

CITATION: Jonasson v. Carfagnini, 2025 ONSC 3686
COURT FILE NO.: CV-23-0061-000
DATE: 2025-06-20

**ONTARIO
SUPERIOR COURT OF JUSTICE**

B E T W E E N:)
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RANDY RAYMOND JONASSON) Self-represented
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Plaintiff)
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- and -)
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)
DR. GREGORY PETER CARFAGNINI) J. Mertz, for the Defendant/Moving Party
) on Motion
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Defendant)
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)
) **HEARD:** May 16, 2025, at Thunder Bay,
) Ontario

Madam Justice R.A. Lepere

Decision on Motion

Overview

[1] This Defendant, Dr. Carfagnini, is a physician duly licensed to practice medicine in the Province of Ontario. At all material times, Dr. Carfagnini worked at a Rapid Access Addiction Medicine Clinic at the NorWest Community Health Centre in Thunder Bay, Ontario (the “Clinic”).

[2] The Plaintiff, Randy Jonasson, became a patient of Dr. Carfagnini on April 27, 2020, when he attended the Clinic for treatment for his cocaine addiction. Mr. Jonasson remained under the care of Dr. Carfagnini until December 7, 2020. During this period, the Plaintiff saw Dr. Carfagnini on several occasions.

[3] On December 6, 2020, Mr. Jonasson was involved in a motor vehicle accident while driving under the influence of a controlled substance (the “Accident”). No one was injured. The same day, Mr. Jonasson was arrested, and his license was immediately suspended by the arresting officers. Mr. Jonasson subsequently pled guilty to operating a motor vehicle while impaired to any degree by alcohol or drug contrary to s. 320.14(1)(a) of the *Criminal Code*, R.S.C., 1985, c. C-46. I have no information before me as to whether Mr. Jonasson’s licence was suspended as a result of the conviction and/or the length of the suspension.

[4] On January 6, 2021, Mr. Jonasson became an inpatient at the Sister Margaret Smith Centre in Thunder Bay for further treatment. He was discharged on February 4, 2021.

[5] On or about February 4, 2021, Mr. Jonasson received a letter from the Ministry of Transportation dated December 22, 2020, advising him that the Ministry had received information indicating that his driving privileges should be reviewed for medical reasons. The letter asks Mr. Jonasson to have his health care provider complete a form and provide further information about the circumstances of the accident and other health conditions on or before January 22, 2021. Once submitted, a review would be completed and decision made within 30 days regarding his licence. He did not submit the information by the deadline noted.

[6] On February 19, 2021, Mr. Jonasson’s family physician provided a letter to the Ministry in response to the December 22, 2020, letter. He reported that Mr. Jonasson suffers from a history of substance use disorder but that he had no concerns with him driving as long as he abstained from alcohol and drugs. He further notes in the letter that Mr. Jonasson had just completed a four week in-patient treatment program, but that he did test positive for cocaine approximately five days before the date of the letter.

[7] On March 30, 2021, Mr. Jonasson received a letter from the Ministry advising him that his licence has been suspended further to information it received that he has a condition that affects his ability to drive safely, namely substance use disorder. While I do not have the complete letter, it states that, in order to reinstate his licence, he must have his health care provider provide information, including confirmation that he has remained abstinent from drugs for a period six months.

[8] On February 19, 2023, Mr. Jonasson commenced the within action as against Dr. Carfagnini seeking damages in the amount of \$200,000 for harm suffered as a result of the suspension of his driver’s licence following the Accident. Mr. Jonasson seeks damages for loss of income and loss of enjoyment of life.

[9] Mr. Jonasson’s claim against Dr. Carfagnini is premised entirely on a purported negligent breach of a statutory duty. More specifically, Mr. Jonasson alleges that Dr. Carfagnini breached s. 203 of the *Highway Traffic Act*, R.S.O. 1990, c. H.8, because he ought to have, but failed to, report Mr. Jonasson to the Registrar of the Ontario Ministry of Transportation (the “Registrar” and the “Ministry”) prior to the Accident. He goes on to allege that if Dr. Carfagnini had reported him to

the Registrar sometime prior to December 6, 2020, the Ministry would have suspended his driver's licence. If the Ministry had suspended Mr. Jonasson's driver's licence, he would have refrained from operating a motor vehicle while under the influence of a controlled substance, he would not have been involved in the Accident, he would not have had his licence suspended, and therefore, he would not have sustained the damages he now claims.

