

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Ocean v. Economical Mutual Insurance Company,
2008 NSSC 282

Date: 20080930

Docket: SH190673

Registry: Halifax

Between

MAY OCEAN

PLAINTIFF

-and-

**THE ECONOMICAL MUTUAL
INSURANCE COMPANY, a body
corporate, registered to carry on business
in the Province of Nova Scotia and
RAYMOND PATRICK SULLIVAN of
Lantz, in the Province of Nova Scotia.**

DEFENDANTS

Oral Decision: September 17th, 2008

Judge: Deborah K. Smith, Associate Chief Justice

Heard: September 17th, in Halifax, Nova Scotia

Written Decision: September 30th, 2008

Counsel: May Ocean, Self-represented Plaintiff
C. Patricia Mitchell, for the Defendant, Economical Mutual
Insurance Company
Byrna D. Fraser, for the Defendant, Raymond Patrick Sullivan

By the Court:

[1] I have before me an application for an Order requiring the plaintiff, May Ocean, to be assessed by an independent medical expert to determine her competency to represent herself in this proceeding.

[2] I will provide a brief overview of the circumstances surrounding this application.

[3] According to the pleadings on file, on December 13th, 2000, the Plaintiff was involved in a motor vehicle accident with the defendant, Raymond Sullivan. It is alleged that Mr. Sullivan was an uninsured motorist at the time of the collision. On December 5th, 2002, Ms. Ocean began an action against Mr. Sullivan as well as the Economical Mutual Insurance Company. At that time, the action brought against Economical was for what is commonly known as a Section D claim.

[4] At the time that the Originating Notice (Action) and Statement of Claim was originally filed in December of 2002, Ms. Ocean was represented by counsel. In August of 2006 an Order was issued by Robertson, J., allowing Ms. Ocean's then

counsel to withdraw as solicitor of record. Since that time, Ms. Ocean has been representing herself in this proceeding.

[5] Ms. Ocean suggests that as the result of the collision she has suffered a number of injuries including Post Traumatic Stress Disorder. This disorder, she says, has significantly changed her life. She has indicated to the court that at the time of trial she will be seeking damages in excess of \$500,000.00. In other words – she is advancing a significant claim.

[6] For quite some time, Ms. Ocean has been focussed on the activities and conduct of her own insurer – Economical. She has alleged, for example, that Economical has made or arranged for “veiled threats” to be made against both she and her children. In documentation filed with the court in August of 2006 she writes of insurance companies and government organizations forming a “conglomeration of joint activities that serve to uphold a corrupt system and allowing it to go unchecked.” She writes of a “wider conspiracy”, “abusive tactics” and other “atrocities”.

[7] In June of 2008, Ms. Ocean applied to amend her Originating Notice (Action) and Statement of Claim originally filed in 2002. Economical opposed that application, and, in the event the application was granted, applied to bifurcate any new causes of action raised by the amendment. During the course of the hearing of those applications, Ms. Ocean indicated that she did not feel that she is mentally capable or competent to represent herself in this proceeding. As a result of that statement (which, I should indicate, she subsequently retracted) I requested that she obtain a Certificate of Competency from her family doctor. On August 11th, 2008, Ms. Ocean filed a sheet from a prescription pad signed by her family doctor on which was written “the above is competent to defend herself in court”. That is the extent of the family doctor’s opinion.

[8] A pretrial conference and chambers application were scheduled to take place on September 3rd, 2008. On September 2nd, 2008 counsel for Economical wrote to the court indicating that Economical has significant concerns about Ms. Ocean’s competency and questioned whether the September 3rd, 2008 application or any other matter, including the trial, should proceed until such time as an appropriate professional could certify that Ms. Ocean is competent and is able to appreciate the court process. Reference was made to various documents that had been filed with

the court by Ms. Ocean in recent months. I do not intend to read extensively from these materials but will note that Ms. Ocean has filed a number of documents with the court some of which appear to be unrelated to the matters at issue in the proceeding and some of which could be considered by some to be “unique”. For example, Ms. Ocean has written to the court advancing a hypothesis that “there exists a parallel world” and that “Homo Sapien Sapiens are in fact highly evolved, perfectly conjoined twins”. In addition, she suggests that she has discovered what she refers to as “the Root Language of Mankind”. She suggests that there is a conspiracy within the insurance system and implicates a number of individuals in that alleged conspiracy including her former lawyer, the defendant Economical, Economical’s legal counsel, Dr. Edwin Rosenberg (a psychiatrist who has seen Ms. Ocean at the request of Economical) and others. The content of the documents that Ms. Ocean has filed with the court is said to have escalated Economical’s concern about Ms. Ocean’s competency.

[9] On September 3rd, 2008, I elected to adjourn the application that was scheduled to be dealt with on that date and I set this date for the hearing of this application.

[10] The trial of this matter is now scheduled to commence on September 26th, 2008. In light of the impending trial date, I think that it is important that I give an oral decision this evening reserving the right to edit and add to my reasons in the event that a written decision is required.

