



Civil Resolution Tribunal

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Type: Small Claims

Civil Resolution Tribunal

Indexed as: *Ovelson v. Joyce Turton (dba Joyce's Electrolysis and Laser Clinic)*, 2024
BCCRT 441

B E T W E E N :

TANYA OVELSON

APPLICANT

A N D :

JOYCE TURTON (Doing Business As JOYCE'S ELECTROLYSIS AND
LASER CLINIC)

RESPONDENT

REASONS FOR DECISION

Tribunal Member:

Kate Campbell, Vice Chair

INTRODUCTION

1. This dispute is about allegedly negligent laser treatments.
2. Tanya Ovelson hired Joyce Turton (Doing business as Joyce's Electrolysis and Laser Clinic) to do cosmetic laser treatments on her face. Mrs. Ovelson says Mrs. Turton

performed the treatments negligently, which damaged her face and caused pain and scarring. Mrs. Ovelson requests \$5,000 in compensation, as reimbursement for her payments to Mrs. Turton and for additional treatments to repair the alleged damage.

3. Mrs. Turton says she was not negligent, and did not damage Mrs. Ovelson's face. Mrs. Turton says Mrs. Ovelson already had scars on her face before the laser treatments.
4. The parties are each self-represented.

JURISDICTION AND PROCEDURE

5. The Civil Resolution Tribunal (CRT) has jurisdiction over small claims 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.
6. 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. I have considered the potential benefits of an oral hearing. The parties did not request an oral hearing. Also, I find I can properly assess and weigh the documentary evidence and submissions before me. I find that any potential benefit of an oral hearing is outweighed by the CRT's mandate to provide proportional and speedy dispute resolution. So, I find an oral hearing is not necessary in the interests of justice.
7. The CRT may accept as evidence information that it considers relevant, necessary, and appropriate, even if the information would not be admissible in court.

ISSUES

8. The issues in this dispute are:
 - a. Did Mrs. Turton perform laser treatments negligently?
 - b. If so, what remedy is appropriate?

EVIDENCE AND ANALYSIS

9. In a civil proceeding like this one, Mrs. Ovelson, as the applicant, must prove her claims on a balance of probabilities. I have read the parties' submitted evidence and arguments, but refer only to what I find relevant to provide context for my decision.
10. The parties agree that Mrs. Turton performed laser treatments on Mrs. Ovelson's face. Mrs. Ovelson says the purpose of the treatments was to reduce brown spots and remove hair. As explained above, Mrs. Ovelson says Mrs. Turton performed the laser treatments negligently, which damaged her face.
11. To prove negligence, Mrs. Ovelson must establish that Mrs. Turton owed her a duty of care, that Mrs. Turton breached the applicable standard of care, and that Mrs. Ovelson experienced harm caused by the breach. See *Mustapha v. Culligan of Canada Ltd.*, 2008 SCC 27.
12. As a service provider performing facial laser treatments, I accept that Mrs. Turton owed Mrs. Ovelson a duty of care. To prove negligence in professional services such as esthetic laser treatments, a party must generally provide expert evidence, such as a report from doctor or certified treatment provider, to prove that the treatments did not meet the standard of a reasonable esthetician. See *Bergen v. Guliker*, 2015 BCCA 283. This is because I find the standards of a professional esthetician performing facial laser treatments are beyond an ordinary person's knowledge and experience.
13. Based on the evidence before me, I find Mrs. Ovelson has not proved that Mrs. Turton damaged her skin, or that her treatments were negligent.
14. Mrs. Ovelson provided photos of her face taken before and after her treatments with Mrs. Turton. I find the after photos to do not establish that her skin was damaged. There are visible marks on the skin, which Mrs. Ovelson says are scars. However, there is no opinion from a medical professional such as a family doctor or dermatologist confirming what the marks are, what caused them, and whether they

are permanent. So, I find the photos do not prove that Mrs. Ovelson's skin was damaged due to negligent treatments by Mrs. Turton.

