

CANADA / JUDGMENT

Vandendorpel v. Evoy

2017 BCSC 1865

COURT

Supreme Court of British Columbia

DECIDED

20 October 2017

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2017 BCSC 1865 Vandendorpel v. Evoy

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Vandendorpel v. Evoy,

2017 BCSC 1865

Date: 20171020

Docket: 12-3074

Registry: Victoria

Between:

Michael Paul Vandendorpel

Plaintiff

And:

Beverly Camillis Evoy and Sheila Louise Evoy

Defendants

Before: The Honourable Mr. Justice G.R.J. Gaul

Reasons for Judgment

Counsel for the Plaintiff:

R. S. Sahota

P. Dudding

Counsel for Defendants:

S. Finn

Place and Date of Hearing:

Victoria, B.C.

19 & 20 January 2017

Supplemental Submissions:

6 February 2017

Place and Date of Judgment:

Victoria, B.C.

October 20, 2017

Introduction

- [1] This action involves a claim by a pedestrian who was struck by a motor vehicle. The accident occurred at the "T" intersection created by the termination of Mount View Avenue at Sooke Road, in Colwood, British Columbia (the "Intersection").
- [2] There are three marked crosswalks at the Intersection. One traverses Mount View Avenue, one traverses Sooke Road at the northern end of the Intersection and one traverses Sooke Road at the southern end of the Intersection. The two crosswalks that traverse Sooke Road have pedestrian traffic control signals.
- [3] At approximately 6:45 a.m. on 9 October 2010, the plaintiff Mr. Vandendorpel was walking north on Sooke Road. He was on his way to work at the Shell Service Station on the northwest corner of the Intersection. Around the same time, the defendant Mr. Evoy was driving his motor vehicle south on Sooke Road. He was returning home after completing his work shift as a paramedic with the BC Ambulance Service.
- [4] When Mr. Vandendorpel reached the Intersection's southern crosswalk, he activated the pedestrian control signal so that he could safely cross Sooke Road. Failing to wait for the signal to change, he began to cross the roadway. When he was part way across Sooke Road, Mr. Vandendorpel noticed Mr. Evoy's car approaching. Although the pedestrian traffic signal facing him was still red, Mr. Vandendorpel began to run directly across Mr. Evoy's path of travel.
- [5] Mr. Evoy's vehicle entered the Intersection as the traffic control signal was yellow. He had not seen Mr. Vandendorpel crossing the roadway and only did so at the last moment when there was no time to avoid a collision.
- [6] The front passenger side of Mr. Evoy's vehicle clipped Mr. Vandendorpel's right foot causing him to spin and fall to the ground.

- [7] Following a nine-day trial, I found Mr. Vandendorpel 100% at fault for the accident. I therefore dismissed his action. My reasons for judgment are indexed at 2015 BCSC 176.
- [8] Mr. Vandendorpel appealed from the order dismissing his action. That appeal was allowed. At reasons indexed at 2016 BCCA 270, Savage J.A. explained:
- [24] In the circumstances, in my view, it was necessary for the trial judge to undertake an analysis of the applicable statutory provisions, and relate those to the facts found. I do not mean by that to suggest that there is any particular outcome to the analysis which must be undertaken, but only that, in analyzing the defendant's duty of care, these statutory provisions should have been considered and reviewed. Nor do I suggest that the only matters that are germane are the statutory provisions. Clearly the duties imposed by the common law include a duty to exercise due care, to keep a proper lookout, and to take precautions when there is an apparent hazard.
- [25] As noted by Mr. Finn, the trial judge did not go on to determine the question of causation because he found that Mr. Evoy met the duty of care. For a finding of liability against Mr. Evoy it was necessary to find both a breach of the duty owed to Mr. Vandendorpel and that the breach was a cause of the injury.
- [9] In the result, the Court of Appeal sent the case back to this court for reconsideration.

