

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Woldemariam v. Reid*,
2025 BCCA 172

Date: 20250527
Docket: CA49455

Between:

Elias Woldemariam

Appellant
(Plaintiff)

And

Dr. John David Struan Reid

Respondent
(Defendant)

Before: The Honourable Mr. Justice Willcock
The Honourable Madam Justice DeWitt-Van Oosten
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated
October 13, 2023 (*Woldemariam v. Providence Health Care (St. Paul's Hospital)*),
2023 BCSC 1783, Vancouver Docket S197766).

Counsel for the Appellant: D.O. Shane

Counsel for the Respondent: J.A. Morris
J.D. Antifaev

Place and Date of Hearing: Vancouver, British Columbia
April 14, 2025

Place and Date of Judgment: Vancouver, British Columbia
May 27, 2025

Written Reasons by:
The Honourable Justice Iyer

Concurred in by:
The Honourable Mr. Justice Willcock
The Honourable Madam Justice DeWitt-Van Oosten

Summary:

The appellant argues that the chambers judge erred in granting the respondent's summary trial application and dismissing his action. He says his claim that the respondent doctor was negligent can reasonably be read to include an allegation that the respondent failed to warn the appellant his lower leg might need to be amputated.

Held: Appeal dismissed. The relevant material facts in the pleading do not put the respondent on notice of an allegation that he breached a duty to warn or advise about the amputation. On their face, they allege the respondent recommended an amputation, but failed to advise of associated risks, benefits and alternatives.

Reasons for Judgment of the Honourable Justice Iyer:

Introduction

[1] This appeal arises from an operation during which Dr. Reid amputated Mr. Woldemariam's right leg below the knee. Mr. Woldemariam sued Dr. Reid and a number of other medical defendants in negligence, saying that the amputation could have been avoided had the defendants treated his condition appropriately. Mr. Woldemariam subsequently discontinued his claims against all defendants except Dr. Reid.

[2] Dr. Reid applied for dismissal of Mr. Woldemariam's claim by way of summary trial under Rule 9-7 of the *Supreme Court Civil Rules*, and Mr. Woldemariam brought a cross-application for leave to amend his notice of civil claim under Rule 6-1(1). The chambers judge dismissed Mr. Woldemariam's cross-application for leave to amend his claim against Dr. Reid. He granted Dr. Reid's application, dismissing the claim and ordering judgment in Dr. Reid's favour.

[3] Importantly, Mr. Woldemariam confines his appeal to the granting of Dr. Reid's application. That means this Court must consider the chambers judge's assessment of Mr. Woldemariam's claim against Dr. Reid only on the basis of the original pleading ("Claim"), not on the basis of the amendments he proposed.

Background Facts and Litigation History

[4] On April 12, 2018, Mr. Woldemariam saw Dr. Yang, an infectious disease physician, who began treating him for swelling, pain and ulcers on his right foot. When his symptoms worsened, Mr. Woldemariam was admitted to Mount St. Joseph’s Hospital on April 17, 2018. Dr. Yang suspected ischemic gangrene in one of his toes and referred Mr. Woldemariam to Dr. Reid, a vascular surgeon.

[5] Dr. Reid met Mr. Woldemariam for a consultation on April 24, 2018, at St. Paul’s Hospital. He had a CT angiogram on April 26, and a follow-up appointment with Dr. Reid was scheduled for the afternoon of May 3. However, on May 2, Mr. Woldemariam’s condition deteriorated rapidly and he developed signs of sepsis. He was transferred to St. Paul’s Hospital on May 3. On May 4, Dr. Reid amputated his right leg below the knee. Dr. Reid saw Mr. Woldemariam and provided follow-up care after the operation. He last saw Mr. Woldemariam on June 20, 2019.

[6] Mr. Woldemariam commenced the Claim on July 8, 2019. The facts pleaded in relation to Dr. Reid were:

- 21. Dr. Reid was consulted on the Plaintiff’s foot and recommended an amputation.
- 22. On May 4 2018, the Plaintiff was transferred into St. Paul’s Hospital for the amputation of his foot by Dr. Reid.
- 23. The Plaintiff states that the care and treatment of the Defendants was negligent and allowed for his foot to become infected and ultimately amputated, and the amputation would not have been necessary had the Defendants not been negligent in their care and treatment of him.

