

In the Court of Appeal of Alberta

Citation: Wong v. Chambers, 2011 ABCA 278

Date: 20111003

Docket: 0903-0060-AC

Registry: Edmonton

Between:

Victoria W. Wong, M.L., Jane Doe and John Doe #1-8

Respondents/Appellants
(Plaintiffs)

- and -

Dr. Graham Chambers, Faculty of Science; Dr. Paul Lu and Mr. Cam MacDonell, Department of Computer Science; J. Agrios and K. Agrios; Dr. Lynn Penrod, Chair; Campus Law Review Committee; Dr. Carl Amrhein, Provost and Vice-President (Academic); Dr. Lynn Penrod, Chair, Campus Law Review Committee; University of Alberta, Her Majesty the Queen in the Right of Alberta, Jane Doe; and John Doe #1-50

Applicants/Respondents
(Defendants)

**Reasons for Decision of
The Honourable Mr. Justice Frans Slatter**

Application to Dismiss for Want of Prosecution

**Reasons for Decision of
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[1] The respondents have applied under R. 515.1(8) for an order dismissing this appeal for want of prosecution:

515.1(8) A civil appeal may be dismissed for want of prosecution

(a) by the court at any time before or after 6 months from the date when a notice of appeal was filed, on the application of any party or on its own motion, or

(b) by a judge, on the application of any party where the appellant has done nothing effective to advance the appeal for more than one year.

Since the application has been brought before a single judge, a threshold issue is whether anything has been done to advance the appeal in the last year.

[2] At the commencement of the oral argument on this application, the appellant applied to have me recuse myself, because I have issued a vexatious litigant order against her: *Wong v. Giannacopoulos*, 2011 ABCA 206. A judge who makes a ruling against a party is not thereafter automatically disqualified from hearing any further applications concerning that party: *Broda v. Broda*, 2001 ABCA 151, 286 AR 120 at para. 16; *Dykun v. Odishaw*, 2001 ABCA 204, 286 AR 392 at para. 8; *Collins v. Canada*, 2011 FCA 171 at para. 11; *Liteky v. United States*, 510 US 540 (1994); *Gallop v. Cheney*, 645 F 3d 519 (USCA, 2nd cir., 2011). Judges, especially those dealing with ongoing matters, are often required to make numerous rulings for and against particular parties. Making those rulings generally does not raise a reasonable apprehension of bias in the minds of a reasonable, informed observer.

[3] The underlying claim, as initially commenced in 2007, alleged that in 2005 two students were wrongfully expelled from the University of Alberta. Those students are named as John Doe #1 and John Doe #2, and are apparently related to the appellant. The claim was struck out in 2009 for failing to disclose a cause of action, and on the basis that the appellant had no standing to sue for wrongs allegedly done to third parties like John Doe #1 and John Doe #2: *Wong v. Chambers*, 2009 ABQB 57. The present appeal from that decision was commenced on March 2, 2009.

[4] The Appeal Record was filed on June 15, 2009. Nothing has been done to advance the appeal since then. The appellant's factum was initially due in August 2009. The respondents (the present applicants) consented to extensions of the time for the appellant to file her factum until October 7, 2009, and then December 4, 2009. During oral argument on this application, the appellant acknowledged that: "Counsel have been very generous to me". The appellant's factum has still not been filed, and the respondents have now brought this application to strike the appeal. The threshold requirement of the Rule that nothing has been done in the past year to advance the appeal has been

met.

[5] On an application to strike an appeal for want of prosecution, the Court will consider any relevant factors, including:

- the length of the delay, and the adequacy of any explanation;
- the merits of the appeal;
- whether previous rulings about timelines and prosecution of the appeal have been breached;
- whether indulgences regarding the prosecution of the appeal have previously been granted;
- any prejudice to the other party;
- whether the appeal is just one component of a larger manifestation of improper litigation.

Alberta (Minister of Finance) v. Bang, 2007 ABCA 190; *Starko v. Starko* (1991), 80 Alta LR (2d) 368 (C.A.); *Kanata Environmental Services Inc. v. Edmonton (City)*, 2003 ABCA 210; *Fott v. Fott*, 2003 ABCA 203; *Whalen v. Whalen* (1996), 187 AR 296 (CA).

[6] Nothing has been done to advance this appeal for two years; that delay calls for an explanation. The appellant argues that health problems have kept her from preparing her factum. She attaches to her affidavit several doctor's prescription pad sheets, from a number of different doctors, containing one line handwritten statements suggesting that the appellant is recovering from a motor vehicle accident in 2000. These cursory, unsworn handwritten notes are not sufficient evidence to provide a medical explanation for the delay. If, 11 years after the accidents, the appellant is still not able to prosecute this appeal, it seems likely that further delays could be expected. It is prejudicial to the respondents to have to wait indefinitely for this matter to be finalized.

[7] The appellant also argues that the vexatious litigant order prevents her from filing her factum. That order, however, was only granted in July of this year. It does not explain why the factum was not filed in the almost 2 years before then. There is also no explanation why the appellant has not simply brought an application for leave to file a factum. The appellant has therefore provided no satisfactory explanation for the lengthy delay.

[8] An important factor in this application is the merits of the appeal. There is no obvious flaw in the judgment under appeal, and the appeal appears to be without arguable merit.

[9] In all the circumstances, the application is allowed, and the appeal is dismissed for want of prosecution. Each set of applicants is entitled to costs of \$2,000 for the appeal. The approval of the appellant on the form of order is dispensed with.

Application heard on September 28, 2011

Reasons filed at Edmonton, Alberta
this 3rd day of October, 2011

Slatter J.A.

Appearances:

R.J. Matthews

for the Applicants Dr. Graham Chambers, Dr. Paul Lu, Cam MacDonell, Dr. Lynn Penrod, Dr. Carl Amrhein, University of Alberta

D.S. McKinley

for the Applicants J. Agrios, K. Agrios

Victoria W. Wong in person

No Representation Jane Doe, John Doe #1-8

No Representation Her Majesty the Queen in Right of Alberta