Position of the Plaintiff

- [10] The plaintiff contends that in addition to the common law duties that apply to the circumstances of this case, the following specific provisions of the Motor Vehicle Act, R.S.B.C. 1996, c. 318 (the "Act") need to be analyzed when assessing whether the defendant was negligent and in determining his degree of liability for the accident: ss. 125, 128, 131(5), 144, 146, 181.
- [11] Although Mr. Vandendorpel accepts he was partially to blame for the accident, he contends Mr. Evoy was equally culpable, given the manner in which he was driving. In the result, Mr. Vandendorpel submits liability should be apportioned evenly between the parties.
- [12] In support of his argument, the plaintiff has cited a number of authorities, including:
- Cerra v. Bragg, [1980] B.C.J. No. 536 (S.C.);
 - Wight v. Prince, [1985] B.C.J. No. 308 (S.C.);
 - Morgan v. Hauck, [1988] B.C.J. No. 535 (C.A.);
 - Nelson (Guardian ad litem of) v. Shinske, [1991] B.C.J. No. 3841 (S.C.);
 - Bishop (Guardian ad litem of) v. Hiebert, [1996] B.C.J. No. 516 (S.C.); appeal allowed [1997] B.C.J. No. 1412 (C.A.);
 - Sheng v. Davis, [1998] B.C.J. No. 2932 (C.A.);

- McKee (Guardian ad litem of) v. McCoy, [1999] B.C.J. No. 678 (S.C.); appeal allowed [2001] B.C.J. No. 804 (C.A.);
- Williams (Guardian ad litem of) v. Low, [1999] B.C.J. No. 2718 (S.C.);
- McKee (Guardian ad litem of) v. McCoy, 2001 BCSC 1652;
- Funk v. Carter, 2004 BCSC 866;
- Wilson v. Potter, 2005 BCSC 807;
- Hadden v. Lynch, 2008 BCSC 295;
- Bell v. Thorner, 2009 BCSC 44;
- Hmaied v. Wilkinson, 2010 BCSC 1074;
- Pirie v. Skantz, 2015 BCSC 368.

Position of the Defendant

- [13] The defence contends that a careful analysis of the applicable statutory provisions and common law principles leads to a result that is no different from the one I reached in my original reasons. That is, Mr. Vandendorpel was entirely responsible for the accident.
- [14] The defence further submits that even if I were to find Mr. Evoy breached his common law or statutory duty of a driver, that alone is not proof of actionable negligence. In this regard, the defence says there is no causal link between Mr. Evoy's actions or inactions and the accident. In other words, even if Mr. Evoy was driving in a negligent manner, that negligence did not cause the accident.
- [15] Finally, the defence contends that in the event I find Mr. Evoy was partially responsible for the accident and liability should be apportioned between the parties, then the greater share of the blame should be attributed to Mr. Vandendorpel.
- [16] In support of his position, the defendant cited a number of authorities, including:
- Cempel v. Harrison Hot Springs Hotel Ltd., [1997] B.C.J. No. 2853 (C.A.)
 - Lau v. Calderisi, [1998] B.C.J. No. 1311 (S.C.)
 - Gautreau v. Hollige, 2000 BCCA 390;
 - Kerr (Litigation Guardian of) v. Creighton, 2008 BCCA 75;
 - Lutley v. Southern, 2011 BCCA 299;
 - ICBC v. Penag, 2013 BCSC 238;
 - Jones v. Treloar, 2013 BCSC 452;
 - Wotherspoon v. Hameluck, 2014 BCSC 2137.

Did the defendant breach his duty of care?

Section 125 (Obeying traffic controls)

[17] Section 125 of the Act reads:

125 Unless otherwise directed by a peace officer or a person authorized by a peace officer to direct traffic, every driver of a vehicle and every pedestrian must obey the instructions of an applicable traffic control device.

[18] It is readily apparent that this section applies to both pedestrians and drivers.

[19] The plaintiff argues that the defendant failed to obey the traffic control signal when he attempted to drive through the Intersection when the signal was yellow. I do not agree. In my view, Mr. Evoy properly entered the intersection on a yellow light and in doing so did nothing to breach this section of the Act.

[20] In my opinion, it was Mr. Vandendorpel who failed to obey this provision of the Act when he depressed the pedestrian control button and within a second or so attempted to cross Sooke Road before the pedestrian walk signal had illuminated.

Section 128 (Yellow light)

[21] Section 128 of the Act in part reads:

128 (1) When a yellow light alone is exhibited at an intersection by a traffic control signal, following the exhibition of a green light,

(a) the driver of a vehicle approaching the intersection and facing the yellow light must cause it to stop before entering the marked crosswalk on the near side of the intersection, or if there is no marked crosswalk, before entering the intersection, unless the stop cannot be made in safety,

[22] The plaintiff argument in relation to this section of the Act is similar to the one he has advanced with respect to s. 125. He submits that when the defendant was faced with the yellow traffic control signal, he should have brought his vehicle to a stop at the Intersection's northern stop line. In failing to do so and in proceeding through the Intersection on the yellow light, the plaintiff says Mr. Evoy breached s. 128 of the Act.

