



Civil Resolution Tribunal

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File: SC-2021-005589

Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Abbott v. Dr. Bob Rishiraj Inc.*, 2022 BCCRT 113

B E T W E E N :

JANILLE ABBOTT

APPLICANT

A N D :

DR. BOB RISHIRAJ, INC.

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Shelley Lopez, Vice Chair

INTRODUCTION

1. This dispute is about alleged dental negligence. The applicant patient, Janille Abbott, says the respondent, corporate dental care provider Dr. Bob Rishiraj, Inc.

(DBR), failed to adequately assess her, unnecessarily extracted 2 teeth (molars #45 and #46), and failed to give her the removed teeth as allegedly agreed. Mrs. Abbott says she now has to eat differently and sometimes bites her tongue. She claims \$2,300 in damages, for pain and suffering and so she can pay for further dental work.

2. DBR says Mrs. Abbott was referred for extraction of molars #45 and #46 and says its oral surgeon Dr. Bob Rishiraj properly removed them after an appropriate consultation with Mrs. Abbott. DBR says she consented to the extractions. DBR says it does not recall that Mrs. Abbott asked for the removed teeth, noting they are considered biowaste. DBR says Mrs. Abbott's post-treatment symptoms are normal and expected post-extraction. DBR denies negligence and asks that I dismiss the claim.
3. Mrs. Abbott is self-represented. DBR is represented by Dr. Rishiraj.

JURISDICTION AND PROCEDURE

4. 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). 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.
5. CRTA section 39 says the CRT has discretion to decide the format of the hearing, including by writing, telephone, videoconferencing, email, or a combination of these. Some of the evidence in this dispute amounts to a "she said, he said" scenario. The credibility of interested witnesses, particularly where there is conflict, cannot be determined solely by the test of whose personal demeanour in a courtroom or tribunal proceeding appears to be the most truthful. The assessment of what is the most likely account depends on its harmony with the rest of the evidence. Bearing in

mind the CRT's mandate that includes proportionality and a speedy resolution of disputes, I find I can fairly hear this dispute based on the submitted evidence and through written submissions.

6. Under CRTA section 42, 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.
7. Where permitted by CRTA section 118, in resolving this dispute the CRT may: order a party to do or stop doing something, order a party to pay money, or order any other terms or conditions the CRT considers appropriate.
8. Mrs. Abbott submitted evidence late, after the CRT's deadline. Bearing in mind the CRT's flexible mandate, I admit the late evidence (signed consent forms and Mrs. Abbott's submission about them) as DBR had an opportunity to respond to it and so is not prejudiced by the admission.

ISSUE

9. The issue is whether DBR was negligent in treating Mrs. Abbott in the course of extracting her 2 teeth, and if so, is she entitled to the claimed \$2,300 in damages.

EVIDENCE AND ANALYSIS

10. In a civil claim like this one, as the applicant Mrs. Abbott has the burden of proving her claims, on a balance of probabilities (meaning "more likely than not"). I have only referenced below what I find is necessary to give context to my decision.
11. In a Statement of Facts, the parties agree:
 - a. Around January 21, 2019, Mrs. Abbott attended a consultation with DBR after having been referred by her dentist for removal of 2 molars. I find the evidence shows these 2 molars were molars #45 and #46.

b. DBR did not take x-rays of the 2 molars.

c. Dr. Rishiraj removed the 2 identified molars on January 21, 2019.

12. I turn next to the applicable law.

13. To be successful in an action for negligence, Mrs. Abbott must establish all of the following: that DBR owed her a duty of care, that DBR breached the standard of care, that she sustained damage, and that the damage was caused by DBR's breach (see *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27). It is undisputed DBR owed its patient Mrs. Abbott a duty of care. The issue in this dispute is the relevant standard of care and whether DBR breached it causing Mrs. Abbott the claimed damages.

14. 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 DBR's dental treatment fell below that standard, which I find are things outside ordinary knowledge (see *Bergen v. Guliker*, 2015 BCCA 283). There are exceptions, where the breach of the standard of care is obvious. Here, I find there was nothing obviously negligent about DBR's treatment, and so expert evidence is required. My reasons follow.

15. First, Mrs. Abbott denies signing a consent form authorizing DBR to extract the 2 molars. In her late evidence, she argues the initials on the January 21, 2019 consent form were not hers and are a forgery. Notably, that consent form expressly identifies removal of molars #45 and #46, and it also explains that there are known complications of surgery, including pain and discomfort and unavoidable damage. I have reviewed the comparison documents Mrs. Abbott submitted, including a signed March 2018 consent form for DBR for prior dental treatment (extraction of molar #47). I agree there is some difference in the initials' slant between the 2 consent forms. However, I cannot conclude the difference is so obvious that it is likely not Mrs. Abbott's initials on DBR's January 2019 consent form. There is no

evidence before me from a handwriting expert, which I find would be necessary to establish the forgery. In any event, Mrs. Abbott's signature is also at the bottom of each 1-page consent form, which appears to be the same signature on both the 2018 and 2019 forms. The burden is on Mrs. Abbott to prove a forgery, and I find she has not done so.

