

CANADA / JUDGMENT

Moss v. Canada

2006 FC 1124

COURT

Federal Court

DECIDED

19 September 2006

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Moss v. Canada Court (s) Database Federal Court Decisions Date 2006-09-19 Neutral citation 2006 FC 1124 File numbers T-2059-01 Decision Content Date: 20060919 Docket: T-2059-01 Citation: 2006 FC 1124 Ottawa, Ontario, September 19, 2006 PRESENT: The Honourable Mr. Justice Russell
BETWEEN: ROCHELLE MOSS Applicant and HER MAJESTY THE QUEEN Respondent REASONS FOR ORDER AND ORDER THE MOTION

- [1] This 369 Motion seeks reconsideration of my August 10, 2006 order in which I dealt with a 369 Motion by the Applicant which sought:
- a) Amendments to her Amended Statement of Claim;
 - b) That Mr. Danny Moss, the Applicant's husband, be allowed to represent her in these proceedings and before the Court; and
 - c) That if Mr. Danny Moss could not represent her that the claim be heard by way of written submissions under Rule 369 of the Federal Court Rules.
- [2] I dismissed the Applicant's first 369 Motion on all counts because: she did not provide the Court with the requisite materials for the proposed amendments or with a sufficiently clear factual or legal justification for the proposed amendment; Rules 119 and 121 of the Federal Court Rules preclude Mr. Danny Moss from acting for the Applicant in the manner proposed and the Applicant provided no authority or real legal justification for deviating from these rules; the Applicant did not provide any factual or legal justification as to how her claim could be handled pursuant to Rule 369.
- [3] The Applicant now asks the Court to reconsider its August 10, 2006 and relies upon Rule 397(1) of the Federal Court Rules, 1998 which reads as follows:
397. (1) Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the ground that
- (a) the order does not accord with any reasons given for it; or
 - (b) a matter that should have been dealt with has been overlooked or accidentally omitted.

397. (1) Dans les 10 jours après qu'une ordonnance a été rendue ou dans tout autre délai accordé par la Cour, une partie peut signifier et déposer un avis de requête demandant à la Cour qui a rendu l'ordonnance, telle qu'elle était constituée à ce moment, d'en examiner de nouveau les termes, mais seulement pour l'une ou l'autre des raisons suivantes :
- a) l'ordonnance ne concorde pas avec les motifs qui, le cas échéant, ont été donnés pour la justifier;
 - b) une question qui aurait dû être traitée a été oubliée ou omise involontairement.
- [4] The Applicant says that the Court gave no reasons in the Court's August 10, 2006 order, but the reasons are inherent in the Court's conclusions which are set out clearly. ARGUMENTS
- [5] The Applicant says that the Court should reconsider the issues dealt with in the August 10, 2006 order because that order "was based on not fully understanding what is behind the motion to amend her Statement of Claim." She says that this is because of her "inability to articulate my thoughts or my reasons properly, especially in a legalistic manner that the Court understands ..."
- [6] As regards representation by her husband, she now says "there is precedent that the Court's have allowed my husband to speak on my behalf because I am unable to represent myself nor am I able to afford representation as I live on a disability pension." However, the Applicant does not address Rules 119 or 121 and she doesn't explain how the Court could allow her husband to represent her in an action, or what precedents she is relying upon.
- [7] As regards resolution in writing, this was not overlooked. As I explained in my order of August 10, 2006, it is not sufficient for the Applicant to merely make a request in this regard. She needed to provide the Court with evidence, argument and authorities to establish that her case can be held in writing before this Court.

ANALYSIS

- [8] In the present case, the Applicant has merely asked the Court to reconsider its order of August 10, 2006. But in doing so she has provided neither the legal basis for any such consideration or any real additions to the materials she submitted in the earlier application that would allow the Court to grant any such request for reconsideration.
- [9] The present motion is an attempt by the Applicant to correct the shortcomings of her earlier motion. She seeks to rely upon Rule 397, but the jurisprudence associated with that rule does not support her case. The purpose of Rule 397 is to correct slips and oversights in a judgment. See *Halford v. Seed Hawk*, [2004] F.C.J. No. 557, paras. 8, 9, and 11.
- [10] A review of the materials submitted by the Applicant in this motion make it clear that she is not asking the Court to apply the slip rule but rather to treat her motion as some kind of appeal or reconsideration on the merits. Our law does not allow this. SELF-REPRESENTATION

- [11] The Court is fully aware that the Applicant is self-represented in this matter. That is a choice she is at liberty to make and she is more than welcome to appear before this Court as a self-represented litigant.
- [12] But the Applicant appears to misconceive the consequences of self-representation. While the Court has taken into account her lack of experience and training, the Applicant must realize that implicit in her decision to represent herself and to act as her own counsel is the willingness to accept the consequences that may flow from such lack of experienced training.
- [13] The Respondent has the right to require that the Rules of Court are followed. Self-representation cannot be used to gain dispensation from the normal rules of evidence and procedure that govern actions and motions in this Court. As a judge, I must remain absolutely impartial between the parties; I cannot play the role of advocate and I cannot step in and merely assist the Applicant to make her case or even to guess at the grounds and jurisprudence that may support her case. It is not the Court's role to assist the Applicant to supplement the shortcomings in her materials, her arguments or her authorities.
- [14] Having come before the Court with a previous 369 motion that the Court found inadequate and that failed to provide adequate materials, argument or authority for the relief requested, the Applicant cannot now seek re-determination of the same issues based upon materials, arguments and a dearth of authority that do little more than repeat the first motion.
- [15] Based upon the above considerations and the authorities and reasons given in the Respondent's materials, with which the court concurs, the Applicant's motion must be dismissed. ORDER THIS COURT ORDERS that
1. The motion to reconsider is dismissed.
 2. The Respondent shall have costs of the motion payable forthwith and in any event of the cause. "James Russell" Judge FEDERAL COURT NAME OF COUNSEL AND SOLICITORS OF RECORD DOCKET: T-2059-01 STYLE OF CAUSE: ROCHELLE MOSS Applicant v. HER MAJESTY THE QUEEN Respondent Reasons for Order and Order on Motions filed on August 14 and 24, 2006 REASONS FOR ORDER AND ORDER: RUSSELL J. DATED: September 19, 2006

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Prepared on 27 October 2026 · Esheria