COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Centrone v. Jones,*
2024 BCCA 177

Date: 20240503
Docket: CA48672

Between:

Glenda Centrone

Appellant
(Defendant)

And

Michael Jones and Bernice Jones

Respondents
(Plaintiffs)

Before: The Honourable Mr. Justice Butler
(In Chambers)

On appeal from: An order of the Supreme Court of British Columbia, dated October 14, 2022 (*Jones v. Centrone*, 2022 BCSC 1816, Nelson Docket S21341).

Oral Reasons for Judgment

Counsel for the Appellant (via videoconference):	L. Kozak
Counsel for the Respondents (via videoconference):	M.D. Scheffelmaier
Place and Date of Hearing:	Vancouver, British Columbia May 3, 2024
Place and Date of Judgment:	Vancouver, British Columbia May 3, 2024

Summary:

The appellant applies to remove her appeal from the inactive list. Held: Application dismissed. The appellant did not take any steps to advance her appeal for over a year and has not provided adequate reasons for the inordinate delay. The appellant sought and received legal advice regarding the property at issue and consequences of the trial decision. The respondents' submissions regarding prejudice have merit. They have taken steps to carry out the trial order and have continued to make improvements to the property. The likelihood of success of the appeal is low. It would not be in the interests of justice to reactivate the appeal.

[1] **BUTLER J.A.**: This appeal arises from the October 14, 2022 judgment of Justice Lyster ordering specific performance of an agreement to transfer land. The reasons for judgment are indexed at 2022 BCSC 1816. Glenda Centrone, along with Marian and Glen Jones, filed a notice of appeal on November 15, 2022. They took no further steps to pursue the appeal until two weeks ago. On April 16, 2024, a notice of abandonment was filed on behalf of Marian and Glen Jones. On April 19, 2024, Ms. Centrone filed the application that is before me today. In the meantime, on November 16, 2023, by operation of Rule 50(1)(a) of the *Court of Appeal Rules*, B.C. Reg. 120/2022, the appeal was placed on the inactive list. Ms. Centrone brings this application to reactivate her appeal.

Background

[2] The decision under appeal concerns a land dispute among members of the Jones family. The parents, Marian and Glen Jones, had eight children, all of whom are grown adults and approaching retirement age. The parents were defendants in this action, along with Ms. Centrone, one of their children.

[3] Michael Jones, one of the other children, and his wife, Bernice Jones, were the plaintiffs. They are the respondents in this appeal and I will refer to them as such.

[4] The parents owned a parcel of land called Lot 35 on Kootenay Lake. In 2003, this Lot was subdivided. The parents transferred one of the new lots (Lot A) to the respondents. The parents retained the remainder of Lot 35 (the "Remainder"). The northern part of the Remainder (the "Upper Remainder") is divided by

Duhamel Creek which runs in a north-south direction. A significant portion of the dispute concerns a strip of land called the “Panhandle” which is situated in the Upper Remainder near the creek.

[5] The respondents asserted that in 2016 they entered into an agreement with the parents to purchase the west side of the Upper Remainder for $100,000. It was also agreed that Ms. Centrone would purchase the east side of the Upper Remainder for $200,000. She paid this amount in August 2016. The respondents paid $90,000 towards their purchase of the west side of the Upper Remainder in October 2017. However, in 2018, the parents transferred the entire Remainder, including the west side of the Upper Remainder, to Ms. Centrone.

[6] The respondents brought a notice of civil claim seeking specific performance of the agreement to sell the west side of the Upper Remainder, including the Panhandle, to them. In issue was the enforceability of the agreement to purchase that property, and whether the Panhandle was included in the parcel to be transferred. The respondents testified that the Panhandle played an important part in their plan to build a campground to operate and generate income in their retirement.