[7] As against the defendant doctors, including Dr. Reid, Mr. Woldemariam particularized the negligence as follows:

- a. Failing to properly treat the Plaintiff’s foot;
- b. Failing to use the proper antibiotics to control the infection;
- c. Failing to identify in a timely way that the treatment they were using was not effective;
- d. Failing to alter the treatment in a timely way to control the infection;

- e. Allowing the Plaintiff's foot to reach such a state of infection that an amputation was necessary;
- f. Failing to administer proper testing;
- g. Failing to properly interpret testing that was done;
- h. Failing to identify and recognize the seriousness of the Plaintiff's foot condition;
- i. Such other particulars as may discovered or uncovered.

[8] The defendant doctors sought particulars. In his response, dated November 21, 2019, the appellant stated, with respect to Dr. Reid:

- 3. Particulars of Dr. Reid's conduct warranting an award for Aggravated Damages include:
 - a. Failing to properly consider other alternatives prior to amputation;
 - b. Failing to properly advise the Plaintiff regarding the risks, benefits and alternatives to amputation;
 - c. Such further and other particulars as may be uncovered or discovered.

[9] At Mr. Woldemariam's examination for discovery in December 2020, he stated he was unaware that he was going to be having surgery before the day of the operation and thought the consent form he signed only authorized a blood transfusion. He said that at about 5:00 a.m. on the day of the operation, two hospital staff forcibly transferred him into the operating room against his will. He also said that he had only authorized Dr. Reid to amputate his "small toe", if necessary.

[10] In July 2022 and September 2023, Mr. Woldemariam abandoned his claim against all defendants other than Dr. Yang and Dr. Reid, and also abandoned his claim in breach of contract. He later abandoned his claim against Dr. Yang.

[11] Mr. Woldemariam filed a notice of trial on May 6, 2022, setting the trial to commence on November 20, 2023. Defence counsel delivered a number of expert reports before the end of August 2023. Dr. Reid's summary trial application was set for hearing on October 3, 2023, after an earlier date was adjourned on consent.

[12] On September 20, 2023, Mr. Woldemariam applied to amend the Claim to add an allegation that Dr. Reid breached a duty to warn or advise Mr. Woldemariam of the likely need for an amputation, and a claim that Dr. Reid committed battery by performing the amputation without Mr. Woldemariam’s consent. The relevant proposed amendments to the statement of facts were:

...

21. Dr. Reid was consulted on the Plaintiff’s foot and recommended an amputation assessed the Plaintiff on April 24 2018.
22. Dr. Reid did not discuss the possibility of an amputation with the Plaintiff.
23. On ~~May 4 2018~~ May 3 2018, the Plaintiff was transferred into St. Paul’s Hospital for the amputation of his foot by Dr. Reid.
24. Dr. Reid had not discussed his plan for an amputation with the Plaintiff prior to transfer.
25. The Plaintiff was not told that there was a plan for an amputation until the morning of May 4 2018.
26. After discussing the amputation with Dr. Reid on May 4 2018, the Plaintiff did not consent to an amputation from just below his knee on the right leg. The Plaintiff only consented to an amputation of one or two toes on the right foot.
27. Dr. Reid amputated the Plaintiff’s right leg below the knee on May 4 2018.
28. The Plaintiff states that Dr. Reid amputated his right leg below the knee without his consent, thus acting negligently, and committing the tort of battery.

[Emphasis in original.]

Chambers Judgment (2023 BCSC 1783)

[13] The chambers judge set out the background facts and noted the conflicts in evidence. These revolved around what information and advice Dr. Reid provided to Mr. Woldemariam about the state of his foot. In particular, the parties disagreed about whether and what conversations Dr. Reid had with Mr. Woldemariam on April 24, 2018, and on May 3 or 4, prior to the surgery.

[14] Dr. Reid deposed that he told Mr. Woldemariam on April 24, 2018, when they met for a consultation at St. Paul’s Hospital Vascular Outpatient Clinic, that he suspected Mr. Woldemariam would need to have at least his right forefoot

amputated. Dr. Reid also deposed that he met with Mr. Woldemariam after his transfer to St. Paul's on May 3. Dr. Reid said he told Mr. Woldemariam at that time that a below knee amputation was necessary because of the progression of the infection. In a subsequent affidavit, Dr. Reid clarified that this meeting occurred on May 4, the date on which Mr. Woldemariam signed the surgical consent forms and the day of the surgery.

[15] Mr. Woldemariam deposed that, while he was at Mount Saint Joseph's Hospital, no one discussed the possibility of an operation with him and no one at St. Paul's Hospital discussed the possibility of an amputation with him before the day of the operation. He deposed that Dr. Reid first told him he was going to amputate his lower leg at 5:00 a.m. on May 4 when he woke in his hospital room to find Dr. Reid putting marks on his leg. He said he was very upset by this and specifically instructed Dr. Reid not to amputate the leg.

