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CANADA / JUDGMENT

## Reed v. Amell

2014 BCSC 1613

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COURT

Supreme Court of British Columbia

DECIDED

25 August 2014

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2014 BCSC 1613 Reed v. Amell

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Reed v. Amell,

2014 BCSC 1613

Date: 20140825

Docket: M113476

Registry: Vancouver

Between:

Wendy Reed [nee Larsen]

Plaintiff

And

Alana Dawn Amell

Defendant

And

Insurance Corporation of British Columbia

Third Party

Before: District Registrar Nielsen

Reasons for Decision

Counsel for the Plaintiff:

S.T. Cope

Counsel for the Defendant:

No Appearance

Counsel for the Third Party

K.S. Johal

Place and Date of Hearing:

Vancouver, B.C.

August 15, 2014

Place and Date of Decision:

Vancouver, B.C.

August 25, 2014

## introduction

- [1] This is an assessment of costs with respect to a motor vehicle accident that occurred on August 16, 2009, when the plaintiff was side-swiped and subsequently rear-ended as she was pulling over to exchange particulars. Liability was admitted. Trial was scheduled to take place January 20 to 29, 2014. The case settled on January 6, 2014, for \$200,000 plus taxable costs and disbursements. A complicating factor was the existence of an unrepresented defendant.
- [2] Counsel have agreed on many of the tariff items and applicable amounts, and most of the disbursements. What follows is a discussion of those tariff items and disbursements that remain in dispute.

## tariff items

- [3] A Registrar is to allow tariff fees with respect to work that was proper or reasonably necessary to the proceeding and must consider Civil Rule 1-3, the object of the Rules.
- [4] The issue of which fees and outlays claimed should be allowed must be determined objectively. In fixing the number of units for items where a minimum and maximum number of units is allowed, the Registrar is to allow:
- (a) the minimum unit for matters upon which little time should ordinarily have been spent; and
  - (b) the maximum unit for matters upon which a great deal of time should ordinarily have been spent.

- [5] Registrars must have regard to the particular circumstances of the proceeding in which the costs are claimed when deciding how many units within the prescribed range should be allowed.
- [6] The plaintiff claims 2 units for a case planning conference which took place on February 29, 2012. At the case planning conference, the plaintiff obtained an order removing the litigation from the fast track process under Civil Rule 15-1.
- [7] In addition, the trial was set down for hearing for eight days; the third party was ordered to prepare and deliver a list of documents in Form 21 to counsel for the plaintiff by March 2, 2012. The unrepresented defendant's approval as to form was dispensed with.
- [8] Two units are claimed with respect to the case planning conference and 2 units are awarded.
- [9] The plaintiff claims 2 units for the preparation for attendance at the trial management conference on November 4, 2013. The plaintiff claims 2 units for attendance. I am advised by counsel that the conference took one and a half days. One unit is awarded.
- [10] Plaintiff's counsel has requested 2 units under item 14 for preparation of a Notice to Admit dated December 19, 2014. The Notice to Admit contains three paragraphs and six pages of chiropractic records. One unit is awarded.
- [11] Finally, units are requested with respect to preparation to attend the assessment of costs, attendance at the assessment, and travel to the assessment. The assessment of costs took a half day within the context of the provisions in Appendix B.
- [12] One unit is awarded for tariff item 29, the preparation to attend the assessment of costs; 2 units are awarded under tariff item 30 for attendance at the costs assessment; and, 2 units are awarded under tariff item 41 for travel to the assessment of costs.
- [13] All other tariff items are agreed as to item and amount.

#### disbursements

- [14] In *Turner v. Whittaker*, 2013 BCSC 712, the applicable legal principles were summarized by Master MacNaughton as follows:
- [5] Counsel were also able to agree on the following legal principles which are applicable on an assessment of disbursements:
  - 1. Rule 14-1(5) requires an assessing officer to determine which disbursements were necessarily or properly incurred in the conduct of a proceeding and to allow a reasonable amount for those disbursements.
  - 2. The consideration of whether a disbursement was necessarily or properly incurred is case- and circumstance-specific and must take into account proportionality under Rule 1-3. (*Fairchild v. British Columbia (Vancouver Coastal Health Authority)*, 2012 BCSC 1207).

