COURT OF APPEAL FOR BRITISH COLUMBIA

Citation: *Hayer v. Dhingra,*
2024 BCCA 424

Date: 20241218
Docket: CA49678

Between:

Sukhwant Kaur Hayer

Appellant
(Plaintiff)

And

Gurpreet Kaur Dhingra

Respondent
(Defendant)

Before: The Honourable Madam Justice Fenlon
The Honourable Madam Justice Horsman
The Honourable Justice Iyer

On appeal from: An order of the Supreme Court of British Columbia, dated February 1, 2024 (*Dhingra v. Hayer*, 2024 BCSC 160, New Westminster Docket M217316).

Oral Reasons for Judgment

Counsel for the Appellant:	G. Cameron
Counsel for the Respondent:	P.M.J. Arvisais A. Ng
Place and Date of Hearing:	Vancouver, British Columbia December 17, 2024
Place and Date of Judgment:	Vancouver, British Columbia December 18, 2024

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Summary:

Appeal from an order finding the appellant entirely at fault for a motor vehicle accident. The appellant's and respondent's vehicles collided at a four-way stop intersection. Each party claimed that they stopped at the stop line and then entered the intersection first. The appellant tendered an expert report based on reconstruction of the accident using collision simulation software that opined on the speed of both vehicles at the point of impact. The appellant argues that the judge erred in rejecting the expert evidence because she did not appreciate that it was based on objective physical evidence. Held: Appeal dismissed. The judge did not misapprehend the expert evidence. She rejected it because one of the parameters it was based on did not accord with the evidence she was entitled to accept from lay witnesses. It is not the role of an appellate court to reweigh evidence.

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[1] **FENLON J.A.**: The appellant Ms. Hayer challenges the trial judge's determination that she was entirely at fault for a motor vehicle accident. The collision occurred in the middle of a four-way stop intersection, with the respondent's northbound vehicle striking the front passenger door of the appellant's eastbound vehicle. The crux of the appeal is whether the judge erred by rejecting expert evidence tendered by the appellant.

[2] The parties gave conflicting evidence at trial about how the accident occurred. Each said she stopped at the stop line, then entered the intersection before the other driver moved into the intersection after failing to stop. Both testified that they did not anticipate the collision, and so took no evasive action such as swerving or braking. Photographic evidence established that the cars came to rest in the eastern side of the intersection, with the appellant's car having travelled farther into the intersection than the respondent's vehicle.

[3] Two of the appellant's children (then aged 15 and 17) were with her on the day of the accident and also testified at trial.

[4] The appellant tendered an expert report prepared by Dr. Toor. He was asked to consider two potential scenarios:

> Scenario A: The appellant's vehicle stopped at her stop sign and then proceeded into the intersection and the respondent's vehicle may or may not have stopped; and

> Scenario B: The respondent stopped at her stop sign and the appellant's vehicle did not stop.

Dr. Toor used collision simulation software to reconstruct the accident. He was of the opinion that Scenario A was more likely. He also opined that the impact speed of the appellant's vehicle was approximately eight to 14 km/h, and the impact speed of the respondent's vehicle was about 22 to 30 km/h.

[5] In assessing liability for the accident, the trial judge began by instructing herself on the law saying:

> [35] In addition to the general guidance provided in s. 144, ss. 173, 175, and 186 of the *MVA* set out the more specific statutory obligations of drivers at a four-way stop. Referring to the decision in *Demarinis v. Skowronek*, 2012 BCSC 1281, this Court summarized those sections in *Kim v. Dresser*, 2021 BCSC 1032 as follows:
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> > [18] Sections 173, 175 and 186 of the *Motor Vehicle Act*, R.S.B.C. 1996, c. 318 [*MVA*] were considered by the court in *Demarinis v. Skowronek*, 2012 BCSC 1281. Section 186 requires drivers to stop at a marked stop line where there is a stop sign. Section 173 requires drivers to yield to the driver on the right, if two cars enter an intersection at approximately the same time and there are no yield signs. Section 175 requires a driver stopped at a stop sign to yield to any traffic that has entered the intersection before them. The court in *Demarinis* confirmed at paras. 48-49 that, "the well settled proposition that drivers are entitled to assume that other drivers will obey and observe the law unless there is reason to believe otherwise," remains accurate. However, a driver must comply not only with statutory provisions, but also with their common law duty of care.
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> [36] Accordingly, in assessing liability, one or more of the following questions must be determined: (a) did either Ms. Hayer or Ms. Dhingra fail to stop at their stop sign; (b) who came to a stop first; or (c) which vehicle was in the intersection first?

[6] The judge carefully considered Dr. Toor's report, but rejected his opinion that Scenario A was more likely, finding it was based on four assumptions about the circumstances of the accident that were either not proved or were contradicted by the evidence at trial. The appellant does not challenge that decision on appeal.

[7] The judge also rejected Dr. Toor's opinion as to the speed of the two cars at the point of impact. The appellant's appeal rests on a challenge to that decision.

