

In the Court of Appeal for the Northwest Territories

Citation: *Werner v. Hay River Mobile Home Park*, 2014 NWTCA 02

Date: 2014 04 01

Docket: A1-AP-2011000006

Registry: Yellowknife, N.W.T.

Between:

Harvey Werner

Appellant

- and -

Hay River Mobile Home Park

Respondent

The Court:

**The Honourable Mr. Justice Jack Watson
The Honourable Mr. Justice Frans Slatter
The Honourable Madam Justice Patricia Rowbotham**

Memorandum of Judgment

Appeal from the Judgment by
The Honourable Mr. Justice J.E. Richard
Dated the 24th day of February, 2011
(2011 NWTSC 08, Docket: S-1-CV 2005 000 090)

Memorandum of Judgment

The Court:

[1] This appeal arises from a dispute over compensation for a mobile home and contents, which were owned by the appellant, and at one time were located in a mobile home park owned by the respondent.

[2] There has been ongoing litigation about this dispute for over a decade. The details are found in the decision under appeal, *Werner v Hay River Mobile Home Park*, 2011 NWTSC 08, and need only be briefly summarized here. Pursuant to an order of the rental officer, the tenancy terminated on March 1, 2000 due to non-payment of rent. The Sheriff eventually put the respondent in possession of the premises in August 2002. In October of 2003 the respondent removed the mobile home and its contents to the town dump, without prior permission from the rental officer.

[3] The appellant then applied for compensation for his property. On July 28, 2004, the rental officer concluded that the appellant's losses were a result of his failure to remove his property at the termination of the lease, and declined to award the appellant any compensation. This decision was reversed in September of 2004 by the Supreme Court of the Northwest Territories, which held that the rental officer had failed to consider all of the relevant circumstances. A rehearing was ordered. No appeal was taken from this decision.

[4] A rehearing of the appellant's application for compensation took place in 2004 and 2005, and on March 14, 2005 the rental officer ordered the respondent to pay the appellant compensation in the amount of \$1,738.23. An appeal to the Supreme Court of the Northwest Territories was filed in 2005, but the appeal was not heard until 2011.

[5] The Supreme Court concluded that the decision of the rental officer was reasonable, that he had properly considered all of the evidence, and that he had applied all relevant considerations. The rental officer did not err in refusing to set off rental arrears owed by the previous owner (the appellant's sister), nor did he err in allowing a set off of the storage and legal fees owing to the respondent. The appeal was dismissed, and the appellant now appeals further to this Court.

[6] The first ground of appeal is that the rental officer had no authority to re-calculate the appellant's losses. The appellant argues that the Supreme Court judge who heard the matter in 2005 should have awarded the appellant the compensation he now claims, rather than sending it back to the rental officer for rehearing. The appellant argues that the rental officer was *functus officio* in 2005 when he re-calculated the claim. However, no appeal was taken from the 2005 Supreme Court decision directing a rehearing, and it is too late to challenge it now. In any event, the Supreme Court, when setting aside a decision of the rental officer, clearly has the ability to refer the matter back for a rehearing.

[7] The second ground of appeal is that the Supreme Court failed to apply the proper standard of review, because no reference was made in the reasons to the “pragmatic and functional approach”. The proper standard of review in this case was “reasonableness”, which the Supreme Court judge correctly applied. It was not necessary for him to do a fresh standard of review analysis by reciting the pragmatic and functional arguments that led to the establishment of that standard of review: *Dunsmuir v New Brunswick*, 2008 SCC 9 at para. 57, [2008] 1 SCR 190.

[8] Thirdly, the appellant argues that he did not get a fair hearing before the rental officer. This argument does not seem to have been raised, at least in this form, before the Supreme Court. In some respects this argument appears to be a disagreement with some of the decisions and actions that were taken in 2004 and 2005; all those matters were previously dealt with and they are not proper grounds of appeal at this time. Just because the rental officer did not accept all of the evidence or arguments of the appellant does not mean that the hearing was unfair.

[9] Finally, the appellant argues a number of errors in the substance of the decision. He argues that his mobile home was not abandoned, but rather was seized. He argues that the rental officer was in error in holding that he did not try to mitigate his losses. He argues that the Supreme Court judge misinterpreted or misapplied the law. Having examined the record, there is no indication of any reviewable error having been made.

[10] The appeal is dismissed. The respondent is entitled to costs, which we fix at \$2,500.

Appeal heard on March 25, 2014

Memorandum filed at Yellowknife, N.W.T.
this day of April, 2014

Watson J.A.

Slatter J.A.

Authorized to sign for: Rowbotham J.A.

Appearances:

Harvey Werner, In Person

M.E. Hansen
for the Respondent

A-1-AP-2011-000006

IN THE COURT OF APPEAL
OF THE NORTHWEST TERRITORIES

Between:

Harvey Werner

- and -

Hay River Mobile Home Park

MEMORANDUM OF JUDGMENT
