

CANADA / JUDGMENT

Mace v. Mitra

2025 BCSC 1400

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Supreme Court of British Columbia

DECIDED

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2025 BCSC 1400 Mace v. Mitra

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Mace v. Mitra,

2025 BCSC 1400

Date: 20250722

Docket: S210661

Registry: Vancouver

Between:

Cameron Mace

Plaintiff

And

Dr. Goldis Mitra

Defendants

Before: The Honourable Justice S. Ramsay

Reasons for Judgment

Counsel for Plaintiff:

D. Shane

Counsel for Defendants:

J.A. Morris

M.A. Clark

Place and Date of Hearing:

Vancouver, B.C.

May 26, 2025

Place and Date of Judgment:

Vancouver, B.C.

July 22, 2025

Overview

- [1] On February 11, 2019, the plaintiff, Mr. Mace, was admitted to hospital and diagnosed with pneumonia. Doctors eventually determined that his condition required the insertion of a pleural catheter into his chest to drain fluid that had collected around his lungs. The procedure was performed by a physician who was originally, but is no longer, a defendant to this proceeding, Dr. Janzen.
- [2] Several days later, Mr. Mace's chest catheter was removed by a medical resident under the supervision of the defendant, Dr. Mitra. There is no dispute that upon removal of the catheter, Mr. Mace experienced an intrathoracic bleed and hemothorax (blood in the space around the lung)--this is the injury at issue in this proceeding. It was serious and required further treatment, including surgery.
- [3] The parties agree that there are only two possible causes of the injury: (1) an artery was damaged during insertion of the catheter, which was only discovered when the catheter was removed because while it was in place it blocked the flow of blood from the artery, or (2) physical trauma to Mr. Mace's chest wall suffered during removal of the catheter.
- [4] Mr. Mace concedes that he has no claim against Dr. Mitra if the catheter insertion caused his injury. To succeed in a claim against Dr. Mitra, the injury must have been caused during removal of the catheter.
- [5] The catheter was what is known as a pigtail catheter, which is a flexible tube with a suture that is pulled taut after the catheter is inserted, creating a coiled pigtail shape to hold it in place. To remove a pigtail catheter, the suture must first be cut.
- [6] The parties agree that the only plausible way Mr. Mace's injury could have been caused during removal of the catheter is if it was removed without first cutting the suture. In that scenario, the coiled pigtail end of the catheter would tear through tissue, creating trauma to the chest wall. To succeed in his claim against Dr. Mitra, Mr. Mace must prove (among other things) that the catheter was removed with the suture in place.

- [7] Dr. Mitra says Mr. Mace has not met his burden of proving the injury was caused by the catheter being removed with the suture in place. To the contrary, she says the evidence shows the suture was cut before the catheter was removed. She therefore asks that Mr. Mace's claim be dismissed pursuant to Rule 9-7 (Summary Trial).
- [8] Mr. Mace says the question of causation is not suitable for summary determination. He says credibility and reliability issues exist with Dr. Mitra's evidence that make it impossible to find the facts necessary to determine whether the suture was cut. He says the evidence supports an inference that the suture was not cut, and he needs to cross-examine Dr. Mitra at trial to explore her evidence in that regard. He also says he needs to cross-examine one of Dr. Mitra's experts, Dr. Siu, on conflicts between his opinion and that of Mr. Mace's expert, Dr. Ball.
- [9] As I explain below, I am satisfied that this matter is suitable for summary trial. I can find the facts necessary to determine whether the suture was cut before the catheter was removed. Summary determination would not be unjust.
- [10] The evidence establishes that the suture was cut before the catheter was removed. Mr. Mace therefore cannot meet his burden of proving that Dr. Mitra caused his injury, and his claim against her must be dismissed.

Suitability for summary trial

- [11] I may only determine Mr. Mace's claim by summary trial if I can find necessary facts on the evidence before me, and if I believe that summary determination would not be unjust: Rule 9-7(15).
- [12] Mr. Mace says this matter is not suitable for summary trial because conflicts in the evidence make it impossible to find the necessary facts. I do not agree.
- [13] Mr. Mace says there is a conflict between Dr. Mitra's and Mr. Mace's evidence regarding whether and to what extent the resident received instruction from Dr. Mitra on catheter removal procedure. In my view, there is no true conflict between their evidence--rather, they give evidence about different events. Mr. Mace describes a bedside conversation between Dr. Mitra and the resident that did not include instructions on the procedure. Dr. Mitra does not give any evidence about her version of any discussion she had with the resident in Mr. Mace's presence. What Dr. Mitra does describe is instructing the resident in the procedure before returning to Mr. Mace's bedside, something Mr. Mace obviously could not give evidence about because it did not occur in his presence. I do not consider there to be any conflict in this evidence.

