

CANADA / JUDGMENT

Geater v. Petersen

2025 BCSC 1470

COURT

Supreme Court of British Columbia

DECIDED

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2025 BCSC 1470 Geater v. Petersen IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Geater v. Petersen, 2025 BCSC 1470 Date: 20250801 Docket: M128463 Registry: Kelowna Between: Stephen Fulton Geater Plaintiff And Jaala Rachel Petersen Defendant

- and - Docket: M142215 Registry: Kelowna Between: Jaala Rachel Petersen Plaintiff And Stephen Fulton Geater and Brittany Dawn Weinrauch Defendants Before: The Honourable Madam Justice Murray Reasons for Judgment Counsel for the Plaintiff, No. 128463: B. Fitzpatrick Counsel for the Defendant, No. 128463: D. Shea Counsel for the Plaintiff, No. 142215: N. Hartney Counsel for the Defendants, No. 142215: D.J. Sinnott Place and Dates of Trial: Kelowna, B.C. July 14-16, 2025 Place and Date of Judgment: Kelowna, B.C. August 1, 2025

INTRODUCTION

- [1] On Sunday, October 28, 2018, at about 9:30 p.m., Ms. Petersen and Mr. Geater were involved in a motor vehicle collision at the intersection of Princeton Avenue and Highway 97 in Peachland.
- [2] This is a trial to decide liability. The parties give conflicting accounts. Each claim that they were proceeding on a green light and were struck by the other's vehicle that ran a red light.
- [3] There were no witnesses to the collision. While a police officer attended shortly after, no investigation was conducted. Nor was the scene documented other than with some photos.
- [4] In order to determine liability, I must consider the evidence in some detail. THE EVIDENCE
- [5] Ms. Petersen is 35 years old. She has lived in Peachland her whole life. As such, she is very familiar with the intersection where the collision occurred.
- [6] Ms. Petersen was at a friend's home for dinner on the night of the collision. The friend lived at the top of Princeton Avenue. Ms. Petersen did not have anything alcoholic to drink that night, nor did she consume any drugs. At the time of the incident, Ms. Petersen lived on Beach Drive. Her route home was down the Princeton Avenue hill, through the lights at Highway 97, then a quick left turn onto Beach Drive. She testified that you had to proceed

slowly through the intersection in order to maneuver the right curve to go through the lights and then the quick left turn.

- [7] Ms. Petersen testified that when she came down the Princeton Avenue hill, the light was red. She stopped for a minute or two. She did not see any other cars on the road when she was stopped. When the light turned green, she proceeded through the intersection at a speed of about 10 to 20 km/h. She did not see any cars before the impact. All of a sudden, she was struck. Her car did a 180-degree turn and came to rest facing the opposite direction. The front of her car was damaged.
- [8] Ms. Petersen testified that she did not see Mr. Geater's car or its headlights. She just felt the impact and heard the sound of the crash. The collision occurred in the lane Mr. Geater was travelling in on Highway 97. After the impact, Ms. Petersen crawled over to Mr. Geater's vehicle and asked him if he was okay. He said he was and that he had called an ambulance. She never saw Mr. Geater get out of his car.
- [9] The accident was traumatic for Ms. Petersen. She was emotional testifying about it. The passage of time, almost seven years, is definitely a factor in Ms. Petersen's evidence. She mentioned several times that her memory was an issue as a result of the passage of time.
- [10] Mr. Geater is 46 years of age. He lives in Oyama. He has worked for a technology company doing repairs since 2008. He is responsible for a large area in the interior, which requires him to do a lot of driving. He is familiar with the intersection of Highway 97 and Princeton Avenue. He estimates that he drives that stretch of road three to five times a week and has since 2015.
- [11] Mr. Geater was returning home from a job in Osoyoos when the accident occurred. He said that he was driving north on Highway 97 at the speed limit, 70 km/h. He saw headlights coming down Princeton Avenue hill. They disappeared behind a retaining wall. Mr. Geater said that as he was about to enter the intersection to proceed through on the green light, he saw the headlights on the Princeton Avenue hill come out from behind the retaining wall. He realized that the vehicle was moving too fast to stop and was going to go through the red light. At that point, the car was 75 to 125 feet away from him. Mr. Geater pushed in his clutch and slammed on his brakes but was unable to avoid being struck. The other car hit his driver's door. The impact happened when he was about a car's length into the intersection. He was in the far-left lane. After the collision, Mr. Geater said that he looked up through his front windshield at the light for traffic proceeding on Highway 97. It was still green. He watched it go yellow, then red. He did that because he was always taught to gather details when something happened. He then got his cell phone and called 911.
- [12] Mr. Geater testified that he was shaken by the collision and that he lost consciousness a couple of times.