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[8] The appellant submits that, in rejecting Dr. Toor's opinion on vehicle speed, the judge made a palpable and overriding error of fact, failing to appreciate that this opinion was based on objective physical evidence. The appellant says the judge did not understand that Dr. Toor simply "worked backward" from the resting location of the vehicles and the extent and location of the damage they sustained to determine their speed at the point of impact. She contends Dr. Toor's opinion was thus based on science—more precisely, on physics. It was therefore reliable and was the "best evidence" of the how fast the cars were moving through the intersection when the accident occurred.

[9] There is no doubt that this error, if made out, is a material one. The judge acknowledged that, if Dr. Toor's calculations of impact speed were accepted, they would support the appellant's position that she was in the intersection before the respondent: at paras. 44–45. The real question is whether the judge made a palpable and overriding error of fact by misapprehending the evidence. I turn now to that question.

[10] After rejecting Dr. Toor's opinion on which of the two scenarios was more likely the judge said:

> [44] Dr. Toor maintains nonetheless that his calculation of the impact speeds was not affected by his assumption. He testified that those calculations were based on objective evidence including photographs of damage to the vehicles and photographs of the post-impact position of the vehicles. Ms. Hayer argues that those calculations of impact speed support her position that she was in the intersection before Ms. Dhingra.
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> [45] Indeed, if Dr. Toor's speed calculations are accurate, it would appear that was the case. However, his calculations of impact speed, if accurate, would mean that the Hayer Vehicle was not travelling straight in her lane before impact but rather was travelling at a "slight angle" toward the oncoming lane. The evidence does not support that she was.
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> [46] On the contrary, [the appellant and her two children] all confirmed that they were travelling in a straight path. The fact that Ms. Hayer did not anticipate the collision makes it unlikely that she swerved prior to impact. Ms. Hayer said she did not. The evidence is inconsistent with Dr. Toor's calculation of impact speed.
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> [Emphasis added.]

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[11] As I read the judge's reasons, she did not misapprehend the evidence. To the contrary, the judgment reflects an appreciation that Dr. Toor used collision simulation software to "work back" from the physical evidence. At p. 12 of his report, Dr. Toor described that method as follows:

> The analysis was conducted with commercially available collision simulation software (PC- Crash [9]). The simulation analysis considers the post-impact displacement in incremental steps to determine the vehicle positions due to collision forces and the post-impact influence of the tire forces. This allows the determination of the post-impact rest positions from the point of impact. The rest positions generated by the simulation can then be compared to the physical evidence. **Parameters which include impact speed, impact orientation and engagement, extent of brake application, and steering can then be varied to closely match the post-impact rest position. However, the laws of physics and the available physical evidence must be observed for a valid simulation. In this case, the simulation analysis was conducted using the collision optimizer feature of PC-Crash to vary individual parameters to find a good match with the assessed rest position. The following results were found to align well with the physical evidence:**
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> - The impact speed of the Hayer Prius was about 11 km/h, with a range of about 8 to 14 km/h.
> - The impact speed of the Dhingra Camry was about 26 km/h, with a range of about 22 to 30 km/h.
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> [Emphasis added.]

[12] It is evident from paras. 45 and 46 of the reasons that the judge rejected Dr. Toor's opinion because one of the parameters Dr. Toor used to determine vehicle speed did not accord with the evidence of the lay witnesses—evidence she accepted. In short, she found that his calculation of speed depended in part on the appellant's vehicle "not travelling straight in her lane before impact" but rather "at a 'slight angle' toward the oncoming lane" (at para. 45). That assumption did not accord with her finding that the appellant was travelling in a straight path.

[13] The appellant says the judge was wrong to prefer the evidence of the lay witnesses that the appellant's vehicle was travelling in a straight line, to that of Dr. Toor's objective calculations based on physical evidence—especially when Dr. Toor was not asked about the significance of that parameter to his opinion. I accept that the judge was required to grapple with the expert evidence given its

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significance to the live issues in the case, and to provide a reason for rejecting it. However, in my view, she did so.

[14] The appellant also emphasizes the weakness of the lay witnesses on this point, noting the judge found some of their evidence to be unreliable. However, it is a well-settled principle that a judge is entitled to accept some, all or none of a witness's evidence.

[15] In essence, having failed to establish a misapprehension of the evidence, the appellant asks the Court to find that the judge erred by preferring the lay evidence over the expert evidence. However, that would amount to reweighing the evidence, which is not the role of an appellate court. Ultimately, the judge assessed all of the evidence before her and made findings of fact. Those findings are entitled to deference on appeal.

[16] Despite Mr. Cameron's very able submissions, I find no basis to interfere with the judge's determination of liability for the accident. I would accordingly dismiss the appeal.

[17] **HORSMAN J.A.**: I agree.

[18] **IYER J.A.**: I agree.

[19] **FENLON J.A.**: The appeal is dismissed.

"The Honourable Madam Justice Fenlon"

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