

Federal Court
of Appeal



Cour d'appel
fédérale

Date: 20110516

Docket: A-293-10

Citation: 2011 FCA 167

**CORAM: NOËL J.A.
NADON J.A.
EVANS J.A.**

BETWEEN:

(BROTHER) KORNELIS KLEVERING

Appellant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on May 16, 2011.

Judgment delivered from the Bench at Toronto, Ontario, on May 16, 2011.

REASONS FOR JUDGMENT OF THE COURT BY:

EVANS J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on May 16, 2011)

EVANS J.A.

[1] Kornelis Klevering appeals from a decision of the Federal Court, dated August 5, 2010 (Docket 09-T-55), in which Justice Hughes (Judge) denied his motion to reconsider an Order of November 10, 2009. In that Order, the Judge granted (Brother) Klevering's motion requesting a 30-day extension of the time to file a Notice of Application for judicial review, but denied his request that the matter be held in abeyance until May 30, 2010.

[2] As an exception to the principle that judicial orders are final, rule 397 of the *Federal Courts Rules* permits the Court, within 10 days from the making of an order, to reconsider its terms, on the ground that the order does not accord with the reasons given for it, or that a matter that should have been dealt with was overlooked or accidentally omitted. In addition, the Court may correct clerical mistakes, errors or omissions at any time.

[3] In other circumstances, an appeal to this Court is the proper remedy for a party who is dissatisfied with an order of the Federal Court. (Brother) Klevering did not appeal the Judge's November Order.

[4] (Brother) Klevering says that the Judge erred in not reconsidering the terms of his November Order. He argues that the Order was unreasonable because the 30-day extension of time within which he could file his Notice of Application was insufficient to enable him to have his day in Court, as the Order intended. This is because (Brother) Klevering left Canada on October 21, 2009, and was not scheduled to return until May 26, 2010. He submits that, in order for him to be able to pursue his Application, the Order should have put the matter in abeyance pending his return.

[5] While a discretionary order may be set aside on appeal if it is shown to be unreasonable, (Brother) Klevering's allegation that the November Order is unreasonable is not a ground for reconsideration under rule 397. This is sufficient to dismiss the appeal.

[6] However, we would also add that there is nothing unreasonable in the Judge's November Order. By leaving Canada for a protracted period one day after filing his motion for an extension of time, and before receiving the Court's decision, (Brother) Klevering took the risk that he would be unable to pursue his Application before the Federal Court in a timely fashion. Contrary to (Brother) Klevering's submissions, this appeal is not an appropriate vehicle for determining the constitutionality of the *Medical Marihuana Access Regulations*.

[7] For these reasons, the appeal will be dismissed with costs.

"John M. Evans"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-293-10

(APPEAL FROM THE ORDER OF THE HONOURABLE MR. JUSTICE HUGHES OF THE FEDERAL COURT, DATED AUGUST 5, 2010, DOCKET NO. 09-T-55)

STYLE OF CAUSE: (BROTHER) KORNELIS KLEVERING v. THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: MAY 16, 2011

REASONS FOR JUDGMENT OF THE COURT BY: (NOËL, NADON & EVANS J.J.A.)

DELIVERED FROM THE BENCH BY: EVANS J.A.

APPEARANCES:

Bro. Kornelis Klevering FOR THE APPELLANT (ON HIS OWN BEHALF)

James Gorham FOR THE RESPONDENT

SOLICITORS OF RECORD:

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