

**CITATION:** Courneyea v Mazzuca 2019 ONSC 2105  
**COURT FILE NO.:** CV-14-511915  
**MOTION HEARD:** 26 March 2019

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** Adam Alexander Courneyea, Oretta Courneyea, Christine Courneyea and  
Romana Moratti, Plaintiffs

**AND:**

Nino Carmen Mazzuca, Toyota Credit Canada Inc./Toyota Financial Services and  
Security National Insurance Company, Defendants

**BEFORE:** Master Jolley

**COUNSEL:** Evan Argentino, Student at Law for the Moving Party Defendants Nino Carmen  
Mazzuca and Toyota Credit Canada Inc./Toyota Financial Services

David Fisher, Counsel for the Responding Party Plaintiffs

**HEARD:** 26 March 2019

**REASONS FOR DECISION**

- [1] The defendants Mazzuca and Toyota Credit Canada Inc./Toyota Financial Services (“the defendants” for the purposes of this motion) seek an order requiring the plaintiff Adam Courneyea (“the plaintiff” for the purposes of this motion) to attend a further examination for discovery.
- [2] The plaintiff was involved in a motor vehicle accident on 13 September 2012 and this action was commenced on 10 September 2014. The plaintiff was examined for discovery on 9 February 2015. The parties have a pre-trial scheduled for 10 November 2020 and a 25 day trial set to commence on 18 January 2021.
- [3] The parties agree that the defendants must demonstrate that there are exceptional circumstances that warrant a further examination (*Green v. Viens* 2018 ONSC 498). I note that the court in *Ozdemir v Economical Mutual Insurance Group*, 2016 ONSC 5682, relying on *Benedetto v. Giannoulis* 2009 CanLII 29990 found that an “important change in the facts” could also form the basis for a further examination for discovery. The parties also agree that a substantial deterioration in a plaintiff’s condition may constitute exceptional circumstances. They disagree about whether the plaintiff’s condition has substantially deteriorated since he was examined for discovery in February 2015.

- [4] The defendants argue that the plaintiff did not complain of any significant psychological issues at the time of his examination for discovery. Since the examination, his psychological well-being has catastrophically deteriorated. He has since been determined to be catastrophically impaired for the purposes of his accident benefits claim, due to his psychological condition.
- [5] The plaintiff further argues that a further examination is unnecessary. The plaintiff has produced all the medical records relating to his treatment after his examination for discovery including a series of updated medical reports. The plaintiff argues that he himself will not be able to shed light on his condition.

### **Discussion**

- [6] The plaintiff argues that any of his psychological differences since his examination for discovery are a difference in his symptoms, not in his condition. The plaintiff has and continues to suffer from depression. His condition of depression has not changed. A change in the symptoms of that condition does not meet the exceptional circumstance test.
- [7] I do not believe such a fine parsing is warranted. While I accept the plaintiff's position that there was reference to the plaintiff's psychological condition after the accident in the reports delivered before the examination for discovery, the injuries were of a different magnitude than have been documented since that time.
- [8] The plaintiff was examined on his psychological issues in February 2015. He indicated that he had seen a psychiatrist twice for issues arising from the accident. Those records were produced before the examination as part of the notes of the family doctor. They indicate that he was seen regarding his depression on 4 December 2014. The notes make reference to suicide and indicate that the plaintiff reported that he had quite often thought of overdosing with nitrous oxide but he had never attempted to act on these thoughts. He denied having an intent or plan to commit suicide.
- [9] The plaintiff indicated on his examination that he did not like interacting with people anymore, that he didn't feel like doing anything and that he was depressed. He also described himself as anti-social. He stated that his depression started immediately after the accident and that he was prescribed medication which only helped slightly. He confirmed that he was offered counselling but did not think it would help.
- [10] The notes of the plaintiff's family doctor have one entry made on 14 January 2013 which raised the issue of depression. The plaintiff reported that he was staying home and doing nothing and that he was annoyed because he was in the house all the time with a large number of family members. There is a further reference to the plaintiff's psychological condition in the notes from St. John's Rehab Hospital. The registered physiotherapist noted in her discharge report of 28 November 2013 that the plaintiff presented with "low mood" and that he declined the offers of a psychology assessment.