[10] Dr. Carfagnini defended the action on April 24, 2023, denying each of Mr. Jonasson's allegations.

[11] Dr. Carfagnini has now brought this motion for summary judgment seeking an order dismissing the action as having no genuine issue for trial for several reasons.

Summary Judgment – General Principles

[12] Rule 20.01(3) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, permits a defendant to move for summary judgment after delivering a Statement of Defence.

[13] On a summary judgment motion, the presiding judge must decide if there are genuine issues requiring a trial. Rule 20.04(2) requires the court to grant summary judgment if “the court is satisfied that there is no genuine issue requiring a trial with respect to a claim or defence”. The overriding consideration on a motion for summary judgment is whether the “judge is able to reach a fair and just determination on the merits”: see *Hyrniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, at para. 49.

[14] Rule 20.02 governs the evidence to be used on a motion for summary judgment. Rule 20.02(2) states that a party responding to a motion for summary judgment “may not rest solely on

the allegations or denials in the party’s pleadings, but must set out, in affidavit material or other evidence, specific facts showing that there is a genuine issue requiring a trial.” Each party must put its best foot forward. The Court is entitled to assume that no additional evidence would be put forward by either party if the matter had proceeded to trial: see *Hurst v. Shabib*, 2021 ONSC 8342, at para. 23.

[15] Although a party moving for summary judgment bears the burden of establishing that there is no genuine issue requiring a trial, the responding party must prove its claim has a “real chance of success” by furnishing evidence in support of its position: see *Shabib*, at para. 23.

[16] Dr. Carfagnini asserts that, with respect to Mr. Jonasson’s claim, there is no genuine issue requiring a trial for the following reasons:

- a. Mr. Jonasson has failed to deliver an expert report to support the allegations of negligence against Dr. Carfagnini which is fatal to his claim;
- b. Mr. Jonasson’s claim is frivolous and is not tenable at law and even if proven would not entitle him to the relief sought in the action; and
- c. Mr. Jonasson’s claim is statute barred as it was commenced after the expiry of the applicable limitation period.

Analysis and Disposition

[17] Mr. Jonasson, who was self-represented, spoke clearly and passionately during his oral submissions with a sincere belief in the merits of his case. While I am certainly sympathetic to Mr. Jonasson and his personal circumstances, pursuant to the applicable legal principles and the facts of this case, as I will set out in more detail below, I am granting Dr. Carfagnini’s summary judgment motion and dismissing this claim.

A. Should the Plaintiff's Claim be Dismissed due to his Failure to Deliver an Expert Report to Support Allegations of Negligence?

[18] In a medical professional negligence case Mr. Jonasson, on this motion for summary judgment and at trial, needs expert evidence about the standard of care. The expert evidence would establish (1) the standard of care, (2) whether there was a breach of the standard of care, and (3) causation. If this evidence is not presented, there is no genuine issue for trial and summary judgment may be granted: see *Ayubi v. Mount Sinai Hospital*, 2023 ONSC 968, at para. 100.

[19] Mr. Jonasson has not delivered expert evidence on this motion regarding the standard of care. He asserts that he did not know that he needed a report and has insufficient funds to hire an expert to provide a report. He further asserts that, if it is necessary, he should be given more time to do so before his claim is dismissed for failure to have a report.

[20] Dr. Carfagnini has provided an expert report which opines that he did not breach the applicable standard of care as alleged by Mr. Jonasson. He asserts that, since Mr. Jonasson has no evidence to rebut this opinion, his claim cannot succeed. He further asserts that Mr. Jonasson has had ample opportunity to obtain a report prior to the motion, as he had the defence expert report since July 2024 and was advised in December 2024 by Nieckarz J. that he needed a report at a Case Conference.

