

CANADA / JUDGMENT

Sidhu v. Sidhu

2020 BCSC 1032

COURT

Supreme Court of British Columbia

DECIDED

29 June 2020

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2020 BCSC 1032 Sidhu v. Sidhu IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Sidhu v. Sidhu, 2020 BCSC 1032 Date: 20200629 Docket: M175472 Registry: Vancouver Between: Harvinder Singh Sidhu Plaintiff And Sikindar Singh Sidhu, Kanwaldeep Kaur Sidhu, Davide Serra, Brittany Marie Serra Defendants Before: Master Cameron Oral Reasons for Judgment Counsel for the Plaintiff appearing via teleconference: S. Jaworski Counsel for the Defendants, Sikindar Sidhu and Kanwaldeep Sidhu appearing via teleconference: S. Ali Place and Date of Hearing: Vancouver, B.C. June 29, 2020 Place and Date of Judgment: Vancouver, B.C. June 29, 2020

- [1] These are my reasons for judgment on this adjournment application.
- [2] This application is brought by the defendants to adjourn the trial of this personal injury action set for July 20, 2020, for ten days.
- [3] The application is yet another an example of where unfortunately the COVID-19 pandemic has caused disruption in the management and preparation for trial by all parties involved in litigation.
- [4] In this case, a difference of opinion arose earlier this year as to whether or not the defendants would be entitled to an independent medical examination with an orthopaedic surgeon where the defendants had already obtained an independent examination and a report from a neurosurgeon.
- [5] Defence counsel ultimately agreed with plaintiff's counsel objection and instead said, to be prepared for trial, they would be satisfied with one more independent medical examination with a physiatrist.
- [6] In early May 2020, defence counsel obtained a date with a physiatrist, Dr. Clark for an examination of the plaintiff on June 17, 2020.

- [7] Plaintiff's counsel responded on May 11, 2020 to say: We write regarding your letter requesting the plaintiff's attendance at an IME with a psychiatrist. We do not agree that the Rule 11-6 deadline for service of originating reports 84 days before trial has been suspended. You are now in receipt of the plaintiff's expert reports. You are entitled to respond to those reports but the time for fresh opinion based on a physical assessment has passed. This is unrelated to the COVID-19 epidemic.
- [8] Unfortunately, both counsel appear to have not appreciated this conclusion was not correct. In fact, the deadline for service of reports was suspended based on a direction from the Chief Justice that was published on the Supreme Court website. It was COVID-19 Notice #8 that in part provided: Effective March 18, 2020, filing and service deadlines under the Supreme Court Civil Rules and the Supreme Court Family Rules are suspended until May 29, 2020, following which they will begin to run again.
- [9] When the opposition was made by plaintiff's counsel to the examination with a psychiatrist, defence counsel may have brought an application under the urgent Chambers application procedure in place for an order to have that examination proceed. . . Defence counsel did not bring that application, noting in submissions that there were other matters outstanding to be dealt with prior to trial, including document production, and the concern that there may not be an ability to bring this application within the restricted guidelines that then applied for urgent Chambers applications, that is, they were to be confined to one issue based on one affidavit of ten pages or less.
- [10] While I do not agree with defence counsel that a discrete application could not be brought, given the plaintiff's refusal to attend the IME, it is also true that defence counsel did not get the litigation ball rolling down the wrong path respecting the IME issue. The stalemate left the defence in a position where they did not have an IME from a psychiatrist in a case where the plaintiff's future loss of capacity to earn income is a very significant feature based on the advice of counsel that the plaintiff has not been able to return to work in a meaningful way since the accident in 2015.
- [11] On an application to adjourn a trial, the court has to be cognizant of ensuring that the decision is focussed on what is necessary in the interests of justice, and that always requires balancing the interests of the parties. There also has to be a reckoning of the parties' ability to be prepared to proceed to trial and to conduct the trial in a way in which they are not unfairly hampered or prejudiced in any way.
- [12] The plaintiff, quite understandably, seeks closure in a case that goes back five years, where he has continued to suffer from a significant disability and the adjournment is opposed with that in mind.
- [13] However, in these rather unique circumstances, it is beyond question that the objection by the plaintiff to the attendance with a psychiatrist was based on an erroneous premise. It has set matters back, and has put the parties in a position where all the requisite medical evidence cannot be made available in time for trial. That is as a direct result of the plaintiff

frustrating the completion of the last IME requested by the defence and where the objection was not based upon any other ground than the erroneous premise that any report would be out of time.

- [14] In these circumstances, I am of the view that the interests of justice require that the trial be adjourned.
- [15] It is a term of the adjournment, Mr. Ali, that there is a formal admission of liability on the part of the defendants.
- [16] MR. ALI: Yes.
- [17] In these unusual circumstances there will be no costs to either party of the application.
"Master Cameron"

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