Citation: Jordan v. Fortier
2002 BCSC 1887

Date: 20020710
Docket: B990741
Registry: Vancouver

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Master Doolan
July 10, 2002

BETWEEN:

EDWARD KEITH JORDAN

PLAINTIFF

AND:

ROBERT LOUIS FORTIER, JIE RONG PAN, EDWARD JOSEPH KANE, CCNS CORPORATE SERVICES LTD., JANICE HOI YAN CHAU and CHIU LAI CHAU

DEFENDANTS

Appearing on his own behalf — Edward Keith Jordan

Counsel for Defendants — T.H. Pettit

[1] **THE COURT:** I have before me the application of the defendants, as set out in the Notice of Motion dated June 12th, 2002 and filed June 27th, 2000. They seek an order under Rule 30 that the plaintiff attend on a second independent medical with Dr. Ponsford on the date of July 12th, 2002, at 1:30.

[2] Briefly, the facts of this case are that the plaintiff was involved in motor-vehicle accidents, one in September, one in October, one in December of 1997, another in February of 1998.

[3] Sometime after the 1998 accident, particularly I think the date was October 19th, 1998, the defendants arranged for an independent medical before Dr. G. Ponsford, who ultimately delivered a very lengthy report on October 27th, 1998. The report clearly does not seem to be favourable to the plaintiff, and that is not the purpose of such reports. They are deemed to be, and expected to be, under Rule 30 an independent medical evaluation, no more, no less.

[4] Subsequent to that time, the plaintiff on reference from his own doctor saw Dr. Hawkins, I think the first time was December 8th, 1998, resulting in a report of Dr. Hawkins on July 23rd, 1999. Dr. Robert H. Hawkins is, from the reports I have received, one of the top three shoulder doctors, orthopedic specialists, in the province. His report is found as an exhibit to the affidavit of Timothy H. Pettit at tab 4, marked as Exhibit B.

[5] Subsequently, the plaintiff on reference from his own doctor saw Dr. P.J. Kokan. He saw the doctor at least on October 31st, 2000, December 6th, 2000, May 8th, 2001, June 12th, 2001, and there is a report dated July 10th, 2001.

[6] The plaintiff does not object to the continuation of, or another separate independent medical by a designee of the defendants, but in the strongest terms does not want to be examined by Dr. Ponsford.

[7] There are no affidavits filed by the plaintiff, but I have been somewhat liberal in my approach to his presentation as he acts for himself. He has described events and circumstances which he found to be, I think, although I do not think he said the word, demeaning. He clearly found the doctor to be rude to him, he found him to be pompous, and he did not feel comfortable with him. He felt that the doctor was not being independent, was not in any way, shape or form respectful to him, in the sense of eye contact or lack thereof, allegations of putting his feet up on his desk, allegations of ignoring him and of being demanding about responding to his questions.

[8] We have on hand the affidavit of Dr. Ponsford, dated July 10th, 2002. That was sworn July 10th, the same date. He responds to what he understands are the complaints advanced by the plaintiff in certain affidavits. He says that he does not recall examination of Mr. Jordan in October 1998, and his response to the allegations and charges raised by Mr. Jordan, derive, I think, on an evaluation of his previous report and handwritten notes as an aide-memoire to recall, to what degree he can, the events.

[9] Much of his disclaimer is not based upon, I think, notes in the file or his report, but based upon his general practice and his denial of the alleged behaviour which he says he does not accurately describe his demeanor. He talks about the assertions by Mr. Jordan that he snorted contemptuously and that on one occasion that he laughed or chuckled. That he put his foot up on his desk, failed to have eye-to-eye contact, seemed somewhat bored with the event, things of that nature. He says that is not his *modus operandi*. It is not his approach. He is a professional and he denies these events, without having any specific recollection of them because of the time lapse, and that is quite understandable.

[10] Rudeness, and as to whether a person is pompous is, in my view, somewhat in the eyes of the beholder. Clearly some people that are extremely sensitive. There are people that are more aloof to, or above and beyond any petty or deemed petty slanders or slurs, or conduct of others.

[11] I am in no position on this application to determine whether the plaintiff is overreacting, or possibly too sensitive. It cannot be determined here as to whether the plaintiff goes in with a chip on his shoulder and expects to be treated badly and therefore concludes he has been treated badly. Some people are like that. I want to make it clear to Mr. Jordan I am not making that finding. I am saying there are people like that. I cannot make that determination, any more than I can make the determination that the conduct of the doctor was as asserted to and declared by the plaintiff, or as stated in the affidavit of Dr. Ponsford, where he makes a basic denial stating that he would conduct himself in such a manner.

[12] The tests here have been discussed and set out by Mr. Pettit, but before I go into that, Mr. Jordan finds difficulty with the fact that other doctors, Dr. Hawkins, Dr. Kokan, I think there was one other, Dr. Aitkens -- formed opinions and views much different than that formed by Dr. Ponsford, therefore Dr. Ponsford's professionalism is called into play.

[13] Mr. Pettit points out that any disagreement, or dissimilarity between the findings and views of the doctors are what the courts are all about. The courts are going to hear professional and expert evidence from one side and then from the other side. The court will have to choose or accept, or a jury will, as to who is more credible, as to which doctor gives evidence which is more believable in all the circumstances.

