Docket: 2008-2126(IT)G

BETWEEN:

IAN R. JAMIESON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

The Honourable Justice Diane Campbell

JUDGMENT

WHEREAS this matter came before me on November 30, 2011;

AND WHEREAS the Appellant did not appear;

AND WHEREAS after hearing submissions from Respondent counsel, I dismissed the appeal;

AND WHEREAS the Appellant subsequently brought an application on December 26, 2011 to have my Order set aside;

AND WHEREAS after reviewing written submissions from both Appellant and Respondent;

I DO ORDER THAT the Appellant's application is dismissed, with costs in the amount of $500, payable forthwith to the Respondent.

Signed at Vancouver, British Columbia, this 2nd day of May 2012.

"Diane Campbell"

Campbell J.

Citation: 2012 TCC 144
Date: 20120502
Docket: 2008-2126(IT)G

BETWEEN:

IAN R. JAMIESON,

Appellant,

and

HER MAJESTY THE QUEEN,

Respondent.

REASONS FOR JUDGMENT

Campbell J.

[1] This matter originally came before me as a status hearing in Calgary on November 30, 2011. The Appellant did not appear and advised the Court by way of an email to the Respondent that he did not intend to be present. Respondent counsel briefly reviewed the timeline of events that had occurred in this appeal since the Appellant first filed his Notice of Appeal on June 25, 2008 and requested that the appeals be dismissed for want of prosecution. It is important that I outline the history of these appeals as it goes to the heart of my reasons for granting the Respondent's motion.

[2] On November 20, 2008 an Order was issued extending the time within which the Notice of Appeal could be filed with this Court. The appeals relate to the Appellant's 1995 to 2002 taxation years. The issues are whether the Appellant was a resident in Canada during any of these years and the amount of his taxable income.

[3] The Respondent filed a Reply to the Notice of Appeal on February 12, 2009. On April 9, 2009, the Appellant submitted his first request to have his appeal held in

abeyance for an indeterminate period of time due to health issues. This request was accompanied by a medical certificate dated March 12, 2009 from Dr. Sayeeda Ghani of Edmonton. According to this medical certificate, the Appellant was suffering from stress related issues and should avoid temporarily "any stressful situation, including any legal actions or proceedings". By letter dated June 15, 2009, this Court initially denied the Appellant's request and the parties were required to submit a timetable for completion of steps within 30 days of the date of that letter.

[4] On August 26, 2009, a status hearing was held and by Order of Justice Campbell Miller, dated September 3, 2009, timelines were established for completion of those steps. The Appellant requested and was granted an extension of time to provide his list of documents by Order of Justice Campbell Miller dated December 16, 2009.

[5] At a further case management conference held on February 18, 2010, Justice Campbell Miller issued a further Order providing amended dates for the completion of the remaining litigation steps in this matter. The Appellant wrote to the Respondent on March 24, 2010 advising that he had fallen on ice and would not be attending the examination for discovery scheduled for March 30 and 31, 2010. On May 5, 2010, the Order of February 18, 2010 was amended again to advance the dates for the remaining litigation steps. On June 15, 2010 the Appellant again wrote to the Respondent, not the Court, requesting that the examination for discovery be rescheduled due to health issues and side effects of medication. On June 24, 2010, Justice Miller again issued an Order advancing the timelines for the parties and also directing the Appellant to provide the Court with an updated medical report by July 30, 2010.

[6] On September 20, 2010, the Appellant again wrote to the Respondent advising that he was too ill to attend the examination for discovery and requesting that the Respondent notify the Court. This request was accompanied by a medical certificate of Dr. Sayeeda Ghani dated July 28, 2010. This certificate was almost identical in content to the original certificate of March 12, 2009. Respondent counsel wrote to the Court on September 20, 2010 enclosing the Appellant's correspondence together with Dr. Ghani's certificate. In this correspondence, the Respondent pointed out that efforts to contact the Appellant to arrange discoveries and to serve on the Appellant a notice to attend had to date been unsuccessful. The Respondent advised that the Appellant's last known house address had been boarded up and advertised for sale. Consequently, the Respondent had faxed and posted to the Appellant's post office box number a notice to attend discoveries and also left a message to this effect on the Appellant's voicemail. Shortly after this, the Appellant forwarded the above-noted

correspondence of September 20, 2010 to the Respondent with the enclosed medical certificate.

