



Civil Resolution Tribunal

Date Issued: April 1, 2021

File: SC-2020-006354

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Isacescu v. Goldthorpe*, 2021 BCCRT 357

BETWEEN:

RUXANDRA ISACESCU

APPLICANT

AND:

JASON GOLDTHORPE and DRS. KARKANIS & SHIVJI INC.
dba ATLANTIS DENTAL CENTRE

RESPONDENTS

REASONS FOR DECISION

Tribunal Member:

Lynn Scrivener

INTRODUCTION

1. This dispute is about dental services. The applicant, Ruxandra Isacescu, was treated by the respondent dentist, Jason Goldthorpe, at a clinic operated by the respondent, Drs. Karkanis & Shivji Inc. dba Atlantis Dental Centre (Atlantis). Ms. Isacescu says that Dr. Goldthorpe made a “mistake” while performing a root canal procedure, and

that Atlantis did not provide her with appropriate care for the pain and infection she experienced after the procedure. She says the respondents were negligent and asks for an order that they pay her \$1,400 in damages. The respondents deny that they were negligent or that they are responsible for the damages Ms. Isacescu's claimed damages.

2. Ms. Isacescu is self-represented. The respondents are represented by Ms. Lori Leung, a lawyer appointed by their insurance company.

JURISDICTION AND PROCEDURE

3. These are the formal written reasons of the Civil Resolution Tribunal (CRT). The CRT has jurisdiction over small claims brought under section 118 of the *Civil Resolution Tribunal Act* (CRTA). Section 2 of the CRTA states that 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 the dispute's parties that will likely continue after the CRT process has ended.
4. Section 39 of the CRTA says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Here, I find that I am properly able to assess and weigh the documentary evidence and submissions before me. Further, bearing in mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find that an oral hearing is not necessary in the interests of justice.
5. Section 42 of the CRTA says 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.

6. 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 CRT considers appropriate.

ISSUE

7. The issue in this dispute is whether the respondents were negligent in their care of Ms. Isacescu and, if so, what is the appropriate remedy.

EVIDENCE AND ANALYSIS

8. In a civil proceeding like this one, an applicant must prove their claims on a balance of probabilities. Ms. Isacescu and Dr. Goldthorpe provided evidence and submissions in support of their positions. Atlantis did not provide evidence or submissions despite CRT staff's reminders of the opportunity to do so. That said, it appears that Dr. Goldthorpe's submissions were made on behalf of all the respondents.
9. Some of the documents in evidence appear to contain information about the parties' settlement discussions during the CRT process. I will not consider this information in my analysis due to the CRTA's provisions about keeping settlement discussions confidential. While I have read and will consider the remainder of the information before me, I will refer to only what is relevant and necessary to provide context to my decision.
10. Ms. Isacescu attended Atlantis' clinic on June 9, 2020 and Dr. Goldthorpe assessed her. His clinical notes indicate that Ms. Isacescu complained of pain in tooth #47 and the gum, and that she already had a "perio infection". Ms. Isacescu saw Dr. Goldthorpe twice more before he performed a root canal on tooth #47 on July 9 and 16, 2020.
11. Ms. Isacescu complained of pain after the procedure. The parties disagreed about whether Ms. Isacescu's condition was serious enough to require an emergency appointment during the weekend following the procedure. Ms. Isacescu saw Dr.

Goldthorpe on July 20 and 21, 2020 for her complaints of pain in tooth #47 and her gums. The clinical notes show that Ms. Isacescu was not receptive to some of Dr. Goldthorpe's treatment recommendations.

