

CANADA / JUDGMENT

Leach v Jesson

2016 BCSC 434

COURT

Supreme Court of British Columbia

DECIDED

25 February 2016

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2016 BCSC 434 Leach v. Jesson IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Leach v. Jesson, 2016 BCSC 434 Date: 20160225 Docket: M71410 Registry: Nanaimo Between: Jamie Leach Plaintiff And Hayley Jesson and Linda Jesson Defendants Before: Master Dick Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: A. de Turberville Counsel for the Defendants: P. Huggins Place and Date of Hearing: Nanaimo, B.C. February 25, 2016 Place and Date of Judgment: Nanaimo, B.C. February 25, 2016

- [1] THE COURT: I am prepared to give judgment right now.
- [2] This is the plaintiff's application, where he seeks production of a redacted copy of the Nanaimo Regional General Hospital and ambulance records of the defendant for November 20, 21, 2012. The documents are entitled to be redacted and edited by defendants' counsel. Only portions relating to:
- a) the cause of the accident;
 - b) the severity of the collision;
 - c) events leading up to the collision and subsequent to it;
 - d) the nature and extent of the defendants injuries, including her ability to recall the collision and observe events after it; are sought to be produced.
- [3] This action arises from a motor vehicle accident that occurred November 20, 2012 in Nanaimo, where the plaintiff was a passenger and was rear-ended by a vehicle driven by the defendant.
- [4] The notice of civil claim was filed January 6, 2014, and the response to civil claim filed June, 2014. The matter is set for trial April 18, 2016. Liability has been admitted with respect to this accident by the defendant. Quantum of damages will be at issue in the trial.
- [5] There is evidence before the court from the defendant that her vehicle rear ended the plaintiff's and was travelling between 50 to 55 kilometres per hour at the point of impact. This evidence is in the defendant's examination for discovery transcript.

- [6] There is also evidence that the defendant was charged with a motor vehicle offence, passing where there is a double yellow line, which offence occurred just prior to the motor vehicle accident.
- [7] There are two expert reports relating to the injuries of the plaintiff; one of which is an independent medical examination produced by the defendant. Both reports indicate the plaintiff sustained injuries as a result of the accident. One such report indicates the plaintiff may have suffered a mild traumatic brain injury in the accident. There have been documents exchanged that indicate the severity of the impact, the nature of the injuries sustained. The police report indicates there is also a witness to the defendant's driving pre-accident.
- [8] In ordering disclosure of these records, I have to be cognizant of the privacy issues for this defendant, as well as the rights of the plaintiff to have the best evidence available to him in order to pursue his claim in this matter.
- [9] More important is knowing that the scope of disclosure sought is proportionate to the matter in issue. The plaintiff indicates they expect the records to contain information from the defendant as to how the collision occurred, the speeds involved, a description of the force on impact, as well as information about whether or not the plaintiff actually did leave his vehicle after the impact. He argues that this information is relevant to the injuries sustained by the plaintiff.
- [10] In this application, I need to know why that information is relevant and whether it will properly advance the plaintiff/applicant's case or damage the case of the defendant. I need to look at the issues of privacy and proportionality rules in looking at this disclosure.
- [11] It is my opinion that the production of the defendant's hospital records do not relate to a matter in question in this action, because liability for the accident has been admitted. Even if the argument is the injuries of the defendant are relevant to the significance of the impact and statements to third parties relate to how the accident occurred, here liability is admitted.
- [12] I agree with the reasoning in the *Gulamani v. Chandra and Chandra* case, a 2009 decision of Madam Justice Arnold-Bailey, reported at 2009 BCSC 1487, where Madam Justice Arnold-Bailey, in a case where liability was denied, stated at paragraph 44, the defendants' "medical records relating to injuries allegedly sustained in the accident do not relate to a matter in question in the action. The injuries of the defendant are irrelevant to liability for the accident and the damages suffered by the plaintiff."
- [13] No case was cited indicating when and how hospital records of the defendant should be producible, where liability is admitted. If I am wrong on the relevance of these documents in this matter, I find that the defendant's hospital records should remain private, as it has not been established to my satisfaction that an invasion of her privacy is necessary in this case.

- [14] The argument that the plaintiff should have the documents as of right fails the proportionality argument, as the privacy rights should not be abridged without cogent reasons to do so. I do not find there are any cogent reasons to order production of these records, especially since liability is admitted and there is other evidence available to indicate the severity of the collision and the injuries sustained by the plaintiff.
- [15] I therefore decline to exercise my jurisdiction to order production of the defendant's NRGH records from November 20 and 21 in this matter.
- [16] I would be prepared to just order that both of you bear your own costs, given the outcome of the two applications.
- [17] MS. HUGGINS: I'm going to take no position if my friend is agreeable.
- [18] MR. DE TURBERVILLE: That's fine.
- [19] THE COURT: Thank you. "Master Dick"

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