15. Mrs. Ovelson provided statements from her husband and SS, who is either a friend or her sister. Both of these statements say that after treatments by Mrs. Turton, Mrs. Ovelson developed scarring on her face. However, I place limited weight on these witness statements. First, the witnesses are not neutral, as they have personal connections to Mrs. Ovelson. Second, and more importantly, neither have expertise in identifying and diagnosing skin conditions, or in how facial laser treatments should be performed.
16. Mrs. Ovelson also provided an undated statement from Marlena Kwasny. Marlena Kwasny's statement says:
 - They are a "dedicated Medical Laser Esthetician and Skin Consultant."
 - Mrs. Ovelson sought a consultation with Marlena Kwasny regarding "pigmentation issue on her face."
 - Marlena Kwasny saw Mrs. Ovelson at another clinic, after Mrs. Ovelson had been treated elsewhere. Mrs. Ovelson had previously been treated with microneedling and IPL (intense pulsed light).
 - The previous treatments had minimal success, which left Mrs. Ovelson emotionally distressed.
 - After examination, it was evident to Marlena Kwasny that it was imperative for Mrs. Ovelson to stop treatment at the previous clinic.
 - Mrs. Ovelson's pigmentation had clearly worsened. Also, there were indications that she had experienced burns over the affected areas, possibly leading to post-inflammatory hyperpigmentation.

- Marlena Kwasny identified some areas that appeared to be scarred as the result of micro-needling, or the combination of IPL and micro-needling in a single session.
- Marlena Kwasny developed a comprehensive treatment plan, emphasizing that progress would be gradual and “necessitate multiple sessions” given the need to rectify damage to the skin and the underlying deeper pigment.

17. CRT rule 8.3(2) says that in order to accept a statement as expert evidence, the witness must state their qualifications. Marlena Kwasny says they are a “dedicated Medical Laser Esthetician and Skin Consultant.” However, they provided no evidence about their training, certification, or professional experience. So, I find Marlena Kwasny has not established her expertise to provide opinion evidence on how facial laser treatments should be performed, or what caused the marks on Mrs. Ovelson’s face.
18. Even if I found Marlena Kwasny was an expert witness, I would place limited weight their opinion for other reasons. First, Marlena Kwasny says in their statement that they developed a comprehensive treatment plan for Mrs. Ovelson, which required multiple treatment sessions. Since Mrs. Ovelson would have to pay for those sessions, I find Marlena Kwasny is not neutral.
19. Second, I find Marlena Kwasny’s opinion is speculative. They say there are “indications” that Mrs. Ovelson had experienced burns, with “possible” post-inflammatory hyperpigmentation. Marlena Kwasny did not say what the indications were, and did not explain the basis of her opinion. For example, they did not explain what clinical signs they observed. So, I find Marlena Kwasny’s statement does not constitute a reasoned expert opinion.
20. Third, Marlena Kwasny says Mrs. Ovelson’s skin damage was caused by micro-needling, or a combination of micro-needling and IPL. However, Mrs. Turton says she never performed micro-needling on Mrs. Ovelson. The treatment records Mrs. Turton provided confirm this, and Mrs. Ovelson provided no contrary evidence.

21. So, even if I accepted that Marlena Kwasny was qualified to give expert evidence on esthetic facial laser treatments, they say the damage they viewed on Mrs. Ovelson's face was caused by micro-needling. Since Mrs. Turton did not perform micro-needling, I find Marlena Kwasny's statement does not establish that Mrs. Turton was negligent.
22. Fourth, and relatedly, I find Marlena Kwasny's only knowledge about what treatments Mrs. Turton provided, and how she did them, came from Mrs. Ovelson. Marlena Kwasny did not have access to Mrs. Turton's records, and did not know what equipment Mrs. Turton used, or what settings or techniques she used. So, I find Marlena Kwasny had no basis to provide an informed expert opinion about whether Mrs. Turton was negligent.
23. For all these reasons, I find Mrs. Ovelson has not established that Mrs. Turton was negligent.
24. Even if Mrs. Ovelson had proved negligence, I would not have ordered the \$5,000 in claimed damages because I find the damages are unproven. Mrs. Ovelson provided no evidence about how much she paid Mrs. Turton, or the cost of treating the alleged skin damage.
25. Under CRTA section 49 and the CRT rules, the CRT will generally order an unsuccessful party to reimburse a successful party for CRT fees and reasonable dispute-related expenses. Mrs. Ovelson was unsuccessful, I dismiss her claim for reimbursement of CRT fees. Mrs. Turton is the successful party. She paid no CRT fees and claims no dispute-related expenses, so I award no reimbursement.

ORDER

26. I dismiss Mrs. Ovelson's claims and this dispute.

Kate Campbell, Vice Chair