
CANADA / JUDGMENT

Bradaric v. Dr. B.B.K. Pirani Inc.

2006 BCSC 1026

COURT

Supreme Court of British Columbia

DECIDED

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2006 BCSC 1026err1 Bradaric v. Dr. B.B.K. Pirani Inc.

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Bradaric v. Dr. B.B.K. Pirani Inc.,

2006 BCSC 1026

Date: 20060630

Docket: S13679

Registry: Chilliwack

Between:

Sofia Bradaric

Plaintiff

And

Dr. B.B.K. Pirani Inc.

Defendant

Before: The Honourable Madam Justice Gill

Reasons for Judgment

The Plaintiff, appearing in person:

Sofia Bradaric

Counsel for the Defendant:

Barbara J. Norell

Dates and Place of Trial:

December 12-16, 2005

Chilliwack, B.C.

- [1] Ms. Bradaric was referred to Dr. Pirani, an obstetrician and gynaecologist, by her family physician because of pain in the left lower abdomen. On September 18, 2001, a hysterectomy was performed. Although the plaintiff signed a consent form stating that she authorized Dr. Pirani to carry out a total abdominal hysterectomy, it is her assertion that she did not want a hysterectomy as she had hoped to become pregnant. She says she signed the consent relying on Dr. Pirani's agreement, made when surgery was being discussed, that a hysterectomy would be done only if necessary.
- [2] The plaintiff, who has represented herself throughout these proceedings, seeks damages for loss of fertility. In her statement of claim, it is alleged that she did not consent to the surgery that was performed. It is alleged that notwithstanding that an ultrasound report stated that she had a fibroid, Ms. Bradaric did not believe she had a fibroid. Rather, it was her belief that she had an ovarian cyst. She asked Dr. Pirani not to remove her uterus if at the time of surgery it was determined that she had an ovarian cyst, but he did not do so and instead, "went against my pre-operation verbal agreement with him". The plaintiff did not plead or argue that her consent was uninformed as it was given for treatment of a condition which was misdiagnosed, nor was there evidence that additional relevant information should have been disclosed to her. It is also alleged that she received substandard care in that tests were denied prior to surgery, Dr. Pirani did not recommend a myomectomy and he was mistaken in his belief that she had previously been diagnosed as having a fibroid or endometriosis. Damages are sought for battery and negligence.
- [3] The evidence of Ms. Bradaric and Dr. Pirani about their discussions is contradictory. Before reviewing their testimony, it is useful to set out background facts which are not controversial and to refer to certain letters and reports.
- [4] Dr. Ormston was the plaintiff's family physician. She saw the plaintiff on April 27, 2001, at which time Ms. Bradaric was complaining of rectal bleeding. On examination, Dr. Ormston noted a mass in the right pelvic area and Ms. Bradaric's abdomen was generally tender. She therefore arranged for a pelvic ultrasound.
- [5] The radiology report in respect of the ultrasound states that there is a large uterine fibroid at the posterior right aspect of the front of the uterus measuring 7.2 x 6 x 11.5 centimetres and cysts on the right and left ovaries. An appointment was arranged with Dr. Pirani for May 24, 2001.
- [6] Dr. Ormston's referral letter of May 10, 2001, to Dr. Pirani is as follows:

Thank you for seeing this lady who presented with rectal bleeding, likely secondary to excessive vitamin C and Iron and was found to have a right pelvic mass. On ultrasound she has a uterine fibroid and bilateral ovarian cysts.

Sofia has severe psoriatic arthropathy for which she has bilateral total hip arthroplasty and for which she takes Indomethacin 50 mg. two or three times daily and Cyclosporine 100 mg. bid. She also has inflammatory bowel disease for which she takes Loperamide 2 mg. when necessary. She also takes 8 Tylenol #3 per day and Oxycocet one to two per day and Ativan .5 mg. one to two per day. She is followed along by Dr. Kam Shojania, a Rheumatologist.

I am not certain of Sofia's present social situation but in the fairly recent past she had talked about a pregnancy but I did suggest to her that her high analgesic use was a relative contraindication.

Sofia feels some discomfort in the left lower abdomen at times and I think that she would like to discuss surgical treatment of the problem with you.

