

NOVA SCOTIA COURT OF APPEAL
 Cite as Moore v. Economical Mutual Insurance Company,
 1998 NSCA 9

BETWEEN:

DOUGLAS MOORE and
JUDITH LAVENDER

Appellants

)
)
) Martin Dumke and
) Suzanne Jensen
) for the Appellants
)

- and -

ECONOMICAL MUTUAL INSURANCE
COMPANY, a body corporate

Respondent

)
)
) David A. Miller, Q.C.
) and Nancy I. Murray
) for the Respondent
)

)
)
) Application Heard:
) December 17, 1998
)
)

)
)
) Decision Delivered:
) December 17, 1998
)

BEFORE THE HONOURABLE JUSTICE ELIZABETH A. ROSCOE IN CHAMBERS

ROSCOE, J.A.:

This is an application made by the appellants to set down the hearing of **part** of their appeal from an order of Justice Hiram Carver of the Supreme Court. The notice of appeal contains 13 grounds of appeal. The first five relate to the refusal of the trial judge to grant an adjournment of the trial when requested by the appellants on the first day of a civil arson and fraud trial scheduled for nine days. The appellants request that the first five grounds of appeal be severed and heard first. The reason advanced for this unusual request is that the expense of transcribing the evidence presented at the trial, which in fact lasted eleven days, would be saved if the appellants are successful in obtaining a new trial on the basis of the grounds of appeal relating to the refusal to adjourn. The respondent is opposed to the application.

The request by the appellants to adjourn the trial was based on the fact that they were at that time unrepresented. The record before Justice Carver indicates that the appellants had been represented by Mr. Kenneth Thomas from shortly after the fire until eleven days prior to the opening day of the trial, when he applied for and was granted an order, by another judge, to be removed as solicitor on the record for the appellants. Mr. Thomas filed an affidavit on that application in which he deposed that the appellants had retained other counsel to act for them. As it turned out, the other counsel later decided not to act for the appellants.

After hearing from the appellants, Mr. Thomas and counsel for the respondent, Justice Carver denied the application to adjourn the trial.

At the conclusion of the trial, Justice Carver dismissed the appellants' claim against their insurer on their fire insurance policy after finding that the appellants, or someone else at their direction, set the fire and that the appellants committed fraud in the swearing of the proof of loss declaration.

I have considered the written and oral submissions made on the application to sever and have decided that it is not appropriate to grant the appellants request for the following reasons:

(1) That the review of the reasons and decision of the trial judge not to grant the adjournment must be undertaken by this Court in the context of the entire proceeding.

(2) It is the final order of the trial judge that is appealed, and the decision not to adjourn is but one aspect of the order. I agree with the submissions of the respondent that even if this Court were to find that the decision not to adjourn was in error, that it could also find, based on all the evidence, it was a harmless error.

(3) There is no precedent for severing grounds of appeal and ordering that one part of an appeal be heard separately. Although through the combination of **Civil Procedure Rules** 25.01(1)(d) and 62.31, there may be jurisdiction to do so, it is not necessary to decide that on this application.

The application is therefore dismissed.

Roscoe, J.A.