- [14] Mr. Mace submits that the evidence supports an inference that the suture was not cut. If accepted, there is a significant conflict between that inference and Dr. Mitra's evidence that the suture was cut. In those circumstances, summary trial may well not be appropriate. However, as explained below in relation to causation, I do not agree that the evidence supports the inference proposed by Mr. Mace. There is therefore no conflict on that critical issue.
- [15] Mr. Mace also argues that summary trial is not suitable because of concerns about the credibility and reliability of Dr. Mitra's evidence. He says Dr. Mitra's evidence that the catheter was cut cannot be accepted, because she did not remove the catheter herself, there is no evidence from the resident who removed the catheter, and her detailed description of the catheter removal is not consistent with her inability to recall the name of the resident or with the cursory nature of the contemporaneous clinical note. Mr. Mace says that these considerations give rise to credibility and reliability concerns that can only be assessed after cross-examination of Dr. Mitra at trial. I do not accept that argument, for several reasons.
- [16] First, having to assess credibility and reliability of affidavit evidence does not preclude the possibility of a summary trial, absent discrepancies in evidence on critical issues: *Hewson v. British Columbia*, 2016 BCSC 803 at para. 18, *aff'd* 2017 BCCA 143. I do not consider there to be any discrepancies in evidence on critical issues in this case.
- [17] Second, I do not agree that the considerations cited by Mr. Mace give rise to credibility or reliability concerns with Dr. Mitra's evidence. While Dr. Mitra did not cut the suture herself, she provided hands-on assistance to the resident who performed the procedure. I acknowledge there is no evidence from the resident, but that is because no one has been able to determine their identity. While it would be helpful to have evidence from the resident, that evidence is simply not available. The absence of evidence from them does not create a credibility or reliability concern with Dr. Mitra's evidence about the events in question.
- [18] There is no basis to conclude that Dr. Mitra's detailed evidence about the procedure is inconsistent with her inability to recall the name of the resident or with the contemporaneous clinical note. I consider it reasonable that Dr. Mitra would remember the details she describes, because it was an unexpected and serious event for her patient. However, the significance of the resident's identity as a witness who could confirm the suture was cut would not have been apparent at the time given Dr. Mitra's impression that Mr. Mace had suffered an arterial bleed. I address the difficulty with Mr. Mace's reliance on the brevity of the contemporaneous clinical record below.
- [19] The third issue with Mr. Mace's argument is that while he says cross-examination is necessary to address credibility issues, it was apparent from his submissions that he wishes to cross-examine Dr. Mitra to "probe" her evidence about something he says is missing from her affidavits: whether she saw the resident cut the suture. As discussed further below, I do not agree with Mr. Mace's characterization of Dr. Mitra's evidence on this topic. In any event,

Mr. Mace has examined Dr. Mitra for discovery. He has not sought to cross-examine her on her affidavits. Mr. Mace cannot now "simply insist on a full trial in hopes that with the benefit of viva voce evidence, 'something might turn up'" on cross-examination of Dr. Mitra: *Everest Canadian Properties v. Mallmann*, 2008 BCCA 275 at para. 34. He was required to take all necessary steps to prove his claim at the summary trial hearing: *Gichuru v. Pallai*, 2013 BCCA 60 at para. 32.

- [20] The above comments apply equally to Mr. Mace's submission that cross-examination of Dr. Siu is required. I do not agree with Mr. Mace's characterization of Dr. Siu's evidence as conflicting with that of Dr. Ball. That submission is based on out-of-context excerpts from the opinions of each doctor. Viewed in context, there is no conflict in their opinion evidence. Mr. Mace effectively seeks to cross-examine Dr. Siu at trial in the hope of eliciting evidence helpful to his theory of the case, which is not a basis for finding this matter is unsuitable for summary trial.
- [21] The critical issue--whether the suture was cut--is not complex. It is a question of fact that I can resolve on the evidence before me. My finding on that issue will be determinative of Mr. Mace's claim. It is not reasonable, proportionate, or in the interests of justice to proceed to trial in these circumstances. These are all factors that weigh in favour of this matter being appropriate for summary trial.
- [22] Mr. Mace has filed a notice requiring trial by jury. While not pressed in submissions before me, in his application response Mr. Mace argues that a conventional trial is required so that he is not denied the opportunity to have this matter decided by a jury. Having filed a jury notice is an important factor to be considered in assessing suitability for summary trial, but it is not determinative: *Hung v. Gardiner*, 2003 BCCA 257 at para. 55. I have considered Mr. Mace's filed jury notice as a factor weighing against suitability for summary trial but, in my view and in the circumstances of this case, it does not outweigh the factors in favour of summary trial, described above.
- [23] For the above reasons, I am satisfied that this matter is suitable for summary trial determination. I can find the necessary facts and it would not be unjust to decide Mr. Mace's claim on the evidence before me.