[7] As Dr. Ormston noted in her letter, the plaintiff suffers from psoriatic arthritis. It has been resistant to disease modifying therapies. Ms. Bradaric has inflammation of the spine as well as the peripheral joints. She also has an inflammatory bowel disease which is often associated with psoriatic arthritis. Both of her hips have been replaced, the right in 1997 and the left in 1998. Ms. Bradaric is under the care of a rheumatologist, Dr. Shojania. Treatment of her inflammatory arthritis has included Cyclosporine, which is not recommended for use during pregnancy, and Tylenol 3.

[8] The plaintiff was seen by Dr. Pirani on May 24. His consultation report of that same date sets out his findings and diagnosis. It states:

Many thanks for your letter about this patient whom I saw at the office on 24 May 2001. She is a 36 year old, G0P0 patient whose main complaint is that of pain in the L lower abdomen for the last 5-6 years. She had previously seen a gynaecologist in Surrey and was told that she had fibroids and endometriosis. She was treated with Danazol for about a year which helped her quite a lot. However the pain has returned. Her periods are normal and regular. The latest ultrasound of the pelvis has revealed a large uterine fibroid at the posterior R aspect of the front of the uterus measuring 7.2 x 6.0 x 11.5 cm in size.

Past Medical History: She has got psoriatic arthropathy, bilateral hip replacement, irritable bowel syndrome.

Medications: She takes Oxycocet, Cyclosporine and Tylenol 3.

Drug Allergies: Mathotraxate.

Social History: She is on disability and a non-smoker.

On Examination: Her general condition was satisfactory.

Abdominal Examination: Revealed a palpable mass approximately 12 week size to the L of the mid line suprapubically.

On Pelvic Examination: The cervix was healthy, the uterus was irregular and enlarged to 12 week size with fibroids and there were no abnormalities in the fornices.

Diagnosis: Symptomatic fibroid.

The patient is not interested in myomectomy or hysterectomy as she wishes to have children in the future. I have suggested uterine artery embolization to her and she was very keen on the idea. I have given her information and she will get in touch with people in Vancouver for an appointment.

[9] The final paragraph of the above report refers to the British Columbia Fibroid Embolization Project conducted at the University of British Columbia. A study was being done comparing treatments for fibroids, the treatments being uterine artery embolization (shutting down the blood supply to the fibroid by use of a catheter introduced through a puncture in the groin) and treatment by operation (myomectomy or hysterectomy). The information given to the plaintiff described the advantage of embolization as being "that it can shrink the fibroids without the need for an open operation, and your uterus remains with you". It was for that reason that Ms. Bradaric was, as Dr. Pirani stated, keen on the idea.

[10] For reasons which will be articulated when the plaintiff's testimony is reviewed, Ms. Bradaric never became part of the study. On August 20, she was seen by Dr. Ormston, who noted that she was in "lots of pain" and had marked tenderness above the pubic bone. Another appointment with Dr. Pirani was made and he saw the plaintiff two days later. His consultation report to Dr. Ormston includes the following:

Many thanks for your telephone call about this patient whom I saw at the office on 23 August 2001. Her history is well known to you. She is a 36 year old, G0P0 patient whom I first saw in May 2001 because of pain the L lower abdomen for the previous 5-6 years. She had previously seen a gynaecologist in Surrey and was told that she had endometriosis as well as uterine fibroids. She was treated with Danazol which gave her relief for about a year or so. The latest ultrasound had revealed a R sided fibroid measuring 7.2 x 6.0 x 11.5 cm in diameter. I had discussed myomectomy or hysterectomy with the patient but she was more interested in uterine artery embolization. Arrangements were made for her to be seen in Vancouver. However she continues to experience a lot of pain and now wishes to have definitive treatment with surgery. She was asking to have a hysterectomy. Once again I discussed myomectomy with the patient but she would prefer to have hysterectomy as she is planning not to have any children.

On Examination: Her general condition was satisfactory, CVS-heart sounds normal, no murmurs. RS - chest clear.

Abdominal Examination: Normal

On Pelvic Examination: The cervix was healthy, the uterus was irregular and enlarged to 12 week size and there was no abnormalities in the fornices.

Diagnosis: Symptomatic uterine fibroids.

