

CANADA / JUDGMENT

Battrum v. British Columbia

2009 BCSC 1276

COURT

Supreme Court of British Columbia

DECIDED

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2009 BCSC 1276 Battrum v. British Columbia IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: Battrum v. British Columbia, 2009 BCSC 1276 Date: 20090917 Docket: S055744 Registry: Vancouver Between: Deborah Eloise Battrum Plaintiff And Her Majesty the Queen in Right of the Province of British Columbia, John Doe #1 and John Doe #2 Defendants Before: The Honourable Mr. Justice Rogers Supplementary Reasons for Judgment (Re: Issue of Battery) Counsel for the Plaintiff: T.J. Delaney Counsel for the Defendant, Her Majesty the Queen in Right of the Province of British Columbia: J.E. Gouge, Q.C. T.S. Saunders Place and Date of Trial: Kelowna, B.C. April 20 - 22, 24, 27 and 28, 2009 Written submissions provided by the parties Place and Date of Judgment: Vancouver, B.C. September 17, 2009

- [1] The evidence and the court's findings of fact following the trial of this case may be found at 2009 BCSC 716. Those reasons refer to the fact that counsel made no submissions with respect to one aspect of the case. At the court's invitation, the parties have made additional submissions with respect to that missing issue, viz: the plaintiff's claim for damages for the tort of battery.
- [2] The plaintiff asserts that she is entitled to damages for battery because she did not consent to Mr. Regts' treatment of her at the accident scene, nor did she consent to his treatment of her as she was transported by ambulance to the Vernon hospital.
- [3] The defendant argues that the plaintiff was incapable of properly assessing whether and what type of paramedical assistance she required at the accident scene. The defendant says that the plaintiff's extremis vitiated a need for her consent to the treatment Mr. Regts offered. The defendant also argues that whether damages may flow from the manner in which Mr. Regts treated the plaintiff must be determined by the principles of the tort of negligence, not battery. Discussion
- [4] Battery is a simple tort. Any person who is touched by another but does not consent to it has suffered battery. It is an intentional tort, meaning that the touching must be intentionally done. Consent may be given in an expressed or implied manner. Under some narrow circumstances, consent may be deemed to have been given, as for example when a person's medical condition prevents him from understanding or responding to a request for consent and there is no reason to believe that he would reject medically sound treatment for that

condition.

- [5] The parties in this case have, in their supplemental submissions, advanced learned and sound arguments for and against the plaintiff's claim for battery. Their efforts have, however, been somewhat in vain. That is because the issue of battery in this case turns entirely on the facts.
- [6] I have already found that one evening Dr. Battrum fell off her horse at her farm. She knew that her shoulder had been injured and she, quite naturally, wanted to be taken to a hospital for treatment. I have found that she called 9-1-1 and asked for an ambulance to attend at her farm. Several firefighters arrived first, and they began touching Dr. Battrum. She did not resist or complain about their ministrations. The paramedics, Mr. Regts and his partner, then arrived in an ambulance. They began preparations to transfer Dr. Battrum to a stretcher so that she could be put in the ambulance and taken to a hospital.
- [7] I find as a fact that Dr. Battrum wanted medical treatment for her injured shoulder and that she wanted to go to the hospital to get that treatment. Her desire to receive that treatment caused her to accept the touches she received from the firefighters. The fact that Dr. Battrum does not complain about battery at the hands of those firefighters belies the fact that she impliedly consented to their putting their hands on her to, among other things, assess her vital functions and to stabilize her spinal column so that she may be transported to a hospital.
- [8] I further find that Dr. Battrum was not constitutionally opposed to being touched by others for the purpose of getting her to a hospital so that her shoulder could be treated. This distinguishes her situation from the kind of case where a person's expressed religious belief might cause her to be fundamentally opposed to being touched for the purpose of some forbidden procedures like a blood transfusion.
- [9] I find that Dr. Battrum also impliedly consented to Mr. Regts touching her for the purpose of transporting her to the hospital. I have already found that Mr. Regts did not perform his task negligently. I have also already found that in order to splint her for transport, Mr. Regts was obliged to move her injured arm. Had he been able to effect that movement painlessly, Dr. Battrum would have found herself with nothing to complain about and she would never have claimed that he battered her.
- [10] I find that Dr. Battrum was not, however, ready for the amount of pain caused by the movement of her arm that was necessitated by splinting it. It is that pain, and not the fact that Mr. Regts touched her, that bottoms her complaint of battery against him.
- [11] I have had no hesitation in finding that Mr. Regts was abrupt and unsympathetic to her plight and that he behaved like a lout toward her. I am not, however, prepared to find that the amount of pain that Dr. Battrum suffered when Mr. Regts splinted her arm was out of keeping with her injury. The expert medical evidence that was tendered at trial convinces me that the kind of injury that Dr. Battrum suffered can generate a significant degree of

pain. I find that Mr. Regts moved Dr. Battrum's injured arm in a manner consistent with proper paramedical practice. I also find that the amount of pain that Dr. Battrum experienced as a consequence of that movement was excruciating but unavoidable.

- [12] Dr. Battrum also complains that Mr. Regts battered her while he attended to her in the ambulance on the way to the hospital. The evidence was clear that while they were in the ambulance, Mr. Regts touched Dr. Battrum only for the purpose of assessing her vital signs. Nothing about that degree of touching could amount to battery - it was entirely consistent with the treatment to which Dr. Battrum had already consented. The essence of Dr. Battrum's complaint about the ambulance ride is that Mr. Regts refused to release her from the splint which was immobilizing her injured arm.
- [13] Dr. Battrum's complaints about the ambulance ride cannot underwrite a tort of battery. That is because in the ambulance, Mr. Regts did not do anything new to her vis-a-vis the splint. The splint had already been applied. Dr. Battrum's complaints in the ambulance were really about what had happened back at the accident scene, and what happened there did not amount to battery.

Conclusion

- [14] Dr. Battrum's claims for battery are dismissed. Subject to any submissions the parties may wish to make concerning costs, the defendant is entitled to its costs attributable to this aspect of the proceeding. P.J. Rogers J. The Honourable Mr. Justice Rogers

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