

CANADA / JUDGMENT

Stein v. British Columbia (Workers' Compensation Appeal Tribunal)

2020 BCCA 327

COURT

British Columbia Court of Appeal

DECIDED

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2020 BCCA 327 Stein v. British Columbia (Workers' Compensation Appeal Tribunal) COURT OF APPEAL FOR BRITISH COLUMBIA Citation: Stein v. British Columbia (Workers' Compensation Appeal Tribunal), 2020 BCCA 327 Date: 20201110 Docket: CA46160 Between: Cheryl Stein Appellant (Petitioner) And WCAT, WCB, Conrad Keebler, and Lois Keebler Respondents (Respondents) Corrected Judgment: The text of the judgment was corrected at para. 12 on November 27, 2020. Before: The Honourable Mr. Justice Groberman The Honourable Mr. Justice Harris The Honourable Madam Justice Dickson On appeal from: An order of the Supreme Court of British Columbia, dated May 15, 2019 (C.S. v. British Columbia (Workers' Compensation Appeal Tribunal), Vancouver Docket S149004). Oral Reasons for Judgment The Appellant, appearing in person (via teleconference): C. Stein The Respondents, appearing in person (via teleconference): C. Keebler L. Keebler Place and Date of Hearing: Vancouver, British Columbia November 10, 2020 Place and Date of Judgment: Vancouver, British Columbia November 10, 2020 Summary: This is an appeal of an order dismissing an application to find the respondents in contempt of court for failing to comply with a document production order. Held: Appeal dismissed: The appellant is unable to identify any error in principle or palpable and overriding error of fact in the judge's decision. He did not err in his award of costs. The Court awards lump sum costs to the respondents fixed in an amount of \$1,000.

- [1] HARRIS J.A.: Ms. Stein appeals from an order dismissing her application to find the personal defendants, Conrad and Lois Keebler (the "Keeblers"), in contempt of court. The judge ordered Ms. Stein to pay \$100 in costs to each of the respondents.
- [2] Although the application below involved other parties and other issues, this appeal is proceeding only in respect of the issue between Ms. Stein and the Keeblers, namely the issue of contempt.
- [3] The alleged contempt related to an order requiring documents to be produced by the Keeblers. Ms. Stein contended that the Keeblers had over-redacted and falsified the documents they were required to produce. These documents related to services Ms. Stein had performed while working as a cardiologist technician in the office of Dr. Keebler.

- [4] The issue of an order of production of MSP records is not an issue which is before us. We are dealing solely with the question of the over-redaction and falsified documents the Keeblers were required to produce.
- [5] Having been taken through the record and having heard from the parties, the judge said that he was unable to find that the Keeblers had not substantially complied with the document production order, consistent with Dr. Keebler's ethical obligations to redact the documents to protect patient privacy.
- [6] On this appeal, Ms. Stein contends the judge disregarded or ignored evidence of the Keeblers' contempt, applied the wrong test for contempt (alleged in her factum), and erred in awarding costs against her. In her factum, she also argues that the judge was biased against her.
- [7] It would serve no useful purpose to set out in full the complicated procedural history involving multiple proceedings and parties that have arisen out of Ms. Stein's time working for Dr. Keebler. Those proceedings are summarized, for example, by Justice Milman in *Stein v. Allan*, 2019 BCSC 1734. I note, however, that Ms. Stein has brought at least six proceedings and more than ten applications against the Keeblers, and has been declared a vexatious litigant in the Supreme Court of British Columbia. She has applied on several occasions to have the Keeblers found in contempt. Each application has been dismissed.
- [8] It is of some moment, however, to observe that this application was brought in the British Columbia Supreme Court file No. S-149004. That proceeding was a judicial review of a Workers' Compensation Appeal Tribunal ("WCAT") decision that had upheld previous decisions by the Workers' Compensation Board ("WCB") and the WCB Review Division to deny Ms. Stein compensation. By the time this application was brought, the judicial review had been dismissed in the Supreme Court of British Columbia. Ms. Stein appealed that decision. This Court heard that appeal in March 2019, with additional submissions in November 2019. This Court dismissed the appeal on November 19, 2019. At the time the application involved in this appeal was heard in May 2019, the appeal of the dismissal of the judicial review petition had been argued in this Court, and was on reserve.
- [9] The judge below was aware of this procedural history up to the point of the judicial review appeal being on reserve. As he rightly pointed out, at para. 10 of his reasons, there was no outstanding litigation before the British Columbia Supreme Court on this file and he had no authority to order document production in that context. Moreover, he rightly determined that he could not make a document production order in the proceeding before him for use in other litigation. He noted, as well, that other judges had dismissed substantially the same application before him on previous occasions. I mention these matters because the judge focused principally on those issues in response to the main issues he had to decide. The issue of alleged contempt was one among many issues, and was dealt with in a brief finding of fact by the judge.