[14] It is not in itself, and I agree with Mr. Pettit, a ground for refusing to attend to the second IME, because the extensive report of Dr. Ponsford, after reviewing some 38 other reports and documents and clinical records, is one which does not lend itself to the plaintiff’s position. The report is very thorough and lengthy that if they were required now to have the plaintiff attend before another orthopedic specialist, it would be, in my opinion, a waste of time and money. It would be travelling the same road twice. It would require a great deal of time by any new doctor to get into the background of the case and many, many hours, I would think, to read these reports and evaluations, review the clinicals and review x-rays and now maybe an MRI.

[15] So the test then really is whether the defendant should have the right to appoint its designee, and if that person is proven to be, as is shown here, a qualified expert, then surely the onus goes to the other side to show that that person is not, in fact, either an expert or that the conduct of that person has been so reprehensible as to, in fact, be almost dangerous to the plaintiff.

[16] There are cases where, for instance, plaintiffs have asserted that the doctor’s treatment of the individual during the examination was rough, rude and crude, and extremely physical causing a great deal of pain to the individual. That is not the case here.

[17] There is the decision of Mr. Justice Hood on appeal from a Master. That was ***Sinclair v. Underwood***, out of Powell River [2002] B.C.J. 515. A comment at page 5:

> It is a matter for decision by the Trial Judge based on evidence and not mere assertion. The Defendant's right, in the first instance, to have the Plaintiff examined by a doctor of his or her choice, and independent of the Plaintiff, should not be successfully challenged unless the opposing Plaintiff can demonstrate by a preponderance of evidence that there are sufficient grounds to justify the Court concluding that its discretion should not be exercised in favour of the appointment of the Defendant's nominee. In my view, for the Plaintiff to succeed, there must be evidence of real or effective inappropriate conduct on the part of the nominee doctor, and not simply the whim or idiosyncrasies of the Plaintiff, or similar views of his or her Counsel. The right of the Defendant to nominate his or her independent medical/legal examiner should not lightly be taken away by the Court in the exercise of its discretion. The fundamental principle is that the examination is granted to put the parties on a basis of equality. See: ***Guglielmucci and Wildemann v. Webster***, (1990), 50 B.C.L.R. (2d) 244.

[18] It is the right of the defendant to designate who shall conduct the independent medical examination, and it should not be overturned or set aside save by a preponderance of evidence.

[19] In my view, the case advanced by the plaintiff does not meet the test in spite of what I deem to be his genuine

concern that he not be examined by the doctor. I make the order sought by the defendants.

[20] The plaintiff is to attend at the examination before Dr. Ponsford on July 12th, 2002, at 1:30. All right. Thank you.

[21] MR. PETTIT: Your Honour, just on the issue of costs, if I may make submissions?

(SUBMISSIONS BY COUNSEL)

[22] THE COURT: I am going to adjourn any application concerning these other dates. I will award costs in any event of the cause for today, because you were successful. I suspect that issue may take another hour and I do not think I have the time for it. There is somebody else waiting, so I will adjourn that issue. You may wish to bring that up at some other time. You have costs of today and that will suffice.

[23] MR. PETTIT: Thank you very much.

[24] THE COURT: All right. Thank you.

[25] THE PLAINTIFF: Your Honour --

[26] THE COURT: I am going to dispense with the necessity of Mr. Jordan approving the form of the order, but of course he knows about it and it should be delivered to him as soon as it is entered. Yes?

[27] THE PLAINTIFF: Yes. As far as having to attend this IME now with Dr. Ponsford, is it possible for me to get transportation costs so I can get to this place out in Delta, if he's still practicing out in Surrey, or transportation to and from, so I can attend this, and with ample parking money?

[28] THE COURT: Are you working?

[29] THE PLAINTIFF: No, I'm not right now, Your Honour.

[30] THE COURT: Do you have any income?

[31] THE PLAINTIFF: I'm on social assistance.

[32] MR. PETTITT: Your Honour, it's my understanding Mr. Jordan works from time to time using his pickup truck to haul rubbish and so forth. That was his evidence at a recent discovery.

[33] THE COURT: Do you have a pickup truck, is it licenced, and does it have gas?

[34] THE PLAINTIFF: It's licenced by it has no gas now. I had to borrow money to extend my time here, so I can stay in court today.

[35] THE COURT: Borrow money in what sense, what, to park it?

[36] THE PLAINTIFF: Yes, Your Honour.

[37] THE COURT: You brought it downtown?

[38] THE PLAINTIFF: Yes, actually I did bring it downtown. I don't have the money to attend this IME now.

[39] THE COURT: I do not think I can make the order you seek, but I would suggest, Mr. Pettit, you think seriously of seeing whether your instructing adjuster may agree that giving him a few dollars for gas and parking may solve a lot of problems in the long haul. If he does not show and then comes to court saying that he did not have the money to travel to the doctor’s office, it would require another application and another hour or so of your client's time and money.

[40] My suggestion is you go out and talk about it. There may be a way to do it. I do not feel I can make that order. I do not think that is appropriate, but as I say, if you consider the pros and the cons and the good and the bad, you may wish to go along with it. Anyway, good luck. All right. Thank you.

“Master K. Doolan per P.D. Dohm, J.”
Master K. Doolan
per The Honourable Associate Chief Justice P.D. Dohm