

SUPREME COURT OF NOVA SCOTIA

Citation: Wareham v. Ross, 2010 NSSC 141

Date: 20100407

Docket: Hfx. No. 237973

Registry: Halifax

Between:

Isabel M. Wareham

Plaintiff

v.

Joseph W. Ross

Defendant

DECISION

Judge: The Honourable Justice Suzanne M. Hood

Heard: April 7, 2010 in Halifax, Nova Scotia

Written Decision: April 15, 2010 (*written release of Oral decision of April 7, 2010*)

Counsel: Brian Hebert, for the plaintiff
Joey Palov, for the defendant

By the Court:

[1] A motion is made by the defendant for an advance ruling on a physician's narrative pursuant to *Rule 55.15*. Physician's narratives are discussed in *Rule 55.14* and in *55.14(6)*. I must be satisfied when I make a determination under *Rule 55.15* that the party offering the evidence has provided to the other party, or the other party has, sufficient information about the facts upon which that narrative report is based so that they can prepare for cross-examination and to deal with it at trial. In my view, because this is a report that came originally from the plaintiffs, those conditions are met. As Mr. Palov has said, Dr. Matheson received this report and Dr. Matheson's report post-dates Dr. Amirault's report.

[2] Mr. Palov says that, without a report such as this, the jury hearing this case will not have the complete picture. Mr. Hebert says that could be done by the defendant getting his own expert and complying with the other part of *Rule 55* with respect to an expert opinion (*Rule 55.04*). In my view, the very reason why *Rule 55* is as it is now is to be consistent with the objective of all the *Rules* which is for the just, expedient and inexpensive determination of proceedings. To require, where there is a report such as this already in existence, that the defendant get another report is, in my view, contrary to that. Furthermore, the reason behind the

changes to the *Rule* with respect to experts was so the court would have objective opinions and not opinions that were basically medical/legal opinions and which resulted in the “war of the experts” at the trial. Therefore, the other parts of *Rule 55* are designed to give the court what expert evidence was always supposed to be, which is provide the court/jury with information it otherwise would not have.

[3] As the court said in *Khan v. College of Physicians and Surgeons of Ontario*, [1992] O.J. No. 1725, quoting from *R. v. Béland*, [1987] 2 S.C.R. at para. 96:

The function of the expert witness is to provide for the jury or other trier of fact an expert’s opinion as to the significance of, or the inferences which may be drawn from, proved facts in a field in which the expert witness possesses special knowledge and experience going beyond that of the trier of fact.

[4] To me, this report does do that. It is an objective report. It was not provided in the context of litigation and it is, in my view, the sort of report that is consistent with both the intent of the overall *Rules* and also with *Rule 55*. Yes, it is a very brief narrative report but, it seems to me, it is consistent with what is intended by *Rule 55.14* dealing with narrative reports. Dr. Amirault ends by giving an opinion in that report and that is contemplated, in my view, by *Rule 55.14*. There are certain limits on what can be done with opinion. *Rule 55.14 (5)* prevents a party

who calls that treating physician from having that treating physician give any evidence which is not summarized in the narrative report. The limits of the report and the use that the defendants can make of it are set out in the *Rule*. As Mr. Palov has pointed out, on the other hand, the plaintiff has the ability to cross-examine this doctor and has all the information that I have already referred to, which is required under *Rule 55.14(6)*. Therefore, in my view, although this is a little bit of an unusual situation in terms of what was, I believe, contemplated by the *Rule*, this is something which is within the spirit and intent of the *Rule* and is, in fact, consistent with the literal wording of the *Rule*. So the report can be presented as a narrative report.

Hood, J.