[23] In my reasons for judgment, I addressed the applicability of this provision of the Act to the circumstances of this case. Both the plaintiff and the defendant presented expert opinion evidence at trial that touched upon the distance Mr. Evoy required to bring his vehicle to a stop at the Intersection's northern stop-line and whether he could have done so in response to the yellow light. After having considered that expert evidence, along with all of the other evidence at trial, I was not satisfied Mr. Evoy could have safely brought his vehicle to a stop prior to entering the Intersection and that he was justified in proceeding through it as he did.

- [24] On this reconsideration, plaintiff's counsel has provided me with a number of scenarios suggesting that had Mr. Evoy been driving at the posted speed limit or 5 km /hr below that limit, he would have been able to bring his vehicle to a stop.
- [25] I will have more to say about the speed of Mr. Evoy's vehicle when I address the question of whether he was speeding and driving in a careless manner. For the moment I will note that I am not convinced by anything I have heard or seen on this reconsideration that Mr. Evoy breached this particular section of the Act.

Section 131(5) (Flashing lights)

- [26] This was another provision of the Act that I expressly referenced in my reasons for judgment. The subsection reads:
- (5) When rapid intermittent flashes of green light are exhibited at an intersection or at a place other than an intersection by a traffic control signal,
 - (a) the driver of a vehicle approaching the intersection or signal and facing the signal must cause it to approach the intersection or signal in such a manner that he or she is able to cause the vehicle to stop before reaching the signal or any crosswalk in the vicinity of the signal if a stop should become necessary, and must yield the right of way to pedestrians lawfully in a crosswalk in the vicinity of the signal or in the intersection, and
 - (b) a pedestrian may proceed across the roadway with caution and at an intersection only in a marked or unmarked crosswalk.
- [27] The plaintiff complains that the defendant breached this provision when he approached the Intersection when the control signal was flashing green in such a manner that he could not bring his vehicle to a safe stop when it became necessary. In essence the plaintiff asserts the defendant should have been slowing down as he approached the Intersection with the flashing green light because he knew or should have known that a pedestrian could be in the vicinity. The plaintiff further says the defendant should have slowed even more when the signal turned solid green because he knew or ought to have known at that point that a pedestrian who wanted to cross Sooke Road was present.
- [28] The defendant contends that this section does not apply to this case as there is no evidence that he saw the flashing green light. That is not entirely correct, nor is it in line with the finding of fact I made at trial. In his direct examination Mr. Evoy testified that at some point after he came around the left-hand bend in Sooke Road and was approaching the Intersection, he noticed the traffic control signal was "green with a blink ... a blinking green" which he described as "intermittent". What he could not say was precisely when the signal changed from flashing green to solid green. Although his evidence in chief was not entirely consistent with what he said in cross-examination, it would appear he believed the signal turned green as he was approaching the Intersection.

[29] In my view, the evidence does not support the submission that the defendant breached this section of the Act. It was only shortly before the traffic control signal turned yellow that Mr. Evoy realized it had gone from flashing green to solid green. While this put him on notice that a pedestrian was waiting to cross Sooke Road, I do not find it was unreasonable or negligent of him to think that the pedestrian would be at one of the two ends of the crosswalk waiting for the pedestrian control signal to change and not out in the middle of the roadway. Given the approximate speed and location of his vehicle on the roadway, I continue to find he acted appropriately in the circumstances when he chose to proceed through the Intersection on the yellow light.

Sections 144 (Careless driving) / 146 (Speed limits) / 181 (Duty of driver)

[30] The plaintiff's principal complaint is that when the accident occurred, the defendant was travelling at a speed above the posted limit and in any event too fast given the environmental and road conditions at the time. But for this careless manner of driving, the plaintiff says the defendant would have been able to stop before entering the Intersection. Alternatively, the defendant would have had to have driven through the Intersection on a red light in violation of s. 129 of the Act.

[31] Section 144 of the Act provides:

144 (1) A person must not drive a motor vehicle on a highway

- (a) without due care and attention,
- (b) without reasonable consideration for other persons using the highway, or
- (c) at a speed that is excessive relative to the road, traffic, visibility or weather conditions.

[32] Section 146 of the Act provides:

146 (1) Subject to this section, a person must not drive or operate a motor vehicle on a highway in a municipality or treaty lands at a greater rate of speed than 50 km/h, and a person must not drive or operate a motor vehicle on a highway outside a municipality at a greater rate of speed than 80 km/h.

