

CANADA / JUDGMENT

Johnson v. Giblin

2020 BCSC 2281

COURT

Supreme Court of British Columbia

DECIDED

21 January 2020

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2020 BCSC 2281 Johnson v. Giblin IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Johnson v. Giblin, 2020 BCSC 2281 Date: 20200121 Docket: M164463 Registry: Vancouver Between: Sarah Johnson Plaintiff And Terry Giblin, Dayle Hansom, Nathan Inglis Defendants Before: Master Muir Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: D.K. Miura Counsel for the Defendants: M.N. Thurber Place and Date of Hearing: Vancouver, B.C. January 21, 2020 Place and Date of Judgment: Vancouver, B.C. January 21, 2020

- [1] THE COURT: This is an application by the defendants for an order that the plaintiff attend an independent medical examination ("IME") by Dr. Kevin Letcher, a physiatrist, tomorrow in Qualicum Beach and for an order that she answer questions put to her by Dr. Letcher to ascertain the extent of her injuries. The defendants also seek costs in any event of the cause.
- [2] Short leave was obtained for this hearing on January 16, 2020, which was Thursday. The plaintiff was first notified of the defence request for an IME on January 2. Counsel was away, did not learn of the matter until January 6, and responded by January 8.
- [3] Defence counsel had some concerns including that this had been scheduled unilaterally at the last minute and that the date selected, being a Wednesday, was not convenient for the plaintiff, who works Tuesdays through Thursdays. She is available on Mondays and Fridays, and plaintiff's counsel gave a number of available dates that the plaintiff was prepared to undertake an IME, including weekends, if that was possible.
- [4] The defendants submit that inquiries were made of Dr. Letcher and that Wednesday in Qualicum Beach is the only day that he has available. Otherwise, his next available date is sometime in March. The trial of this matter is scheduled for June 8, 2020. The 84-day deadline for service of expert reports is March 13, 2020.
- [5] The plaintiff submits that this is one of those cases referenced by Master Baker in O'Callaghan v. Hengsbach, 2017 BCSC 2182 at para. 20, where Master Baker says:

- [20] Some areas of the law tend to offer more emergencies or crises than others; family law would likely fall in this category. Despite this, however, of late more applications for short leave seem to arise from personal injury/motor vehicle accident cases than in any other. And most of those applications for short leave seem to be on behalf of the defence, seeking short leave to bring an application for an IME close to trial. In that respect, this case is completely typical of that growing practise.
- [6] I can say that O'Callaghan is one example of the frustration that the court experiences with these types of applications. The court has expressed, on many occasions, its frustration with defendants leaving IMEs at the 11th hour and then seeking to invoke the Rules to stampede a plaintiff regardless of convenience, availability, or anything else, to attend on very short notice. That practice, in case it is not clear, is not one that the court condones.
- [7] There is no evidence before me that there are not other physiatrists available to conduct IMEs that would be timely in that they would result in a report being available before the 84-day deadline. There is no evidence before me that the plaintiff could not be accommodated by another physician on a Monday or a Friday in a location closer to her residence, which is in Merville, which, for anyone unfamiliar with Vancouver Island, is actually between Courtenay and Campbell River. Probably an hour's drive from Qualicum where the IME before Dr. Letcher is proposed.
- [8] The defendants sought to make submissions that IMEs were hard to schedule. That was objected to, for good reason. There is no evidence of that before me.
- [9] The defendants also sought to submit that it was not a practice to seek available dates from the plaintiff before scheduling IMEs as that would be a practical impossibility.
- [10] Be that as it may, it would seem simple enough to inquire whether there were days that were better than others for the plaintiff and to see if that could be accommodated by one doctor or another in what has been referred to by plaintiff's counsel as the stable available to defendants in these cases.
- [11] In all of the circumstances, I am not satisfied that the defendants will suffer prejudice as a result of this application being denied, simply because there is no evidence that there is not another available physician that is more able to accommodate the plaintiff's schedule, or that is closer to her. And even, frankly, if the plaintiff had to come to Vancouver, the proximity of Merville to the Campbell River airport might make that more agreeable to her than driving to Qualicum and having to take a day off work.
- [12] In any event, it will be clear from my comments that these types of applications brought at the 11th hour are not favoured by the courts, and in this circumstance I am not satisfied that the application is appropriate. It is denied. I will hear you on costs. [SUBMISSIONS RE COSTS]

[13] Given the dissatisfaction that I have already expressed with these types of applications, in my view this application should not have been brought, and I will award the plaintiff special costs in any event of the cause but not payable forthwith. Just of today, not of the short leave. "Master Muir"

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