- [13] Firefighters, police, and ambulance attended the scene. Mr. Geater had to be removed from his car with the jaws of life. Both Mr. Geater and Ms. Petersen were taken to the hospital by ambulance.
- [14] Cst. Julie Miller, then of the West Kelowna RCMP, attended the scene. She had been a police officer for about three months at the time. She has no memory of the accident scene. She is unable to say whether she took all of the photos that are in the RCMP file and filed as exhibits on this trial. She noted in her police notebook that there were skid marks in the northbound lane of Highway 97 starting at the intersection. She saw no visible skid marks on the Princeton Avenue hill.
- [15] Trevor Dinn, a registered engineer, was hired by Ms. Petersen to determine the post-collision resting positions of the vehicles. He was qualified to give such opinion evidence. He reviewed the photos taken by the police and tried to match them up to landmarks (control points) at the accident scene to try to determine the location of the vehicles as they are depicted in police photos. There are a number of issues with his opinion in this case. First, there is no evidence that the vehicles as seen in the police photos had not been moved before they were photographed. Second, Mr. Dinn attended the scene six years after the collision. Third, the police photos are poor. As Mr. Dinn conceded, he is only as good as the photos. And last, the photos show only a few control points.
- [16] Mr Dinn conceded that this was not an exact science. I find that in this particular case, given the poor-quality photos and the lack of control points, Mr. Dinn's conclusion is imprecise and little more than a guess. I put no weight on Mr. Dinn's evidence.

ANALYSIS

- [17] I am left with two conflicting versions of the accident, making credibility and reliability of the parties' evidence a key issue.
- [18] The factors to be considered when assessing credibility were summarized by Dillon J. in *Bradshaw v. Stenner*, 2010 BCSC 1398, as follows: 186 Credibility involves an assessment of the trustworthiness of a witness' testimony based upon the veracity or sincerity of a witness and the accuracy of the evidence that the witness provides (*Raymond v. Bosanquet* (Township) (1919), 59 S.C.R. 452, 50 D.L.R. 560 (S.C.C.)). The art of assessment involves examination of various factors such as the ability and opportunity to observe events, the firmness of his memory, the ability to resist the influence of interest to modify his recollection, whether the witness' evidence harmonizes with independent evidence that has been accepted, whether the witness changes his testimony during direct and cross-examination, whether the witness' testimony seems unreasonable, impossible, or unlikely, whether a witness has a motive to lie, and the demeanour of a witness generally (*Wallace v. Davis*, [1926] 31 O.W.N. 202 (Ont. H.C.); *Faryna v. Chorny*, [1952] 2 D.L.R. 152 (B.C.C.A.) [Faryna]; *R. v. S.* (R.D.), [1997] 3 S.C.R. 484 at para.128 (S.C.C.)). Ultimately, the validity of the evidence depends on whether the evidence is consistent with the probabilities affecting the

case as a whole and shown to be in existence at the time (Faryna at para. 356). [Emphasis added.]

- [19] The difference between credibility and reliability was discussed by Dickson, J., as she then was, in *Hardychuk v. Johnstone*, 2012 BCSC 1359:
- [10] The typical starting point in a credibility assessment is to presume truthfulness: Halteren. Truthfulness and reliability are not, however, necessarily the same. A witness may sincerely attempt to be truthful but lack the perceptive, recall or narrative capacity to provide reliable testimony. Alternatively, he or she may unconsciously indulge in the human tendency to reconstruct and distort history in a manner that favours a desired outcome. There is, of course, also the possibility that a witness may choose, consciously and deliberately, to lie out of perceived self-interest or for some other reason. Accordingly, when a witness's evidence is demonstrably inaccurate the challenge from an assessment perspective is to identify the likely reason for the inaccuracy in a cautious, balanced and contextually sensitive way. [Emphasis added.]
- [20] I am satisfied that both Ms. Petersen and Mr. Geater were sincerely trying to be truthful. Reliability is the issue.
- [21] Ms. Petersen was firm that she never saw Mr. Geater's vehicle or its headlights. It was dark, and the intersection is wide open. There are no obstructions. Approaching headlights would be visible. Ms. Petersen describes being struck by Mr. Geater's car. In fact, the evidence clearly shows that Ms. Petersen struck Mr. Geater - not the other way around. Even when Mr. Geater's car was directly in front of her and she was hitting it, Ms. Petersen did not see it. Overall, Ms. Petersen's evidence regarding the accident was vague and lacked detail. For these reasons, I find Ms. Petersen's recall to be unreliable.
- [22] Conversely, Mr. Geater's evidence was detailed, and it fits with the independent evidence. He recalls seeing the headlights of Ms. Petersen's car coming down Princeton Avenue. His evidence, that he lost sight of its headlights behind the retaining wall, fits with the photographs of the scene. So does his evidence that when the headlights emerged from behind the retaining wall, he could judge the speed of the fast-approaching vehicle and could tell that it was not going to stop. Mr. Geater's evidence that he then slammed on the brakes is corroborated by the officer's evidence that she saw skid marks in his lane in the intersection. I accept Mr. Geater's evidence that he could see the traffic lights after the collision. I also find that it makes sense that he would look to see what colour his light was after the impact. I do not find Mr. Geater's evidence that he thinks that he was unable to speak after the impact or that he lost consciousness after the impact troubling. It does not, in my view, impact his evidence regarding the accident, as that evidence is corroborated in material ways.

- [23] Overall, I find that Mr. Geater's evidence makes sense, and most importantly, it fits with the independent evidence, namely where on his vehicle the impact occurred and the skid marks. Ms. Petersen's evidence does neither. The only way she could not have seen a car that she T-boned was if she was not paying attention.
- [24] Considering all of the evidence, I am satisfied on a balance of probabilities that Ms. Petersen ran a red light and struck Mr. Geater's vehicle as it proceeded through the intersection on a green light. Accordingly, I find that Ms. Petersen is at fault for the accident.
- [25] If counsel are unable to agree on costs, they may schedule a hearing before me to address same. "The Honourable Madam Justice Murray"
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