

NOVA SCOTIA COURT OF APPEAL

Citation: *Haggart v. Nova Scotia Public Service Long Term Disability Trust Fund*, 2003 NSCA132

Date: 20031205

Docket: CA 194437

Registry: Halifax

Between:

William Haggart

Appellant

v.

The Nova Scotia Public Service
Long Term Disability Plan Trust Fund

Respondent

Judges: Chipman, Saunders & Fichaud, J.J.A.

Appeal Heard: December 2, in Halifax, Nova Scotia

Held: Appeal dismissed with costs of 40% of trial costs, plus disbursements, payable to the respondent, as per reasons for judgment of Saunders, J.A.; Chipman & Fichaud, J.J.A. concurring.

Counsel: Jamie MacGillivray, for the appellant
Colin D. Bryson, for the respondent

Reasons for judgment:

[1] In light of our reasons we need not consider the respondent's request for leave to adduce fresh evidence.

[2] At trial the appellant sued his long term disability insurer claiming breach of contract for terminating his benefits after he refused to submit to a psychological assessment as recommended by the insurer. Mr. Haggart also accused the respondent of bad faith, saying that their dealings with him were designed to intimidate and threaten with the purpose of humiliating him in the hope that he would refuse to cooperate, thus giving the company an "excuse" to terminate his benefits. He sought aggravated and punitive damages against the insurer.

[3] The respondent argued that in seeking to rehabilitate the appellant and train him to resume gainful employment, their vocational assessment raised the possibility that the appellant suffered from a depression and a memory deficit. Accordingly the insurer recommended that the appellant be seen by a psychologist for assessment and possible treatment of depression and by a neuro-psychologist for assessment of possible memory deficit, both referrals for the purpose of developing a vocational rehabilitation plan. By refusing to submit to these assessments the insurer claimed that the appellant had breached the terms of his insurance policy thereby entitling the company to discontinue his long term disability benefits.

[4] The case was heard in a three day trial before Nova Scotia Supreme Court Justice Douglas L. MacLellan. In a written decision dated January 21, 2003, MacLellan, J. correctly and succinctly described the central issue as:

. . . whether the defendant is entitled based on the terms of the insurance policy to terminate the plaintiff's long term benefits because he has refused to attend for psychological assessment as recommended . . .

[5] After a careful assessment of the material evidence and a well-articulated and reasoned analysis, Justice MacLellan dismissed the claim. We see no error of law in his interpretation of the terms of the contract and guidelines, or its

application to the evidence presented. He made strong findings of fact, well-founded on the evidentiary record, all supporting the defence position taken by the respondent. He said:

[33] I conclude that the decision to terminate benefits was clearly communicated to the plaintiff and he was given every opportunity to comply with the request prior to actual termination. He sought legal advice (sic) on the issue before his benefits were terminated.

[34] I also find that the defendant acted honestly and fairly in requesting the psychological assessment. That recommendation was based on Chris Hartley's report and was, I believe, well-founded. It is clear from the evidence presented before me that the issue about the plaintiff's mental state was relevant to any decision to attempt to retrain him. Chris Hartley's recommendation is supported by . . . a psychologist, who reviewed Mr. Haggart's test results and agreed . . .

[42] I conclude also that the decision to terminate the plaintiff's benefits was done fairly and within the terms of the contract of insurance.

. . .

[45] Based on the evidence before me, I conclude that the defendant was within its right to ask for a psychological assessment of the plaintiff and that it acted appropriately in dealing with the plaintiff. I find no fault with how his file was handled.

. . .

[47] The defendant here has not made a decision on whether the plaintiff should be involved in re-training. It was simply requesting an assessment to deal with some perceived psychological problems detected by Mr. Hartley. It could well be that the defendant would have decided that re-training was not a suitable option. The plaintiff did not give the defendant the opportunity to make that decision.

[6] We see no error in these and other strong findings of fact made by the trial judge that would warrant our intervention.

[7] The appeal is dismissed with costs of 40% of trial costs, plus disbursements, payable to the respondent.

Saunders, J.A.

Concurred in:

Chipman, J.A.

Fichaud, J.A.