COURT OF APPEAL OF YUKON

Citation *Ramirez v. Mooney*
2017 YKCA 6

Date: 20170526
Docket: 17-YU808

Between:

Evangeline Ramirez

Appellant
(Plaintiff)

And

Norah Mooney, Benjamin Sarmiento Toquero, Timothy and Nolibeth Ng, Lackowicz, Shier & Hoffman, (Barrister and Solicitor) and Bull, Housser & Tupper (LLP)

Respondents
(Defendants)

Before: The Honourable Madam Justice Stromberg-Stein
(In Chambers)

On appeal from: an order of the Supreme Court of Yukon, dated March 28, 2017 (*Ramirez v. Mooney*, Whitehorse Registry No. 16-A0103

Oral Reasons for Judgment

Appellant appearing In Person (via teleconference):

Counsel for the Respondent: K. Handzic (via teleconference)

Place and Date of Hearing: Vancouver, British Columbia
May 26, 2017

Place and Date of Judgment: Vancouver, British Columbia
May 26, 2017

Summary:

Application for extension of time to appeal and for indigent status. HELD: Application denied. The proposed appeal has no merit and is bound to fail. No reviewable error of law or fact has been alleged. The applicant has not discharged the onus of demonstrating undue hardship if indigent status is denied.

[1] **STROMBERG-STEIN J.A.**: Ms. Ramirez applies for an extension of time to appeal and for indigent status.

Background

[2] Ms. Ramirez was involved in a family law dispute with Mr. Toquero, who was found to have been her common law spouse. That dispute commenced in 2010 and ended in 2014.

[3] Ms. Ramirez brought the current action in 2016 against Mr. Toquero, various witnesses, and lawyers who were involved in the 2010 dispute. That 2010 dispute was dealt with by Mr. Justice Gower. She alleges in the present action 25 causes of action against the various defendants.

[4] The defendant lawyers and law firms brought a motion to dismiss Ms. Ramirez's claim in its entirety on the grounds that it discloses no reasonable claim, is an abuse of process, or is vexatious.

[5] They also applied for an order barring Ms. Ramirez from bringing further proceedings without prior leave of the court, pursuant to s. 7.1 of the *Supreme Court Act*, R.S.Y. 2002, c. 211, as amended by S.Y. 2013, c. 15, s. 19.

[6] Ms. Ramirez also brought a motion to strike the statements of defence of the defendant lawyers and law firms.

Judgment

[7] In reasons delivered March 28, 2017, Mr. Justice Veale granted the orders the defendants sought and dismissed Ms. Ramirez's motion. The judge dismissed Ms. Ramirez's claim on the basis it breached an order made by Mr. Justice Gower prohibiting Ms. Ramirez from making any applications or commencing any

proceedings against Mr. Toquero in the Supreme Court unless represented by counsel, or with leave.

[8] The judge also dismissed Ms. Ramirez's action on the basis it disclosed no reasonable claim, it was unnecessary, scandalous, frivolous or vexatious, or was otherwise an abuse of process, as provided by Yukon Rule 20(26).

[9] She filed a notice of appeal on May 15, 2017. She is out of time since it had to be filed, and in accordance with the Rules, by April 28, 2017. The sole ground she raises in her notice of appeal is fraud upon the court. In oral submissions, she repeatedly states this is because Mr. Toquero "was legally married".

Test – Extension of Time

[10] Yukon Rule 52(1) allows a justice to extend or shorten the time for which an appeal may be brought:

> **52(1)** A justice may extend or shorten the time within which an appeal to the court or application for leave to appeal may be brought.

[11] The considerations for an extension of time are set out in *S.(C.) v. N.(S.),* 2008 YKCA 11 at para. 7. These are also set out in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 (C.A.). These are:

> 1) Was there a *bona fide* intention to appeal?
> 2) When were the respondents informed of the intention?
> 3) Would the respondents be unduly prejudiced by an extension of time?
> 4) Is there merit in the appeal?
> 5) Is it in the interest of justice that an extension be granted?

The key question is whether it is in the interests of justice to grant the extension of time sought.

Test – Indigent Status

[12] Yukon Rule 56 sets out the considerations for granting indigent status:

> **Indigent litigants**
>
> **56** Despite anything in these rules, no fee is payable to the government by a person to commence, defend or continue an appeal or application if a justice, on application before or after the commencement of the appeal or application, finds that the person is indigent, unless the justice considers that the position being argued by that person
>
> (a) lacks merit;
>
> (b) is scandalous, frivolous or vexatious; or
>
> (c) is otherwise an abuse of the process of the court.

