledge of, or interest in 0729521 B.C Ltd. (Cf. appendix 2)

[8] The attachments to the affidavit were copies of the dismissal Order and accompanying fax coversheet, a demand letter from the Canada Revenue Agency and the requirement to pay.

[9] By order dated September 30, 2019, issued in Court file 2017-1850 (IT)G, the Tax Court dismissed Mr. Morrison’s request. No reasons were given by the Tax Court.

[10] Mr. Morrison now appeals from the September 30, 2019 order dismissing his motion to set aside the dismissal Order.

[11] Mr. Morrison asserts that the Tax Court erred by:

- (i) Failing to grant an extension of the time period in which he could bring an application to set aside the dismissal Order; and,
- (ii) Failing to set aside the dismissal Order.

[12] I see no merit in Mr. Morrison's submissions. I would dismiss the appeal for the following reasons.

[13] First, while Rule 140(2) allows the Tax Court to set aside an order obtained against a party who fails to attend a status hearing, the rule requires such an application to be made within 30 days of the pronouncement of the order in question. The Tax Court did not err in failing to grant an extension of time in circumstances where no extension was expressly sought and no evidence was tendered that would permit the Tax Court to exercise its discretion to extend the time period. Simply put, Mr. Morrison provided no evidence that would permit the Tax Court to either grant an extension of time or set aside the dismissal Order.

[14] Specifically, Mr. Morrison failed to present any evidence with respect to a continuing intention to appeal. Indeed, his letter of October 13, 2017 quoted above negates such intent. Additionally, no reasonable explanation was provided for Mr. Morrison's failure to attend the status hearing. His bald assertion that he did not receive the notice of status hearing is insufficient when the notice was sent to the address for service provided by Mr. Morrison and was not returned. Also missing was evidence that Mr. Morrison had an arguable case that he was improperly assessed. While he denied receiving property from 0729521 B.C. Ltd., he was

assessed on the basis that he received property not from this entity but rather from the specified individual.

[15] Finally, Mr. Morrison complains that the Tax Court did not provide reasons so that it is unclear whether the Court considered and applied the case law applicable to motions to set aside an order dismissing an appeal made under Rule 140.

[16] Again, I disagree. It is well-settled law that a judge has no general duty to provide reasons for decision “when the finding is otherwise supportable on the evidence or where the basis of the finding is apparent from the circumstances” (*R. v. Sheppard*, 2002 SCC 26 at para. 4, [2002] 1 S.C.R. 869, citing *R. v. Barrett*, [1995] 1 S.C.R. 752 at p. 753, 21 O.R. (3d) 736). Given the state of the evidentiary record before the Tax Court, the basis of the Court’s decision is plain and obvious.

[17] For these reasons, I would dismiss the appeal with costs. The parties have agreed that if costs are awarded to the respondent they should be fixed in the all-inclusive amount of \$1,848.65.

“Eleanor R. Dawson”
D.J.C.A.

“I agree.
Johanne Gauthier J.A.”

“I agree.
Judith Woods J.A.”

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-413-19

STYLE OF CAUSE: ROBERT MORRISON v. HER
MAJESTY THE QUEEN

PLACE OF HEARING: VANCOUVER, BRITISH
COLUMBIA

DATE OF HEARING: NOVEMBER 16, 2021

REASONS FOR JUDGMENT BY: DAWSON D.J.C.A.

CONCURRED IN BY: GAUTHIER J.A.
WOODS J.A.

DATED: DECEMBER 1, 2021

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