SUPREME COURT OF NOVA SCOTIA
Citation: Mosher v. Lefort Estate, 2013 NSSC 139

Date: 20130219
Docket: Hfx No. 186382
Registry: Halifax

Between:

Susan Louise Mosher — Plaintiff

and

The Estate of the Late Joseph Gerard Lefort — Defendant

Decision on Adjournment of Trial Dates

Judge:	The Honourable Justice Gerald R. P. Moir
Heard:	February 19, 2013
Oral Decision Transcribed and Released:	May 2, 2013
Counsel:	David W. Richey, for plaintiff Philip M. Chapman and Christine Nault, for defendant

Moir J. (Orally):

[1] I have a four week trial slated to start on March 3, seven business days from now.

[2] I had set a deadline for draft jury questions at the pre-trial conference, which was held a month ago. Neither party met the deadline.

[3] The deadline for briefs has come and gone. There is no evidence the parties are developing a common documents book. They are in violation of Rules 51.04 and 51.10. The defendant particularly was to take the initiative on this according to Justice Wright's memo following the date assignment conference. I set a deadline for the plaintiff to produce a book of all experts' reports or narratives she intends to introduce and I directed the defendant to give notice, as soon as possible, of its objections. The experts' book has not been delivered and we are in the dark as to the defendant's position.

[4] Those circumstances alone would compel me to cancel the trial on my own motion, rather than to inflict upon a jury an ill-prepared trial. However, there is another serious reason to cancel the trial dates.

[5] At the date assignment conference, the parties told Justice Wright that there had been full compliance with the disclosure requirements.

[6] At the trial readiness conference, the parties told Justice McDougall that all pre-trial procedures had been completed. Allowing some leniency, Justice McDougall noted that the defendant may have to make a motion so its expert can have access to certain x-rays.

[7] The trial readiness conference is a necessary mechanism for our new system under which trial dates are assigned before the parties are ready. Most adhere to the requirement that all pre-trial procedures be complete before the conference. Otherwise, a judge must cancel the trail dates unless justice requires otherwise. Failure to enforce the requirements will result in an overall failure of the new system, which is generally regarded as an improvement.

[8] The defendant now makes a motion that goes far beyond the x-rays. She moves, I am sorry, it moves for an order compelling production of the following undertakings that are still outstanding from the plaintiff's September 2011 discovery:

> 1. contact information of the person that placed the $10,000 order;
>
> 2. updated prescription printout, October 5, 2006 to present;
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> 3. verification of the plaintiff's weight;
>
> 4. the plaintiff's divorce file; and
>
> 5. permission from the plaintiff allowing Dr. Thomas Loane to review x-rays on the Capital Health computer system.

[9] In addition to the foregoing, the defendant is seeking production of the following documents:

> 6. updated records from the plaintiff's family physician;
>
> 7. updated records of the plaintiff's files from any other treating providers, including ...

and then follows a list of eight people.

> 8. an updated MSI printout, December 24, 2007 to present;
>
> 9. copies of all tax returns from 2010 to present.

[10] In my view, those are productions that ought to have been secured before the finish date.

[11] Had Justice McDougall been told of the enormity of the productions the defendant alleges to be outstanding, he would have been duty bound to cancel the trial dates.

[12] At the pre-trial conference, the defendant advised me that there were outstanding undertakings. I wrote:

> Mr. Chapman thinks he may need to move for an order requiring undertakings to be fulfilled. Considering the outcome of the trial readiness conference, I would expect the parties to resolve this. If not, arrangements can be made with my office under Rule 29 - Motions to Presiding Judge.

I had no idea of the alleged enormity.

[13] In addition to the productions, the defendant now professes to need discovery of three individuals.

[14] The parties were not ready when the trial readiness conference was held. They are not ready now. I have no confidence they will be ready on March 3rd. In all likelihood, we would adjourn and inconvenience the panel, or go ahead and inflict an ill-prepared case on the jury.

[15] On my own motion, I cancel the trial dates. I know that this is a hardship for the parties, but the parties bear the responsibility as well.

[16] In view of the hardship, I am prepared to do whatever I can to assist in getting this back on track. Obviously, I will have some availability through March. I have been told by scheduling that they have some things they can make use of me for. But, there should be some dates available in March.

[17] What I propose to do is have you contact Ms. Mollon, get a date in March we can get back together. I will deal with the motions to the extent that I feel it is appropriate to deal with them, not as trial judge, but just as a chambers judge.

[18] And I will see, by that time, Mr. Richey, if you have gotten anywhere with all of the work that we have to do. In view of the fact that you are not going to be

doing a trial that you were scheduled to do, I expect you to put that brochure together. I expect that you can give Mr. Chapman a chapter and verse on your concerns about production and chapter and verse on how you are going to make whatever outstanding productions there are happen.

[19] So, if we could get back together sometime in mid-March, say, I would expect for those things to have been delivered by Mr. Richey and I would expect for Mr. Chapman to be able to adopt a position on some experts and that sort of thing.

[20] If we can get over the issues that face the parties now, then I will be satisfied to try to get expedited trial dates for you.

[21] I have one recommendation, Mr. Richey. This is probably not a case that should be tried by a jury, in my view. I probably would have gone ahead with it if this was judge alone. I have inflicted upon myself ill-prepared cases before just to get through them. But, I will not do that to a jury. So, it is not my choice to make. It is your client's choice to make in consultation with you. But, we may be able to get this back together quicker if your client was content to have it tried by a

(inaudible). That assumes as well that the defendant's original position, which was judge alone, remains.

[22] Thank you, counsel. Please get ahold of Ms. Mollon.

J.