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ALBERTA EDITION

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Ford Motor Company of Canada Canada Ltd. v. Welcome Ford Sales Ltd., 2011 ABCA 158

Areas of Law : Bankruptcy and Insolvency Law; Administration of Estate; Sale of Property

Under Appeal : Justice Thomas

CLICK HERE TO ACCESS THE JUDGMENT

BACKGROUND

The appellant in this case was the Ford Motor Company of Canada. The respondents were the Welcome Ford Sales Ltd. and Mr. Smith. Welcome Ford operated a franchise dealership with the appellant pursuant to the terms of a written dealership agreement. The dealership ceased operations after Ford Credit discovered a large defalcation apparently made by a senior employee of the dealership. A receiver was appointed over Welcome Ford. Notwithstanding the objections of the appellant, the chambers judge granted an order authorizing the trustee to market the dealership. After the dealership was placed into bankruptcy, the chambers judge approved the trustee's application to assign the rights and obligations of Welcome Ford under the dealership agreement to the ultimate purchaser pursuant to s. 84.1 of the Bankruptcy and Insolvency Act, R.S.C. 1985, c.B-3. The chambers judge concluded that the dealership agreement was assignable by reason of its nature based on an assessment of evidence showing that the proposed assignee would be able to discharge the dealer's obligations. Further, the chambers judge concluded that it was appropriate to assign the agreement based on evidence that the appellant unreasonably withheld its consent, that the effect of earlier breaches of the agreement would be remedied through its assignment, and that the appellant's rights and remedies under the agreement would carry on unchanged. The appellant appealed this decision, and argued that the dealership agreement had been terminated as a result of a fundamental breach occurring before the granting of the receivership order such that there was nothing left to assign to the ultimate purchaser.

APPELLATE DECISION

The appeal was dismissed. The Court of Appeal determined that nofundamental breach of the dealership agreement had occurred. The appellant's refusal to co-operate with the sale was the only reason the agreement could not be performed. The appellant, as franchisee, was capable of carrying on the commercial purpose of the dealership agreement but chose not to do so, which fell far short of meeting the test for fundamental breach. Upon the reopening of the dealership, there was nothing to suggest that the appellant would not be able to carry on the commercial purpose of the dealership agreement. The Court thus held that the proposed sale cured the effect of those breaches because it put a financially sound, experienced person in charge of the resumed operation in the form of a new business operating outside of the receivership. The effect of s. 84.1 of the Bankruptcy and Insolvency Actwas to override the common law unilateral right of the innocent party to the contract to accept the repudiation and end the contract. The Court concluded that nothing in the agreement rendered it unassignable, either because it was said to be personal or not to be assigned without the appellant's consent.

R.W. v. Alberta (Child, Youth and Family Enhancement Act, Director), 2011 ABCA 139

Areas of Law : Family Law; Child Protection; Civil Procedure

Under Appeal : Justice Hall

CLICK HERE TO ACCESS THE JUDGMENT

BACKGROUND

The appellant in this case was the Director of Child Welfare. The respondents were Mr. and Mrs. W, who were grandparents and guardians to the five children whose custody was at issue in this case.The children initially resided with their parents for seven years, before they were apprehended by the respondent agency in May 2005. Shortly thereafter, the appellant Director applied for a permanent guardianship order under the Child, Youth and Family Enhancement Act, R.S.A. 2000, c. C-12. Several months after that, the respondent grandparents brought a competing application for private guardianship and contact under the Family Law Act, S.A. 2003, c. F-4.5. Both applications were initially heard together. The trial judge found that the Child, Youth and

Family Enhancement Act was a comprehensive code for permanent guardianship orders and ruled in favour of the Director. Separate appeals by the parents and grandparents resulted in a bifurcation of proceedings. The grandparents' appeal was dismissed in 2008 and the parents' appeal was dismissed in 2009. A further appeal by the grandparents resulted in reversal of the trial judgment by the Court of Appeal. The Court concluded that the grandparents had standing to bring a private guardianship application under the Family Law Act and that there was nothing in the Child, Youth and Family Enhancement Actforeclosed parallel proceedings. A new trial was ordered. This new trial resulted in a decision granting a permanent guardianship order to the Director. The respondent grandparents appealed this order to the Queen's Bench. The Queen's Bench judge vacated the Director's permanent guardianship order, and granted the grandparents private guardianship. The Director appealed this decision, seeking restoration of the previous guardianship order to permit the children to remain in their present foster homes.