12. On July 22, 2020, Ms. Isacescu sent an email to Dr. Goldthorpe and Atlantis in which she questioned the treatment she had received and expressed her frustration with the situation. In his July 23, 2020 reply, Dr. Goldthorpe stated that he could not treat Ms. Isacescu to the best of his ability as she refused to take his advice. On that same date, he sent Ms. Isacescu a letter advising her to find care elsewhere. Dr. Goldthorpe did refer Ms. Isacescu to an endodontist, Dr. Tabatabaei, for a second opinion.
13. Ms. Isacescu saw Dr. Tabatabaei on August 11, 2020. In a September 29, 2020 email to Dr. Goldthorpe, Dr. Tabatabaei said she saw no sign of infection. Dr. Tabatabaei did not comment on Dr. Goldthorpe's treatment of Ms. Isacescu.
14. Ms. Isacescu saw another endodontist, Dr. Lam, on September 10, 2020. By that time, her pain symptoms had improved but were still present. Dr. Lam's prognosis for tooth #47 was "guarded", and provided options for extraction, re-treatment or re-evaluation. Dr. Lam did not provide an opinion about the quality of the previous work on the tooth performed by the respondents or a previous practitioner.
15. Ms. Isacescu says that tooth #47 is still symptomatic. In her Dispute Notice, Ms. Isacescu said that she cannot say whether the root canal was done correctly. However, in her submissions, she argues that it must have been performed incorrectly because she has had previous root canals that did not result in persistent pain. She also says that the treatment to her gums was negligent. As noted, the respondents deny any negligence. They submit that Ms. Isacescu consented to treatment and was aware of the risks involved.
16. To be successful in an action for negligence, Ms. Isacescu must establish all of the following: that the respondents owed her a duty of care, that the respondents breached the standard of care, that she sustained damage, and that the damage was

caused by the respondents' breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27).

17. In claims of professional negligence like this, it generally is necessary for an applicant to prove a breach of the standard of care with expert evidence. Experts can comment on the applicable standard of care and whether treatment fell below that standard, which are things that are outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). I find that an expert opinion from a qualified dentist or dental specialist is necessary to assist me with assessing the respondents' treatment of Ms. Isacescu.
18. As noted, neither Dr. Tabatabaei nor Dr. Lam commented on the treatment Ms. Isacescu received from the respondents. There is no opinion before me that comments on the respondents' treatment of Ms. Isacescu's gums or the root canal procedure. There is also no opinion that addresses whether persisting symptoms are a possible outcome of a correctly performed root canal procedure. I find that the evidence before me does not establish that the respondents failed to treat Ms. Isacescu's gums properly or did not perform the root canal appropriately.
19. Ms. Isacescu was also unhappy that she was not provided with an emergency appointment on the weekend following her procedure and that the respondents dismissed her as a patient. I find that an expert opinion would also be necessary to establish that Ms. Isacescu's symptoms amounted to an emergency situation or that it was inappropriate or unethical for the respondents to decline to treat her given that she did not follow Dr. Goldthorpe's recommendations for treatment. In the absence of an expert opinion on these matters, I find that Ms. Isacescu has not shown that the respondents acted inappropriately.
20. Ms. Isacescu says that Dr. Goldthorpe erred by recommending antibiotics despite her telling him that she is allergic to antibiotics. The respondents point out that, on the June 9, 2020 medical history form completed by Ms. Isacescu, she answered "no" to questions about allergies and issues with penicillin, other antibiotics or sulfa drugs. As there is no expert opinion before me that comments on the appropriateness of

recommending antibiotics in these circumstances, I find that Ms. Isacescu has not proven that Dr. Goldthorpe made an error in doing so.

21. I acknowledge Ms. Isacescu's report of symptoms and her dissatisfaction with her experience with the respondents. However, I find that Ms. Isacescu has not met her burden of proving that Dr. Goldthorpe or Atlantis failed to meet the standard of care when treating her. As she has not established that the respondents were negligent, I dismiss Ms. Isacescu's claim for associated damages.
22. Under section 49 of the CRTA and CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Even if Ms. Isacescu had been successful, I would not order a reimbursement of CRT fees as she did not pay any fees. No dispute-related expenses were claimed.

ORDER

23. I dismiss Ms. Isacescu's claims and this dispute.

Lynn Scrivener, Tribunal Member