

Date: 20120613

Docket: 12/19

Citation: *Warford v. Weir's Construction Limited*, 2012 NLCA 37

**IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR
COURT OF APPEAL**

BETWEEN:

ROLAND WARFORD

APPELLANT

AND:

WEIR'S CONSTRUCTION LIMITED

FIRST RESPONDENT

AND:

BILL WEIR AND JAMES WEIR, JR.

SECOND RESPONDENTS

AND:

WORKPLACE HEALTH, SAFETY AND

COMPENSATION COMMISSION

INTENDED INTERVENOR

Coram: Barry J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (General) 1997 01T 357

Appeal Heard: June 13, 2012

Judgment Rendered: June 13, 2012 (Orally)

Memorandum of Disposition Filed: June 18, 2012

Counsel for the Appellant: Andrew Fitzgerald

Counsel for the First and Second Respondent: Jorge Segovia

Counsel for the Intended Intervenor: Krista Gillam

MEMORANDUM OF DISPOSITION

Barry J.A.:

[1] The Commission has applied for leave to intervene on the hearing of the appeal in this matter. The issue on appeal is whether the Commission has any jurisdiction under s. 46 of the *Workplace, Health, Safety and Compensation Act*, RSNL 1990, c. W-11, to adjudicate and determine whether an action brought by the Commission pursuant to statutory authority under s. 45(8) and (9) of the *Act* is prohibited.

[2] By s. 45(8) of the *Act*, the Commission is subrogated to the rights of the worker and also the Commission may maintain an action in the worker's name.

[3] Rule 7.05(1)(a) of the Rules of Court provides:

Any person may, with leave of the court, intervene in a proceeding and become a party thereto if

- (a) that person claims an interest in the subject matter of the proceeding, including any property seized or attached in the proceeding, whether as an incident to the relief claimed, enforcement of the order therein, or otherwise

...

[4] I conclude that the Commission has shown itself to have a sufficient interest in the subject matter of the proceedings to warrant granting it leave to intervene.

[5] The Commission commenced the present action after Warford accepted compensation from the Commission after he had been injured by a truck falling upon him as he worked on it. The Commission subsequently decided not to pursue the action (apparently because the employer of Warford, Weir's Construction, was not covered by liability insurance) but in accordance with its policy memorandum EN-08 consented to Warford selecting a lawyer to conduct the action on his behalf.

[6] The Respondents, after a number of judicial reviews and appeals, asked the Commission to make a determination under s. 46 of the *Act*. This provides:

Where an action in respect of an injury is brought against an employer or a worker by a worker or his or her dependent, the Commission has jurisdiction upon the application of a party to the action to adjudicate and determine whether the action is prohibited by this *Act*.

[7] The Commission concluded the action is prohibited. After further applications to quash and to stay, ultimately, on March 12, 2012, Hall J. granted a stay of proceedings and referred the matter back to the Commission for a determination as to whether the action is barred. Warford appealed and the Commission seeks to intervene.

[8] An “interest” within Rule 7.05(1)(a) extends to an interest in the outcome of an appeal when a legal issue to be determined on the appeal will be binding on future similar litigation to which the applicant will be a party; *Newfoundland (Minister. of Govt. Services and Lands) v. Drew* (2000), 191 Nfld. & P.E.I.R. 82 (NFTD), at paras. 13-17. Here the question at issue is whether the Commission has the right under s. 46 to determine whether an action commenced by the Commission itself (as opposed to a worker) is prohibited by the *Act*. The decision will be binding on future similar cases. Also, it is a public law issue warranting a less rigid approach in the exercise of the Court’s discretion to permit interventions: *Drew*, at paragraph 23. The Court and society will benefit by receiving different points of view on such an issue.

[9] The Commission has satisfied me that it has a sufficient interest in the proceedings; that it can make a useful contribution considering its particular expertise in administering the *Act*; and that its participation will not unduly lengthen or delay the proceedings nor impose an injustice or excessive burden on the parties. This meets the criteria set out by the cases: for example, *Forsey v. Eastern Regional Health Authority* (2007), 267 Nfld. & P.E.I.R. 19 (NLTD).

[10] I do not accept the argument of Warford’s solicitor that the reference in s. 45(9) of the *Act* to the Commission’s decision to commence an action being “final” prevents the Commission from subsequently arguing that the action is prohibited by the *Act*. Section 19(3) of the *Act* authorizes the Commission to reconsider and rescind a previous decision. I find nothing unfair to the parties in permitting the Commission to intervene and express its views on the appeal.

[11] The Commission has leave to intervene to make submissions regarding its jurisdiction to make statutory bar determinations, including comments by the Commission on the facts of the present case as they may relate to such jurisdiction.

L. D. Barry J.A.