[7] On September 26, 2010, the Court again wrote to the Appellant asking for an updated medical certificate by November 26, 2010, or alternatively, for the parties to provide an updated timetable by that date.

[8] On November 21, 2010, the Respondent counsel provided the Court with the Appellant's correspondence dated November 20, 2010 enclosing Dr. Ghani's certificate containing the same medical information but now dated November 15, 2010.

[9] On November 30, 2010, the Court wrote to the parties requesting litigation dates by January 15, 2011. On January 10, 2011, the Appellant wrote to the Respondent advising that he was still on medication for stress and would be "declining to participate" in setting down a timetable or any subsequent proceedings. On January 20, 2011, the Court wrote to the Appellant advising that it would not set further dates in this appeal until the spring and that a new medical certificate was required.

[10] On July 21, 2011, Dr. Ghani wrote to the Court and advised that he had lost contact with the Appellant and that the last time he saw him was on November 18, 2010.

[11] On September 6, 2011, the Court ordered a status hearing to be held in court on November 30, 2011. The Court Order to the Appellant was returned by Canada Post marked "moved" and the telephone numbers on file were no longer in service. However, the Respondent forwarded an email to the Appellant on November 23, 2011 advising of the court date together with contact information for the Court and the Respondent. The Appellant did not contact the Court and, as he has done throughout these proceedings, he instead emailed the Respondent on November 29, 2011 advising that he was ill and would not be attending. This was the status hearing that took place before me where I dismissed the Appellant's appeal.

[12] On December 26, 2011, the Appellant wrote to the Court asking that my Order dismissing his appeal be set aside and that his appeal be reinstated. He advised in that letter to the Court that he had received notification from the Respondent of the status hearing scheduled for November 30, 2011 on the 29th day of November, 2011. He further stated that he had advised the Respondent by return email on November 29, 2011 that he was too sick to attend and to make his apologies to the Court, which the

Respondent did. That email was before me at the hearing. The Appellant also advised in this email that the Edmonton property had been foreclosed and, consequently, he had no fax or land phone line, no regular computer access and no addresses where mail could be sent and received in a timely manner. In the December 26, 2011 correspondence, the Appellant provided the Court with an Edmonton address where he could be notified of future proceedings but advised that mail to this address would be re-routed to him in the Caribbean and that it would take anywhere from 4 to 6 weeks for such mail to reach him.

[13] I received the Respondent's written response to the Appellant's request on March 29, 2012. The Respondent opposed the Appellant's request and the submissions were supported by an affidavit of Camille Ewanchyshyn. The Respondent pointed out that the Appellant has both children and grandchildren living in Edmonton, although the Edmonton address provided in his December 26, 2011 letter, where the Court could correspond with him, did not appear to be a residential address or the address of an accountant or solicitor. Instead, this address appeared to be for an end-of-line retail store called "The Bargain Shop" located in a strip mall that did not have a postal box or mail forwarding service.

[14] The Respondent also pointed out that, although the Appellant's December 26, 2011 correspondence contains letterhead referencing the Turks and Caicos Islands, the Appellant provided no address, telephone number or any other type of contact information if he is in fact residing there. The Respondent also pointed out that the fax stamp on the copy of the letter to the Court and received at the Respondent's office shows that the letter was faxed to the Respondent from a UPS store located in Edmonton.

[15] In addition, the affidavit accompanying the Respondent's submissions points to a number of factors which would lead to the conclusion that, although the Appellant has represented to the Court and to the Respondent that he has been too ill to attend to any of the deadlines imposed upon him, he has been actively producing music videos and maintaining a website for that purpose. The Respondent submitted a copy of the homepage of this site together with a copy of the Alberta Trade Name/Partnership Search linking the Appellant to that site. Further exhibits were produced indicating that nine music videos had been released in 2011. There have also been news releases on the internet during this period by the Appellant. I note that these miscellaneous facts were not before me at the time of my decision to dismiss the appeals on November 30, 2011.

[16] Rule 140(2) states:

> **140.** (2) The Court may set aside or vary, on such terms as are just, a judgment or order obtained against a party who failed to attend a hearing, a status hearing or a pre-hearing conference on the application of the party if the application is made within thirty days after the pronouncement of the judgment or order.