[11] Economical has applied pursuant to the inherent jurisdiction of the court and Civil Procedure Rules 22 and 23 for an Order requiring that Ms. Ocean be assessed by an independent medical expert as to her competency to continue to represent herself in this proceeding. In support of this application they have filed an affidavit of Dr. Edwin M. Rosenberg. Dr. Rosenberg saw the plaintiff for the purpose of a medical examination at the request of Economical on January 25th, 2005. In February of 2005, Dr. Rosenberg prepared a report in which he diagnosed Ms. Ocean with a delusional disorder, persecutory type. In a further report dated January 18th, 2007, Dr. Rosenberg confirmed this diagnosis. According to Dr. Rosenberg's affidavit sworn to on September 10th, 2008, earlier this month he received and reviewed further documentation from Economical's counsel including the materials that Ms. Ocean has filed with the court in recent months. At paragraph 15 of Dr. Rosenberg's affidavit he states:

15. I am unable to make any final conclusion or diagnosis regarding Ms. Ocean's competency to represent herself in this litigation at this time. A personal assessment of Ms. Ocean would be required in order to reach a conclusion on competency. However, having reviewed the material submitted by Ms. Ocean since my January 2007 report, it is my opinion that Ms. Ocean has most probably developed a serious and dramatic escalation of the original delusional disorder which now interferes with her ability to separate reality from fiction and which certainly impacts significantly on her mental competency and ability to represent herself at trial.

[12] Further, at paragraph 19 of this affidavit, Dr. Rosenberg states:

19. In my opinion, there is a blurring of fantasy and reality interfering with her ability to relate to the world and which would necessarily interfere with her ability to represent herself in court, beyond the normal lack of legal skills possessed of a self-represented litigant and in keeping with mental incompetence.

[13] Finally, at paragraph 24 of his affidavit Dr. Rosenberg states:

24. Based on a review of the most recent written submissions by Ms. Ocean, it is my opinion that she is not able to understand the issues and purpose of the trial, comprehend the nature of the evidence she must present to support her claim, or give evidence in a cogent fashion at the September 26, 2008 trial.

[14] During his testimony this afternoon, Dr. Rosenberg confirmed that he is not suggesting that Ms. Ocean is incompetent. However, he feels that it would be

appropriate for Ms. Ocean to be assessed by an independent psychiatrist who is experienced in dealing with issues of competency.

[15] Ms. Ocean, understandably, disputes Dr. Rosenberg's suggestion that she is delusional and, in her written submissions to the court, points out that if her beliefs are in fact correct – then she would not fit the definition of “delusional”. Ms. Ocean notes that she has a number of support people who will help her during the trial and submits that the defendants have not submitted sufficient evidence for me to order an assessment.

[16] I have considered the various materials and authorities filed, as well as the evidence and representations made in court today. I have concluded that it is appropriate to grant an Order requiring Ms. Ocean to be assessed by an independent expert to determine her competency to represent herself in this proceeding.

[17] As I indicated previously, Ms. Ocean is advancing a significant claim in excess of \$500,000.00. She is a self-represented litigant and suggests that she suffers from Post Traumatic Stress Disorder. She has been diagnosed by Dr.

Rosenberg as being delusional. While her family doctor has written a brief note indicating that she is “competent to defend herself in court” I am not satisfied that that brief note adequately deals with Ms. Ocean’s situation.

[18] I have an obligation as a trial judge to help to insure that the parties to this action receive a fair trial. In order to insure that the plaintiff receives a fair trial, I must be satisfied that she is competent to represent herself in this proceeding. The evidence that has been presented satisfies me that it is appropriate to order a psychiatric examination of Ms. Ocean to determine this issue.

[19] I want to make it clear that I am not in anyway finding that Ms. Ocean is incompetent. I am satisfied, however, that it is appropriate for me to grant an Order requiring an assessment to insure that Ms. Ocean receives a fair trial.

[20] I am granting this Order pursuant to Civil Procedure Rule 23. I am satisfied that this Rule allows for such an Order. As indicated by Justice Goodfellow in *Noseworthy v. Murphy*, [1999] N.S.J. No. 79 our court has repeatedly indicated that our Rules are to receive a liberal interpretation in order to meet the objects of the Rules. The Civil Procedure Rules are our tools and not our masters. I am

satisfied that it is appropriate to use Civil Procedure Rule 23 in the circumstances of this case. If I am in error in this regard, I am fully satisfied that it is appropriate to use the Court's inherent jurisdiction to issue such an Order. In light of my finding that I can make this Order under Rule 23, I am not going to make any finding on whether I could have used Civil Procedure Rule 22.

[21] I will be reserving on the issue of who will conduct the assessment. I think it is important for Ms. Ocean to be comfortable with the person who conducts the assessment and I am, therefore, going to give her an opportunity to provide the Court with a name or names of psychiatrists that she would find acceptable. She is not under any obligation to provide a name or names but she is free to do so if she wishes. Any names she puts forward should be the names of licensed psychiatrists who have experience in determining the competency of individuals and who are willing to take on the task.

[22] I am also going to reserve on the issue of costs as well as the form of the Order. I think that it is important that I spell out in the Order what it is I want the expert to determine.

[23] The trial which was scheduled to commence on Friday, September 26th, 2008 is hereby adjourned. However, we will reconvene at 9:30 a.m. that day to discuss how much time Ms. Ocean will have to provide any names of psychiatrists she may wish to put forward, to discuss the questions that will be asked of the assessor and to discuss the form of the Order as well as the issue of costs.

Deborah K. Smith
Associate Chief Justice