

IN THE SUPREME COURT OF NOVA SCOTIA

Citation: Young v. Ward, 2008 NSSC 151

Date: 20080523
Docket: SH. No. 233498
Registry: Halifax

Between:

Lindsay Alexandra Young,
by her litigation guardian, Richard Young

Plaintiff

-and-

Erin Ward and William F. Ward,
Ann Lorraine Ward and Joseph E. Meery

Defendants

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Judge: The Honourable Justice Robert W. Wright

Heard: April 30, 2008 in Halifax, Nova Scotia

Written

Decision: May 23, 2008

Subject: Civil Procedure Rule 13.01(a) - whether co-defendant entitled to summary judgment in motor vehicle accident case.

Summary: The defendant Ward, with the plaintiff as her passenger, was travelling easterly on the Sydney - Glace Bay highway when her vehicle hit a chunk of ice, causing it to slide out of control across the centre line and into the path of an oncoming vehicle driven by the defendant Meery. The plaintiff suffered severe personal injuries and is permanently disabled from the accident. After the completion of discovery examinations, the defendant Meery made application for summary judgment, contending that there is no arguable issue to be tried with respect to the claim against him. The plaintiff contends that there is a genuine issue of material fact to be left for determination at trial, namely, whether the defendant Meery ought to

have been able to take evasive action to have either avoided or lessened the impact, had he been keeping a proper lookout.

Issue: Is the defendant Meery entitled to an order for summary judgment, applying the well-established two part test most recently affirmed by the Nova Scotia Court of Appeal in *Huntley et al. v. Hogeterp* (2007) NSCA 75?

Result: After reviewing the evidentiary record, including transcripts of the discovery evidence of the two drivers, as well as that of an independent eyewitness, the court found that the defendant Meery had shown that there is no genuine issue of material fact to be left for determination at trial. The court also found, based on the facts that are not in dispute, that the plaintiff could not establish that her claim has a real chance of success as against Meery. His application for summary judgment was therefore granted.

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DECISION. QUOTES MUST BE FROM THE DECISION, NOT THE COVER
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