

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Weatherill v. Cameron*,
2016 BCSC 2217

Date: 20161117
Docket: S108470
Registry: Vancouver

Between:

Charles John Weatherill

Plaintiff

And

**Douglas Cameron, Kevin McCarthy, Christopher Neimor,
Amin Ocampo, Her Majesty the Queen in Right of Canada, and
the Attorney General for British Columbia**

Defendants

Corrected Judgment: The text of the judgment was corrected on the front page
on December 23, 2016.

Before: The Honourable Madam Justice Murray

Oral Reasons for Judgment

Counsel for Plaintiff:

P. G. Kent-Snowsell

Counsel for Defendants:

R. Dawodharry
L. Bell

Place and Date of Trial/Hearing:

Vancouver, B.C.
November 16, 2016

Place and Date of Judgment:

Vancouver, B.C.
November 17, 2016

[1] **THE COURT:** The defendants challenge the admissibility of the report of Dr. Karen Forgie on two bases. First that Dr. Forgie is not qualified to give the opinions set out therein. More particularly they argue that she is a general practitioner, and has not offered any basis upon which to find her an expert in osteoarthritis, and that in any event her report is unhelpful and unnecessary.

[2] Their second ground is that her report fails to comply with Rule 11-6 in that it does not set out the reasons for the opinion and does not list every document she relied on in forming her opinion.

[3] The defendants also take the position that Dr. Forgie's opinions encroach on the function of the trial judge by making findings of fact.

[4] Regarding the first ground, Dr. Forgie's CV is attached to her report. It sets out her education and work history and shows that she has worked extensively in family practice since 1991. The Plaintiff's counsel is seeking to have her qualified to give opinion evidence in the field of family medicine, not as an expert in osteoarthritis.

[5] I would not be going out on a limb at this stage to take judicial notice that a GP would certainly deal with arthritis as part of their practice. It is a common disease. The Defendants' counsel can certainly cross-examine Dr. Forgie as to her level of knowledge.

[6] In my opinion, this ground of challenge goes to the weight of Dr. Forgie's opinion, not to the admissibility of her report. The defendants go further and argue that Dr. Forgie's report is unhelpful and unnecessary as all the doctor does is recite her clinical notes, which consist primarily of the plaintiff's complaints, and then she gives an opinion.

[7] This is precisely the same objection that Mr. Justice Smith dealt with in *Edmondson v. Payer*, 2011 BCSC 118, where he says this at paras. 71 through 74:

[71] On the question of weight, counsel for the defendant correctly characterized the medical opinions in this case as primarily a recitation of

what the doctors were told by the plaintiff, followed by an opinion, with little explanation of how the opinion was arrived at. That does not mean, however, that there has been no application of medical expertise.

[72] The extent to which an expert's methodology must be clearly expressed in the opinion will always depend on the nature of the case, the type of expertise involved and the purpose for which the opinion is tendered. In this case, the soft tissue injuries alleged by the plaintiff are, by their very nature, not always susceptible to physical testing or analysis and the doctors must rely on the subjective symptoms reported by the plaintiff, as well as on their general medical knowledge and experience.

[73] In such a case, the effect of the expert opinion is really nothing more than to confirm that the plaintiff's reported symptoms make sense medically and are consistent with injuries known to be caused by the type of trauma the plaintiff experienced. That opinion assists the court in drawing factual inferences about the plaintiff's injuries.

[74] The extent to which the court accepts the opinion and draws those inferences depends, as I have already said, on the court's assessment of the plaintiff's credibility...

[8] I agree with Justice Smith. This is a matter of weight, not admissibility. This passage from *Edmondson* applies as well to the defendants' second argument; that is, their technical objection to the form of Dr. Forgie's report. Given her level of expertise and the nature of the injuries, I am satisfied that the grounds for the conclusion she draws are set out in the opinion. I am also satisfied that she has listed the documents that she has considered albeit in very general terms.

[9] I must note that it appears from their cross-examination of the plaintiff that defendants' counsel had the records upon which Dr. Forgie relies; however, if anything arises during her examination that causes them concern, they may bring it to my attention and we will revisit the issue.

[10] Finally, I do not agree that Dr. Forgie in stating conclusions is encroaching on my function as trier of fact. As stated by Smith J., her opinion assists the court in drawing factual inferences about the plaintiff's injuries. The extent to which I accept the opinion and draw those inferences depends solely on my assessment of the evidence. Dr. Forgie's report is therefore admissible.

“Madam Justice Murray”