Plan: I will arrange for her to have a total hysterectomy with conservation of both ovaries.

- [11] Surgery was performed on September 18, 2001. At the time of surgery, it was discovered that the tumour was not a fibroid. Rather, the plaintiff had severe endometriosis. Dr. Pirani continued with the hysterectomy.
- [12] Dr. Beresford, a specialist in obstetrics and gynaecology retained by the defence, described endometriosis as a condition in which the tissue lining the uterus becomes displaced outside the structure and therefore has nowhere to be shed. A laparoscopy is the method by which a diagnosis of endometriosis is made. Dr. Pirani described endometriosis as a chronic, progressive disease which is very painful.
- [13] There is no question about whether a hysterectomy was an appropriate procedure. It is the opinion of Dr. Beresford that a laparoscopy was not indicated, that the surgery which was performed was an entirely acceptable surgical treatment and that Dr. Pirani met the standard of care in continuing with the hysterectomy when it was discovered during surgery that the plaintiff did not have a fibroid but had endometriosis. His opinion assumes that the plaintiff did not want children, as is set out in Dr. Pirani's consultation report quoted above. Dr. Jackson, a specialist in the same field who gave evidence on behalf of the plaintiff, also expressed the view that the optimal surgical management of endometriosis is an abdominal hysterectomy. However, less than complete surgery is often done in a patient who wishes to become pregnant, so long as the patient is aware of its limitations.
- [14] Turning to the evidence of the parties, a central factual issue is what conversations took place between Ms. Bradaric and Dr. Pirani in their two meetings.
- [15] Ms. Bradaric testified as follows. On April 27, 2001, she saw Dr. Ormston because she had experienced intense pain in the abdomen. Dr. Ormston told her that she had an ovarian cyst and referred her for an ultrasound. Ms. Bradaric denied being told that there were a number of potential causes of her pain, which is what Dr. Ormston believed she would have said. Dr. Ormston also arranged for her to see Dr. Pirani.
- [16] The plaintiff agreed that she told Dr. Pirani that she had pain in the lower left abdomen, but said she described it as sporadic. Surgical options were discussed. She was told that a myomectomy was not possible because he believed her uterus was destroyed. She stressed that she wanted the option of attempting to conceive and it was for that reason that she chose not to have surgery and instead, to participate in the embolization project. On that visit, she also told him that Dr. Ormston believed she had an ovarian cyst and she asked him to requisition a laparoscopy, but he refused. Although she was not happy with Dr. Pirani, she

believed that further investigations would be done at UBC.

- [17] On June 4, the plaintiff had a bone scan, which was unrelated to her abdominal problems, but is relevant in that Ms. Bradaric testified that she formed the conclusion that what she observed on the scan contradicted the ultrasound report. (Her conclusion is not supported by any medical evidence.)
- [18] Before her first visit to UBC, an incident occurred which made her believe she needed immediate treatment. She testified that it felt as if something had ruptured inside her. She was in excruciating pain and passed clear fluid and what seemed like a piece of tissue. She saw Dr. Ormston on August 20 and a second appointment with Dr. Pirani was arranged. Although Dr. Ormston's clinical records state that she was to see Dr. Pirani regarding an early hysterectomy, Ms. Bradaric denied that this was her wish. She did, however, believe that surgical treatment was required.
- [19] When the plaintiff saw Dr. Pirani, she was in a great deal of pain. She testified that she asked to be admitted to hospital because she was concerned about infection, but he refused. It was her view that she needed additional testing before she could make any decisions, so she asked again for a laparoscopy. She told him about the bone scan, but he did not listen, stating that the ultrasound was good enough for him. She asked that Danazol be prescribed, but he refused. He told her that she had two choices - participate in the UBC study or have a hysterectomy. Because of the pain, Ms. Bradaric did not believe that participation in the UBC study was an option. It was her evidence that they had a "fight" about his diagnosis and the only reason she signed the consent form was that he agreed that if it was discovered that she had a cyst, her uterus would be preserved. In fact, the only consent form signed on that day was in respect of blood transfusions. The consent to surgery was signed on September 12, 2001, at Mission Memorial Hospital.
- [20] Ms. Bradaric was asked why, given her disagreement with Dr. Pirani and his refusal to listen to her concerns or order additional tests, she did not seek a second opinion. She testified that she had made some attempts to find someone else but during this period, health care professionals were engaged in job action. She stated that time was not on her side. Ms. Bradaric was also asked why she chose to have surgery on September 18 when she had an appointment at UBC only a week later. She testified that she felt that there was an emergency situation and she had a number of concerns, including a concern about the consequences of an infection.
- [21] On the morning after the surgery, the plaintiff spoke with Dr. Pirani. She testified that he was very nervous. He told her that she did not have a fibroid, but had a cyst which had ruptured, and said that he had removed her uterus. Dr. Pirani asked what she wanted to do about what had occurred and who she wanted to sue. Ms. Bradaric was very upset and described herself as screaming at Dr. Pirani. Later that day, she wrote a letter to Dr. Pirani. The letter made reference to the erroneous ultrasound report and requested his help in filing a complaint regarding the report. On September 19, she also spoke with her foster