[21] Mr. Jonasson has not provided an expert report that opines that Dr. Carfagnini breached the applicable standard of care. The only evidence I have before me is that Dr. Carfagnini did not breach the standard of care on the facts of this case. As the parties are required to put all evidence

forward on a motion for summary judgment that they would rely on a trial, the failure of Mr. Jonasson to provide an expert report to rebut the expert evidence of Dr. Carfagnini leads to the conclusion that there is no genuine issue requiring a trial and his claim ought to be dismissed.

[22] While I appreciate that Mr. Jonasson is self-represented, he cannot be relieved of the obligation to prove his claim with the necessary evidence on this motion or at trial. He has had Dr. Carfagnini's expert report for many months and was advised previously by the court of the need for his own report.

[23] Based on the foregoing, I find that there is no genuine issue requiring a trial and the claim ought to be dismissed.

B. Is the Plaintiff's Claim Frivolous or Without Legal Merit?

[24] While I have already dismissed the claim further to the above, I will also consider whether the claim ought to be dismissed on the basis that the claim is frivolous or without legal merit.

[25] Frivolous actions are defined as "lacking a legal basis or legal merit", or those actions that are "not serious" and "not reasonably purposeful: see *Ash v. Ontario (Chief Medical Officer)*, 2024 ONCA 398, at para. 21.

[26] An action will be lacking a legal basis or merit where the evidence or the law do not allow the party to make a rational argument in support of the claim, or where no reasonable person would expect to obtain the relief sought in the claim based on the allegations that have been advanced: see *Gao v. Ontario WSIB*, 2014 ONSC 6497, 61 C.P.C. (7th) 153, at paras. 14–15.

[27] I find that the Plaintiff's claim is frivolous and lacks legal merit. As such, there is no genuine issue requiring a trial and the claim ought to be dismissed.

[28] Mr. Jonasson claims damages for loss of income and loss of enjoyment of life resulting from the suspension of his driver's licence following the Accident. He alleges that the suspension of his driver's licence prevented him from pursuing gainful employment following his discharge from treatment in February 2021, and from spending time with his son.

[29] His theory of liability is premised on the allegation that Dr. Carfagnini ought to have, but failed to, suspend his driver's licence prior to the Accident further to the statutory duty found in the *Highway Traffic Act*. He further alleges that, if he had done so, Mr. Jonasson would not have been driving on December 6, 2020, the Accident would not have occurred, and his driver's licence would not have been suspended following the Accident, resulting in the damages he now claims.

[30] I note that Mr. Jonasson spent a lot of time during his submissions taking me through his medical records to demonstrate that Dr. Carfagnini had an obligation to report him for several reasons under the *Highway Traffic Act*. While I heard the submissions of Mr. Jonasson on this issue, I do not need to determine that issue to dispose of this motion. Regardless of whether Dr. Carfagnini had an obligation to report in this instance, the logic of Mr. Jonasson's claim is flawed and is, therefore, frivolous and lacking legal merit for several reasons.

[31] Firstly, there is no evidence to establish that, if his licence had been suspended prior to the Accident, that Mr. Jonasson would have abided by the suspension and would not have driven under the influence of drugs on December 6, 2020. I make this finding further to the evidence from Mr.

Jonasson's examination for discovery wherein he stated that he had previously driven without a licence and while impaired.

[32] Secondly, any damages that Mr. Jonasson suffered from the suspension of his driver's licence after the Accident were as a result of his own decision to drive a vehicle while under the influence of drugs. He cannot pass the responsibility or the consequences of making that decision on to someone else. Regardless of whether his driver's licence had been suspended, he should not have been driving on December 6, 2020.

[33] Lastly, his licence was suspended on March 30, 2021, as he continued to suffer from a substance use disorder. This suspension is wholly unrelated to any allegations regarding the conduct of Dr. Carfagnini. This is the period for which Mr. Jonasson seeks damages arising from the suspension of his licence. He was without a licence and unable to work or see his son because he continued to suffer from substance use disorder, not because Dr. Carfagnini failed to have his licence suspended prior to the Accident.