[7] Justice Lyster found for the respondents. She concluded the parties had arrived at an enforceable agreement pursuant to which the parents would transfer the land in question to the respondents. As the parents and Ms. Centrone conceded at trial that the parents had agreed to transfer some part of the Upper Remainder to the respondents, the only term that was “really open to any doubt [was] the boundaries of the parcel of land to be transferred” and whether it included the Panhandle: at para. 200. The judge found that it did. She reasoned that it would have taken clear and express language to carve out that small strip of land from the larger parcel described as the west side of the creek, and such language was not used: at para. 228. The parties’ subsequent conduct supported the conclusion that an agreement was reached. The respondents performed work on the area to the knowledge of the defendants.

[8] The judge found that the contract was enforceable in accordance with s. 59(3) of the *Law and Equity Act*, R.S.B.C. 1996, c. 253. Section 59(3) sets out the criteria for what must be shown to enforce a contract respecting land:

> (3) A contract respecting land or a disposition of land is not enforceable unless
>
> > (a) there is, in a writing signed by the party to be charged or by that party's agent, both an indication that it has been made and a reasonable indication of the subject matter,
> >
> > (b) the party to be charged has done an act, or acquiesced in an act of the party alleging the contract or disposition, that indicates that a contract or disposition not inconsistent with that alleged has been made, or
> >
> > (c) the person alleging the contract or disposition has, in reasonable reliance on it, so changed the person's position that an inequitable result, having regard to both parties' interests, can be avoided only by enforcing the contract or disposition.
>
> (4) For the purposes of subsection (3) (b), an act of a party alleging a contract or disposition includes a payment or acceptance by that party or on that party's behalf of a deposit or part payment of a purchase price.

[9] The judge found that a map put into evidence satisfied s. 59(3)(a). This map displayed the Remainder and in particular, highlighted the west side. There was a handwritten statement noting that the highlighted portion belonged to the respondents. It was signed by all three defendants. While the map did not clearly show that the Panhandle belonged to the respondents, the judge found "that the terms objectively agreed to by [the parties] did include the Panhandle": at para. 240.

[10] The judge found that s. 59(3)(b) was also satisfied. The defendants were aware of and allowed the respondents to continue to work on the land on the west side of the creek. A payment of $90,000 had been made to the parents. As a corollary, s. 59(3)(c) was also satisfied. Though the money paid could be returned, the work performed could not be undone. The respondents planned their retirement on the basis of this purchase, and their money had been tied up in the land since 2017 in a rapidly rising real estate market.

[11] The judge found that specific performance was the appropriate remedy. The property was unique and irreplaceable to the respondents. It was clear that

Ms. Centrone purchased the Remainder with full knowledge of the agreement between the parents and the respondents. The judge ordered her "to take all steps necessary to transfer the west side of Duhamel Creek down to Duhamel Creek Road to [the respondents]": at para. 256.

The Appeal

[12] Notices of appeal were filed by Ms. Centrone and her parents on November 15, 2022. As I have indicated, the appellants took no steps after filing the notice of appeal. The appeal was placed on the inactive list on November 16, 2023.

[13] On April 18, 2024, present counsel came on record and on April 19, 2024, after the notice of abandonment had been filed by the parents, Ms. Centrone brought this application to reactivate her appeal.

Legal Framework

[14] There is no rigid test for when to reactivate an appeal; however, the following factors from *Kar Recovery, Ltd. v. KDA*, 2004 BCCA 503 at para. 24 (Chambers) inform the decision:

a) The extent of the delay;
b) The explanation for the delay;
c) Any prejudice arising from the delay; and
d) The likelihood of success of the appeal.

[15] The overriding concern is whether reactivation is in the interests of justice: *Grosz v. Royal Trust Corporation of Canada*, 2022 BCCA 57 at para. 7 (Chambers).

[16] The appellant has the onus of establishing a good reason for allowing the appeal to proceed: *Shoolestani v. Ichikawa*, 2018 BCCA 155 at para. 14 (Chambers). When self-represented litigants are involved, the court should not be overly strict about form or procedure. While not held to the same standard as represented parties, self-represented litigants must establish a good reason for

reactivating the appeal: *M.P.W. v. Victoria (City)*, 2022 BCCA 113 at para. 13 (Chambers).

Analysis

[17] I will address each factor in turn, summarizing the parties' positions and providing my analysis.