- [10] This appeal is not concerned with the merits of the underlying dispute between Ms. Stein and the Keeblers, even though much of her factum is devoted to presenting her view of that dispute. Rather, the appeal is focused on whether the judge made a reversible error in dismissing Ms. Stein's application to find the Keeblers in contempt, and awarding costs against her.
- [11] I will begin by observing that I consider the allegation that the judge was biased against Ms. Stein to be devoid of merit. I see nothing in the record before us to suggest that the judge exhibited any bias, real or apprehended. To the contrary, it seems clear that the judge listened to the parties, examined the evidence, assessed it, and made certain findings of fact. The judge did not discuss the law of civil contempt, but judges are presumed to know the law and to apply it. I can see nothing to suggest that the judge failed in his obligation to decide the case impartially.
- [12] In my opinion, Ms. Stein has not demonstrated to us any error of fact or principle underlying the judge's order. His finding of fact was open to him on the evidence. This morning, in oral submissions, Ms. Stein pointed to some evidence in the record that she says supports her view about the truth of the number of tasks she did each day and the accommodation she was provided with. But that evidence, which are in the form of prior consistent statements, is inadmissible and irrelevant in any event. Ms. Stein explained to the judge that the material documents in the record, including a key document relied on by Ms. Stein, had been falsified and over-redacted. She said the Keeblers were lying about how much work she had done for them. The judge's finding of fact is entitled to deference. There is no merit in the suggestion that the judge made palpable and overriding errors of fact about such matters as the number of tests done each day, whether the Keeblers breached an accommodation of Ms. Stein, or their alleged lies in the hearing.
- [13] The judge rightly recognized the ethical obligations imposed on Dr. Keebler to respect private information contained in the day sheets, and to redact them accordingly. The judge was entitled, implicitly, to reject the argument that Ms. Stein had proven that the work sheets had been tampered with or falsified. The judge's conclusion that he could not find that the Keeblers had not substantially complied with the order is unassailable, in my opinion.
- [14] In the circumstances, and given the history between the parties, the judge's award of costs was indeed "very measured". The judge was entitled to order costs in a fixed amount: see Rule 14-1(15) of the Supreme Court Civil Rules. As a rule, a successful party on an application is entitled to costs. The burden of persuading a judge not to order costs is borne by the losing party. Here, Ms. Stein argued to the judge that he ought not to award costs against her. The judge exercised his discretion as he was entitled to do against her. I see no error in principle in the exercise of discretion that would permit this Court to interfere with the order.

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- [15] I would dismiss the appeal with lump sum costs in an amount fixed at \$1,000 to the respondents, payable forthwith.
- [16] GROBERMAN J.A.: I agree.
- [17] DICKSON J.A.: I agree.
- [18] GROBERMAN J.A.: The appeal is dismissed with lump sum costs in an amount fixed at \$1,000 to the respondents, payable forthwith. "The Honourable Mr. Justice Harris"
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Prepared on 26 October 2026 · Esheria