



Civil Resolution Tribunal

Date Issued: August 6, 2020

File: SC-2019-007917

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Yiu v. Fraser Health Authority*, 2020 BCCRT 874

BETWEEN:

SAMUEL YIU and BONMI KOO

APPLICANTS

AND:

FRASER HEALTH AUTHORITY

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Sherelle Goodwin

INTRODUCTION

1. This dispute is about alleged medical negligence.
2. The applicant Bonmi Koo and her husband, the applicant Samuel Yiu, went to the hospital emergency room operated by the respondent, Fraser Health Authority (Fraser Health). Mr. Yiu says Fraser Health's nurses failed to properly assess and

triage Ms. Koo, resulting in Ms. Koo waiting too long to see a doctor. The applicants claim \$3,000 in damages for pain and suffering and asks the Civil Resolution Tribunal (CRT) to order Fraser Health to properly train its staff.

3. Fraser Health denies that it was negligent in its dealings with Ms. Koo or Mr. Liu and says the applicants have not proven their damages. It also says the CRT has no jurisdiction to order Fraser Health to do anything. It asks that the claims be dismissed.
4. Mr. Yiu represents himself and Ms. Koo. Eric Stanger, a lawyer, represents Fraser Health.

JURISDICTION AND PROCEDURE

5. These are the CRT's formal written reasons. The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act (CRTA)*. The CRT's mandate is to provide dispute resolution services accessibly, quickly, economically, informally, and flexibly. In resolving disputes, the CRT must apply principles of law and fairness, and recognize any relationships between parties to a dispute that will likely continue after the dispute resolution process has ended.
6. The CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. I decided to hear this dispute through written submissions because I find that there are no significant issues of credibility or other reasons that might require an oral hearing.
7. The CRT may accept as evidence information that it considers relevant, necessary and appropriate, whether or not the information would be admissible in a court of law. The CRT may also ask questions of the parties and witnesses and inform itself in any other way it considers appropriate.
8. Where permitted by section 118 of the CRTA, in resolving this dispute the CRT may order a party to do or stop doing something, pay money or make an order that includes any terms or conditions the tribunal considers appropriate.

ISSUES

9. The issues in this dispute are:
 - a. Did Fraser Health fail to properly assess Ms. Koo or make her wait too long to see a doctor?
 - b. Was Fraser Health negligent in its dealings with either applicant?
 - c. If the answer to a or b is “yes”, what is the appropriate remedy?

EVIDENCE AND ANALYSIS

10. In a civil claim, such as this one, the applicants Mr. Yiu and Ms. Koo must prove their claims on a balance of probabilities. I have reviewed all submissions and evidence, but I will only refer to that which explains and gives context to my decision.
11. Ms. Koo went to the hospital on March 24, 2019 for obstetrical treatment. The hospital nurses assessed Ms. Koo as Level 3 on the Canadian Triage and Acuity Scale (CTAS) and triaged Ms. Koo in the pelvic examination queue. This meant Ms. Koo had to wait to see a doctor until a gynecological room became available. None of this is disputed.
12. Based on Ms. Koo’s medical records submitted into evidence by Fraser Health, I find she was registered at the hospital’s emergency department and assessed by a nurse at 2:37 pm. The hospital took Ms. Koo’s blood. Ms. Koo was assessed twice more over the following hour and a half, was not in any distress, and was calm and cooperative. Based on the medical records, I find Ms. Koo was seen by a doctor at 8:17 pm, nearly 6 hours after arriving at the emergency room.
13. As stated by Fraser Health, to prove negligence the applicants must show that Fraser Health owed each of them a duty of care, that it breached the standard of care, and that the breach caused Mr. Yiu or Ms. Koo some reasonably foreseeable injury or damage (see *Ediger v. Johnston*, 2013 SCC 18).

