

CANADA / JUDGMENT

Ark v. Antonias

2020 BCSC 1419

COURT

Supreme Court of British Columbia

DECIDED

29 July 2020

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2020 BCSC 1419 Ark v. Antonias IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Ark v. Antonias, 2020 BCSC 1419 Date: 20200729 Docket: M188488 Registry: Vancouver Between: Neesha Kaur Ark Plaintiff And Anthony George Antonias Defendant Before: Master Taylor Oral Ruling Re Application for Further Document Production In Chambers Counsel for the Plaintiff: N. Peterson Counsel for the Defendant: M. Harrison Place and Date of Hearing: Vancouver, B.C. July 29, 2020 Place and Date of Ruling: Vancouver, B.C. July 29, 2020

- [1] THE COURT: There is an application before the court for document production, most of which has either been adjourned or consented to. However, paragraph 4 of the notice of application brought by the defendants and date stamped June 11, 2020, seeks the plaintiff's clinical records from November 15, 2009, to November 23, 2014, from her general practitioner, Dr. Iman Abou-Gareeb of Wellness First Medical Clinic, and paragraph 5 seeks an order that WorkSafeBC produce to counsel for the defendant a copy of the plaintiff's WorkSafeBC file.
- [2] The background to all of this is that the plaintiff was involved in a motor vehicle accident on November 24, 2016, which is commonly known as a rear-end accident. She had been injured in a fairly serious motor vehicle accident in 2009, and also something else happened to her in 2014. In any event, those matters have been resolved prior to this incident and settled. I understand the plaintiff resolved earlier matters for the sum of \$57,000.
- [3] There has been substantial document disclosure by the plaintiff to the defendant. There have been a number of defence medical examinations, the most recent one of which was conducted by Dr. Khan, a physiatrist, on behalf of the defence within the last few months, but no documents have been served on the plaintiffs in regard to that examination in advance of the trial that is set to commence on the 26th of October next for ten days.
- [4] The rationale given for the request for the documents of the general practitioner going back to November 2009 is that the plaintiff has an underlying chronic back injury and although she said she was 85 percent recovered at the time of the motor vehicle accident, there are records from her GP to indicate the year before that there were persistent back problems from the motor vehicle accident and also her injury at work. She injured herself sneezing. That is what would be disclosed from the WorkSafeBC records if granted. More to the point,

the defence claims that this is a substantial claim and that therefore I should consider the proportionality argument such that because it is such a substantial claim, the intrusion into the plaintiff's clinical records back to 2009 is justified.

- [5] On the other hand, the plaintiff says all of the records and expert reports of the plaintiff have been provided and the defendants should know that no doctors have suggested that there is anything untoward or being hidden by the lack of clinical records. In fact, is it Dr. Abou-Gareeb's clinical records that say "persistent back pain"? When it comes right down to it, whether or not I order the clinical records will mean there is a dispute between the credibility of the plaintiff and what she told her family physician at the time that she visited in 2015 where subjectively she told her physician there is persistent back pain.
- [6] I am at a loss as to know why I should find any of the records predating the ones already provided from Dr. Abou-Gareeb's office would be either relevant or probative given that there has been full and complete disclosure, it seems, up until now and no medical expert has indicated a desire to see those records pre-November 2014.
- [7] I am given some confidence in my decision by referring to the decision of Master Muir in the decision of *Marchant-Larson v Bahrami*, 2017 BCSC 2337, where at paragraph 7 she says: The defendants bring no specific evidence in support of their application that more than two years of records are required. They simply point to the pre-existing conditions, the evidence that these pre-existing conditions are of some considerable length and history prior to the accident, and certainly well prior to two years before the accident. There is no evidence from any expert that more than two years of disclosure are required in order to properly analyze her propensity for having the problems she is currently experiencing or to establish a baseline for an analysis of her present condition.
- [8] Now, that case was a Rule 15-1 matter; whereas, the one at bar is not. That said, I do not think there is anything before me that takes this outside of the sort of general concept that two years prior to a motor vehicle accident is sufficient investigation, barring other evidence, to allow the defendants to properly investigate the facts surrounding pre-existing conditions.
- [9] When I spoke earlier with counsel for the applicant and raised the issue about the clinical record of Dr. Abou-Gareeb talking about the persistent back difficulties suffered by the plaintiff he said, well, we are just left with an assumption. I do not think that is an assumption, in my view. It is something more than that, and it may affect the plaintiff's credibility. Accordingly, the application is denied.
- [10] Costs will be in the cause. "Master Taylor"

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