

CANADA / JUDGMENT

Turner v. Dionne

2018 BCSC 1075

COURT

Supreme Court of British Columbia

DECIDED

1 June 2018

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2018 BCSC 1075 Turner v. Dionne IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Turner v. Dionne, 2018 BCSC 1075 Date: 20180601 Docket: M116475 Registry: Vancouver Between: Erika Turner Plaintiff And: Elias Edgar Dionne Defendant Before: The Honourable Madam Justice Adair Supplementary Reasons re Costs, Tax Gross-up and Management Fees In Chambers Counsel for the Plaintiff: J. Nieuwenburg Counsel for the Defendant: D. Perry Place and Dates of Hearing: Vancouver, B.C. June 1, 2018 Place and Date of Judgment: Vancouver, B.C. June 1, 2018

- [1] THE COURT: In a judgment issued October 25, 2017 and indexed at 2017 BCSC 1905, I found the defendant liable to the plaintiff, Ms. Turner, for damages for injuries arising out of a motor vehicle accident, and I awarded damages to Ms. Turner totalling \$1,426,002.83. This sum included \$950,000 for future loss of earning capacity and \$145,489 for cost of future care. The parties were given leave to make submissions concerning costs, management fees and tax gross-up. Written submissions were filed in December 2017 in anticipation of a December hearing date, and I heard oral submissions today.
- [2] There is no issue concerning costs. I confirm the order that was made on October 25, 2017, that Ms. Turner is entitled to her costs on Scale B.
- [3] Plaintiff's counsel has provided a calculation of prejudgment interest. There is no dispute regarding this calculation, and those amounts can be included in the formal order from trial.
- [4] There is also no dispute concerning the calculations of the tax gross-up found in Mr. Darren Benning's November 2, 2017 report at table 1. However, as the tax gross-up depends on how the funds are invested, I need to make a determination about this. I have concluded, based on Mr. Hildebrand's evidence, that the plaintiff is likely to be able to achieve a rate of return equal to the discount rate through an interest-only portfolio. On that basis the tax gross-up is \$13,514.
- [5] The parties, however, disagree regarding Ms. Turner's entitlement to a management fee and, if entitled, the amount.

- [6] A management fee is intended to compensate for the cost to the plaintiff of management and investment of the lump sum damage awards for future care and loss of future earnings. It is a sum that may be given to ensure those awards fully compensate the plaintiff as was intended by the court, without erosion by expenditures for professional management. However, such an award is not automatic. The party seeking to recover a management fee must provide evidence of the necessity for the service. In addition, in order to receive an award for the cost of management services, the plaintiff must adduce evidence of the management services required to provide a rate of return equal to the discount rate.
- [7] In this case, the plaintiff seeks a management fee of \$247,353 based on a mixed portfolio, or, alternatively, \$107,373 based on an interest-only portfolio. Those are the amounts set out in Mr. Benning's table 1. In a supplementary report dated May 29, 2018, Mr. Benning did a further calculation of fees for a mixed portfolio (based on slightly different assumptions) at \$148,199. The plaintiff says, based on the amount of money involved and her historic difficulties with science and math, an award for management fees in this range is justified.
- [8] There is no evidence of what the plaintiff has done with the judgment awarded since last year. There is indeed no evidence at all of the plaintiff's circumstances since the trial ended.
- [9] The defendant says that the plaintiff has failed on the evidence to establish that any management assistance or investment assistance is necessary, and therefore she has failed to establish that she has any entitlement to an award. The defendant says that financial advice entirely appropriate to the plaintiff's circumstances is available at no charge through banks and other similar financial institutions and would allow the plaintiff to produce a rate of return equal to the discount rate. The defendant says that, at most, a relatively modest one-time lump sum would be sufficient to "bridge the gap" or to assist the plaintiff with investment advice and the preparation of an investment plan. Such an award was made in *Riding-Brown v. Jenkins*, 2015 BCSC 1751. There was a \$10,000 award in respect of damages of about \$1.2 million. Also in *Best v. Thomas*, 2014 BCSC 2487, there was an award of \$25,000 in respect of damages of about \$2.6 million.
- [10] The plaintiff is a thoughtful and mature woman now in her late 20s. There is no evidence that, despite struggles with math and science, she has ever, either before or after the accident, had any problems managing money responsibly. There is no evidence that, since the judgment was released at the end of October 2017, she has struggled in any way to decide what to do with her award. I find that she is capable of making rational decisions about her financial future with the occasional assistance of a financial advisor and with the benefit of the complementary services that are available to bank customers. I conclude, therefore, that only a modest award is justified, and I award \$15,000 for management fees.
- [11] In summary, the tax gross-up is calculated at \$13,514, and a management fee is awarded of \$15,000.
- [12] That concludes my ruling. "ADAIR J."

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Prepared on 29 October 2026 · Esheria