14. It is undisputed and I find that Fraser Health owed a duty of care to reasonably assess and treat Ms. Koo, as a patient. I find Fraser Health does not owe the same duty to Mr. Yiu, as he was not a patient. I find Mr. Yiu has failed to show how Fraser Health owed him a duty of care in the context of this dispute. Without a duty of care, there can be no finding of negligence. So, I dismiss Mr. Yiu's claims against Fraser Health.
15. I now turn to Ms. Koo's claims.
16. To prove negligence Ms. Koo must prove that the medical professionals involved failed to meet the accepted and recognized professional standard of care in the circumstances (see *Shanahan v. Fraser Health Authority*, 2010 BCSC 144). Nurses must exercise the care and skill that is reasonably expected of a prudent and careful nurse in similar circumstances. The standard required is not that of perfection, or even excellence (see *Wiebe v. Fraser Health Authority*, 2018 BCSC 1710). Generally, expert evidence is required to establish the standard of care expected of a reasonable nurse (see *Shanahan* and *Wiebe*).
17. Mr. Yiu says that, according to the CTAS guidelines, a patient assessed at Level 3 requires urgent care and should be seen within 30 minutes and be reassessed every 30 minutes after that. He says Fraser Health failed to assess Ms. Koo every 30 minutes and failed to have her seen by a doctor within 30 minutes, as required by the guidelines.
18. The CTAS guidelines specifically state that its time responses are "ideals (objectives), not established care standards". Clinical guidelines, including hospital policies and protocols, are not determinative evidence of the standard of care (see *Wiebe*). I find the guidelines do not establish the standard of care that the hospital must meet. In other words, I find Ms. Koo has not proven that the hospital has a duty to assess and reassess her every 30 minutes.
19. Mr. Yiu says that, if the hospital nurses had assessed Ms. Koo's pain levels on intake to the emergency room, they would have assessed her as CTAS Level 2,

which would have resulted in Ms. Koo seeing a doctor faster. Mr. Yiu did not provide any explanation, or expert evidence, showing that Ms. Koo's rate of pain would have resulted in a change in her triage assessment. Further, Ms. Koo has not proven she had abdominal pain while in the emergency room on March 24, 2019. My reasons follow.

20. Although Mr. Yiu says Ms. Koo recalls having significant abdominal pain, this is indirect evidence documented months after the hospital visit and therefore I give it very little weight. It is inconsistent with Ms. Koo's medical records which show that Ms. Koo did not report pain to the nurses at 3:11 pm, or 3:55 pm and specifically denied pain to the attending doctor at 8:17 pm. As the medical records were made at the time Ms. Koo reported her symptoms, I find they are more accurate about Ms. Koo's pain levels. On balance, I find Ms. Koo likely did not have significant, if any, abdominal pain during her emergency room visit.
21. Mr. Yiu also says the hospital should not have put Ms. Koo in the queue for a pelvic examination. He says, and Fraser Health acknowledges, that the limited pelvic examination rooms can result in pregnant patients waiting longer to see a doctor. Mr. Yiu says that it was clear that a pelvic examination was unnecessary and that other methods of investigation, such as blood work, physical examination, or an ultrasound, would have been sufficient to assess Ms. Koo's condition. However, Mr. Yiu has not shown that he is qualified to provide an opinion on medical assessment. Neither he, nor Ms. Koo, have provided any expert evidence setting out what type of investigation a reasonable nurse would be expected to undertake in similar circumstances. I find that expert evidence is required to establish the standard of care of a reasonable nurse in these circumstances, as assessment and triage is outside of common knowledge.
22. Mr. Yiu says the hospital nurses approached Ms. Koo with "an element of prejudice" but does not explain the basis for the alleged prejudice. I find Ms. Koo has not proven that the hospital failed to assess and treat her in a timely manner due to any alleged prejudice.

23. I find Ms. Koo has failed to prove that waiting nearly 6 hours to be seen by an emergency room doctor was below the reasonably expected standard in the circumstances. Overall, I find Ms. Koo has not proved that the hospital failed to meet the established standard of nursing care in assessing and treating her on March 24, 2019.
24. Even if Ms. Koo had established that the hospital was negligent, I would find that she has not established her claim for damages. Ms. Koo provided no evidence showing that she experienced any pain or suffering resulting from the 6-hour hospital wait. I dismiss Ms. Koo's claims, and this dispute.
25. Under section 49 of the CRTA and tribunal rules, the CRT will generally order an unsuccessful party to reimburse a successful party for tribunal fees and reasonable dispute-related expenses. I see no reason in this case not to follow that general rule. As Mr. Yiu and Ms. Koo were unsuccessful in their claims, I find they are not entitled to reimbursement of their CRT fees. Fraser Health did not pay fees or claim dispute-related expenses.

ORDER

26. I dismiss Mr. Yiu and Ms. Koo's claims, and this dispute.

Sherelle Goodwin, Tribunal Member