NOVA SCOTIA COURT OF APPEAL

Citation: Combined Insurance Company v. Hart, 2003 NSCA 134

Date: 20031205
Docket: CA 201300
Registry: Halifax

Between:

Combined Insurance Company of America, with Head Office at 980 Yonge Street, Toronto, in the Province of Ontario

Appellant

v.

Darcy Hart, as Guardian *ad litem*, on behalf of Amanda Hart, and Darcy Hart, for herself

Respondents

Editorial Notice

Address removed from this electronic version of the judgment.

Judges:	Bateman, Cromwell and Fichaud, JJ.A.
Appeal Heard:	December 5, 2003, in Halifax, Nova Scotia
Written Judgment:	December 9, 2003
Held:	Appeal allowed per oral reasons for judgment of Bateman, J.A.; Cromwell and Fichaud, JJ.A. concurring.
Counsel:	J. David MacDonald, for the appellant Gerald A. MacDonald, for the respondents

Reasons for judgment:

[1] This is an appeal by Combined Insurance Company of America from an order and decision of Justice Douglas L. MacLellan of the Supreme Court of Nova Scotia, in Chambers. The application before Justice MacLellan, made pursuant to **Civil Procedure Rule** 25, was for interpretation of the wording of a sickness hospital policy issued by the appellant.

[2] The respondent to this appeal, is the insured, Amanda Hart, who is fifteen years old and is represented by her mother, Darcy Hart, her Guardian *ad litem*. Amanda lives with and is cared for by her parents. She has Aicardi Syndrome, an extremely rare congenital disease characterized by partial or complete absence of the corpus callosum part of the brain. This results in seizures, mental retardation, eye problems and other serious physical problems. Amanda also has a sacroccygeal teratoma, a congenital tumor of the sacrum or coccyx. She requires a high level of care.

[3] Amanda had commenced an action in Supreme Court demanding payment under the terms of the sickness insurance policy issued by Combined Insurance. For a number of years Amanda has been regularly admitted to hospital for four days per month for respite care. The policy provides for a *per diem* payment of a specified amount for each day that Amanda is confined to a hospital and for a defined number of convalescent days thereafter. The parties could not agree whether the hospitalization for respite care qualified, under the policy, for payment. They agreed that the dispute could be resolved through an application pursuant to **Civil Procedure Rule** 25.

[4] The agreed statement of facts was not well developed and the issue for decision was not stated with much clarity. The Chambers judge rightly expressed his concern in that regard. In light of the issues and submissions raised in this Court, it is apparent that the parties do not agree on the relevant facts essential to resolving the dispute which they submitted to the Chambers judge under **Rule** 25. Absent such agreement, this is not a proper case for a **Rule** 25 application. The appeal is allowed on that basis and without prejudice to the position of the parties on the merits or to their making a further **Rule** 25 application on a proper agreed statement of facts and properly formulated questions.

[5] There shall be no costs on the appeal. However, the costs order made by the Chambers judge shall stand.

Bateman, J.A.

Concurred in:
Cromwell, J.A.
Fichaud, J.A.