

ORIGINAL

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20150910
Docket: M137586
Registry: Vancouver

Between:

Ashley Ann Harder

Plaintiff

And

Freda Jean Halpen

Defendant

Before: The Honourable Mr. Justice Leask

Oral Reasons for Judgment

In Chambers

Counsel for Plaintiff:

R. Dasanjh

Counsel for Defendant:

J.V. Marshall

Place and Date of Trial/Hearing:

Vancouver, B.C.
September 10, 2015

Place and Date of Judgment:

Vancouver, B.C.
September 10, 2015

[1] **THE COURT:** This case is a *Motor Vehicle Act*, R.S.B.C. 1996, c.318 case where the plaintiff was approximately 20 years old at the time of the first accident, something like 22 years old at the time of the second accident. The two cases are going to be tried together in about mid-January of next year.

[2] As the case has developed to date, the defence keeps learning of what are arguably more serious problems that the plaintiff is suffering. At the moment, the information available to counsel for the defendant is that the plaintiff is unable to successfully return to work at the moment, and nobody is giving the defence any information to suggest that that is going to change in the near future.

[3] In the circumstances, I am satisfied that the test for extra IMEs, which in part calls for the court to try and maintain a level playing field between plaintiff and defence, can only be maintained in this case by permitting the defence to have an additional IME to deal with functional capacity evaluation.

[4] I am going to order that the plaintiff must attend such an evaluation on Friday, September 18th, 2015. Because this date is a last-minute change of date to accommodate a problem the plaintiff has, I am going to give both plaintiff and defendant leave to apply to change the date if it is absolutely necessary.

[5] **MS. MARSHALL:** My Lord, if we could just have it that the parties have to reattend before you before the end of next week?

[6] **THE COURT:** Well, my way of thinking of it is quite differently, oddly. The parties can attend before me if they cannot agree how to solve any problem that arises. That does not have to be in the order. I am just saying if one of you has a problem that the other is ready to accommodate, you do not need to come back to me to have me smile at you, but if you are unable to agree and there is a problem, both of you have leave to apply.

[7] **MS. MARSHALL:** So just to clarify, that would be leave to apply before the end of next week?

- [8] THE COURT: Well, not necessarily. Suppose you discover the problem on the 18th. That sort of limitation is just not helpful to you.
- [9] MS. MARSHALL: The order sought is that she will attend, that she will answer questions, and that we will provide any conduct money as ordered.
- [10] THE COURT: I want the order in that form, obviously. I expect that if your friend thinks conduct money is needed, she will let you know and you will supply it.
- [11] MS. MARSHALL: Yes, that sounds fair. I guess the final issue is costs.
- [12] THE COURT: Costs in the cause.
- [13] MS. MARSHALL: Thank you.

Peter Leask, J.

Leask J.