

CANADA / JUDGMENT

Hoflin v. Rea

2010 BCSC 1950

COURT

Supreme Court of British Columbia

DECIDED

24 November 2010

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2010 BCSC 1950 Hoflin v. Rea IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Hoflin v. Rea, 2010 BCSC 1950 Date: 20101124 Docket: M074985 Registry: Vancouver Between: Julie Mairi Hoflin Plaintiff And: Taylor John Rea and Riley Johan Friesen Defendant Before: Master Baker Oral Reasons for Judgment In Chambers Counsel for Plaintiff G. Kehler Counsel for Defendants J. Dyer Place and date of Hearing: Vancouver, B.C. November 24, 2010 Place & Date of Hearing: Vancouver, B.C. November 24, 2010

- [1] THE COURT: This is an application for an independent medical examination brought on behalf, of course, of the defendants, seeking an order that the plaintiff attend before Dr. Baker tomorrow, November the 25th.
- [2] I'm enlightened. You learn something new every day in this job, and I've learned now that there are addictionologists out there, or at least one. And that's Dr. Baker. I say I'm enlightened and it's a case of first impression on my part. But not in general, because he has been before the courts.
- [3] His expertise, obviously considerable and substantial, was placed before Mr. Justice Voith in the matter of Zawadski v. Calimoso. The cite for that is not given, because it's an oral decision. Yes. And it was recently decided here, in June of this year.
- [4] Although it does not factor typically into the considerations of whether or not an I.M.E. could be directed by the court, I'm satisfied that Ms. Hoflin is not a recalcitrant or unco-operative plaintiff. She has attended at something like five I.M.E.s, two of which relate to occupational therapists. Why two? Because the defence has required that she attend before one for a relatively limited and I understand circumscribed purpose and inquiry of Part 7 claims; and one, a separate one, for the broader tort claim.
- [5] I understand that Ms. Hoflin has co-operated throughout, attended at all of these, including Dr. Kendall, an orthopedic surgeon; Dr. Smith, a psychiatrist; and Dr. Hashimoto, a neurologist.

- [6] I'm a little bit circumspect about my comments there, because Ms. Hoflin had had a more recent accident, but I haven't heard much about that. But it has been some four and a half years of, she says, medical difficulties and problems.
- [7] To get back to the point, the defence's position is that some or much of these difficulties relate to, they say, opioid dependencies that have arisen in advance of this motor-vehicle accident. This is denied or contradicted by the report of her family physician, Dr. Singhal.
- [8] Dr. Baker a specialist, in this area, not just of addiction and addiction parameters or aspects of that, but also chronic pain management, I understand. Even the brief c.v. to which I was referred was impressive. His membership in various societies, the committees he serves on, all of which impressed me.
- [9] Having said all that, I cannot see that this case is in any significant way distinct from that decided by Mr. Justice Voith, to which I just referred. With greatest respect, at least two specialists for the defence have commented on, concluded, and been quite specifically direct that they regard Ms. Hoflin as having been either habituated, as one -- Dr. Smith, I think, said it -- or dependent, euphemistically perhaps, addicted to opioids. This has had consequences for her recovery, or her response to the accident.
- [10] I agree entirely, with greatest respect, with Mr. Justice Voith and his impression of the case that he decided. I agree that there's no doubt that Dr. Baker has greater expertise on that particular point.
- [11] But as Mr. Justice Voith says, that's not the measure of whether or not to direct an I.M.E. The phrase -- I know it has a pejorative ring to it -- but it was used at least a couple of times, once by me -- that this is a "belt and suspenders application" by the defence. They already have expert opinion on the subject.
- [12] They were met, from the plaintiff's perspective, by opposition to Dr. Hashimoto opining on that aspect. The view, as taken by the plaintiff, that Dr. Hashimoto is not qualified to give this opinion that's outside his expertise. They have not taken that perspective in respect of Dr. Smith.
- [13] It doesn't really matter to me whether they did or didn't, because whether or not a second or subsequent I.M.E. should be ordered does not rely upon the plaintiff's opinion as to the admissibility of an expert's opinion, or in fact any other evidence. That is for the court to decide; and it is, with respect, for the defence to structure its case and its strategies.
- [14] I am satisfied, on the circumstances and facts before me, that this does constitute a situation in which the defence is wishing to bolster the opinion of Dr. Smith at least, and possibly Dr. Hashimoto, with the further and yes, more focused opinion of Dr. Baker.

- [15] The law in this area does not support that course. That is sufficient, in my respectful view, to decide the issue. But beyond this are the more immediate logistical concerns that Mr. Kehler has pointed out, and that is that Ms. Hoflin is scheduled for a vocational assessment tomorrow. This date has been set since September.
- [16] Criticism, I think, has been levelled that the wish to have her before Dr. Baker tomorrow at the same time, I should have said, has been known for some time. I do not take that view.
- [17] Essentially, for me to order this pre-empts her opportunity to proceed in a normal and timely way to prepare her own case. Dr. Smith saw her some time ago. The opinion of Dr. Smith has been in the hands of the defence for some time, as well. Possibly over a year, based on the dates and chronologies here. It seems to me that the defence has had ample opportunity to consider his conclusions and to consider whether or not they wish to have further and more focused expertise on the point.
- [18] So in all the circumstances, the application is dismissed.
- [19] COUNSEL: Costs, Your Honour? Costs in the cause?
- [20] THE COURT: No. Plaintiff is correct in their position today.
- [21] Costs will follow the result, so the plaintiff will have her costs of the day. "Master Tokarek" for Master Baker

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