

Denise Hubley (appellant) v. The Public Trustee as Litigation Administrator of the Estate of Philip Douglas Hubley (respondent)
(S1-CA-1211; 2012 PECA 17)

Indexed As: Hubley v. Hubley Estate

Prince Edward Island Court of Appeal
Jenkins, C.J.P.E.I., McQuaid and Murphy, JJ.A.
September 5, 2012.

Summary:

Philip Hubley was killed in a motor vehicle accident allegedly caused by his own fault. His wife Denise, a passenger in the motor vehicle, sued Philip's estate for damages for heads which included loss of benefits to her from Philip's employment earnings and Philip's retirement pension benefits (economic loss), and loss of care, guidance and companionship. The Public Trustee, on behalf of the estate, applied to strike the above damage claims for failure to disclose a cause of action.

The Prince Edward Island Supreme Court, Trial Division, in a decision reported 307 Nfld. & P.E.I.R. 323; 954 A.P.R. 323, allowed the application. Denise appealed.

The Prince Edward Island Court of Appeal, in a decision reported (2011), 315 Nfld. & P.E.I.R. 79; 981 A.P.R. 79, dismissed the appeal. Costs were awarded to the estate on a partial indemnity basis. Thereafter, the wife asked the court to reconsider the costs issue, claiming that the motion to strike and the appeal raised novel issues of law and each party should bear their own costs. The court agreed to reconsider and asked for written submissions.

The Prince Edward Island Court of Appeal, in the decision reported below, held that the issues of law raised did not involve novel issues of law such as to justify an order that each party should bear their own costs. The court therefore dismissed the motion for reconsideration and awarded the estate costs of the motion on a partial indemnity basis.

Practice - Topic 7029

Costs - Party and party costs - Entitlement to - Successful party - Exceptions - Novel or important point - At issue was whether a husband owed his wife a prima facie duty of care to protect himself from death by motor vehicle accident - A motions judge conducted a duty of care analysis and struck the wife's pleadings, holding that such a duty of care should not be imposed - The wife appealed unsuccessfully - The Prince Edward Court Island Court of Appeal rejected the wife's argument that because the proceedings raised a novel issue each party should bear their own costs - The proceedings did not resolve a novel legal issue, rather this type of issue arose whenever a duty of care analysis was required - Just because the relationship in issue had never been considered previously, the analysis did not engage novel issues of law - A party who was unsuccessful in establishing that such a duty of care should be imposed would have the claim either struck out or dismissed and would therefore be liable for costs.

Cases Noticed:

Griffin v. Summerside (City) et al. (2010), 302 Nfld. & P.E.I.R. 196; 938 A.P.R. 196; 2010 PECA 19, refd to. [para. 12].
Nielsen v. Kamloops (City) and Hughes, [1984] 2 S.C.R. 2; 54 N.R. 1, refd to. [para. 21].
Cooper v. Registrar of Mortgage Brokers (B.C.) et al., [2001] 3 S.C.R. 537; 277 N.R. 113; 160 B.C.A.C. 268; 261 W.A.C. 268; 2001 SCC 79, refd to. [para. 21].
Cooper v. Hobart - see Cooper v. Registrar of Mortgage Brokers (B.C.) et al.
Elliott et al. v. Canadian Broadcasting Corp. et al. (1995), 82 O.A.C. 115; 38 C.P.C.(3d) 332 (C.A.), dist. [para. 25].
Burgess v. Canadian Railway Co. et al., [2005] O.J. No. 4650, dist. [para. 26].
Madore-Ogilvie v. Ogilvie Estate et al. (2008), 232 O.A.C. 152; 2008 ONCA 152, dist. [para. 27].
Euteneier v. Lee et al. (2005), 204 O.A.C. 287 (C.A.), dist. [para. 27].
Attis et al. v. Canada (Minister of Health) et al. (2008), 254 O.A.C. 91; 300 D.L.R.(4th) 415; 2008 ONCA 660, dist. [para. 28].

Counsel:

Bruce W. Evans, for the appellant;
Tracey L. Clements, Q.C., and Rosemary Scott, Q.C., for the respondent.

This costs matter was dealt with by way of written submissions by Jenkins, C.J.P.E.I., McQuaid and Murphy, J.J.A., of the Prince Edward Island Court of Appeal. The following decision was delivered for the court, by McQuaid, J.A., on September 5, 2012.

Order accordingly.

Editor: Elizabeth M.A. Turgeon