R.W. v. Alberta (Child, Youth and Family Enhancement Act, Director), (cont.)

APPELLATE DECISION

The appeal was allowed. The Court of Appeal determined it was inappropriate for the Queen's Bench judge not to order a new trial, and to determine the matter on the existing evidentiary record. The Queen's Bench judge heard no oral evidence, and discounted expert evidence recommending against placement with the grandparents. Despite valid motivation to avoid a new trial, the judge should not have made findings of fact in the absence of meaningful findings by the trial judge regarding the fitness of the grandparents as guardians and engagement of a full best interests analysis. It was not possible for the Queen's Bench judge to determine the best interests of the children in such circumstances. The Court further found that neither of the two judges applied the proper test, which was to determine suitability of the grandparents in isolation rather than in competition with the foster family. If suitability was determined, it was appropriate to conduct a best interests analysis recognizing that the assessment was not a competition between the state and the family. That was not possible on the record without a new trial. A further factor militating in favour of a new trial was that after the decision, three of the five children gave instructions to counsel stating they wished to remain in their foster homes. The Court thus allowed the appeal, and remitted the matter to the Provincial Court for a new trial.

I.W. v. Kasohkowew Child Wellness Society, 2011 ABCA 160

Areas of Law : Family Law; Custody and Access; Aboriginal Law
Under Appeal : Justice Topolniski

CLICK HERE TO ACCESS THE JUDGMENT

BACKGROUND

The appellants in this case were I.W. and B.W. The respondent in this case was the Kasohkowew Child Wellness Society. The appellants were foster parents to a six-year-old First Nations child who had been in their foster care for three and one-half years. The child was placed in the appellants' home in March 2005. In August 2008, the respondent Society, the child's permanent guardian, advised the appellants that the child would be removed from their care and placed with her siblings with a view to eventually placing her with relatives on the Samson Cree Reserve. The appellants were unsuccessful in having the placement decision reviewed, and as a result, the child was removed and placed with her siblings. After the child's removal, a psychologist recommended against unsupervised access by the appellants in part because of alleged inappropriate physical contact. The police investigated and no charges were laid. The appellants then made an application for guardianship, parenting, and contact and led expert evidence from a psychologist recommending the placement of the child in their care. The psychologist considered the child's separation from the appellants detrimental. The Society led evidence from its psychologist, who testified it was better to place the child with relatives and siblings on the reserve to prevent the child from becoming alienated from her culture, community and family, but did not contest the idea of unsupervised access. The trial judge determined that the child had indeed bonded with the appellants, and that no inappropriate physical contact had occurred. However, she accepted that reintegration of the child into a stable family in her cultural community was a priority, outweighing the child's attachment to the appellants. The judge went on to find that the appellants failed to prove that a contact order was reasonable in all the circumstances. The appellants appealed this finding, and also sought to introduce fresh evidence.

I.W. v. Kasohkowew Child Wellness Society, (cont.)

The appeal was allowed in part. The Court of Appeal determined that given the judge's finding that no inappropriate physical contact occurred, the fresh evidence on this point could have had an impact on the outcome of the application. The Court held the trial judge was correct in denying the appellants' application for guardianship, but erred in dismissing their application for contact. The Court found there was a gap in the judge's reasons for concluding that a contact order was not appropriate given the evidence in this case. The Court thus ordered a re-hearing on the merits of the contact issue.

brilliant [bril-yuhnt]

– *adjective*

1. having or showing great intelligence, talent, quality, etc.

See also:

Lawyers who save time and money outsourcing their legal research and drafting to OnPoint Legal Research Law Corporation.