Extent of Delay

[18] Ms. Centrone submits that it is in the interests of justice to remove her appeal from the inactive list. She concedes there has been delay but says that it has "not yet reached the threshold of being inordinate". She states that while the delay between the filing of her notice of appeal and this application was 17 months, she brought the application six months after being notified that the appeal was placed on the inactive list. She submits that the latter is the "appropriate method of calculating the extent of the delay for this matter."

[19] The respondents argue that the delay is inordinate. Ms. Centrone was due to serve and file her appeal record on January 14, 2023. She has failed to take any steps to progress the appeal for well over a year.

[20] In my view, the delay is inordinate.

[21] Whether a delay is inordinate must be resolved having regard to the circumstances of the particular case, not whether the same delay has been held to be inordinate in other cases: *van Melle v. Mohammed*, 2021 BCCA 217 at para. 40 (Chambers).

[22] Ms. Centrone filed her notice of appeal in November 2022, and took no further steps until very recently. In similar circumstances—where no steps were taken by an appellant for more than a year after filing a notice of appeal—the delay has been characterized as significant or inordinate: *B.B. v. M.B.*, 2008 BCCA 52 at para. 26 (Chambers); *van Melle* at para. 41.

[23] Ms. Centrone argues that the delay here is not significant because she brought her application within six months after being notified that the appeal was placed on the inactive list. However, the delay must be considered contextually. Where a party has taken steps to advance an appeal, for example by filing the appeal record, transcripts and a factum, a delay of six months after being placed on the inactive list may not be considered to be inordinate. Here, the length of time between placement on the inactive list and the filing of the present application does not attenuate the total delay because no steps had been taken for the first year following the filing of the notice of appeal. If the appeal had remained on the inactive list for another few weeks, it would have stood dismissed as abandoned pursuant to Rule 51(1) of the *Court of Appeal Rules*.

Reasons for Delay

[24] Ms. Centrone's position is that she was self-represented and had difficulty keeping up with various legal matters in which she was involved, including actions before the Environmental Appeal Board, Provincial Court, this Court of Appeal matter, and orders related to the underlying decision. She says that she was not capable of continuing this appeal as a self-represented litigant, sought representation, and filed this application. She argues that this appeal carries "significant similarities" to *Abel v. 405834 B.C. Ltd.*, 2014 BCCA 167 (Chambers). The appellant in that case was also self-represented and took limited steps on the appeal after the notice was filed.

[25] The respondents submit that Ms. Centrone has not established a justifiable reason for the delay. They take significant issue with Ms. Centrone's assertion that she was unrepresented until April 2024. They assert that Ms. Centrone had counsel assisting her between November 2022 and August 2023. After this period, she retained different counsel for an unknown period of time. In support, the respondents filed correspondence that took place between counsel during the period Ms. Centrone claims she was unrepresented. That correspondence indicates:

- Ms. Centrone had filed an affidavit in the court below in December 2022, in which she indicated that she "retained new counsel November 10, 2022, on a limited basis" and was experiencing delays in responding to the respondents' notice of application regarding costs.

- Between March and April 2023, respondents' counsel exchanged emails with Mr. Ronald Wong, Ms. Centrone's counsel under the email subject "Settlement funds initial payment". In early April 2023, respondents' counsel reminded Mr. Wong that Ms. Centrone was required to deliver $32,378.08 (for costs). Later that month, respondents' counsel confirmed that the funds had been received.

- On May 17, 2023, Mr. Wong sent an email to respondents' counsel stating: "I understand that the charges your client placed on Mrs. Centrone's properties have been removed, and the remaining task of the parties are to finalize the transfer and boundary adjustment – kindly advise as to its status and any steps required of Mrs. Centrone."

- On August 1, 2023, respondents' counsel alerted Mr. Wong that the respondents were seeking payment of $35,000 for damage to the property caused by Ms. Centrone. They also sought "payment of the cost of the survey necessary to carry out the subdivision of the West side of Duhamel Creek pursuant to the order of Madam Justice Lyster."

