

Federal Court of Appeal



Cour d'appel fédérale

Date: 20240522

Docket: A-177-23

Citation: 2024 FCA 97

**CORAM: LEBLANC J.A.
ROUSSEL J.A.
GOYETTE J.A.**

BETWEEN:

ROGER B. BENNETT

Appellant

and

**MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondent

Heard at Winnipeg, Manitoba, on May 21, 2024.

Judgment delivered at Winnipeg, Manitoba, on May 22, 2024.

REASONS FOR JUDGMENT BY:

ROUSSEL J.A.

CONCURRED IN BY:

LEBLANC J.A.
GOYETTE J.A.

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REASONS FOR JUDGMENT

ROUSSEL J.A.

[1] Mr. Bennett appeals a judgment of the Federal Court (2023 FC 761), dated May 31, 2023, dismissing his appeal from an order of an associate judge acting as a case management judge. In her order dated February 21, 2023, the case management judge dismissed Mr. Bennett's action for failing to show cause following the issuance of a status review order. The underlying action, which was introduced in February 2021, relates to the importation of a motorhome

purchased by Mr. Bennett in the United States, seized by the Canada Border Services Agency for failure to comply with the reporting requirements under section 12 of the *Customs Act*, R.S.C. 1985, c. 1 (2nd Supp.).

[2] After stating the law on status review and outlining the history of the proceeding as well as the positions of the parties, the case management judge found that Mr. Bennett's justification for failing to move his action forward was wholly unsatisfactory, lacking in substance and unsupported by the evidentiary record. In addition, she did not accept his argument that the delays and failure to adhere to the Court's orders and direction resulted from his lack of legal counsel, finding that for much of the proceeding, he was consulting with counsel and, in any event, he had the obligation to acquaint himself with the Court's rules of procedure. Finally, she found that the measures proposed by Mr. Bennett to move the case forward were inadequate and was not persuaded that he recognized his responsibility to diligently proceed with the remaining steps in the proceeding. Concluding that it was not in the interests of justice to permit the action to proceed, she dismissed the action for delay and for failure to comply with the orders and direction of the Court.

[3] On appeal, the Federal Court considered Mr. Bennett's submissions and the case management judge's findings. The Federal Court disagreed with Mr. Bennett that there had been a breach of procedural fairness regarding the acceptance of an affidavit filed by the Minister, noting that Mr. Bennett could have filed a reply objecting to its acceptance or tendered his own affidavit. The Federal Court also found that the case management judge had not made any palpable or overriding error justifying the Court's intervention. The Federal Court was not

persuaded that the delays and non-compliance resulted from Mr. Bennett's status as a self-represented litigant and his diminished cognitive abilities. Observing that case management judges enjoy ample discretion in managing cases and that they are in the best position to decide whether it is in the interests of justice to allow a matter to proceed on status review, the Federal Court dismissed Mr. Bennett's appeal.

[4] Before this Court, Mr. Bennett challenges the Federal Court's decision on several grounds. He raises a number of errors allegedly committed by the Federal Court and the case management judge relating to his status as a self-represented litigant, the characterization of the history of the proceedings, the application of the test for dismissing a claim on status review and the refusal to admit medical evidence. He also makes allegations of bias and breaches of procedural fairness on the part of both the Federal Court and the case management judge.

[5] The first issue I must decide is whether the Federal Court erred in law or made a palpable and overriding error in reviewing the discretionary order of the case management judge. The same standard applies when the Federal Court is reviewing the discretionary decision of an associate judge (*Housen v. Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at paras. 64-65, 79; *Nova-Biorubber Green Technologies Inc. v. Sustainable Development Technology Canada*, 2022 FCA 121 at para. 5). Second, I must determine, in relation to the procedural fairness issues raised, whether the process leading to the decisions was fair in all of the circumstances (*Canadian Pacific Railway Company v. Canada (Attorney General)*, 2018 FCA 69 at paras. 54-55).

[6] After carefully considering Mr. Bennett's submissions and the record before this Court, I am of the view that his appeal must fail. While Mr. Bennett may not agree with the outcome of the status review hearing and of his appeal before the Federal Court, he has not identified any reviewable error in the case management judge's decision to dismiss his action, or in the Federal Court's decision not to intervene, that would justify this Court's intervention.

[7] Considering the delay since the commencement of the action, Mr. Bennett's repeated failure to comply with the case management judge's orders and direction, his justifications for non-compliance, and his failure to put forward a concrete plan demonstrating that he would move the matter forward with diligence, it was open to the case management judge, in the exercise of her discretion on status review, to dismiss Mr. Bennett's action. While courts generally show flexibility with self-represented litigants, lack of counsel or familiarity with the rules of procedure and the law does not exempt claimants from moving their action forward. I am satisfied that the Federal Court properly declined to interfere with the case management judge's decision as it did not amount to an improper exercise of discretion.

[8] Moreover, Mr. Bennett has failed to convince me that his allegations of bias and breaches of procedural fairness are well founded. In this regard, one of Mr. Bennett's arguments relates to a statement in the show-cause order where the case management judge noted that the "Court Registry has attempted to communicate with [Mr. Bennett] via telephone and email, with no response from [Mr. Bennett] having been received." Mr. Bennett disputes this information and claims that the case management judge based her decision on non-existing email and phone communications from the Registry between December 19, 2022, and January 5, 2023.

Mr. Bennett has attempted to obtain access to these communications by bringing several motions before this Court. In my view, Mr. Bennett's claim is without consequence as there is no indication that the case management judge based her decision to dismiss his action on these email and telephone communications.

[9] For these reasons, I would dismiss the appeal without costs. Although the Minister requested costs on this appeal and on Mr. Bennett's various motions, I would exercise my discretion not to award costs pursuant to Rules 400(1) and 400(3) of the *Federal Courts Rules*, SOR/98-106, given Mr. Bennett's circumstances.

"Sylvie E. Roussel"

J.A.

"I agree
LEBLANC J.A."

"I agree
GOYETTE J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-177-23

STYLE OF CAUSE: ROGER B. BENNETT v.
MINISTER OF PUBLIC SAFETY
AND EMERGENCY
PREPAREDNESS

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: MAY 21, 2024

REASONS FOR JUDGMENT BY: ROUSSEL J.A.

CONCURRED IN BY: LEBLANC J.A.
GOYETTE J.A.

DATED: MAY 22, 2024

APPEARANCES:

Roger B. Bennett
Representing himself FOR THE APPELLANT

Samantha Gergely FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef
Deputy Attorney General of Canada FOR THE RESPONDENT