[17] As Respondent counsel pointed out, the leading case *Hamel v Chelle* (1964), 48 W.W.R. 115, sets out the principles followed by this Court in determining whether to set aside an order dismissing an appeal. The decision in *Hamel* quotes Lamont, J.A. in *Klein v Schile*, [1921] 2 W.W.R. 78, 14 Sask. L.R. 220, at p. 79 as follows:

> The circumstances under which a Court will exercise its discretion to set aside a judgment regularly signed are pretty well settled. The application should be made as soon as possible after the judgment comes to the knowledge of the defendant, but mere delay will not bar the application, unless an irreparable injury will be done to the plaintiff or the delay has been wilful. Tomlinson v. Kiddo (1914) 7 WWR 93, 29 WLR 325, 7 Sask LR 132; Mills v. Harris & Craske (1915) 8 WWR 428, 8 Sask LR 114. The application should be supported by an affidavit setting out the circumstances under which the default arose and disclosing a defence on the merits. Chitty's Forms, 13th ed., p. 83.
>
> It is not sufficient to merely state that the defendant has a good defence upon the merits. The affidavits must show the nature of the defence and set forth facts which will enable the Court or Judge to decide whether or not there was matter which would afford a defence to the action. Stewart v. McMahon (1908) 7 WLR 643, 1 Sask LR 209.

[18] The Appellant's request was not supported by an affidavit "setting out the circumstances under which the default arose and disclosing a defence on the merits." The Appellant represented that he is out of the country and living in the Turks and Caicos Islands and that he continues to be seriously ill. However, he provided no evidence in his request, by way of affidavit or otherwise, to support either of his representations. There is sufficient evidence, however, placed before me by the Respondent that would lead me to question whether in fact the Appellant has been in the past or is currently out of the country on any type of temporary or permanent basis. In addition, I have no current medical certificate to support that he is as ill as he states. Dr. Ghani has advised the Court that he no longer has any contact with the Appellant. The miscellaneous facts submitted by the Respondent concerning the Appellant's work activities support my conclusion that, although he is actively involved in producing music videos and other related internet activities, he refuses to attend to deadlines imposed by this Court.

[19] The Appellant's request provides no new evidence that would allow me to alter my decision of November 30, 2011 and set aside my Order. He has continued to keep secretive his contact information both from the Respondent and this Court. He failed in his request to explain his failure to attend the November 30, 2011 hearing or to have an agent or solicitor attend on his behalf.

[20] These appeals commenced in November 2008. After a number of delays, lists of documents were exchanged but after this step nothing further has occurred. The appeals have been case managed and numerous orders and amending orders have been issued, all of which were to accommodate the Appellant.

[21] The Appellant has failed to proceed diligently and reasonably in moving his appeals through the system. These are his appeals and, after three and one-half years, he must assume responsibility for complying with the numerous orders which have been issued to accommodate him. If he refuses to do so, as he has done here, then he faces the possibility of having his appeals dismissed.

[22] The fact that this Appellant intends to "stay the course" with his appeals is evidenced by the fact that, in this age of instant communication, he now states that any communication on his appeals could take 4 to 6 weeks to reach him. This is an incredulous statement given that he has children and grandchildren living in Edmonton with whom, I suspect, he enjoys more regular contact than the weeks proposed for transmitting information on his appeals. The Court and the Respondent have dealt reasonably with the Appellant, but there comes a time when common sense must prevail and room made in the court docket for taxpayers who are earnestly attempting to comply with court orders and have their appeals heard. The Appellant's approach to his appeals prejudices those taxpayers. I must infer from the Appellant's inaction in these appeals and his approach of delaying the matter to infinity, that he has no desire ultimately to have his appeals adjudicated upon by this Court.

[23] The request is denied and I award costs of $500 to the Respondent payable forthwith.

Signed at Vancouver, British Columbia, this 2nd day of May 2012.

"Diane Campbell"

Campbell J.

CITATION:	2012 TCC 144
COURT FILE NO.:	2008-2126(IT)G
STYLE OF CAUSE:	IAN R. JAMIESON AND HER MAJESTY THE QUEEN
PLACE OF HEARING:	
DATE OF HEARING:	
REASONS FOR JUDGMENT BY:	The Honourable Justice Diane Campbell
DATE OF JUDGMENT:	May 2, 2012
APPEARANCES:	
:	
:	
COUNSEL OF RECORD:	
For the Appellant:	
Name:	
Firm:	
For the Respondent:	Myles J. Kirvan Deputy Attorney General of Canada Ottawa, Canada