
CANADA / JUDGMENT

Shannon v. Cook

2019 BCSC 1975

COURT

Supreme Court of British Columbia

DECIDED

22 October 2019

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2019 BCSC 1975 Shannon v. Cook

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Shannon v. Cook,

2019 BCSC 1975

Date: 20191022

Docket: M180648

Registry: Vancouver

Between:

Cynthia Rose Shannon

Plaintiff

And

Michael Cook

Defendant

Before: Master Cameron

Oral Reasons for Judgment

Counsel for the Plaintiff:

T. Martin

Counsel for the Defendant:

B. McFadden

Place and Date of Hearing:

Vancouver, B.C.

October 22, 2019

Place and Date of Judgment:

Vancouver, B.C.

October 22, 2019

- [1] This application brought by the Defendant seeks production of clinical records from a number of medical practitioners and other medical service providers in some cases dating back to June 14, 2004, and in other cases from February 11, 2006, to the present.
- [2] Defence counsel seeks all of these additional clinical records that extend beyond the more conventional two year pre-accident period for production because, in his submission, the exploration of the circumstances of the earlier accidents involving the Plaintiff of June 14, 2006, April 6, 2008, November 28, 2009, and January 6, 2011, all of which were settled in August of 2011, are an integral part of the defence of this action.
- [3] It was submitted that the injuries sustained suffered by the plaintiff in those accidents and the compensation she received in respect of her damage and loss may be relevant and necessary to delve into to fairly adjudicate upon the damage and loss sustained by the plaintiff in this action respecting a motor vehicle accident which occurred in February 2016.
- [4] Defence counsel referred to a litany of medical records in an effort to demonstrate that there was some linkage between these historical accidents and some of the physical and other complaints that the plaintiff has pled in this action.
- [5] Counsel for the plaintiff was equally industrious in reviewing the documented medical history of the plaintiff to show that there was no apparent linkage between any of the injuries sustained in those earlier accidents that would require any inquiry into the settlement of those claims or production of the clinical records and independent medical reports that were produced for the litigants in those actions.
- [6] What is telling in my view in respect of this application is this: defence counsel examined the plaintiff for discovery in October 2018 and I am advised undertook a careful review of all of these historical accidents and asked questions about them, the circumstances surrounding them, the injuries sustained by the plaintiff in each of them and her recovery, whether it was complete or otherwise, in respect of those accidents.
- [7] The parties have a ten day trial pending in January 2020, and now just three months before trial, defence counsel brings this application seeking production of clinical records, medical records, employment records and third party expert reports going back as far as ten years from the date of the subject motor vehicle accident. In my view, it is simply too late at this

stage of the proceeding for the defendant to suggest that these records are necessary to properly prepare for trial. Any experts retained by the defendant have been retained, save for the companion application for one further independent medical examination which I will address, and either have prepared their reports or are on the verge of doing so given that the 84 day limit for delivery of expert reports expires next week.

- [8] There is nothing in the affidavit evidence to suggest that any of the experts retained by the defendant have been handicapped in any way in providing opinions about the injuries sustained by the plaintiff, her current circumstances and her prognosis. If there was the need for those historical records, I expect that defence counsel would have received that request from their experts and would have included such requests as a foundational pillar supporting this application.
- [9] In this context, I adopt what Master Muir said in *Marchant-Larson v Bahrami*, 2017 BCSC 2337, as follows:
- [7] The defendants bring no specific evidence in support of their application that more than two years of records are required. They simply point to the pre-existing conditions, the evidence that these pre-existing conditions are of some considerable length and history prior to the accident, and certainly well prior to two years before the accident. There is no evidence from any expert that more than two years of disclosure are required in order to properly analyze her propensity for having the problems she is currently experiencing or to establish a baseline for an analysis of her present condition.
- [8] There is nothing before me that takes this outside of the sort of general concept that two years prior to a motor vehicle accident is a sufficient investigation, barring other evidence, to allow the defendants to properly investigate the facts surrounding pre-existing conditions.
- [10] Accordingly, the application for the production of these historical clinical records and other associated records is dismissed.
- [11] The defence also applies for production of the transcripts of the plaintiff's examination for discovery in the historical accident claims.
- [12] I will adjourn that application because as curious as it may be, the counsel for the plaintiff and counsel for the defendant in this action were also counsel for all the parties in the other actions and neither counsel have been able to locate their copies of the transcripts from those discoveries after a diligent search. If the transcripts surface, the parties may reset the application before any other presider.
- [13] This leaves the application by the defence for an independent examination of the plaintiff by a physiatrist set for October 24, 2018.

- [14] This application has an unusual history to it, in this way: earlier in this action plaintiff's counsel agreed that the defendant would be entitled to an independent examination with a vocational consultant, an independent examination with a psychiatrist and an independent examination with a physiatrist.
- [15] An application was subsequently brought by the defence for an order to have a fourth independent examination by a neurologist. In granting that application Master Elwood said:
- [32] However, I am satisfied that there are also distinct areas of focus of these three medical specialties. The focus of a neurologist is on diagnosis of problems with the nervous system, whereas the focus of a physiatrist is on physical injuries, rehabilitation and the prognosis of recovery, and the focus of a psychiatrist is on diagnosing and treating secondary psychiatric disorders.
- [16] On that footing, Master Elwood ordered that there be an independent medical examination by Dr. Johnston, a neurologist.
- [17] As matters transpired, the independent examination with the physiatrist did not occur. For reasons that counsel did not make entirely clear for some reason the physiatrist selected did not examine the plaintiff although she appeared for the examination as scheduled by the defence.
- [18] The examination by the psychiatrist and the vocational assessment were completed.
- [19] Dr. Johnston provided an independent medical report following his neurological examination and upon receipt of that report, plaintiff's counsel, as I described it during the course of the argument, "changed course" and said that while initially the plaintiff was prepared to be examined by a physiatrist, the contents of the report of the neurologist made such an examination not necessary or proportional. Plaintiff's counsel submitted that Dr. Johnston had not limited his report to a diagnosis of any issues with the nervous system but also opined in respect of some of the plaintiff's soft tissue injuries and concluded in respect of them that they were improving and would continue to improve. He also provided some advice and recommendations for her rehabilitation and her prognosis of recovery in respect of those soft tissue injuries.
- [20] Plaintiff's counsel submitted that if Dr. Johnston was limited or restricted in providing an opinion on the plaintiff's physical injuries and her prognosis for recovery he would have done what he did in deferring any opinion to the psychiatrist in respect of some of her other complaints. This he did not do.
- [21] I am satisfied that in keeping with the now well known authorities referred to by counsel it is not necessary to maintain an "even playing field" in this case and would not be proportional or the interests of an orderly resolution of the case to require the plaintiff to attend yet another independent medical examination this close to trial and the application is dismissed.

(SUBMISSIONS ON COSTS)

- [22] The plaintiff will have the costs of the applications dealing with the income and employment records, the medical records and associated documents sought going back to 2004, including the settlement documents, and the costs in respect of the application for the independent medical examination.
- [23] The costs of the application with respect to the discovery transcripts will be reserved for the presider should that application proceed. To simplify matters, I award the plaintiff the sum of \$1,500 inclusive of disbursements and taxes for all attendances on these applications, not payable forthwith.

"Master Cameron"

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