

CANADA / JUDGMENT

McEvoy v. Grohme

2024 BCSC 895

COURT

Supreme Court of British Columbia

DECIDED

1 May 2024

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2024 BCSC 895 McEvoy v. Grohme IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: McEvoy v. Grohme, 2024 BCSC 895 Date: 20240501 Docket: M211892 Registry: Vancouver Between: David Thomas McEvoy Plaintiff And Karin Grohme and Peter Heinrich Grohme Defendants Before: Associate Judge Robertson Oral Reasons for Judgment In Chambers Counsel for the Plaintiff: M. Zanic Counsel for the Defendants: M. Monroy Place and Date of Trial/Hearing: Vancouver, B.C. May 1, 2024 Place and Date of Judgment: Vancouver, B.C. May 1, 2024

- [1] THE COURT: The application before the court today is one with respect to defence independent medical examinations ("IMEs") but on very limited grounds, that being, what conditions ought to be imposed with respect to conduct money, specifically whether or not conduct money is payable, and whether it ought to be inclusive of hotel costs, in order to address the convenience factor as set out in R. 7-6 of the Rules of Court.
- [2] This matter involves a motor vehicle accident that occurred on November 15, 2018. Liability is denied. The claims include much of the usual heads of damages and claims for injuries, with the added complexity of a pre-existing diagnosis from 2009 of rheumatoid arthritis and associated pain.
- [3] The IMEs that the defendant wishes the plaintiff to attend are twofold: one with Dr. George Medvedev, a neurologist, on May 2, 2024, at 3:00 p.m. (moved to this later time from what was initially a 10:30 a.m. appointment to make it more convenient for the plaintiff); and a second with Dr. John Wade, a rheumatologist, the following day, May 3, 2024, at 8:30 a.m.
- [4] The plaintiff is a 63-year-old man who has been on long-term disability for some time. He lives in Maple Ridge. The IMEs are in Vancouver.
- [5] Although the affidavit is hearsay evidence introduced through the plaintiff's legal-office staff member, the evidence is that the plaintiff he has not driven since the accident and generally gets around by using an electric scooter. His initial plan had been to have one of his sons drive him to the IMEs. However, that son has confirmed that he is not available to drive the plaintiff into Vancouver.

- [6] The evidence also indicates that plaintiff has problems falling asleep and staying asleep, problems waking up early, and generally takes at least an hour to get up and get ready to leave the house. Further, he lives by himself such that he worries that he will not be able to wake up early enough to go to an IME, particularly factoring in the travel time. In this respect, the travel time from Maple Ridge to downtown/Broadway area, particularly during rush hour, could be anywhere from an hour to an hour and 40 minutes meaning that with respect to an 8:30 AM appointment, the plaintiff would need to wake up and get himself ready quite early in order to be there on time. While the plaintiff is able to generally attend appointments independently, he tends to book them later in the day for that reason.
- [7] As such, the plaintiff is of the view that having a hotel over night, which means he will be close to the appointments, particularly the May 3, 2024 appointment, will enable him to attend without having his sons take him, and to eliminate the risk of being late, or missing the appointment.
- [8] As to the exact amount of the conduct money being sought, there remain some outstanding determinations, including how much a taxi will cost given that his sons can no longer drive, and whether or not having a taxi taking him to and from his home would even address some of his concerns, given the commute time.
- [9] Nonetheless, I am satisfied that in the circumstances of this case and having regard to cases where a similar accommodation has been reached, albeit by consent, that payment of a hotel cost for one night is appropriate.
- [10] As noted in *Parent v Krystal*, 2021 BCSC 988, in a similar circumstance, meals and accommodations the night before an IME was provided for the plaintiff who indicated that it would be a stressful morning drive to attend.
- [11] As noted, convenience is a factor for consideration in making orders for attendance at IMEs. The stress of having to make a long commute, particularly first thing in the morning, and risk to being late or missing the appointment altogether as a result does have some import on applications such as this, and in this plaintiff's particular circumstances.
- [12] I am satisfied that one night's accommodation on the night of May 2, 2024 is appropriate to provide, along with meals and travel costs being covered to and from Vancouver. I do agree, however, that the more costly hotel is not necessary.
- [13] I make the order on the basis that conduct money is to be provided to cover the taxi costs to and from Vancouver to Maple Ridge, one night's hotel not to exceed \$400, and meals of \$120, with reimbursement for the hotel and taxi to be paid upon receipt of invoices in respect of the hotel and taxis.
- [14] With respect to the notice of application itself then, paras. 1, 2, 3, 5, 6, and 7 are granted with the addition that the conduct money as referenced in paras. 3 and 7 will go on the terms as I have set out above.

[15] Paragraphs 4 and 8 are adjourned.

[16] As to costs, it seems to me that there was divided success on this.

[17] The defendants have the IMEs they sought, but the conduct money is a little bit in between the two positions, although probably more in favour of what the plaintiff was seeking. However, given that this application was brought in a rather quick manner before the parties could meaningfully negotiate the differences in their positions, as the facts changed, including that they were able to change the one appointment to 3:00 PM, and that the sons are now no longer available to drive such, an appropriate order is that each party bear their own costs. "Associate Judge Robertson"

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