mother, Ms. Bennison, who testified that the plaintiff was very upset that she would be unable to have children.

- [22] The plaintiff's evidence about her wish to have children and her attempts to become pregnant was as follows. In September, 2000, she had spoken with Dr. Ormston about trying to conceive and was told that she should give herself a year. She ceased trying in May, 2001, because of the problems described above. When cross-examined about how long she had been attempting to conceive, the plaintiff denied that as at September, 2000, she had been trying to conceive for a year. The suggestion of defence counsel was based on Dr. Ormston's clinical records relating to a visit on September 13, 2000. Dr. Ormston testified that on that date, she recorded that the plaintiff had been "hoping for pregnancy" and "trying for one year" and the plaintiff's boyfriend was to have a semen analysis. She also provided Ms. Bradaric with a requisition for an ultrasound because of her history of ovarian cysts. The document referred to primary infertility, meaning that the plaintiff was not pregnant despite having tried for one year. Ms. Bradaric testified that it was on September 13 that she had first spoken to Dr. Ormston about trying to conceive.
- [23] I turn next to the evidence of Dr. Pirani.
- [24] Dr. Pirani did not have an independent recollection of his first visit with the plaintiff and relied on his notes and his general practice in giving his evidence about that visit. Before seeing the plaintiff on May 24, 2001, he had received Dr. Ormston's referral letter and the ultrasound report. The report indicated that there was a large fibroid arising from the back of the uterus and cysts on the right and left ovaries. He described a fibroid as a common tumour or solid benign growth which causes various symptoms. Treatment options are hysterectomy, myomectomy (removing the growth and preserving the uterus) and embolization. It was his evidence that films are read by a radiologist and like Dr. Beresford, he had not previously encountered errors of this kind.
- [25] On May 24, he interviewed Ms. Bradaric and conducted an examination. It was his practice to tell patients of his findings and the surgical options. He noted that she did not want a hysterectomy or myomectomy and that he suggested that she contact the UBC embolization project. Dr. Pirani testified that myomectomy was an option for the plaintiff and he denied that he told her otherwise. It was his evidence that there would have been no point in referring the plaintiff to UBC if her uterus was destroyed.
- [26] Because of confusion about what UBC required, Dr. Pirani did not complete the necessary checklist until August, 1, 2001. It was noted on the checklist that the plaintiff did not want treatment by myomectomy or hysterectomy and wished to preserve fertility.

- [27] Dr. Pirani recalled that Dr. Ormston telephoned him asking that he see the plaintiff on an urgent basis. He was surprised as the documents required for the UBC project had been prepared only weeks before. His notes made August 22, 2001, state that he had a call from Dr. Ormston to tell him that the plaintiff had a lot of pain and bleeding, that she was fed up and wanted to have a TAH, meaning a hysterectomy.
- [28] Dr. Pirani saw Ms. Bradaric on August 22. Again, he had no independent recollection of that visit and relied upon his notes, his report to Dr. Ormston and his usual practice. His notes state that the plaintiff told him that she did not wish to wait for embolization. His notes also state that he mentioned myomectomy but the plaintiff preferred a hysterectomy. He testified that he would have discussed the procedure in some detail and would also have explained the possibility that a transfusion would be required and therefore, the need for written consent.
- [29] Dr. Pirani denied that the plaintiff had expressed doubts about his diagnosis or that she had asked for a laparoscopy or Danazol. He stated that if a patient expressed reservations, that would be documented. If a patient had wanted to preserve fertility, that would also be noted as it is an important consideration. Here, however, the patient stated she was not planning to have children. Further, if a patient had reservations, a hysterectomy would not be booked. Dr. Pirani denied that there was a verbal agreement as Ms. Bradaric alleged.
- [30] It was Dr. Pirani's evidence that prior to the surgery, he did not consider that the plaintiff had endometriosis as his findings supported what had been found on the ultrasound. A laparoscopy was not indicated. There was no reason why the plaintiff would have been hospitalized, nor did she request to be admitted to hospital.

