

# In the Court of Appeal for the Northwest Territories

**Citation:** *Goodzeck Estate v Goodzeck*, 2019 NWTCA 4

**Date:** 2019 04 24

**Docket:** A1-AP-2019-000 002

**Registry:** Yellowknife, N.W.T.

**Between:**

**The Estate of Alec Goodzeck**

Applicant  
(Respondent)

- and -

**Jonathan D. Goodzeck**

Respondent  
(Appellant)

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**Reasons for Decision of  
The Honourable Mr. Justice Frans Slatter**

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Application to Strike Appeal  
Application for Security of Costs

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[1] The late Alec Goodzeck made a valid will, in which he appointed his widow as his executrix and sole beneficiary of his modest estate. The appellant Jonathan Goodzeck is his son, and wants to displace his mother as executrix. The trial judge assumed that the appellant was motivated by a sincere concern about his mother's ability to manage her affairs, and about possible influence of his sisters, but found that the appellant had no standing to seek a replacement of the executrix: *Estate of Goodzeck*, 2018 NWTSC 68. As a result of the finding on standing, the Court did not have to deal with the cross application for summary dismissal of the claim.

[2] The Notice of Appeal from that decision was filed about five days late, and the respondent executrix has now brought an application to strike out the appeal, or alternatively for security for costs.

[3] The lateness of the appeal is explained by a miscalculation of time over the Christmas holidays. The judgment under appeal was served on November 26, 2018, meaning that the 30 day appeal period expired on December 26, 2018. The Registry was closed from December 21, 2018 to January 1, 2019, bringing into play s. 22 of the *Interpretation Act*, SNWT 2017, c. 19:

22(10) When the time limit for doing an act expires or falls on a holiday, the time limit is extended to the next day that is not a holiday.

(11) When the time limit for registering, filing or submitting a document or doing any other act in an office expires or falls on a day the office is not open during its regular operating hours, the time limit is extended to include the next day the office is open.

Under these provisions the appellant had until the "next day" to file and serve the notice of appeal. That next day the Registry was open was Wednesday, January 2, 2019. The appeal was filed five days late, on January 7, 2019.

[4] The appellant assumed that the *Interpretation Act* "suspended" the running of time while the Registry was closed. On this interpretation, the 11 days that the Registry was closed over Christmas would be added to the 30 days allowed for filing and service of the Notice of Appeal, giving the appellant until January 7, 2019 to file and serve. The *Act*, however, is clear. It does not "suspend" any running of time, but rather provides that the time continues to run, and merely gives until the "next day that the office is open" to file and serve. The appeal was accordingly filed out of time.

[5] The fact that the Registry accepted the Notice of Appeal for filing is not conclusive, or even particularly important. The Registrar will not always be sure when the judgment was served, and

would not be aware of any potential agreements between the parties about filing. Further, an appellant may knowingly file an appeal late, with the intention of immediately applying for an extension of the time. The role of the Registry is to file tendered documents. The Registry should always err on the side of accepting a document, leaving it up to the Court or the parties to deal with any potential or contested irregularities later.

[6] There was no formal cross-application to extend the time to appeal, but the issue was argued. The test for permitting late appeals is generally taken from the decision in *Cairns v Cairns*, [1931] 4 DLR 819 at pp. 826-7, [1931] 3 WWR 335 (Alta SCAD), which lists a number of relevant factors:

- (a) a *bona fide* intention to appeal held while the right to appeal existed;
- (b) an explanation for the failure to appeal in time that serves to excuse or justify the lateness;
- (c) an absence of serious prejudice such that it would not be unjust to disturb the judgment;
- (d) the applicant must not have taken the benefits of the judgment under appeal;  
and
- (e) there must be a reasonably arguable appeal.

Absent prejudice, the test can often be met for appeals that are only late by a few days: *Paquin v Lucki (Guardians ad litem of)*, 2017 ABCA 79 at para. 4.

[7] In this case, however, the appellant has failed to identify any basis on which he might have a reasonable chance of success. The appellant may have a viable argument that he has standing under R. 74(b) or (f) of the *Estate Administration Rules*, NWT Reg 123-2016. However, the appellant's mother is both the named executrix in the will, and the sole beneficiary. In his affidavit, the appellant acknowledges that his father did not want to replace his mother as the executrix for fear of hurting her feelings. The appellant is seeking to contradict the clear words of the will with hearsay oral expressions of intention by the deceased. No arguable legal basis has been shown by which the appellant can take over the management of his mother's affairs in this way. The estate has been probated, the debts paid, and the net estate distributed to the beneficiary; the issue of administration is moot.

[8] There is also insufficient merit to the appeal as to costs. The appellant's counsel had a fair opportunity to address costs at the time that the decision was rendered. Costs are highly discretionary, and the chambers judge merely applied the default presumption that the successful party is entitled to costs. Even if the appellant had standing, there was no merit to the underlying

application to replace the executrix. Any issue about the way costs were taxed are to be taken before the Supreme Court: R. 693.

[9] The appellant's ultimate application to replace the executrix is hopeless, and the only effect of this litigation will be to run up costs. The law on standing in estate litigation can be clarified in a case where the issue is not moot. The executrix's application to strike the appeal due to its late filing is granted. Alternatively, if the appeal had been allowed to proceed, it would only have been upon the posting of significant security for costs.

[10] The appeal is struck. The executrix is entitled to costs of this application fixed at \$2,000 for fees and \$200 for disbursements, plus GST. The formal offer to abandon the proceedings without costs was not a realistic invitation to resolution, and does not justify an award of solicitor and client costs. Disbursements for counsel to travel to Yellowknife are not warranted. Both counsel have offices in Yellowknife, and appearances could have been made by video.

Application heard on April 16, 2019

Reasons filed at Yellowknife, NWT  
this        day of April, 2019

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Slatter J.A.

**Appearances:**

P. Tomic  
for the Applicant

D. McNiven  
for the Respondent

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REASONS FOR DECISION

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