[13] The purpose of granting an order for "indigent status" is to ensure that no litigant will be denied access to the courts by reason of impecuniosity: *Trautmann v. Baker*, [1997] B.C.J. No. 452 (Hall J.A. in Chambers):

> [4] … As I see it, the underlying rationale for the granting of indigent status is to ensure that no litigant will be denied access to the courts by reason of impecuniosity. … [T]he concern of the court must be that no arguably meritorious case should be prevented from getting a hearing merely because a person is without the financial resources to carry on with the litigation. ...

[14] There are two criteria the chambers judge must examine in determining whether an order should be granted: 1) the likelihood of success of the appeal; and 2) the financial position of the appellant: *Duszynska v. Duszynski*, 2001 BCCA 155 at para. 3, 149 B.C.A.C. 153 (Ryan J.A. in Chambers).

[15] While the Yukon rule retains the word "indigent" (which the B.C. rules have removed), the Supreme Court of Canada's comments in *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59 at para. 46 are applicable:

> A fee that is so high that it requires litigants who are not impoverished to sacrifice reasonable expenses in order to bring a claim may, absent adequate exemptions, be unconstitutional because it subjects litigants to undue hardship, thereby effectively preventing access to the courts.
>
> [Emphasis added.]

[16] The financial position criterion requires a consideration of whether the fees would subject the applicant to undue hardship such that access to the courts is effectively prevented.

[17] In her affidavit in support of her indigent status application, Ms. Ramirez deposes to be an unemployed senior who is supported by government benefits (OAS and CPP). She has provided documentation that indicates she receives approximately $1,300 in benefits each month. She provides a financial statement estimating her monthly expenses to be approximately $1,300. I note her expenses include $200 a month for "filing documents, ink, paper" and an additional $75 for "mailing documents". She has not properly completed a Form 19, which requires a detailed listing of income and assets. Form 19 is required by Rule 38 of the Yukon *Rules.*

[18] She has a bachelor's degree from the Philippines and completed some coursework at Yukon College. She was formerly employed by the Yukon Government as a custodian worker in various schools in Whitehorse and has also worked as a self-employed janitress. She retired in 2010 when the divorce action was commenced. She deposes to have "lost everything" since the divorce case, and says she has suffered from severe depression. She notes in her materials that she has skills as a beautician and in dressmaking.

[19] I am not satisfied, from the financial information given, that the applicable court fees would pose an undue hardship on Ms. Ramirez such that she would be effectively denied access to the courts. An indigent status order would only waive fees that are "payable to the government by a person to commence, defend or continue an appeal or application" (Rule 56), such as filing fees. It appears from her own estimations that she has approximately $200 each month available for, among other things, "filing documents."

[20] On the material before me at this time, I do not think there is any merit in the appeal. I am of the view the appeal is bound to fail, which is a consideration in an

indigent status application. I will address this now in relation to the application to extend time to appeal.

[21] Ms. Ramirez's notice of appeal, as I have said, claims the judge's order should be set aside on the basis of "fraud upon the court." In oral submissions before me, she has not disclosed any recognizable ground of appeal or argument that has any prospect of success.

[22] The judge dismissed the application on the basis that it disclosed no reasonable claim. He noted the correct test articulated in *R. v. Imperial Tobacco Canada Ltd.*, 2011 SCC 42, that claims would only be struck if it is plain and obvious, assuming the facts pleaded to be true, that there is no reasonable claim disclosed or that there is no reasonable prospect of success. The judge noted the vast majority of the claims in the current action were addressed and adjudicated on in the 2010 action.

[23] The judge dismissed the entire action on the basis it was an abuse of process. The judge identified the correct legal standard ("plain and obvious") and that the majority of issues were decided in a prior action. He noted certain issues that warranted further attention, and in particular, the fraud allegation. He concluded the fraud allegation was an issue concerning conduct in the 2010 action that could have been canvassed then. He also dismissed the claim against the two witnesses on the basis of witness immunity. This determination appears to be supported by the applicable authorities: *Lower v. Stasiuk,* 2013 BCCA 389.

[24] In sum, Ms. Ramirez has not alleged a reviewable error of law or fact in the judge's reasoning, and I can see none that would indicate any merit to the proposed appeal.

[25] I now turn to the vexatious litigant order. Section 7.1 of the Yukon *Supreme Court Act* provides for such an order

[26] The judge, referring to the applicable rule, noted the wording differences between that rule and the rule in British Columbia. The judge analyzed the meaning

of the words “persistently instituted vexatious proceedings” and “conducted a proceeding in a vexatious manner”. The judge distinguished B.C. case law on the basis of the different wording, and arrived at an interpretation of how the Yukon provision, s. 7.1, should be applied. On appeal, I do not understand that Ms. Ramirez alleges any error of law in the judge’s reasoning on this point.

[27] In the result, there being no merit to the appeal, I dismiss the applications for an extension of time to appeal and for indigent status.

“The Honourable Madam Justice Stromberg-Stein”