[33] Section 181 of the Act provides:

181 Despite sections 178, 179 and 180, a driver of a vehicle must

- (a) exercise due care to avoid colliding with a pedestrian who is on the highway,
- (b) give warning by sounding the horn of the vehicle when necessary, and
- (c) observe proper precaution on observing a child or apparently confused or incapacitated person on the highway.

- [34] Much of the plaintiff's argument is predicated on the speed of Mr. Evoy's vehicle. That is, the plaintiff asserts that if Mr. Evoy had been driving slower, he either would have been able to stop before entering the Intersection or he would have been able to see Mr. Vandendorpel in the crosswalk and would have been able to safely avoid the collision.
- [35] The plaintiff criticizes Mr. Evoy for missing or misjudging three "key circumstances" that would have or should have alerted him to the potential danger that lay ahead: the southbound traffic control signal changing from flashing green to solid green; that signal then changing from solid green to yellow; and the plaintiff being in the crosswalk. I find much of this criticism is misplaced and contrary to what I found at trial. Mr. Evoy was familiar with the roadway and the Intersection. He was also familiar with the traffic control signals and what the various signals meant. At some point as he was driving southbound on Sooke Road approaching the Intersection, he noticed the traffic signal had changed from flashing green to solid green. As I noted at paragraph 25 of my reasons, "This prompted him to think that someone was on one of the sidewalks and had depressed the pedestrian control device". Mr. Evoy also saw the traffic control signal change to yellow. Where the plaintiff is correct is that Mr. Evoy did not see him on the roadway until the last second when he ran across Mr. Evoy's lane of travel.
- [36] Furthermore, the plaintiff's argument using the mathematical calculations provided by his counsel is founded to a certain degree on a finding of fact that I did not make. Plaintiff's counsel contends that "the defendant confirmed that he was going 55 kilometers an hour". This is not what Mr. Evoy testified to, nor is it a finding of fact that I made at trial. In his examination-in-chief Mr. Evoy testified as follows:

I would say - I'm not 100 percent, but I would say 50 - 55 ish. Around 50, 55. No more than 55. Just an average drive home.

Give or take one or two kilometers. One or the other. I can't say 100 percent I was this or I was - that. I was in that range between 50, 55.

On cross-examination, Mr. Evoy testified as follows:

Q: You were travelling at 55 kilometers per hour, is that correct?

A: Thereabouts. Actually could be a bit less. That was --

Q: So, I'll ask it one more time. You were travelling at about 55 kilometers per hour?

A: Approximately. Thereabouts.

Q: You know you were travelling 55 kilometers per hour?

A: I can't say 100 percent I was travelling -- I know I wasn't over 55. According to my odometer (sic) it's between the 50 and the 55, so it's there. At a glance down, it's thereabouts.

Q: You were going 55 kilometers an hour or thereabouts

A: That's correct.

- [37] In my reasons for judgment, I accepted the defendant's evidence and concluded at para. 45 that "Mr. Evoy's vehicle was travelling at approximately 55 km/hr or 15.3 metres per second" (emphasis added). Using this approximate rate of speed, I then attempted to reconstruct what I believed was the likely sequence of events that led up to the accident. Naturally, it was impossible for me to do so with laboratory exactness and in no way did I intend to attempt such a feat.
- [38] I was satisfied that when the southbound traffic signal on Sooke Road changed from solid green to yellow, Mr. Evoy's vehicle was 51.5 metres from the Intersection's northern stop line.
- [39] Counsel for the defendant submits that plaintiff's counsel has selected only portions of the evidence at trial, including the expert engineering evidence, and has then "quilted those pieces together for the purposes of advancing a theory". Although I tend to agree with defendant's counsel, that does not mean the plaintiff's submissions lack persuasive merit.
- [40] The evidence of the two expert engineering witnesses needs to be considered with a nuanced eye because to a large extent it is based on estimates and averages. Mr. Kurt Ising, the expert called by the defence, opined that for Mr. Evoy to bring his car to a safe stop at the Intersection, he needed to have seen the traffic control signal change from green to yellow from 62 metres or more. This was based in part on a "perception-response" time of 1.5 seconds from the traffic control signal changing from green to yellow. Mr. Gerald Stoudz, the expert called by the plaintiff, was not as specific on this point but did say that the distance would be less than 71 meters. He used a more conservative perception response time of 2.5 seconds. I was satisfied using either perception-response time that the defendant would not have had the time or the space to stop his vehicle at the Intersection's northern stop line.
- [41] Plaintiff's counsel says my findings of fact at trial are unimpeachable. He is correct on that; however, for obvious reasons they must be considered in the context in which they are made. As I have already explained, to expect to be able to recreate with laboratory precision the manner in which an accident occurs is unreasonable.
- [42] During the course of his submissions, counsel for the plaintiff used a video recreation of the Intersection and the accident, with Mr. Evoy's vehicle travelling at various speeds. This video material was not evidence at trial; it was something plaintiff's counsel created based upon the findings of fact I made at trial. Although defendant's counsel had no prior notice that it would be used at this hearing and he consequently had a limited opportunity to consider it and address it in his submissions, I do not find the material unfairly depicts the circumstances or, more importantly, prejudices the defendant's position on this reconsideration. Much like counsel's respective written submissions, including the mathematical tables that are included in plaintiff's counsel's submissions, I have considered this video material, keeping in mind that it is only an aide-memoire and not evidence per se.

