



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

Citation: *Al-Haidari v. Memorial University of
Newfoundland*, 2022 NLCA 58

Date: October 28, 2022

Docket Number: 202201H0003

BETWEEN:

AMEENAH ZAID AL-HAIDARI

APPLICANT/APPELLANT

AND:

MEMORIAL UNIVERSITY OF NEWFOUNDLAND

RESPONDENT

Coram: Goodridge J.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador,
General Division 201801G4123

Application Heard: October 18, 2022

Memorandum of Disposition Filed: October 28, 2022

Reasons for Judgment by: Goodridge J.A.

Counsel for the Applicant/Appellant: Self-Represented

Counsel for the Respondent: No Appearance

Counsel for the Attorney General on the Application: Marc P. Lewis

Authorities Cited:

CASES CITED:

Hennessey v. Canada, 2017 NLCA 23, 1 CANLR 586; *British Columbia (Attorney General) v. Christie*, 2007 SCC 21, [2007] 1 SCR 873; *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46; *Healey v. Barrett*, 2019 NLCA 64.

STATUTES CONSIDERED:

Criminal Code, RSC 1985, c C-46, section 684; *Canadian Charter of Rights and Freedoms*, section 7.

RULES CONSIDERED:

Court of Appeal Rules, NLR 38/16, section 40.

MEMORANDUM OF DISPOSITION

Goodridge J.A.:

- [1] Ammenah Zaid Al-Haidari is asking this Court to appoint state-funded legal counsel to represent her on the appeal of two interlocutory procedural orders arising out of a civil claim.
- [2] The civil claim alleges various torts and seeks monetary damages against Memorial University. The claim is still at the pleadings stage; no trial date has been set.
- [3] The two interlocutory orders that are challenged by this appeal include:
- February 19, 2020 order striking parts of the pleadings relating to the claim; and
 - December 22, 2021 order declaring a document (purporting to be an amendment to the pleadings) a nullity.
- [4] In her affidavit supporting the application for state-funded legal counsel, Ms. Al-Haidari alleges:
- the appeal engages complex issues of civil trial procedure;
 - her ability to provide written and oral submissions is limited by her lack of legal training and her deteriorating vision;
 - legal aid under the provincial plan was sought but denied;

- she has been unsuccessful in her attempts to secure legal counsel who is willing to assist without compensation; and
- she will suffer financial hardship if required to pay for legal counsel because of her current unemployed status and reliance on social assistance.

Position of the Attorney General

[5] Pursuant to subsection 40(3) of the *Court of Appeal Rules*, NLR 38/16, a copy of an application for state-funded counsel shall be given to the Attorney General, and the Attorney General shall have the right to be heard and to participate in the application. The Attorney General exercised that right and opposed Ms. Al-Haidari's application. Counsel for the Attorney General argued that there is a publicly funded legal aid program that provides legal counsel to low income individuals in qualifying matters. Ms. Al-Haidari's civil matter did not qualify. He added that state-funded counsel for this type of matter outside that legal aid program, as Ms. Al-Haidari is seeking in this application, is not a right at common law; it can be ordered only where there is an independent constitutional or statutory grounding; and no such independent or statutory grounding exists here.

ANALYSIS

[6] There is no legal rule or general principle supporting court ordered appointment of state-funded counsel, at either trial or appeal, for an individual in pursuit of private litigation seeking damages. In *Hennessey v. Canada*, 2017 NLCA 23, 1 CANLR 586, at para. 7, Green C.J.N.L. observed that applications seeking appointment of state-funded counsel, particularly on the civil side, have largely failed since they involve imposing positive obligations on governments to expend scarce resources. In *British Columbia (Attorney General) v. Christie*, 2007 SCC 21, [2007] 1 SCR 873, at para. 21, the Supreme Court of Canada noted, "general access to legal services is not a currently recognized aspect of the rule of law".

[7] The appointment of state-funded counsel for an appeal is exceptional, and is generally limited to criminal proceedings where the appointment is made under section 684 of the *Criminal Code*, RSC 1985, c C-46. It has been allowed in a non-criminal context where the right of security to the person under section 7 of the *Charter* is engaged (see *New Brunswick (Minister of Health and Community Services) v. G. (J.)*, [1999] 3 SCR 46, at para. 2; and it has been discussed as a possibility in private litigation where issues of significant public interest are engaged (see *Christie*, at para. 27; and *Healey v. Barrett*, 2019 NLCA 64, at para. 10).

[8] This Court has never granted an order for the appointment of state-funded counsel to a private litigant, like Ms. Al-Haidari, for appeal of an interlocutory procedural order arising out of a civil claim.

[9] Even if there was a legal rule or general principle in which Ms. Al-Haidari could ground her application, appointment of counsel would not be warranted here based on consideration of the factors set out in section 40 of the *Court of Appeal Rules*. That section provides:

40. (1) Where, by virtue of a legal rule or principle, appointment of counsel may be necessary or appropriate, an application may be made in Form 19 with a supporting affidavit as provided in the Form.

(2) Factors the Court may consider in an application under subsection (1) include:

- (a) the complexity of the legal issues in the appeal;
- (b) the potential effect of the appeal on the development of the law;
- (c) the ability of the applicant to provide written and oral submissions;
- (d) the availability of legal aid under a provincial plan providing legal aid or similar services;
- (e) whether the applicant has requested the assistance of a solicitor who would agree to provide assistance without financial compensation, including for a limited purpose as authorized under rule 24; and
- (f) financial hardship the applicant would suffer if required to pay for a solicitor to provide assistance, including for a limited purpose as authorized under rule 24.

(3) Notice in Form 10 of an application under subsection (1) shall be given to the Attorney General of the Province not less than 15 days before the application is set to be heard, and the Attorney General shall have the right to be heard and to participate in the application.

[10] The issues raised by Ms. Al-Haidari are not complex and are not of general public interest. The issues raised include amendments to pleadings, inappropriate pleadings, irregularities in pleadings, particulars of pleadings, and unreliable evidence (alleged forged document). These types of procedural and evidentiary issues are regularly considered by the court appealed from and are within the scope of questions regularly considered by this Court. The potential effect that these issues could have on the development of the law is low. Any decision would be highly fact specific and of little application to future cases.

[11] Ms. Al-Haidari is articulate and highly educated. She has the ability to provide sufficient written and oral submissions addressing the issues engaged here, despite her declining vision, as was demonstrated by her submissions in this current matter. While I accept that she did not qualify for legal aid funding

and that she lacks the financial means to retain legal counsel on her own, the other section 40 factors have greater weight and tip the scales heavily against granting this application.

[12] This is a private dispute between private parties in which the state has no interest as to whether or not the action was started or whether the appeal of these interlocutory orders is pursued. There is no justification in law or public policy to support state-funded counsel for the appeal in this instance.

[13] The application is dismissed.

COSTS

[14] Memorial University did not participate in this application; the Attorney General is not a party and is not seeking costs. In the circumstances, there is no order as to costs.

W. H. Goodridge J.A.