- On August 29, 2023, new counsel for Ms. Centrone, Mr. Umar Sheikh, responded indicating that he had "recently been retained by Ms. Glenda Centrone … [having] taken conduct of her file from her previous solicitor, Mr. Ronald Wong". He advised that he was "currently in the process of receiving and reviewing voluminous documentation and correspondence related to Duhamel Creek, disputed ownership claims, and remediation work ordered by the Province under the Water Sustainability Act, and the actions and responsibility of … Mr. Glen Victor Jones, now deceased…" and would respond to the letter upon completion of his review of the file.

[26] On the basis of the affidavit evidence, I am not persuaded that Ms. Centrone has provided a sufficient explanation to explain the inordinate delay.

[27] First, I note that she has provided no evidence about attempts to pursue the appeal. She has not offered any information about attempts on her part or by counsel to prepare appeal materials. She has given no explanation for failing to file an appeal record and has not indicated that she took any steps to prepare it. At the hearing today, I was advised that she has not ordered transcripts for the appeal as she is waiting to see if this application is granted. The only explanation given is that she is self-represented, but she has provided no evidence to suggest that she is indigent and unable to retain counsel.

[28] Second, I agree with the respondents that this case is not analogous to *Abel*. In that case, the appellant was 73 years old. She was granted indigent status on the appeal and was facing difficult financial circumstances as well as significant health challenges: at paras. 7, 13. Further, in *Abel*, the appellant expressed "frustration in her attempts to prepare and file the necessary books to move this appeal ahead." That is not the situation here. Ms. Centrone does not assert indigence or health issues and has given no evidence that she attempted to prepare and file appeal materials. She simply states that at some point, "[i]t became apparent that I was not capable of representing myself at the Court of Appeal".

[29] Third, Ms. Centrone's assertion that she had difficulty progressing this appeal because she was self-represented is belied by the record. At various points between November 2022 and April 2024, she sought and received legal advice regarding this matter. The communication between her counsel and the respondents' counsel after the notice of appeal was filed is telling. While it is evident that she did not instruct counsel to assist with the appeal, she was instructing counsel and receiving advice about matters dealing with the property and the consequences of the trial decision. Particularly concerning is the email sent by her counsel in May 2023 confirming that she was ready to facilitate the transfer of the property. It is a fair inference that, at that time, Ms. Centrone did not intend to pursue the appeal.

[30] The conclusion I draw from the correspondence is that Ms. Centrone chose to retain counsel to deal with various matters arising from the trial decision and the continuing dispute with the respondents, but also chose not to retain counsel to pursue the appeal. Unlike *Abel*, this is not a case where it is appropriate to "not be overly strict" about procedural rules: at para. 7. The decision not to proceed expeditiously with the appeal was made by Ms. Centrone and the reasons provided for the delay are inadequate.

Prejudice

[31] Ms. Centrone submits that a finding of prejudice is generally only appropriate where the appeal concerns allegations of wrongdoing against the respondents in the action. Since she is not alleging wrongdoing on the part of the respondents, her position is that the respondents face little prejudice in defending this appeal.

[32] The respondents assert that they would face significant prejudice if this appeal was allowed to proceed. Ms. Centrone seeks a new trial in this matter. However, Mr. Glen Jones, who would be a key witness, has passed away. Ms. Marian Jones is 91 years old and wishes this dispute to be over. Furthermore, the respondents state that as a result of Ms. Centrone's failure to "express any intention to proceed with her appeal and her expressed intention to complete the transfer of land", they have taken the following steps:

- paid the remaining $10,000 to the parents for the purchase of the property;
- hired a surveyor to assist with making a subdivision application, incurring $24,632.25;
- applied to the Regional District and paid $550 in relation to that application;
- made significant improvements to the property subject to this dispute; and
- commenced a small claims action against Ms. Centrone on the basis of trespass and conversion which is in trial and set for a continuation in the near future.

[33] In respect of the small claims action, the respondents state that Ms. Centrone allowed this claim to proceed and did not seek an adjournment on the basis of this appeal, risking “conflicting legal findings at various levels of court”. The respondents have expended time and money in relation to that action which may not be able to proceed in a timely manner if this appeal was reactivated.