- [43] I have reviewed all of the evidence provided at trial, including the expert opinion evidence of Mr. Ising and Mr. Stoudz, and I have done so keeping in mind the supplemental submissions I have received from counsel on this reconsideration. I have also examined the statutory provisions counsel have submitted are applicable to this case and have related them to the findings of fact I made at trial. I have done the same with respect to the common law duties that applied to the parties. Having done so, I agree with the plaintiff that the defendant was travelling at a speed above the posted limit and therefore he breached s. 146 of the Act. Although the speed was only marginally greater than 50 km/hr, the fact of the matter is Mr. Evoy was speeding.
- [44] In completing this reconsideration, I found the video material presented by plaintiff's counsel was helpful in visualizing and appreciating the different speed scenarios and what would likely have occurred had Mr. Evoy not been travelling above the posted speed limit. Recognizing that scientific precision cannot be achieved in situations like the present one, I am now satisfied that had Mr. Evoy been travelling at a slower speed, he would likely have seen Mr. Vandendorpel sooner and been able to take evasive measures to avoid the accident. Although the difference is only a second or so, on a balance of probabilities, that difference would likely have made a difference in the result.
- [45] In *Salaam v. Abramovic*, 2010 BCCA 212, Groberman J. observed that the statutory provisions of the Act do not encapsulate the complete legal framework for assessing and determining fault. At para. 21, he explained:
- [21] In the end, a court must determine whether, and to what extent, each of the players in an accident met their common law duties of care to other users of the road. In making that determination, a court will be informed by the rules of the road, but those rules do not eliminate the need to consider the reasonableness of the actions of the parties. This is both because the rules of the road cannot comprehensively cover all possible scenarios, and because users of the road are expected to exercise reasonable care, even when others have failed to respect their right of way. While s. 175 of the Motor Vehicle Act and other rules of the road are important in determining whether the standard of care was met, they are not the exclusive measures of that standard.
- [46] While I have found Mr. Evoy was entitled to proceed through the Intersection on the yellow light, I also find he should not have been driving faster than the posted speed limit, especially given the lighting and road conditions at the time.
- [47] Having considered all of the submissions on this reconsideration, I accept the plaintiff's argument that by travelling at the speed he was, Mr. Evoy breached the duty of care he owed to Mr. Vandendorpel.

Is there a causal link between the defendant's breach of his duty of care and the accident?

[48] In its simplest form, this question asks whether "but for" the speed of the defendant's vehicle, would the accident have happened and would the plaintiff have suffered injuries? (see: *Athey v. Leonati*, [1996] 3 S.C.R. 458).

[49] As I have noted earlier in these reasons, I accepted at trial and continue to accept that Mr. Evoy was entitled to enter the Intersection on a yellow light. However, with the benefit of this reconsideration, I am satisfied that had he been travelling at a slower rate of speed, he would likely have been able to see and respond to Mr. Vandendorpel's presence on the road in time to avoid the accident. I am therefore satisfied that but for the speed at which Mr. Evoy was driving on the morning of 9 October 2010, the accident would likely not have occurred.

Apportionment of Liability

[50] Being satisfied that both Mr. Vandendorpel and Mr. Evoy breached their respective duties of care and that it was because of their negligence that the accident happened, I must now address the issue of apportioning liability.

[51] Section 1 of the Negligence Act, R.S.B.C.1996, c. 333 stipulates:

- 1 (1) If by the fault of 2 or more persons damage or loss is caused to one or more of them, the liability to make good the damage or loss is in proportion to the degree to which each person was at fault.
- (2) Despite subsection (1), if, having regard to all the circumstances of the case, it is not possible to establish different degrees of fault, the liability must be apportioned equally.
- (3) Nothing in this section operates to make a person liable for damage or loss to which the person's fault has not contributed.

