

**NOVA SCOTIA COURT OF APPEAL**

**Citation:** *Ocean v. Economical Mutual Insurance Company*,  
2013 NSCA 114

**Date:** 20131011

**Docket:** CA 415635

**Registry:** Halifax

**Between:**

May Ocean

Appellant

v.

The Economical Mutual Insurance Company  
and Raymond Patrick Sullivan

Respondents

**Judge:** The Honourable Justice Joel Fichaud

**Motion Heard:** October 10, 2013, in Halifax, Nova Scotia, in Chambers

**Held:** Registrar's motion adjourned to October 31, 2013, pending  
performance of directions

**Counsel:** May Ocean, Appellant, in person

C. Patricia Mitchell and Scott R. Campbell for the  
Respondent, The Economical Mutual Insurance Company

Raymond Patrick Sullivan, Respondent, in person

**Decision:**

[1] This is a Registrar's motion for dismissal of an appeal based on non-perfection.

[2] In 2000, Ms. Ocean was in a motor vehicle accident. The other party to the accident, Mr. Sullivan, was uninsured. So Economical Mutual, Ms. Ocean's insurer, was joined to the action. After a lengthy trial on liability in the Supreme Court of Nova Scotia, Associate Chief Justice Smith apportioned responsibility between Mr. Sullivan and Ms. Ocean (2011 NSSC 202). It was anticipated that a further hearing would quantify damages. But Ms. Ocean declined to participate further before the Supreme Court.

[3] Ms. Ocean appealed to this Court from the Supreme Court's ruling on apportionment of liability. She sought from this Court an exemption to the requirement that a transcript be included in her Appeal Book. Justice Oland, of this Court, dismissed that motion because a transcript was necessary to properly assess Ms. Ocean's grounds of appeal (2011 NSCA 106). Later Ms. Ocean's appeal was dismissed by Registrar's motion.

[4] As Ms. Ocean would not participate in further proceedings before the Supreme Court to quantify damages, Economical Mutual sought a ruling on costs of the liability trial. On April 25, 2013, Associate Chief Justice Smith quantified those costs (2013 NSSC 120). Ms. Ocean's appeal from that ruling is the instant appeal. She filed her Notice of Appeal on May 7, 2013.

[5] Ms. Ocean then moved, in this Court, for directions to schedule the hearing of the appeal. At the chambers hearing on August 1, 2013, she requested that the appeal proceed without transcripts. Justice Bryson's decision of August 7, 2013 (2013 NSCA 90) denied that request for reasons similar to those of Justice Oland in 2011, *i.e.* that the transcript is necessary to properly adjudicate the issues under appeal. Rules 90.26(2)(d) and (e) require that an applicant for scheduling directions file a certificate of readiness that states when the transcript will be completed by a certified court reporter. As Ms. Ocean had not complied with that requirement, Justice Bryson dismissed Ms. Ocean's motion to schedule the date of hearing.

[6] Rule 90.43 requires that the appellant “perfect” her appeal. Rules 90.43(1)(c) and (d) define “perfection” to include ordering a transcript and filing a proper Certificate of Readiness. According to Rule 90.26(2)(e), a proper Certificate of Readiness must specify a date when, according to the certified court reporter’s estimate, the transcript will be completed. By Rule 90.43(3), if an appeal is not perfected within 80 days of filing the Notice of Appeal, the Registrar of the Court of Appeal may move for an order to dismiss the appeal.

[7] Ms. Ocean’s 80 days expired in late July 2013. To the date of this motion on October 10, 2013, Ms. Ocean has neither filed a compliant Certificate of Readiness nor indicated when a transcript might be completed. She has done nothing to request the preparation of a transcript by a certified court reporter.

[8] On September 23, 2013, the Registrar filed a Notice of Motion under Rule 90.43(3) for an order that Ms. Ocean’s appeal be dismissed for non-perfection. Ms. Ocean was properly served with the Notice. In chambers on October 10, 2013, I heard the motion. Ms. Ocean attended.

[9] My practice with Registrar’s motions is:

- (a) If the appeal is unperfected, the Notice of Motion has been properly served, and the Appellant does not appear on the motion, I allow the motion and dismiss the appeal.
- (b) If the appeal is unperfected, and the Appellant appears but offers no commitment for perfection in the reasonable future, I allow the motion and dismiss the appeal.
- (c) If the appeal is unperfected, the Appellant appears, and the Appellant commits to perfect in the reasonable future, then I either dismiss the Registrar’s motion or adjourn it to a specified date. If I am satisfied that the Appellant will perform as committed, I dismiss, but the Registrar or Respondent may re-apply if it turns out that the appellant has not perfected as committed. If I am not satisfied that the Appellant will perform as committed, then I adjourn the Registrar’s motion to a date after the committed date and, on that adjourned date, re-consider with a stringent standard whether to allow the Registrar’s motion and dismiss the appeal.

[10] In my view, this approach balances the Appellant's need for flexibility to deal with unfamiliar procedures, which is especially a concern with an unrepresented Appellant, and the standard necessary for the efficient administration of justice.

[11] In this case, Ms. Ocean appeared on the Registrar's motion. She gave no explanation, that makes sense to me, for the past non-perfection. Had she simply persisted with her view, expressed to Justice Bryson on the previous motion, that a transcript was unnecessary, then I would grant the Registrar's motion and dismiss Ms. Ocean's appeal. But Ms. Ocean said she would now take steps to order a transcript. In my view, she should have that opportunity.

[12] Accordingly, I will adjourn the Registrar's motion until Thursday, October 31, 2013 at 10 a.m. Ms. Ocean should re-appear in chambers at that time. Ms. Ocean is directed to take whatever steps are necessary, before October 31, 2013, to file and serve the Respondents with an accurate Certificate of Readiness that complies with Rule 90.26. To be clear, that includes all of: (1) obtaining any tapes or digital recordings of the proceedings under appeal, (2) providing those to a certified court reporter, (3) obtaining from the certified court reporter an estimate of a date when the transcript will be completed, (4) inserting this information, along with all the other information required, onto the Certificate of Readiness, signed by Ms. Ocean, and (5) filing and serving the properly completed Certificate. If this is not done by October 31, 2013, then Ms. Ocean's appeal may have a short life expectancy.

Fichaud, J.A.