[34] For all of the above reasons, Mr. Jonasson's claim is frivolous and there is no legal basis or merit to the claim. As such, there is no genuine issue requiring a trial and Mr. Jonasson's claim is dismissed.

C. Is the Plaintiff's Claim Statute Barred by the Applicable Limitation Period?

[35] While I have already dismissed Mr. Jonasson's claim for the failure to provide an expert opinion and on the basis that his claim is frivolous and has no legal merit, I will also consider whether his claim ought to be dismissed because it was not commenced prior to the expiry of the applicable limitation period.

[36] Section 4 of the *Limitations Act, 2002*, S.O. 2002, c.24, Sched.B (the “*Limitations Act*”) provides for a two-year basic limitation period from the date on which a claim is discovered.

[37] Section 5(1) of the *Limitations Act* states as follows:

“A claim is discovered on the earlier of,

(a) the day on which the person with the claim first knew,

- (i) that the injury, loss or damage had occurred,
- (ii) that the injury loss or damage was caused by or contributed to by an act or omission,
- (iii) that the act or omission was that of the person against whom the claim is made, and
- (iv) that having regard to the nature of the injury, loss or damage, a proceeding would be an appropriate means to seek to remedy it; and

(b) the day on which a reasonable person with the abilities and circumstances of the person with the claim first ought to have known of the matters referred to in clause (a).

[38] Section 5(2) of the *Limitations Act* creates a presumption that a plaintiff discovered their claim on the day on which the act or omission occurred that ultimately resulted in their alleged injuries. If the plaintiff wants to allege that that the claim was discovered on a later date, thereby extending the commencement of the limitation period, the onus is on the plaintiff to prove same.

[39] There is no dispute that the applicable limitation period in this matter is the standard two years. However, in order to determine whether Mr. Jonasson’s claim is statute barred, I must determine when the two-year limitation period commenced.

[40] It is the position of Dr. Carfagnini that the limitation period commenced on the date of the Accident, being December 6, 2020, or alternatively, on the date that the Plaintiff received notice

that his licence had been suspended, being February 4, 2021 (at the latest). In either scenario, since the claim was not commenced until February 19, 2023, the Plaintiff's claim is statute barred, as it was commenced after the expiry of the two-year limitation period.

[41] It is the position of Mr. Jonasson that he did not discover his claim against Dr. Carfagnini until several months after he completed treatment in February 2021. It was then that he learned that Dr. Carfagnini had a statutory duty to suspend his licence pursuant to the *Highway Traffic Act*. He learned of this information at the time, as his mental health worker was assisting him with making a complaint against Dr. Carfagnini. He asserts that it was not until he was aware of this fact that he knew he had a claim against Dr. Carfagnini. As such, his claim is not statute barred, as the limitation period did not expire prior to February 19, 2023.

[42] Discoverability is a fact-based analysis. A plaintiff is not required to possess a comprehensive understanding of his/her potential claim in order for the limitation period to commence. As held by the Ontario Court of Appeal in *Lawless v. Anderson*, 2011 ONCA 102, 81 C.C.L.T. (3d) 220, at para. 23, “[t]he question to be posed is whether the prospective plaintiff knows enough facts on which to base an allegation of negligence against the defendant.”

[43] In a claim alleging negligence, a plaintiff does not need knowledge that the defendant owed it a duty of care, or that the defendant's act or omission breached the applicable standard of care. What is required is actual or constructive knowledge of the material facts from which a plausible inference can be made that the defendant acted negligently: see *Grant Thornton LLP v. New Brunswick*, 2021 SCC 31, [2021] 2 S.C.R. 704, at paras. 42–46.