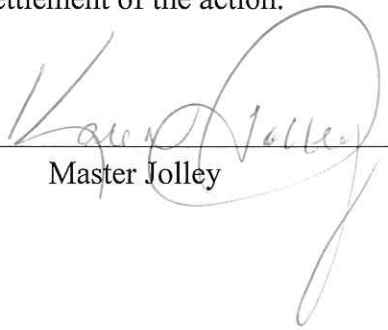
- [11] For context it is worth noting that there were no references to the plaintiff's psychological condition in the Sunnybrook Hospital records, the William Osler Health Centre records, the decoded OHIP summary or the insurer assessments. The three plaintiff assessments conducted between the accident and the examination list emotional and cognitive symptoms as secondary complaints/complications.
- [12] Since his examination for discovery, the plaintiff has attended at Sunnybrook Hospital on multiple occasions with suicidal ideations. On 28 May 2015 the notes of the orthopaedic surgeon indicate that the plaintiff is quite depressed, not motivated, has some flashbacks and stress related to the accident and may have some degree of post-traumatic stress. The notes go on to state that the plaintiff has seen someone in Etobicoke but the person did not have expertise in PTSD or trauma patients and he was referred to a doctor at Sunnybrook with that speciality.
- [13] On 4 December 2015 another note from Sunnybrook Hospital indicates that the plaintiff had been referred for an assessment for depressive symptoms and was diagnosed with "Major Depressive Episode – current episode severe with psychotic features, PTSD in partial remission". A note from 17 August 2016 contained a similar diagnosis. That note also stated that "since December [the plaintiff] has been seen weekly to monthly with increasing hopelessness and suicidality, despite trials of different medications. Amendable to admission to hospital for medication review, possible trial of ketamine or ECT, mental status consistently depressed, restricted, slowed with passive SI."
- [14] After "disclosing suicidal ideation with plan to overdose on N2O" in September 2016, the plaintiff was admitted to Sunnybrook Hospital on a Form 1, where he stayed for a month. The notes from that period report the plaintiff stating "I have no reason to live. I have no interests in anything or anybody". It continues, noting "significant symptoms of depression since MVA, daily pain and reduced mobility, has become hopeless and socially withdrawn, last seen July 21, 2016 as outpatient, since then discontinued fluoxetine as did not feel his depression was improving, described testing N2O as party drug but denied any suicidal intent though continues to plan to commit suicide on nitrous after mother has moved into her new apartment. Has been seen weekly to monthly since December 2015 with increasing hopelessness and suicidality despite trials of sertraline, trazodone and nortryptiline, gabapentin and vortizetine, fluoxetine.... Addendum – Mother called expressed Adam acting differently past two weeks, more private and withdrawn, concerned he is at high risk of suicide."
- [15] The plaintiff's discharge statement in October 2016 noted that his only enjoyment had been his sister's dog that died in June 2016, precipitating increased suicidality and discontinuation of medication.
- [16] It was noted in June 2017 that as a result of his designated catastrophic status, the plaintiff would have a full rehabilitation team now including weekly treatment from a psychologist, case manager, occupational therapist, physiotherapist, massage therapist and registered social worker.

- [17] In her psychological assessment report dated 24 April 2017 Dr. Rockman diagnosed the plaintiff with Major Depressive Disorder, moderate without psychotic features, somatic symptoms disorder with predominant pain, adjustment disorder with anxiety, social phobia and specific phobia related to being in traffic and concluded that, without any psychological treatment, the plaintiff's prognosis was poor.
- [18] At the examination for discovery, the plaintiff stated that he was on daily medication that slightly improved his depression. He indicated that he was depressed all the time after the accident and had become anti-social as he did not believe he had anything to say to anyone any longer. While he went so far as to describe his symptoms of depression after the accident by saying that he would rather be dead, he was not seeing a psychiatrist or psychologist. There was no suggestion that the plaintiff suffered from PTSD or flashbacks or that he had taken active steps to put a suicide plan in place. By September 2016 he reported self-harm thoughts on a daily basis and he had a concrete plan and had recently purchased nitrous oxide.
- [19] Further, according to his medical records, he indicated that after the accident he would often feel sad, annoyed or even tearful. By September 2016, he would never feel like crying and stated his sadness had been replaced by apathy; he "just doesn't care anymore". He stated that after the accident he would try to get his friends together to go to a movie, but had stopped doing that by September 2016.
- [20] Based on the plaintiff's post-discovery diagnosis of PTSD, his reported behavioural and emotional changes, the fact that he had taken steps toward attempting suicide and had been admitted to hospital on a Form 1 for treatment for a month, I find these changes are more than a natural extension or worsening of the prognosis on which he was examined at discovery. I find there has been a substantial deterioration in the plaintiff's psychological condition that, on these facts, constitutes an extraordinary circumstance.
- [21] I am not prepared to say that the plaintiff will not have something useful to offer during his examination. He may speak to his own symptoms, his daily experiences and future outlook, something that the medical doctors are only able to report second hand.

### **Order**

- [22] I am satisfied that exceptional circumstances exist here that warrant that I exercise my discretion to order a further examination for discovery in order to permit the defendants to update the plaintiff's condition.
- [23] Such an examination will not delay the trial and will assist the parties to properly narrow the issues and prepare for trial and may, as well, aid in settlement.
- [24] I hereby grant the defendants leave to conduct a further examination of the plaintiff on issues not covered during his first examination. The examination shall take place on a date convenient to counsel and the plaintiff but within 90 days of the date of this order.

- [25] The defendants shall have their costs of the motion in the all-inclusive amount of \$3,500 payable by the plaintiff at the conclusion of trial or settlement of the action.



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Master Jolley

**Date:** 2 April 2019