[52] In *Cemple v. Harrison Hot Springs Hotel Ltd.*, [1997] B.C.J. No. 2853 (C.A.), Mr. Justice Lambert for the majority explained:

[19] The Negligence Act requires that the apportionment must be made on the basis of "the degree to which each person was at fault". It does not say that the apportionment should be on the basis of the degree to which each person's fault caused the damage. So we are not assessing degrees of causation, we are assessing degrees of fault. In this context, "fault" means blameworthiness. So it is a gauge of the amount by which each proximate and effective causative agent fell short of the standard of care that was required of that person in all the circumstances.

- [24] In the apportionment of fault there must be an assessment of the degree of the risk created by each of the parties, including a consideration of the effect and potential effect of occurrences within the risk, and including any increment in the risk brought about by their conduct after the initial risk was created. The fault should then be apportioned on the basis of the nature and extent of the departure from the respective standards of care of each of the parties
- [53] While both parties failed in their respective duties of care, I find Mr. Evoy's failure was much less significant than Mr. Vandendorpel's. His negligence consisted of driving at a speed that was over the posted limit, even if it was only minimally above that limit (i.e., approximately 55 km/hr in a 50 km/hr zone) and doing so when the lighting and road conditions were less than optimal. Compared to this conduct, Mr. Vandendorpel's failures were more serious. He was dressed in dark clothing, including a dark hooded pullover that was zipped up to the top. None of his clothing had any light reflective qualities. Counsel for Mr. Vandendorpel submits that wearing dark clothing is not in and of itself contributory negligence. That submission is correct, but Mr. Vandendorpel's failures are greater than simply the clothing he was wearing. He was also wearing headphones and listening to music and that reduced his ability to hear any on-coming traffic. He also had to cross a five-lane roadway that spanned approximately 18 metres. Although he depressed the pedestrian control device, he only waited a second or so before he attempted to cross the roadway. He carelessly did so even though the pedestrian control signal was still red and the traffic control signals were still green. Mr. Evoy's vehicle approached the Intersection from the north. That is the direction Mr. Vandendorpel was initially walking. The headlights of Mr. Evoy's vehicle would have been visible from at least 100 metres away. Mr. Vandendorpel must not have looked north on Sooke Road as he began to cross the roadway because he did not see the headlights of Mr. Evoy's vehicle until it was approximately 30 metres away from him. That is, until the vehicle was just about to enter the Intersection. At that point, the pedestrian control signal was still red and the traffic control signal was yellow. Notwithstanding all of this, Mr. Vandendorpel chose to run across the path of the on-coming car instead of standing fast or retreating.
- [54] I remain of the firm opinion that Mr. Vandendorpel showed a reckless disregard for his duties as a pedestrian on the roadway and conclude that his degree of fault for the accident is greater than that of Mr. Evoy.
- [55] The case authorities counsel provided me with respect to apportionment have been helpful. Each party's degree of responsibility is to be decided by assessing the risk their respective conduct created, the effect of that risk, and the extent to which each party departed from the standard of reasonable care (see: MacDonald (Litigation guardian of) v. Goertz, 2008 BCSC 394, aff'd 2009 BCCA 358).

[56] In my view, the risk Mr. Vandendorpel created when he chose to walk and then run across Sooke Road, into the path of Mr. Evoy's on-coming vehicle created a much more significant risk than Mr. Evoy driving at a speed marginally above the speed limit on a dark morning with a wet roadway. Moreover, I find the departure from the standard of care expected of Mr. Vandendorpel as a pedestrian was much more pronounced than the departure of Mr. Evoy from his duty of care as a driver of a motor vehicle.

Conclusion

[57] Having conducted the reconsideration as directed by the Court of Appeal, I am satisfied that the plaintiff has made out his case. In reaching this decision I have also found that both parties share responsibility for the accident. In my opinion the appropriate division of liability is 20% to Mr. Evoy and 80% to Mr. Vandendorpel.

[58] Within 21 days of the date of these reasons, counsel are to inform me if and how they wish to make additional submissions on the issue of the quantum of damages. Moreover, the parties have leave to address the issue of costs in the event there is a need to do so.

"G.R.J. Gaul J."

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/sc/17/18/2017BCSC1865.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/vandendorpel-v-evoy-2017>

Prepared on 29 October 2026 · Esheria