[34] The passing of Glen Jones is also prejudicial. He was a key witness and the judge’s findings about credibility and reliability were critical to the decision reached. Of course, the delay in proceeding with the appeal has not contributed to that prejudice as he passed away shortly after the notice of appeal was filed. The notice of appeal seeks a new trial and his absence at a possible new trial is problematic. Ms. Centrone now says that if this application is granted, she will seek to amend her notice of appeal and will no longer be seeking a retrial. Given the proposed grounds of appeal, I have difficulty understanding how that would be possible. At the very least it would make the appellant’s task on appeal more onerous. For the purpose of the prejudice analysis, I would only say that there is some prejudice arising from the passing of a key witness.

[35] In summary, there is significant merit to the respondents’ submissions regarding prejudice. It appears that, until recently, all parties continued to conduct themselves in accordance with Justice Lyster’s order. The respondents have taken steps to effectuate the transfer and have continued to make improvements to the property. In my view, it was reasonable for the respondents to have done so given the failure of Ms. Centrone to take any steps to prosecute the appeal. Further, Ms. Centrone has not opposed the respondents’ claim in provincial court for trespass and conversion on the basis of a pending appeal despite the claim being predicated on the conclusions reached by Justice Lyster.

Merit

[36] Ms. Centrone says that her appeal meets the low merits threshold in that it is not bound to fail. She states she will advance two arguments on appeal. The first concerns the operation of s. 29 of the *Land Title Act* with respect to the Panhandle.

Section 29 of the *Land Title Act* protects the title of purchasers from prior unregistered interests in land except in the case of fraud. It is Ms. Centrone's position that the respondents' interest in the Panhandle was unregistered and outside her actual knowledge. While the trial judge found that she had knowledge of the existence of the agreement between the respondents and the parents for the sale of the west side of the Upper Remainder, she submits that the same cannot be said of the Panhandle.

[37] The second outstanding issue for appeal relates to the order made by the trial judge that Ms. Centrone "take all steps necessary to transfer" the property to the respondents. According to Ms. Centrone, the respondents are now taking the position that "taking all steps necessary to transfer the property includes bearing the entire cost of subdividing the Upper Remainder and effecting the transfer." In support of her application, she adduced a letter from the respondents' counsel dated April 12, 2024 asking her to pay $27,000 for these costs. It is Ms. Centrone's position that the trial judge erred in mixed law and fact by finding that the agreement contained a term in which the defendants agreed to bear the entire cost of the transfer of the property. As a result, Ms. Centrone argues that the price of the agreement is indeterminate and that the judge erred in finding that an agreement ever existed.

[38] The respondents assert that both arguments are bound to fail. The judge already found that there was strong evidence that Ms. Centrone knew of the respondents' unregistered interests. Furthermore, the parties knew that the west side of the Upper Remainder "needed to be brought into existence by way of a subdivision." The judge found that Ms. Centrone assumed the role of trustee of the property and thus placed the responsibility on her. Justice Lyster allowed the parties to seek directions from the court in relation to her order but Ms. Centrone failed to take any steps to do so.

[39] I do not intend to examine the merits in any detail. I accept that the appeal has sufficient merit to meet the threshold on an application to reactivate. However, it appears to me that it would be a challenging appeal.

[40] Weighing all of the above factors, I conclude it would not be in the interests of justice to restore this appeal to the active list. While the appeal is arguable, the decision was based on findings of fact and inferences drawn therefrom and so the merits are not strong. The delay was lengthy by any measure. Ms. Centrone has not provided satisfactory reasons to explain that delay. Indeed, as I have indicated, she initially conducted herself in accordance with Justice Lyster's order and instructed counsel to pursue other matters. She appears to have made a conscious decision to put the appeal on hold and took no steps to pursue it. She has now changed her mind and wishes to go ahead with the appeal. However, as I have explained, I am satisfied that the respondents would suffer real prejudice if the appeal is permitted to proceed.

Disposition

[41] The application to remove the appeal from the inactive appeal list is dismissed. As a result, given the passage of time, the appeal stands dismissed.

"The Honourable Mr. Justice Butler"