16. Next, Mrs. Abbott alleges DBR engaged in unethical billing practices, arguing it billed her dental plan for a January 21, 2019 examination she says was not done. In later submissions, she says on that date Dr. Rishiraj injected freezing in her mouth and asked the reason for the extractions, and then left. Mrs. Abbott argues this was not an examination because it was insufficient. DBR denies performing an inadequate examination and improper billing. As noted, the extractions were done on January 21, 2019.
17. Generally speaking, any billing irregularities are for the College of Dental Surgeons of British Columbia (College) or perhaps the relevant dental plan, and neither of those entities are parties to this dispute. There are chart notes for January 21, 2019 in DBR's records that I find show some examination likely took place. In the absence of expert evidence, I find it unproven that Dr. Rishiraj failed to conduct an adequate examination or that DBR improperly billed for his service. In any event, Mrs. Abbott has not shown she suffered any damages as a result of the alleged billing issue, as did not pay for the dental care personally. I dismiss this aspect of Mrs. Abbott's claim.
18. Next, Mrs. Abbott argues she told DBR she wanted the extracted teeth returned to her, which DBR generally denies though in its response submission says it is possible she did so. DBR admits it did not return the teeth to her. However, DBR says extracted teeth are biowaste and are disposed of appropriately. On balance, as Mrs. Abbott has the burden of proof, I find it unproven she asked for the teeth back. In any event, she has not explained what damages she suffered as a result. I dismiss this aspect of her claim.

19. I find Mrs. Abbott's central allegation is that had Dr. Rishiraj "done a proper examination" and taken or adequately reviewed x-rays on or before January 21, 2019, Mrs. Abbott would have been informed and declined to have molars #45 and #46 extracted. Mrs. Abbott says she would have avoided the pain and discomfort following the extractions if the molars had been left in place.
20. Notably, Mrs. Abbott agreed to have 2 teeth extracted on January 21, 2019, because she signed the consent form to that effect and because she says she asked for the teeth's return, both issues I have discussed above. Again, there is no expert opinion evidence before me. So, I find it unproven that DBR proceeded improperly or was negligent in extracting the 2 molars that were specifically referred to it for extraction by the referring dentist. For the same reason, I find it unproven that Dr. Rishiraj should have obtained different x-rays or that he improperly failed to review the available x-rays that came with the referral. On this point I note Dr. Rishiraj says the x-rays showed that extractions of molars #45 and #46 were necessary and I have no expert evidence before me to prove otherwise.
21. Mrs. Abbott denies DBR's assertion there were "reabsorption" issues with molars #45 and #46, and she relies on her own interpretation of x-rays. I note DBR says it does not understand her argument on this point. In any event, I find interpretation of the x-rays here requires expert evidence. Again, Mrs. Abbott has provided none in support of her position. Printouts from the College's website about standards of care are not sufficient, as they do not address Mrs. Abbott's particular situation. Similarly, Mrs. Abbott has not provided any expert evidence that says DBR should have taken further x-rays or any that says DBR should not have removed those 2 teeth.
22. Next, it is undisputed and DBR's chart notes show Mrs. Abbott attended DBR in further follow-up on January 26, 28, and 30, 2019. DBR says on those latter 3 visits her extraction sites were healing normally, which Mrs. Abbott denies. DBR admits Mrs. Abbott suffered from "dry socket" after the extractions, but there is no expert evidence before me that this resulted from lack of appropriate care. To the extent Mrs. Abbott argues DBR failed to provide adequate follow-up care, I find this

unproven and unsupported by any evidence before me. Overall, I find it unproven DBR was negligent.

23. Finally, I find Mrs. Abbott's claimed damages unproven in any event. In particular, she has submitted no medical opinion that her recovery from the extractions was beyond what was expected, bearing in mind I have found above that she consented to the extractions.
24. Under section 49 of the CRTA and the CRT's rules, a successful party is generally entitled to reimbursement of their CRT fees and reasonable dispute-related expenses. Mrs. Abbott was unsuccessful. DBR did not pay fees or claim dispute-related expenses. So, I make no order for fees or expenses.

ORDER

25. I dismiss Mrs. Abbott's claims and this dispute.

Shelley Lopez, Vice Chair