- [31] At the time of surgery, the findings were as noted in the operative report, which states in part:

On entering the peritoneal cavity old blood was noted. In the pelvis the uterus was noted to be anteverted, mobile, of normal shape and size, the right ovary was enlarged to approximately 10 cm with a bilocular chocolate cyst suggesting endometrioma and the left ovary had a 5 cm endometrioma and small follicular cyst measuring 3 cm in diameter. There were adhesions between the omentum and the posterior wall of the uterus. In trying to free the right ovarian cyst it ruptured releasing a copious amount of chocolate coloured material. As the right ovary had been completely replaced by endometriosis it was decided to remove it. On the left side ovarian cystectomy was carried out by removing the cyst together with the capsule. A circumferential incision into the vaginal vault was made and the cervix together with the uterus removed in toto.

- [32] Dr. Pirani was asked why he had continued with a hysterectomy when it became apparent that the ultrasound report was wrong and the plaintiff had endometriosis. He gave a number of reasons for his decision. He referred to the extensive endometriosis, the plaintiff's pain, her statement that she did not want children, the signing of the consent to the treatment and the fact that the plaintiff had declined a myomectomy and did not wish embolization. In his view, a hysterectomy was appropriate and curative. Dr. Pirani testified that he had no doubt

that the plaintiff wanted a hysterectomy. He agreed that if the plaintiff had wished to preserve fertility, it would have been appropriate to excise as much as possible, which would be followed by other treatment.

- [33] Dr. Pirani testified that after the surgery, Ms. Bradaric's complaint, as made to him, was not with the actual surgery but with the ultrasound findings on which the decision was based. He agreed that she was very upset.
- [34] I turn next to the claims of the plaintiff and the arguments advanced. There are two issues to be addressed. Did the plaintiff consent to the surgery performed. If so, did Dr. Pirani meet the standard of care in continuing with the surgery when it became apparent that the problem was endometriosis. If the plaintiff did not consent, she will be entitled to succeed in her claim for battery. If consent, as defined by the authorities, has been proven, it will be necessary to deal with the claim in negligence.
- [35] I will deal first with the issue of consent.
- [36] In *Reibl v. Hughes*, [1980] 2 S.C.R. 880, the court concluded that if the surgery performed is substantially that of which the plaintiff was advised and then agreed to, there has not been an invasion of the person for which consent was not granted. Actions for battery are confined to cases where no consent at all has been given or treatment has been performed beyond that to which there was consent.
- [37] Ms. Bradaric made submissions at the end of trial but they were brief and focussed on the evidence. Counsel for the defendant conceded that if Ms. Bradaric's evidence with respect to the verbal agreement is accepted and it is concluded that Dr. Pirani breached this agreement, then there is liability. However, it was submitted that the plaintiff's evidence regarding her verbal agreement with Dr. Pirani should not be accepted as it is not consistent with the evidence of Dr. Pirani, the clinical records or her conduct. It is also not consistent with the evidence and records of other physicians. It was suggested that Ms. Bradaric regrets her decision to have a hysterectomy and has reconstructed relevant conversations with treating physicians.
- [38] I agree with certain of the defendant's submissions regarding the reliability of Ms. Bradaric's evidence.
- [39] Ms. Bradaric's evidence regarding conversations with other physicians is inconsistent with the evidence of those other physicians and their records.
- [40] Dr. Shojania testified that it is his practice to have a serious discussion with women in the plaintiff's circumstances, who have rheumatic diseases and are on medications and who are considering pregnancy. His advice is that they should attend at the Women's Hospital Rheumatic Disease and Pregnancy Clinic. Ms. Bradaric testified that had she become pregnant, she would have followed his suggestion. To her mind, going to the pregnancy clinic was an option and she denied that she had been told to do so before she was pregnant. However, it was clear from Dr. Shojania's testimony that his recommendation was that she

should attend at the clinic if pregnancy was being considered because of the risks to both mother and child. He does not view it as an option to be considered only when a woman is pregnant.

