

NOVA SCOTIA COURT OF APPEAL

Citation: LeFort Estate v. Mosher, 2010 NSCA 48

Date: 20100602

Docket: CA 311486

Registry: Halifax

Between:

Estate of the Late Joseph Gerald LeFort

Appellant

v.

Susan Louise Mosher and Ferguson Brown
and Laurie MacIsaac

Respondents

Judges: Bateman, Saunders and Farrar, JJ.A.

Appeal Heard: May 27, 2010, in Halifax, Nova Scotia, In Chambers

Held: Appeal dismissed per reasons for judgment of Saunders, J.A.;
Bateman and Farrar, JJ.A. concurring.

Counsel: Philip M. Chapman, for the appellant
David Ritchey, Q.C. for the respondent Susan Louise Mosher
Wendy Johnston, Q.C. and Kiersten Amos, for the respondent
Ferguson Brown

Reasons for judgment:

[1] This is an appeal from the decision of Nova Scotia Supreme Court Chief Justice Joseph P. Kennedy reported at 2009 NSSC 129 in which he determined liability for a motor vehicle accident which occurred on Highway 102 near the Hammonds Plains Road exit on September 19, 2000.

[2] The circumstances may be described summarily. The plaintiff Susan Mosher was a passenger in a truck owned by Laurie MacIsaac and driven by Mosher's boyfriend, Ferguson Brown. The defendant Gerry LeFort was driving his van. Both vehicles were proceeding in a northerly direction. At the time of the accident the highway was undergoing construction. Northbound traffic was reduced to one lane to accommodate bridge repair work. LeFort's van was following behind Brown's truck, headed in the same direction. LeFort was in the left lane, Brown in the right. Brown slowed his truck and merged over into the left lane as temporary construction signs with flashing lights directed. LeFort's van struck Brown's truck in the left rear quarter panel, causing the truck to be spun around and hit a second time.

[3] Mosher sued for her injuries. LeFort joined Brown and MacIsaac as third parties. LeFort died a year later from causes not related to the accident. He was not questioned at discovery before his death. The lawsuit continued against his Estate. The trial proceeded on liability only. The parties agreed at the commencement of trial that no liability would be found against the third party truck owner, Laurie MacIsaac. Accordingly, the only issue at trial became a contest over liability between the insurers of the van driven by LeFort, and the insurers of the truck driven by Brown.

[4] Chief Justice Kennedy found LeFort solely responsible. LeFort's Estate appeals. The appellant raises two issues. First, the appellant says the trial judge erred in law by admitting and relying upon a document entitled "Accident Benefits Information Capture" which purported to contain an account of the accident LeFort gave the claims examiner of his own motor vehicle insurer and which the respondents say served to confirm their version of events that LeFort admitted responsibility for the mishap. Second, the appellant says the trial judge's decision is contrary to the weight of the law and evidence.

[5] After carefully assessing the record and counsels' submissions we are unanimously of the view that the appeal ought to be dismissed.

[6] Chief Justice Kennedy's strong findings of fact clearly explain his reasoning in deciding liability. He accepted the testimony of both Brown and Mosher as to how the collision took place. He found as a fact that there was no evidence to contradict Brown's version of events. The trial judge held that the stretch of highway where the accident occurred had been effectively reduced to a construction zone. Heeding the warning signs, Brown reduced his speed and gradually merged into the left lane, as required. Kennedy, C.J. instructed himself on the law and the heavy onus of care placed upon a driver changing lanes. He was satisfied that Brown acted prudently, engaged his 4-way flashers, slowly moved to the left as required, and began his merge only when the left lane was clear to do so. Accordingly, the judge was satisfied that Brown met the required standard of care and was in no way contributorily negligent. Ultimately, after careful consideration, Chief Justice Kennedy was persuaded that sole responsibility for the collision lay with LeFort for driving too fast and not paying proper attention in circumstances that demanded heightened care.

[7] No part of this decision should be seen as endorsing the trial judge's consideration of the "Accident Benefits Information Capture" document. In disposing of this appeal we make no comment upon the purported content of the document, its attribution, authorship, authenticity, relevance or admissibility, or how it came to be put before the judge as part of the trial. We are unanimously of the view that the document was immaterial to Chief Justice Kennedy's findings of liability, all of which were amply supported by the direct evidence accepted by the judge in his reasons for judgment.

[8] As to the second issue raised by the appellant, we see this, respectfully, as nothing more than an expression of dissatisfaction with the trial judge's findings and an invitation for us to retry the case. That is not our function. The appellant has failed to demonstrate any error of law, or any palpable and overriding error of fact, which would cause us to intervene.

[9] Accordingly, the appeal is dismissed with costs of \$1,500.00 inclusive of disbursements, payable to each of the respondent Mosher, and to (collectively) the respondents Brown and MacIsaac.

Saunders, J.A.

Concurred in:

Bateman, J.A.

Farrar, J.A.