

CANADA / JUDGMENT

Gokey v. Usher

2019 BCCA 470

COURT

British Columbia Court of Appeal

DECIDED

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2019 BCCA 470 Gokey v. Usher COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Gokey v. Usher, 2019 BCCA 470 Date: 20191210 Dockets: CA45069; CA45197 Between: Edward C. Gokey and Diane B. Gokey Appellants (Appellants) And Gordon F. Usher and Patricia Ann Parsons Respondents (Respondents) And Attorney General of British Columbia Respondent (Pursuant to the Constitutional Question Act) Before: The Honourable Madam Justice Dickson The Honourable Madam Justice Griffin The Honourable Mr. Justice Abrioux On appeal from: Orders of the Supreme Court of British Columbia, dated January 17, 2018 (Gokey v. Usher, 2018 BCSC 60, Prince Rupert Docket S10479) and February 20, 2018 (Gokey v. Usher, Prince Rupert Docket S10479). Oral Reasons for Judgment Appellant appearing in person, and as a representative for Diane B. Gokey on December 3, 2019; and appearing via teleconference on December 10, 2019: E.C. Gokey Counsel for the Respondents: J.C. Adams L. Robinson, Articled Student Counsel for the Attorney General of British Columbia: Z. Froese Place and Date of Hearing: Victoria, British Columbia December 3, 2019 Place and Date of Judgment: Vancouver, British Columbia December 10, 2019 Summary: The appellants seek to appeal orders from the Court below dismissing an appeal of a small claims matter, arguing that this Court has inherent jurisdiction to entertain the appeals and that the statutory prohibitions on such appeals are unconstitutional. Held: Appeals quashed. The Legislature has constitutional authority to limit this Court's jurisdiction to hear appeals and the fact that other provinces may provide greater appeal rights cannot, on its own, form the basis of a s. 15 Charter challenge. This Court has no inherent jurisdiction.

- [1] DICKSON J.A.: The appellants, Edward and Diane Gokey, appealed a small claims judgment of a British Columbia Provincial Court judge to the Supreme Court of British Columbia. Justice Punnett made an order resulting from the appeal and a reconsideration application and rejected the appellants' subsequent application for clarification of the order on the basis that he was functus officio. Thereafter, the appellants filed notices of appeal in this Court with respect to the order and rejected clarification application. In furtherance of the proposed appeal, they challenged the constitutionality of s. 6(2) of the Court of Appeal Act, R.S.B.C. 1996, c. 77, and s. 13(2) of the Small Claims Act, R.S.B.C. 1996, c. 430, which provide in combined effect, that this Court has no jurisdiction to hear the appeals.

- [2] The appellants concede that the order and related application fall under s. 13(1) of the Small Claims Act. However, they submit this Court has inherent jurisdiction to entertain the proposed appeals because the appeals are required in the interests of justice. In support of this submission, the appellants cite *Bea v. The Owners, Strata Plan LMS 2138*, 2015 BCCA 31, and emphasize the importance of access to the courts to protect the rights and freedoms of citizens and argue any attempt by the Legislature to limit this Court's inherent jurisdiction fails to pass constitutional muster. They also submit that the statutory prohibition of an appeal to this Court is unconstitutional because it is based solely on their residency in British Columbia, which unjustifiably violates their s. 15(1) Charter right to equal protection under the law, given the less restricted forms of appellate review available in some other Canadian provinces.
- [3] I would not accede to the appellants' submissions.
- [4] Appellate courts and appeals are creatures of statute. A Court of Appeal has no inherent jurisdiction and there is no right of appeal on any matter, unless it is provided for by the relevant Legislature: *Kourtessis v. M.N.R.*, [1993] 2 S.C.R. 53 at pp. 65-66 and 69-70; *Cambie Surgeries Corporation v. British Columbia (Attorney General)*, 2017 BCCA 287 at para. 27. Contrary to the appellants' submission, *Bea* does not support the proposition that this Court has inherent jurisdiction to hear appeals in order to do justice. *Bea* concerned the inherent jurisdiction of the Supreme Court of British Columbia under s. 96 of the Constitution Act, 1867, not the jurisdiction of this Court.
- [5] This Court derives its jurisdiction from the Court of Appeal Act. Sections 6(1) and (2) of the Court of Appeal Act provide: Appellate Jurisdiction 6(1) An appeal lies to the court
- (a) from an order of the Supreme Court or an order of a judge of that court, and
 - (b) in any matter where jurisdiction is given to it under an enactment of British Columbia or Canada.
- (2) If another enactment of British Columbia or Canada provides that there is no appeal, or a limited right of appeal, from an order referred to in subsection (1), that enactment prevails.
- [6] Appellate rights with respect to small claims matters are provided for in the Small Claims Act: Right of appeal 5(1) Any party to a proceeding under this Act may appeal to the Supreme Court an order to allow or dismiss a claim if that order was made by a Provincial Court judge after a trial.
- (2) No appeal lies from any order of the Provincial Court made in a proceeding under this Act other than an order referred to in subsection (1). Decision 13(1) On an appeal, the Supreme Court may do one or more of the following:
- (a) make any order that could be made by the Provincial Court;
 - (b) impose reasonable terms and conditions in an order;

- (c) make any additional order that it considers just;
- (d) by order award costs to any party to the appeal in accordance with the Supreme Court Rules.
- (2) There is no appeal from an order made by the Supreme Court under this section.
- [7] The effect of the foregoing statutory provisions on this Court's jurisdiction to entertain an appeal of a small claims matter is well-settled. As summarized in *Mohammed v. Hunyadi* (c.o.b. O.K. Painters), [1995] B.C.J. No. 2295 (C.A.): "[s]hortly put, this Court has no jurisdiction to entertain [such an] appeal."
- [8] The constitutionality of statutory bars to appeal rights is also well-settled. There is no constitutional right to an appeal: *Charkaoui v. Canada (Citizenship and Immigration)*, 2007 SCC 9 at para. 136, citing *Kourtessis*. The Legislature has the constitutional authority to fix the powers of an appellate court it created by statute and rights of appeal may vary in one province to another in our federal system: *H.L. v. Canada (Attorney General)*, 2005 SCC 25 at paras. 2, 181. As the Supreme Court of Canada stated in *R. v. S.(S.)*, [1990] 2 S.C.R. 254 at p. 288, unequal treatment stemming solely from provincial legislators' exercise of their jurisdictional powers cannot be the subject of a s. 15 Charter challenge on the basis only that it creates distinctions based upon the province of residence.
- [9] In my view, it follows that this Court cannot entertain the appeals brought by the appellants. I would hold that this Court does not have the jurisdiction to hear an appeal from an order made under s. 13(1) of the Small Claims Act and quash the appeals.
- [10] GRIFFIN J.A.: I agree.
- [11] ABRIOUX J.A.: I agree.
- [12] DICKSON J.A.: The appeals are quashed. "The Honourable Madam Justice Dickson"

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