

JUDGE ORDERS PLAINTIFF TO ATTEND DEFENDANTS' MEDICAL ASSESSMENTS IN PERSON DESPITE COVID-19 PANDEMIC

M v. B

2021 ONSC 2295

The Reasons for Decision of Master Jolley – March 25, 2021

The defendants brought on a motion on March 22, 2021, to compel the plaintiff to attend medical assessments they had booked for a neuropsychology examination with Dr. Dowhaniuk on March 31st, 2021 and a psychiatry examination with Dr. Muhlstock on April 5th, 2021. Both examinations would take place at a medical assessment facility in Mississauga. The trial of this matter is scheduled to be heard in June 2021.

The plaintiff agreed to the psychiatry examination but challenged the necessity of a neuropsychological examination. The issue in both cases is the form the examinations will take. Ms. M does not consent to attending examinations in person, given the pandemic and what she describes as her compromised health situation. She had a heart attack and underwent heart surgery in 2016, had had breast cancer in 2017 and had a lumpectomy in 2018. She generally does not leave her home unless necessary. Her treating physician filed an affidavit and report. He opined that due to the plaintiff's multiple and significant medical conditions and her intake of medications, she is at the high end of the high-risk category to contract COVID-19 and to have a poor outcome. He noted that the public health recommendation for those with chronic conditions is to limit their contact with others and to avoid closed indoor spaces and crowded places.

Master Jolley accepted the evidence that the medical assessment company has extensive COVID-19 protocols in place, which are compliant with both the Ministry of Health guidelines and the guidelines of the College of Physicians and Surgeons of Ontario. She noted that the plaintiff has attended other necessary appointments in person including a mammogram for her cancer follow-up and her lawyer's



office for the pre-trial. Master Jolley found for the defendant that it is necessary for the plaintiff to attend the neuropsychology examination.

Master Jolley accepted the evidence of Dr. Muhlstock that “A Physiatry assessment CANNOT be done virtually. The physical examination is critical to the assessment”. Further, she accepted Dr. Dowhaniuk’s advice that “I cannot conduct a neuropsych assessment virtually. Administration of cognitive testing must be done face to face using the required stimulus materials.”

Master Jolley adopted the reasoning in *Severin v. Barker* 2020 ONSC 7784 which held that requiring a plaintiff to attend an in-person defence medical during the pandemic does not pose an undue hardship on a plaintiff where the examination will be conducted with COVID-19 safety protocols.

The Plaintiff was ordered to attend both the physiatry and neuropsychological assessments in person.

WRITTEN BY STELLA GOWANS, PARALEGAL

The full text of this Decision [CAN BE FOUND HERE](#)

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