[16] Dr. Reid's medical notes did not say what Dr. Reid discussed with Mr. Woldemariam on either occasion. The surgical consent form dated May 4, 2018 evidences consent to "right below-knee amputation".

[17] The chambers judge first addressed the cross-application for leave to amend. Applying well-settled law on this issue, the chambers judge denied leave. He found the delay was extensive, Mr. Woldemariam had provided no explanation for it, and that Dr. Reid would be prejudiced by an amendment that would add a completely different theory of liability five years after the relevant events and about five weeks before the scheduled trial: RFJ at paras. 35–56.

[18] Turning to Dr. Reid's summary trial application, the chambers judge first considered the application based on the Claim. He found that, as Mr. Woldemariam had tendered no expert evidence, the Claim could not succeed:

[58] Mr. Woldemariam does not seriously dispute that without any supporting expert medical evidence, the claim as currently pleaded is bound to fail, and Dr. Reid is entitled to judgment (see, *McLellan v. Shirley*, 2015 BCSC 1930; *Mikhail v. Northern Health Authority*, 2010 BCSC 1817; *Shannahan v. Fraser Health Authority*, 2010 BCSC 144; *Reibl v. Hughes*, [1980] 2 S.C.R. 880).

[19] The judge then went on to consider whether, if he had granted leave to amend, Dr. Reid’s summary trial application would have succeeded on the basis of the proposed amendments. He found it would: RFJ at paras. 64–73.

The Appeal

[20] The appellant says that the chambers judge erred in law by concluding that his Claim could not succeed without expert evidence. He submits that the Claim includes the allegation that Dr. Reid failed to warn or advise Mr. Woldemariam “of a possible impending amputation” and expert evidence is not required to succeed in such a claim, at least in the present case. The appellant also says that the conflicting evidence as to whether Dr. Reid advised Mr. Woldemariam about the possible need for amputation and whether Dr. Reid obtained his consent means the matter was not suitable for summary determination.

[21] That means the two questions in this appeal are:

- a) Does the Claim plead that Dr. Reid breached a duty to warn or advise Mr. Woldemariam about the possible need for amputation?
- b) If so, was the matter suitable for summary trial?

Does the Claim plead that Dr. Reid breached a duty to warn or advise Mr. Woldemariam about the possible need for amputation?

[22] The purpose of a pleading is to inform the other side of the case they have to meet: *Workers’ Compensation Board v. Sort*, 2022 BCCA 318 at para. 102, citing *K.O. v. British Columbia (Ministry of Health)*, 2022 BCSC 573 at para. 9. Pleadings are foundational, guiding litigation and ensuring a fair process: *Mercantile Office Systems Private Limited v. Worldwide Warranty Life Services Inc.*, 2021 BCCA 362 at paras. 21–23.

[23] For a cause of action to be properly pleaded, “a notice of civil claim must set out a concise statement of material facts giving rise to the claim and a concise statement of the legal basis for the relief sought”: *Valeant Canada LP/Valeant Canada S.E.C. v. British Columbia*, 2022 BCCA 366 at para. 36.

[24] In my view, it is obvious from the Claim that it does not plead Dr. Reid failed to advise Mr. Woldemariam about the possibility of amputation. It says the opposite:

21. Dr. Reid was consulted on the Plaintiff's foot and recommended an amputation.
22. On May 4 2018, the Plaintiff was transferred into St. Paul's Hospital for the amputation of his foot by Dr. Reid.

[25] Read without the proposed amendments, the Claim does not provide Dr. Reid with any notice of that allegation.

[26] The particulars Mr. Woldemariam provided in response to Dr. Reid's request do not assist him. They state Dr. Reid's relevant conduct includes:

- a. Failing to properly consider other alternatives prior to amputation;
- b. Failing to properly advise the Plaintiff regarding the risks, benefits and alternatives to amputation;

[27] Had Mr. Woldemariam been claiming that Dr. Reid never told him that amputation of his foot or lower leg was necessary, one would have expected him to at least state a particular of that alleged fact. Read in the context of the relevant paragraphs of the Claim, as they must be, the particulars allege Dr. Reid failed to sufficiently discuss alternatives (along with risks and benefits), not that he failed to discuss amputation at all.

[28] In light of my conclusion that the Claim did not plead a failure to warn or advise Mr. Woldemariam about the possibility of amputation, it is not necessary to consider whether the matter was suitable for summary adjudication.

Disposition

[29] I would dismiss the appeal.

“The Honourable Justice Iyer”

I AGREE:

“The Honourable Mr. Justice Willcock”

I AGREE:

“The Honourable Madam Justice DeWitt-Van Oosten”