

CANADA / JUDGMENT

Wang v. Wang

2017 BCSC 1981

COURT

Supreme Court of British Columbia

DECIDED

3 October 2017

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2017 BCSC 1981 Wang v. Wang IN THE SUPREME COURT OF BRITISH COLUMBIA Citation: Wang v. Wang, 2017 BCSC 1981 Date: 20171003 Docket: M138150 Registry: Vancouver Between: Nan Wang Plaintiff And Yubin Wang Defendant Before: Master Dick Oral Ruling In Chambers Counsel for the Plaintiff: S. Khazamipour Counsel for the Defendant: R. Davis Place and Date of Hearing: Vancouver, B.C. October 3, 2017 Place and Date of Ruling: Vancouver, B.C. October 3, 2017

- [1] THE COURT: I am going to give you some brief oral reasons. I will reserve the right to edit these reasons and put in appropriate citations if written reasons are necessary. In any event, if I edit the reasons it will not change the result.
- [2] This is the defendant's application that the plaintiff attend at an independent medical examination pursuant to Rule 7-6(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009 with Dr. Peter Wong, a neurologist, on October 16, 2017.
- [3] This action arises from a motor vehicle accident which occurred December 26, 2012. The plaintiff brought and filed the notice of civil claim on December 18, 2013. The matter is set for trial on February 10, 2018, for ten days.
- [4] In her notice of civil claim the plaintiff claims to have suffered a number of injuries that have led to complaints, including ongoing numbness of the face, headaches, fatigue and dizziness.
- [5] In 2013 and 2014 she regularly reported complaints in these areas to her general practitioner, kinesiologist and other medical practitioners. In recent medical reports headaches and dizziness are still complained of, though not to the same extent. Numbness on the extremities is also still complained of by the plaintiff.
- [6] The defendant requested the plaintiff attend to see an orthopedic surgeon, Dr. Kokan, as well as a neuropsychologist, Dr. Lysak and a neurologist, Dr. Wong in May 2017. The plaintiff consented to the appointments with Dr. Kokan and Dr. Lysak, but did not consent to the medical examination with Dr. Wong as they did not see the basis for it.

- [7] Dr. Lysak and Dr. Wong have sworn affidavits that are before me setting out the different testing each of them undertake in providing reports and what areas they give opinions in. There is no affidavit from Dr. Kokan, but his report and the instruction letter are before me. Dr. Kokan gives no indication that opining on headaches or any other complaints are areas outside of his expertise. He does not comment on the plaintiff's headaches or dizziness at all, but does give an opinion that there is no evidence of firm neurological loss on the part of the plaintiff, and the plaintiff appears to have primarily subjective complaints that appear disproportionate to the usual physical location, nature and pattern of injuries. His opinion was her presentation is consistent with inorganic sources of pain and deferred to a psychiatrist to report on this further.
- [8] The defendant submits that the attendances of Dr. Kokan and Dr. Lysak were voluntary, so they need only meet the lower threshold required for an order under Rule 7-6(1). The fact that the plaintiff has undergone two assessments is still a relevant consideration for me in exercising my discretion under Rule 7-6(1).
- [9] I note the plaintiff has seen a physiatrist and a psychiatrist, but the plaintiff indicates they do not intend on getting a report from a neurologist. One of the plaintiff's experts does recommend the plaintiff be seen by a neurologist for treatment purposes. The parties agree that the examination should be granted if it is necessary to put the parties on a reasonable basis of equality in preparing their case for trial.
- [10] The defendants say they need an opinion from a neurologist with respect to the plaintiff's headaches and dizziness so that there is an opinion before the court with respect to the origin of those complaints. The plaintiff says these are issues the orthopedic surgeon could have addressed and no reason is given why these complaints were not addressed. Therefore any neurologist report is not necessary.
- [11] I have considered the following considerations:
- a) reasonable equality does not necessarily mean the defendant should be able to match expert for expert or report for report. I would not consider this a subsequent examination by a specialist in a field that is the same specialty as an expert who previously examined the plaintiff.
 - b) There are no newly diagnosed symptoms that justify a subsequent examination by an appropriate specialist. The complaints of fatigue, headaches, dizziness and facial numbness and tingling are long standing in this matter.
 - c) With respect to the timeliness of the application it appears that Dr. Wong could get the report done by the 84-day deadline. I also understand that the defendants sought the report back in May of this year.

- [12] I am of the opinion that even if the symptoms complained of may be considered neurological the examination sought is not warranted. The defendant is not entitled to pursue every potential medical possibility to address the plaintiff's subjective complaints. The plaintiff has been seen by a neuropsychologist so a report may be forthcoming that may address the inorganic aspect of complaints as opined by Dr. Kokan.
- [13] I do not see the independent medical examination as being necessary to ensure equality between the parties at trial. Therefore, I am not prepared to exercise my discretion to allow the independent medical examination with Dr. Wong and this application is dismissed.
- [14] I note that the plaintiff indicates they do not intend to obtain a report from a neurologist. The defendant should be entitled to get a neurologist's report without further order if such a report is to be relied on by the plaintiff in this matter.
- [15] I would award costs to the plaintiff in the cause. "Master Dick"

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