3. The time for assessing whether a disbursement was necessarily or properly incurred is when the disbursement was incurred not with the benefit of hindsight. (Van Daele v. Van Daele, 56 B.C.L.R. 176 (SC) rev'd 56 B.C.L.R. 178 at para. 4 (CA))
  4. A necessary disbursement is one which is essential to conduct litigation; a proper one is one which is not necessary but is reasonably incurred for the purposes of the proceeding. (McKenzie v. Darke, 2003 BCSC 138, para. 17-18)
  5. The role of an assessing officer is not to second guess a competent counsel doing a competent job solely because other counsel might have handled the matter differently. (McKenzie v. Darke, 2003 BCSC 138, para. 21)
- [15] Dealing with each disbursement as it appears on the bill, the first is in regards to Registry fees in the amount of \$200 to file a Notice of Civil Claim under Part 7, the no-fault provisions, and also a claim for \$80 to file the Appointment to assess costs. Agent fees are also claimed in regards to both these disbursements. To cost of filing the Part 7 Writ was \$7.00 and the Notice to Assess Costs was \$7.00.
- [16] The third party objects to the costs of filing the Part 7 claim on the basis that it relates to a separate proceeding. The third party refers to Muller v. Workman et al., 2004 BCSC 90, wherein Master Patterson stated:
- [15] With respect, I disagree with the result attained by District Registrar Sainty. The authority to which she referred is not authority for the proposition that disbursements in a Part 7 action are included in the disbursements for a tort action. There is no provision in the Rules to include disbursements in another proceeding. A registrar, or master sitting as a registrar, on the assessment of a bill of costs is governed entirely by the order of the court and the Rules of Court to assess those costs.
- [16] It is worth pointing out that this case is not the standard motor vehicle action defended by the Insurance Corporation of British Columbia. The suit here was against the cyclist and his father. Neither were insured through a policy of automobile insurance.
- [17] There is no provision in the consent order in this proceeding for Part 7 costs or disbursements to be added in to this bill of costs. Hence the disbursements are disallowed.
- [17] The Part 7 Writ was filed on April 23, 2012. Counsel for the plaintiff submits that had the matter gone to trial without a Part 7 Writ having been filed and a no-fault claim preserved, ICBC would have claimed a deduction. Here, the Part 7 claim was filed to preserve the plaintiff's rights under the Insurance (Vehicle) Act to seek (and be reimbursed for) treatment related to the accident.
- [18] The Part 7 action was therefore necessary and adjunct to this litigation. But for the defendant's actions, which caused the accident, the plaintiff would not have had to commence the Part 7 action to preserve her rights. Accordingly, I will allow the \$200 cost to file the Notice of Civil Claim under Part 7 and the agent's fees of \$7.00 are allowed.

- [19] Both the \$80 Registry fee and the agent fee of \$7.00 to set the assessment of the bill of costs are also allowed.

### Photocopying

- [20] The plaintiff claims the costs of photocopying with respect to the binders and documents related to the costs assessment. The pages were counted at 708. A claim of \$125 is advanced, which, at ¢25 per page, would equate with 500 pages.
- [21] As explained in *Sovani v. Jin*, 2006 BCSC 855, the assessment of the reasonableness of photocopying charges is not an arithmetical exercise but rather requires consideration of what is reasonable in the circumstances of the action. It has been described as a "rough and ready" calculation.
- [22] The amount claimed is reasonable and incorporates a deduction. The \$125 disbursement claimed is allowed.

### MRI costs

- [23] The plaintiff has claimed a total of \$3,378.43 related to radiology costs. The plaintiff had MRIs done both to the right wrist and right shoulder. Plaintiff's counsel had initially offered to fund the assessment of the MRI to the right wrist but that was initially rejected by the plaintiff's general practitioner, Dr. Frayne. However, as the plaintiff's complaints became chronic and persistent, Dr. Frayne made a specialist referral to Dr. Faverro and also endorsed an MRI referral.
- [24] Dr. Faverro, the treating expert, reviewed the MRI reports and suggested that the plaintiff return in September 2011 for a "clinical and radiographic review".
- [25] Plaintiff's counsel emphasizes that Dr. McKenzie, the treating specialist, also wanted MRIs to be done in order to properly assess the plaintiff. He stated: "I would suggest that she undergo a plain x-ray and motion study of the wrist. That includes an AP and lateral view of the wrist, as well as lateral views of the wrist inflexion and extension and AP views of the wrist and radio deviation in all of deviation". Dr. McKenzie further stated: "in my opinion, she should undergo an MRI arthrogram of the right shoulder. She may need further treatment depending on whether or not her symptoms improve or not".
- [26] A complicating factor was that the plaintiff moved out of the province of British Columbia to Alberta in March 2011. Plaintiff's counsel advises that because the plaintiff was no longer a British Columbia resident, and had not been for a year, she was not entitled to coverage under the British Columbia public healthcare system.

- [27] Defence counsel questions the costs of the plaintiff coming to British Columbia for the MRI assessments, the issue being why not have them done in Alberta. Plaintiff's counsel advises that the costs associated with having the MRIs done in Alberta, in conjunction with bringing radiological experts to British Columbia to give evidence would have been too expensive.
- [28] Plaintiff's counsel advised that once travel time is incorporated into the mix, an out-of-province expert could have cost four days' worth of cancellation costs. This, in turn, would have led to the out-of-province expert costs being challenged on the basis that it would have been cheaper to enlist local experts.
- [29] I find that the MRIs were properly incurred. The cost in the amount of \$3,378.43 is allowed.

### Travel Expenses

- [30] The plaintiff travelled from Alberta to British Columbia in order to be assessed by Dr. McKenzie. The costs associated with that travel were two WestJet flights in the amount of \$172.61 and \$177.58. There is a further WestJet flight in the amount of \$455.61 that was incurred in order to undergo a number of further medical appointments which included the right shoulder arthrogram on March 19, 2012 and wrist X-rays.
- [31] I find that the travel costs associated with the medical appointments were necessary and properly incurred in the conduct of the proceeding and those disbursements are allowed.
- [32] Finally, the remaining disbursement in issue was the cost of conduct money which was not returned by two witnesses in the amount of \$80. Counsel for the plaintiff advises that he requested the return of the conduct money but simply was not successful in getting the money back.
- [33] This disbursement is not seriously contested. Conduct money is required to compel the attendance of those witnesses required to attend a trial. The disbursement in the amount of \$80 is allowed.

### conclusion

- [34] If the parties require a certificate, they can submit one, with the signatures of counsel for the plaintiff and the third party. The unrepresented defendant did not attend and therefore her signature is dispensed with.

"District Registrar Nielsen"

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