Was the suture cut before the catheter was removed from Mr. Mace's chest?

- [24] As stated, Mr. Mace cannot succeed in his claim against Dr. Mitra without proving that the catheter was removed with the suture in place.
- [25] Dr. Mitra's evidence is that removal of pleural catheters is a routine part of physician training. Her evidence is that she discussed the procedure with the resident in advance, including that the suture would be cut before removal. These instructions occurred outside the presence of Mr. Mace.

- [26] Dr. Mitra's evidence is that during the procedure, she "instructed and provided hands-on assistance to the Resident to cut the pleural catheter in the area required to uncoil the pigtail drain prior to removal from Mr. Mace's body". She says the resident "gently pulled on the remainder of the pigtail to ensure there was no resistance, and then pulled the remainder of the pleural catheter straight out". Dr. Mitra's evidence is that she "could observe from how the pleural catheter was removed that there was no resistance on removal". Dr. Mitra says the resident completed the removal in the same way Dr. Mitra would have.
- [27] Mr. Mace's evidence is that in his presence, Dr. Mitra and the resident discussed that the resident had never performed a pleural catheter removal. He recalls that Dr. Mitra said, "ok well you might as well try it now". His evidence is that the resident then removed the catheter with no instruction or communication from Dr. Mitra.
- [28] Mr. Mace could not see the catheter removal, because the insertion point was through his back. He had no way of observing the procedure as it occurred. Mr. Mace's evidence is that the resident "pulled and removed the tube very quickly". When the catheter was removed, he felt "immediate and severe pain" that was "the most intense pain" he has ever felt.
- [29] Dr. Mitra's evidence is that upon removal of the catheter, she observed what she assessed to be significant arterial bleeding. Mr. Mace began to experience symptoms that included muscle spasms, profuse sweating, shortness of breath, and mildly reduced blood pressure. As Dr. Mitra assessed Mr. Mace, his condition significantly worsened. An immediate chest x-ray showed that he likely had bleeding around his lung. Dr. Mitra involved a critical care physician and continued to monitor and treat Mr. Mace. Her shift ended and she handed Mr. Mace's care over to a colleague.
- [30] Mr. Mace argues that I should infer that the catheter suture was not cut before its removal, because the resident did not receive proper instruction on the procedure, the contemporaneous clinical record does not record that the suture was cut, Dr. Mitra does not expressly state in her evidence that she saw the resident cut the suture, and the chance of an artery being damaged by the catheter insertion is low. I do not agree that the inference proposed by Mr. Mace is available on the evidence before me.
- [31] First, I do not accept Mr. Mace's assertion that Dr. Mitra did not properly instruct the resident. Mr. Mace assumes that because he did not overhear the instruction, it did not occur. However, Dr. Mitra's evidence is that she provided the resident with detailed instructions on the procedure before they returned to see Mr. Mace. I accept that evidence. It makes sense that Dr. Mitra would explain the technical details of the procedure to the resident outside the presence of the patient.

- [32] In the scenario proposed by Mr. Mace, Dr. Mitra would have allowed a resident she was responsible for training to perform a procedure on a patient who was under Dr. Mitra's care, without providing any instruction on the procedure and knowing that the resident had never performed the procedure before. There is no evidence to suggest Dr. Mitra would have acted that way. That scenario is not in accordance with the preponderance of probabilities affecting this case.
- [33] I acknowledge that the contemporaneous clinical record of the procedure does not record that the suture was cut. However, the absence of that information does not, on its own, support the inference Mr. Mace proposes. There are multiple steps to removal of a catheter, many of which are not specifically documented in the clinical record. The clinical note is cursory, stating only: "pigtail removed at [approximately] 1545. [No] resistance. Significant external bleeding [at] site, arterial".
- [34] There is no evidence about which steps in a pleural catheter removal procedure should normally be documented. There is no evidence as to whether the content of the clinical record in this case meets or falls short of the usual standard expected of clinical records in comparable circumstances. There is no evidence that recording the fact that the suture was cut is the usual or expected practice for a clinical record entry describing a routine pleural catheter removal that resulted in significant bleeding. Absent evidence on these matters, I am unable to draw any inference arising from the absence of such a notation in this case.
- [35] Further, Mr. Mace's position ignores that while the clinical record does not state that the suture was cut, it does state the catheter was removed with "[no] resistance". The uncontroverted expert evidence is that if the catheter was removed without the suture being cut, removal would be very difficult and would involve a significant degree of resistance if attempted.
- [36] Mr. Mace suggests that Dr. Mitra would have noted the suture was cut if it had been, because removal of Mr. Mace's catheter resulted in an "adverse medical event". I do not agree that the proposed inference necessarily follows from those facts. Absent evidence establishing the standards for clinical record content, I cannot make any inferences related to the absence of information about the suture in the contemporaneous clinical record.
- [37] Mr. Mace's submission that I should infer Dr. Mitra did not see the resident cut the suture because she does not expressly say so in her affidavits is not a fair or reasonable characterization of her evidence. First, while Dr. Mitra does not use the words "I saw" when describing the procedure, she does state that she "instructed and provided hands-on assistance to the [resident] to cut the pleural catheter ", that "the [resident] removed the pleural catheter the same way that I would have, had I been removing the pleural catheter on my own", and that "the [resident] cut the tube/suture in the manner described" by Mr. Mace's expert, Dr. Ball. The only reasonable interpretation of this evidence is that Dr. Mitra saw the resident cut the suture.