- [41] Dr. Ormston was asked about advice that she would have given to the plaintiff about the risks of using medications containing narcotics. Ms. Bradaric said that she was told that a baby would be "cranky", which again significantly minimizes what was actually said to her.
- [42] Ms. Bradaric testified that she did not actually take all of the medications prescribed by Dr. Ormston. However, the clinical records of Dr. Ormston confirm that prescriptions were regularly repeated.
- [43] Whether Ms. Bradaric misunderstood what she was being told or was attempting to bolster her evidence that she had been trying to conceive may be debated, but in either case, it calls into question the reliability of at least some of her evidence.
- [44] As defence counsel argued, Ms. Bradaric's evidence regarding her conversations with Dr. Pirani and most particularly, her conversation with him on August 22, is inconsistent with his clinical records and his evidence. I agree that there are inconsistencies.
- [45] As already stated, the plaintiff says that she told Dr. Pirani that she wanted additional testing, but he refused. She asked for Danazol, which he refused to prescribe. She expressed doubt about his diagnosis but he refused to listen to her reasons. She says that Dr. Pirani told her that she was haemorrhaging, but refused to put her in the hospital. She says she was told that a myomectomy was not an option. She described an argument and voices being raised.
- [46] Dr. Pirani testified that these things did not occur and had they happened, he would have made a note in his chart. If there had been an argument as described by Ms. Bradaric, he would have told her that he could not be her physician and would have referred her to someone else.
- [47] It is difficult to accept that the August 22 visit could have gone as badly as Ms. Bradaric described yet nothing was noted in Dr. Pirani's chart and more significantly, he seemingly had no hesitation in continuing to be her physician. If the plaintiff had clearly expressed, as she says she did, that she lacked confidence in Dr. Pirani and felt that she was being badly served, I do not accept that Dr. Pirani would simply have ignored her and carried on.
- [48] In my view, the most significant discrepancy on the issue of consent is the plaintiff's evidence that Dr. Pirani told her that a myomectomy was not possible. I do not accept that he told her that a myomectomy was not an option. He believed that it was an option, his records and letter to Dr. Ormston state that a myomectomy was offered and there was no point in a referral to the UBC project if her uterus was destroyed. As such, I cannot accept that it was orally agreed that a hysterectomy would be done only if necessary.
- [49] In the end result, I cannot conclude that Ms. Bradaric did not consent.

- [50] The next question is whether Dr. Pirani met the standard of care when he decided to proceed with a hysterectomy after it was discovered that there was no fibroid but extensive endometriosis.
- [51] The medical evidence unquestionably leads to the conclusion that a hysterectomy was the appropriate and optimal treatment. The defence accepts, however, that if the plaintiff asserted a wish to preserve fertility or indicated doubt about whether or not she wished to preserve fertility, Dr. Pirani should not have proceeded with the hysterectomy when the diagnosis of endometriosis was known.
- [52] As already stated, one of the defence arguments is that the plaintiff regrets her decision and has looked back and reconstructed events to cast blame on Dr. Pirani. It is not my view that the plaintiff has reconstructed events because she regrets her decision. I believe, however, that Ms. Bradaric has a tendency to place her own interpretation on what she has been told by physicians and that she has beliefs about medical matters which are predicated on erroneous assumptions or conclusions. As a simple example, she seemingly continues to believe that the results of a bone scan should have led Dr. Pirani to at least question the diagnosis of a fibroid. It is also the case that the plaintiff came to Dr. Pirani's office on August 22 believing that the situation was an emergency and that she required surgical treatment. She believed that she was haemorrhaging and had a number of concerns, including a concern about the potential for infection. Her belief about her circumstances together with her tendency to place her own interpretation on what she has been told and to formulate her own views may explain why the plaintiff's version of events differs from the evidence of Dr. Pirani.
- [53] While I question the reliability of certain of the evidence of Ms. Bradaric, there is one matter in respect of which I accept her evidence over that of Dr. Pirani. I do not accept that she literally said to him that she "was planning not to have children" or that she said words to the effect that she did not wish to have children.
- [54] Ms. Bradaric testified that it was always the case that she wished to preserve fertility. That was certainly her wish at the time of her first visit to Dr. Pirani and only weeks before her second visit, she arranged to have him complete the documentation required for her participation in the embolization project. Dr. Ormston's referral letter and her records confirm that the plaintiff had spoken to her about a pregnancy. There was also evidence that immediately after the surgery, Ms. Bradaric was very upset. Ms. Bennison, the plaintiff's foster mother, testified that the plaintiff telephoned her after the surgery and was very upset that she could not have children. I do not accept that between August 1, when documents required by UBC were prepared, and her second visit to Dr. Pirani only three weeks later, Ms. Bradaric had an abrupt change of heart.

