

IN THE SUPREME COURT OF BRITISH COLUMBIA

Date: 20170716
Docket: M131020
Registry: Vancouver

Between:

Bradley Gaebel

Plaintiff

And

Gordon Lipka and Stacy Gaebel

Defendants

Before: The Honourable Madam Justice Sharma

Oral Reasons for Ruling on Admissibility of the Expert Report of Dr. D. Coleman

In Chambers

Counsel for Plaintiff:

C.J. Trueman
J.J. Hyde

Counsel for Defendants:

R.C. Brun, QC
J.J.L. Brun

Place and Date of Trial/Hearing:

Vancouver, B.C.
June 16, 2016

Place and Date of Judgment:

Vancouver, B.C.
June 16, 2016

[1] **THE COURT:** This is my ruling on the admissibility of the expert reports of Dr. Douglas Coleman. The plaintiff objects to the admission of the reports into evidence.

[2] I will address first what I regard to be the primary issue, which is whether the reports are admissible as responsive reports. I acknowledge that counsel addressed some other issues, including timing and formatting of the reports, but I find the critical issue is whether the reports properly can be seen as responsive.

[3] As I understand the defendants' position, they submit the reports are responsive to Dr. Armstrong's report and therefore admissible. In particular, they point to paragraph 79 of Dr. Armstrong's report wherein he states (under the heading of "Diagnosis Relevant to his Injuries"): "Substance use disorder involving opioids and a bedtime sedative, zopiclone, destabilized following the MVA". There are other references throughout Dr. Armstrong's report to the plaintiff's substance abuse disorder.

[4] The defendants also point out that aggravation of the plaintiff's drug dependence is not a matter that was pled and it was something the plaintiff denied at the examination for discovery. They say because of those factors, the issue of drug dependency only became apparent upon receipt of Dr. Armstrong's report. Thus, it is appropriate and fair they be allowed to file a report in response.

[5] Counsel addressed the timing between receipt of that report and the issues regarding the plaintiff's attendance at Dr. Coleman's office, but I do not regard those as material to my findings. I focus on the substantive issues.

[6] The plaintiff does not deny that he has, and has had, a drug dependence problem. The plaintiff does not assert the motor vehicle accident aggravated his drug dependency. However he does acknowledge that I may be faced with having to determine the extent to which his drug dependency is relevant to my assessment of his post-accident condition and possible prognosis.

[7] Paragraphs 21 to 28 in Dr. Coleman's second report are what I understand to be the crux of his opinion asserted to be responsive to Dr. Armstrong.

[8] Paragraph 21 describes the accident to a significant degree; I cannot see how that is helpful or relevant. The same comment applies to paragraphs 22 and 23. The last two sentences of paragraph 24 are of concern. He writes:

Mr. Gaebel's intake at the time of his MVA (March 11, 2011) has been referenced above (approximately 12 tablets daily). In my opinion this suggests that Mr. Gaebel was in the grip of an active and increasingly severe substance dependence disorder.

[9] The tablets Dr. Coleman is referring to are zopiclone. At paragraph 27, Dr. Coleman also notes:

... I respectfully disagree with Dr. Armstrong's opinion regarding Mr. Gaebel's clinical status at the time of his MVA -- i.e., that he was stabilized and doing well in Dr. Maguire's [methadone maintenance programme].

[10] He also makes some other comments regarding the plaintiff's PharmaNet printout.

[11] I do not find that Dr. Coleman's opinions are truly responsive. They might have been if the plaintiff was claiming the motor vehicle accident made his drug dependency worse. The plaintiff has confirmed that that is not his position.

[12] Dr. Armstrong comments about the plaintiff's drug dependency. In my view, the comment does not rise to the level of an opinion that raises the right of reply. My conclusion stems primarily from the fact that under the heading of "Causation" (at paragraph 13 of Dr. Armstrong's report), he makes no reference at all to the drug dependency.

[13] Dr. Armstrong's comments at paragraph 79, to which I referred earlier in this judgment, are not statements about causation. He simply states that the condition (drug dependency) destabilized following the motor vehicle accident. That is not a basis upon which I could reasonably find a causative link; most importantly, the plaintiff is not asserting a causal connection between the alleged destabilization and

the motor vehicle accident. To put it plainly: there is no disagreement that the plaintiff had a substance abuse problem.

[14] There are other portions of Dr. Armstrong's report where he refers, in some fashion, to the plaintiff's drug dependency. None of those references are central or significant to the crux of his opinion.

[15] Dr. Coleman's opinion that the plaintiff was in the grip of an active and increasingly severe substance dependence disorder is not responsive to any opinion upon which the plaintiff relies. For that reason, I find his reports are not responsive expert reports and are therefore inadmissible as being well beyond the deadline.

“Sharma, J.”