

IN THE SUPREME COURT OF THE YUKON TERRITORY

Citation: *Fox v. Yukon Hospital Corporation.*,
2006 YKSC 51

Date: 20060822
Docket: S.C. No. 05-A0070
Registry: Whitehorse

BETWEEN:

WENDY FOX

Plaintiff

AND:

**YUKON HOSPITAL COPORATION,
DR. BRUCE BEATON, DR. BRAD AVERY,
DR. BRENDAN HANLEY**

Defendants

Before: Madam Justice C.A. Kent

Appearances:
Andre Roothman
Nigel Trevethan

Counsel for the Plaintiff
Counsel for Dr. Beaton, Dr. Avery
and Dr. Hanley

Larry Jackie

Counsel for Yukon Hospital Corporation

**MEMORANDUM OF JUDGMENT
DELIVERED FROM THE BENCH**

[1] KENT J. (Oral): With respect to the application for dismissal of the action under Rule 18A, the action against both the Yukon Hospital and the doctors is dismissed. With respect to costs for the defendants, which would ordinarily follow the event, there will be no costs. With respect to costs against the Yukon Hospital for the disbursements, that application is dismissed. I will deal with the doctors separately, but

if there is some kind of unusual issue as a result of the primary mistake, if I can call it that, the primary error, and that is the notation of 1,300 hours, that was done by one of the doctors, not the hospital. So I do not see any basis for awarding costs against the hospital for those disbursements.

[2] That takes me to perhaps the most difficult or the most unusual issue, and that is whether or not the doctors should be liable for the payment of the disbursements of Ms. Fox. I suppose if I was to make a finding of costs on behalf of Ms. Fox, it would not necessarily be limited to disbursements, but her counsel has quite fairly said that that is all that they are seeking. It is an unusual situation. The primary error was made by the doctors. It was not anything other than a slip in making a notation on the form. That error was compounded not by the hospital or any other doctors or by Dr. Avery himself, but rather first by the Neighbourhood Law Centre, who represented Ms. Fox on the mental health review and sent her a letter, essentially, advising her that she had a reasonable claim against the hospital because of the failure to complete the examinations within the required time.

[3] There was also the decision of the Mental Health Review Board and although they did not make any findings with respect to the timeliness or not because, as I understand it, they -- just hang on a minute. I am wrong. They did make a statement on page 4 with respect to the timeliness and specifically indicated that the patient be sent a copy of their decision advising her of the violations of s. 12(1) and s. 13(4) of the *Act*. So the context within the application for disbursements is, first, an inadvertent error of a reasonably minor nature made by Dr. Avery. The fact that we have a psychiatric patient, that is, someone whose mental health, to some degree or another, was then,

and perhaps continues to be, fragile, the fact that she received advice from a lawyer and with that, a decision of the *Mental Health Review Act*, indicating that there had been a violation of the *Act*, it is curious that neither of those bodies had access to the additional documentation, which would have shown that there was an error one way or the other, and allowed for that investigation.

[4] Notwithstanding those unusual facts and certainly Mr. Roothman's plea on behalf of Ms. Fox, as wide as my discretion is to award costs, I cannot see it appropriate to award any costs to Ms. Fox on the basis that she has made. The encouragement, if I can call it that, or the suggestion of liability were made by bodies other than the defendants, namely the Neighbourhood Law office and the Mental Health Review Board. So with that, the application on behalf of Ms. Fox for costs is denied. So there will be no costs to any party.

[5] Is there anything else, Mr. Roothman?

[6] MR. ROOTHMAN: Nothing more.

[7] THE COURT: Mr. Trevethan, Mr. Jackie, anything else?

[8] MR. TREVETHAN: My Lady, I may have misheard you, but I think you -- did you say that the applications were dismissed?

[9] THE COURT: The actual actions were dismissed.

[10] MR. TREVETHAN: The actions, I see.

[11] THE COURT: At the very beginning, with no reasons at all, I said that the action was dismissed and then the applications on behalf of Ms. Fox for costs were also dismissed. So there are no costs at all.

[12] MR. TREVETHAN: Thank you. The voices, unfortunately, are going a little bit in and out here on my telephone.

[13] THE COURT: And I have a very bad cold so my voice may have dropped.

[14] MR. TREVETHAN: Okay, thank you very much for that.

[15] THE COURT: All right. We will adjourn.

KENT J.