- [55] Dr. Pirani did not have an independent recollection of his discussions with the plaintiff. Perhaps Dr. Ormston's statement that Ms. Bradaric wanted an early hysterectomy influenced his thinking. Whatever the circumstances, I do not accept that the plaintiff wishes changed and that she no longer wished to preserve fertility.
- [56] Given the concession that if there was doubt about whether or not the plaintiff wished to preserve fertility, Dr. Pirani should not have proceeded with surgery, the plaintiff is entitled to succeed.

Damages

- [57] Ms. Bradaric did not make submissions on this issue and did not refer to any authorities.
- [58] The evidence clearly establishes that the plaintiff's chances of conceiving were small. Dr. Beresford's opinion is as follows:

There is no doubt that the severe endometriosis would have significantly affected the plaintiff's likelihood of conceiving. At the time of the original consultation with Dr. Pirani, the patient stated that she had had pain for 5-6 years. It is quite possible that endometriosis, which is a well recognized cause of infertility, had been present during that time. The plaintiff had unsuccessfully attempted to conceive for at least 20 months prior to her initial consultation with Dr. Pirani. The only stated record of contraceptive use was that of condoms at the time of her consultation with Dr. Jackson in 1995. It is my opinion that there would be a significantly reduced likelihood of the plaintiff conceiving spontaneously given her advancing age (36 years at the time of surgery), the severe endometriosis and her lack of success in the past.

It is very likely that the plaintiff would have required in vitro fertilization. The success rate, given the age of the patient, the severe endometriosis, the right oophorectomy and the partial resection of the left ovary, would be approximately 15-20% per cycle. The cost per cycle is \$4500.00 plus an additional cost for drugs to a maximum of \$3000.00 per cycle.

- [59] Dr. Beresford referred to the plaintiff's attempts to conceive for 20 months. That conclusion flows from the clinical records of Dr. Ormston. As stated, the plaintiff's evidence was that she had not been attempting to conceive for that length of time. It is not necessary to resolve that issue. Dr. Beresford testified that his opinion would not change if the period in question was only eight months rather than 20. As regards the reference to in vitro fertilization, the plaintiff has limited financial resources.
- [60] Dr. Beresford's view is shared by Dr. Ormston. During her testimony, she stated that it had been her view that pregnancy was an "unlikely possibility" but did not believe that she had shared that view with Ms. Bradaric.
- [61] Ms. Bradaric's circumstances were further complicated by the fact that the medication she takes is contra-indicated in pregnancy.

[62] Defence counsel referred to three authorities: Bowlby v. Oosterhuis (2003), 63 O.R. (3d) 748 (Ont. S.C.J.); Johnston v. Hebert, 2003 ABQB 859 and Snider v. Henniger et al. (1992), 96 D.L.R. (4th) 367 (B.C.S.C.). Considering those authorities and the plaintiff's particular circumstances, it is my view that an award of \$20,000 is appropriate. If there is not agreement on costs, written submissions should be made.

"K.M. Gill, J."

The Honourable Madam Justice K.M. Gill

July 21, 2006 - Revised Judgment

The docket number for this matter should read:

"S13679"

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