Watson v. Alberta (Workers' Compensation Board), 2011 ABCA 127

Areas of Law : Workplace Health and Safety; Workers' Compensation; Administrative Law

Under Appeal : Justice Lee

CLICK HERE TO ACCESS THE JUDGMENT

BACKGROUND

The appellants in this case were the Alberta Workers' Compensation Board (WCB) and the Appeals Commission for the Alberta Workers' Compensation. The respondent was Ms. Patricia Watson.In 1999, the respondent filed a claim for benefits. In 2007, the WCB case manager awarded her an economic loss payment calculated on 90 per cent of the difference between her pre-accident earnings and the earnings of a general office clerk, the employment position she was deemed to be capable of performing. After an appeal by the respondent, the case manager's decision was overturned on the basis that the position of general office clerk did not provide an appropriate basis on which to base the respondent's wage loss payments. As a result, the respondent was awarded temporary total disability benefits until an appropriate deemed employment position was identified. Three days later, the decision-maker issued a letter identifying an error in the decision and a formal reconsideration restoring the original decision by the WCB case manager. The respondent sought reconsideration and the case manager revised the benefits further. The Dispute Resolution and Decision Review Body upheld that decision on review. The respondent then appealed the Body's decisions to the Appeals Commission. The Commission issued a preliminary decision finding that although the Body had jurisdiction for reconsideration, that reconsideration power was improperly exercised. The Commission ruled on the merits, ordering that the respondent was entitled to wage loss benefits on the basis of 20 hours per week of employment at minimum wage. On judicial review, the court ruled that the Appeals Commission erred in finding that the Body had reconsideration jurisdiction and erred in altering its decision on the merits. The appellants appealed this finding.

Watson v. Alberta (Workers' Compensation Board), (cont.)

APPELLATE DECISION

The appeal was allowed in part. The Court of Appeal determined that as a component of the WCB, the Dispute Resolution and Decision Review had the express power to reconsider its own decisions under s. 17(3) of the Workers' Compensation Act, RSA 2000, c W-15. The Court found that this interpretation was consistent with the remedial nature of the legislation, and that to otherwise would lead to anomalies and potential injustice. The Court further held that the Appeals Commission properly found that the purported reconsiderations at issue were invalid in light of a marked failure to follow the rules of procedural fairness. The Body's initial decision awarding temporary total disability benefits to the respondent was never formally appealed to the Commission, and thus the Commission had no jurisdiction to consider that decision. The Commission acted reasonably in varying the Body's decision and directing that the respondent's entitlement to benefits was based on an estimated employment of 20 hours per week at minimum wage.

Lee v. Alberta (Appeals Commission for Alberta Workers' Compensation), 2011 ABCA 128

Areas of Law : Workplace Health and Safety; Workers' Compensation; Appeals and Judicial Review

Under Appeal : Justice Acton

CLICK HERE TO ACCESS THE JUDGMENT

BACKGROUND

The appellants in this case were the Appeals Commission for the Alberta Workers' Compensation and the Alberta Workers' Compensation Board. The respondent was Ms. Kim Lee. The respondent Lee was injured at work in 1994. In 1996 the appellant awarded her benefits in compensation for her condition sustained as a result of her injuries. However, in 1997, when new medical information from the respondent's psychiatrist concluded that her symptoms related to her paranoid schizophrenia and not the injuries she sustained at work, the appellant discontinued benefits. Both parties made several attempts to review this decision, and to reassess the whole question of responsibility for coverage of the respondent's condition. Ultimately, in 2000, the appellant Appeals Commission held that the respondent was entitled to compensation for somatoform pain disorder from the date of her accident, but was not entitled to compensation for her schizophrenia and associated symptoms. No appeal was ever taken from that decision. Subsequently, in 2002, the Claims Service Review Committee held that the respondent was entitled to compensation for her psychological condition. The Appeals Commission rejected this decision, and held that while the Review Committee had the jurisdiction to enter into the 2000 review, it lost jurisdiction by not making a decision before the Commission released its decision in 2000, and that as a result, its 2002 decision was void. The Review Committee then rescinded its 2002 decision as being a nullity. The respondent challenged the matter by way of judicial review. The Chambers judge concluded the Claims Service Review Committee had no jurisdiction to rescind one of its own decisions. The appellant appealed this finding.

APPELLATE DECISION

The appeal was allowed. The Court of Appeal determined the Review Committee had the right at law, and apart from any express statutory provision to that effect, to rescind its 2002 decision, which was made without authority. The Review Committee, as an integral part of the Workers' Compensation Board, was bound by a decision of the appellant and by any decision rendered on an appeal or review of a decision of the appellant. The Review Committee could thus not render a decision that was contrary to a decision of the appellant.