- [38] Finally, there is no merit to Mr. Mace's argument that I can infer the injury occurred during removal of the catheter because there are only two possible causes of his injury, and the medical risk of the other possible cause--arterial damage during catheter insertion--is low. There is no evidence before me to suggest that because the statistical risk of injury during catheter removal is low, the risk of injury during catheter insertion is correspondingly high. To the contrary, Dr. Ball's opinion is that the complication rate associated with catheter removal is lower than the complication rate associated with catheter insertion. Mr. Mace's submissions on this point wrongly conflate the concepts of statistical risk of injury and causation of injury.
- [39] On the evidence before me, I have no difficulty finding that the suture was cut before the catheter was removed from Mr. Mace's chest. This finding is directly supported by Dr. Mitra's evidence that the suture was cut, and indirectly supported by her evidence that the catheter was removed without resistance, something that would not have been possible if the suture had remained intact. As discussed above, there is also a contemporaneous medical record that the catheter was removed without resistance, supporting my finding that the suture was cut prior to removal.
- [40] Mr. Mace's evidence is that the catheter was removed quickly. That evidence is consistent with Dr. Mitra's evidence that the catheter was removed "in a matter of seconds". Mr. Mace submits that the catheter could have been removed quickly with resistance. That submission is not supported by any expert evidence, and it is contrary to Dr. Siu's description of what would be expected if a catheter was removed with the suture intact. In my view, the fact that the catheter was removed quickly suggests it was removed without resistance, which in turn suggests the suture had been cut.
- [41] Another issue with Mr. Mace's theory that the catheter was removed with the suture intact is that there is no evidence of the kind of trauma to Mr. Mace's chest wall that Dr. Siu says one would expect in those circumstances. Dr. Mitra's evidence is that there was "no trauma to the tissue surrounding the area where the pleural catheter was removed". Each of the experts reviewed Mr. Mace's hospital records, and none of them mention any evidence of trauma.
- [42] I acknowledge Mr. Mace's evidence is that he experienced extreme pain on removal of the catheter. He submits that evidence is more consistent with the injury being caused by removal of the catheter and not during its insertion. The difficulty with that argument is that there is no evidence before me about the degree of pain a patient might experience during a sudden arterial bleed. On the evidence, it is not possible for me to make a finding about the cause of Mr. Mace's pain; the fact that he experienced pain, on its own, does not assist his position.
- [43] Based on the evidence I have described above, and applying the balance of probabilities standard of proof, I have no difficulty finding that the suture was cut before the pleural catheter was removed from Mr. Mace.

Conclusion and costs

[44] Mr. Mace has the burden of proving his injury was more likely caused by the removal of the catheter than by the artery being damaged during catheter insertion. He has not met that burden. The evidence does not support his theory that the catheter was removed with the suture intact. It is clear on the expert evidence that removal of the catheter with the suture cut, as I find it was in this case, could not plausibly have caused Mr. Mace's injury. Dr. Mitra therefore cannot be liable for Mr. Mace's injury. It follows that Mr. Mace's claim against her must be dismissed.

[45] As the successful party, Dr. Mitra is presumptively entitled to her costs from Mr. Mace, at Scale B. If either party seeks an alternative costs order, they have leave to request a further hearing before me within 30 days of the date of this judgment. In that circumstance, I will provide further direction to the parties regarding the exchange of written argument before the hearing date.

"Ramsay J."

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