[44] In order for the limitation period to start, Mr. Jonasson needed to know enough facts to support an inference that Dr. Carfagnini acted negligently. The allegation against Dr. Carfagnini is that he was negligent because he failed to meet his statutory duty under the *Highway Traffic Act* to suspend Mr. Jonasson's licence prior to December 6, 2020. As such, I find that the material fact which Mr. Jonasson had to know or ought to have known to start the commencement of the limitation period is that Dr. Carfagnini had a statutory duty to report him to the Ministry under certain circumstances. Knowledge of the suspension of his licence on February 4, 2021, is not a sufficient material fact to establish that Dr. Carfagnini acted negligently. The allegation of negligence is grounded in the fact that he had an alleged obligation to do so by statute and failed to.

[45] Dr. Carfagnini takes the position that the reporting requirement is not a material fact but knowledge of the law. I agree that the law is clear that failure to appreciate the legal consequences of a fact and/or the ignorance of the law does not postpone the commencement of a limitation: see *Nicholas v. McCarthy Tetrault*, 2008 CanLII 54974 (Ont. S.C.), at para. 27. However, I find that the reporting requirement, while found in a statute, is a material fact.

[46] There is confusing evidence before me on this motion as to when Mr. Jonasson became aware of the reporting obligation. At his examination for discovery, he gave conflicting evidence on this. He stated that when he got out of treatment on February 4, 2021, and received the letter about the suspension of his licence he was upset and made an appointment with his family physician, Dr. Ek. Based on the records, that appointment took place on February 19, 2021. Mr. Jonasson stated that it was at this appointment that Dr. Ek advised him about the reporting

obligation. He also stated, during his examination for discovery, that he called the Ministry to find out who had reported him. He could not recall when this call took place, but it was after his mental health worker advised him that Dr. Carfagnini should have reported him prior to the Accident. On the motion, Mr. Jonasson stated that the information from his mental health worker was provided several months after he received the February 4, 2021, letter. However, there is no evidence to assist with providing an accurate timeline on this.

[47] I find that, based on the evidence before me, Mr. Jonasson knew that doctors, including Dr. Carfagnini, have reporting obligations to the Ministry when treating a patient with substance use disorder in certain circumstances as of February 19, 2021, when he was advised by Dr. Ek. As such, the limitation period commenced on that date. Since the claim was commenced on February 19, 2023, it is not statute barred.

Costs

[48] Dr. Carfagnini seeks costs of this motion and the action on a partial indemnity basis in the amount of \$15,000.00, inclusive of HST and disbursements. A Bill of Costs was filed wherein it shows that costs of \$42,620.61 were incurred by Dr. Carfagnini on a full indemnity basis and \$25,572.36 on a partial indemnity basis in relation to the motion and the defence of the action. I am mindful of the fact that he has discounted the amount claimed to, I assume, take into account the personal circumstances of Mr. Jonasson.

[49] Mr. Jonasson states that he does not have the funds to pay any cost award that may be ordered.

[50] In the usual course, the successful party is entitled to their costs or a portion thereof from the losing party. Since I have dismissed Mr. Jonasson’s claim, he is the unsuccessful party. I must now determine whether he must pay costs to Dr. Carfagnini and if yes, how much.

[51] In *Ayubi v. Mount Sinai Hospital*, 2023 ONSC 968, at para. 124, Perell, J. stated as follows:

[M]odern costs rules are designed to advance five purposes in the administration of justice: (1) to indemnify the successful litigants for the costs of litigation, although not necessarily completely; (2) to facilitate access to justice, including access for impecunious litigants; (3) to discourage frivolous claims and defences; (4) to discourage and sanction inappropriate behaviour by litigants in their conduct of the proceedings; and (5) to encourage settlements.

[52] I find that none of these purposes would be met by ordering Mr. Jonasson to pay costs to Dr. Carfagnini. Therefore, I am simply dismissing the action without costs.

“original signed by”
The Hon. Madam Justice R.A. Lepere

Released: June 20, 2025

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Randy Raymond Jonasson

Plaintiff

- and -

Dr. Gregory Peter Carfagnini

Defendant

DECISION ON MOTION

Lepere J.

Released: June 20, 2025