

IN THE SUPREME COURT OF BRITISH COLUMBIA

Oral Reasons for Judgment
Mr. Justice Thackray
Pronounced in Chambers
March 1, 1993

BETWEEN:

STEVEN WALFORD, a minor, by his mother
and Guardian Ad Litem, LAURIE WALFORD
and the said LAURIE WALFORD

PLAINTIFFS

AND:

ABDULHUSEIN KARMALI KARIM, S & S. AUTO CENTRE LTD.
CITY OF NEW WESTMINSTER and THE BOARD OF
SCHOOL TRUSTEES OF SCHOOL DISTRICT NO. 40 (NEW WESTMINSTER)

DEFENDANTS

Mr. J. McNeeney	Appearing for the Plaintiffs
Mr. W. Chalcraft	Appearing for the Defendants
Mr. J. Dowler	
Mr. P. Alteridge	

THE COURT: The hearing today was by way of an 18(a) application. I must admit that I find this a little unusual in that this is a case with multiple defendants for which the whole trial could be heard in five days; that is liability against all the defendants plus damages. Nevertheless, the case was ordered to be split and that the case against the defendants School and City be heard on the trial date, but not in conjunction with the rest of

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4 the trial. Rather, that the 18A be heard at the opening of the
5 trial. That is what I heard today.
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7 The case of the plaintiff against the City is set out in
8 paragraph 4(b) of the statement of claim. The facts, very briefly,
9 are that the infant who was effectively nine years of age, was
10 going to Tweedsmuir School on 8th Avenue from his home on or about
11 Kamloops Street. From the map it appears to me that this meant he
12 had to travel six or seven or eight blocks from south to north. I
13 am not totally aware of the state of traffic on all of the streets,
14 but it is uncontradicted that 6th Avenue is a busy street. Sixth
15 Avenue was a street that had to be crossed by the plaintiff. There
16 are assists to pedestrians in crossing that street. There is a
17 marked crosswalk at 14th Street, across 6th Avenue, and there is a
18 marked crosswalk at 16th Street, across 6th Avenue. At 16th
19 Street, on the west side of the intersection, there is a school
20 crosswalk sign, combined with the crosswalk, and overhead there is
21 an orange elongated crosswalk sign suspended in what appears to be
22 about the middle of the intersection. From the standpoint of the
23 particular facts of this case, when it comes to trial, those signs
24 may be of particular importance and may be the only relevant ones.
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26 However, on this hearing, it may be relevant to note that at
27 14th Street there is a pedestrian crosswalk sign across 6th Avenue
28 and a marked crosswalk. One of the questions here is the
29 recognition by the City of the necessity to move pedestrians across
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6th Avenue, but more particularly, school children.

The facts in this case are that the child was proceeding to school at some time around 8:00 in the morning and apparently tried to cross 6th Avenue. It cannot be said with absolute certainty that the infant was even trying to do that. There is really no witness to such facts. Some conclusions have to be drawn. The accident happened very slightly to the west of Sharp Street which is a T-intersection with 6th Avenue. It is a narrow street without sidewalks and has been described by an engineering witness as a lane. I am not sure that is an appropriate description. I would call it a narrow street. That witness gave evidence that it would not be appropriate to have crosswalk signals or markings at that street and suggested that an excess of such pedestrian assists can be dangerous to pedestrians because if overdone such assists are ignored.

It is also relevant here and may be more so on the balance of the case, that there were what are called crossing-guards at the crosswalks at 16th and 14th. These, I take it, are the human beings with illuminated clothing that assist children cross the street.

What we do know is that the child was struck on 6th Avenue. We know the child was struck by the defendant driver. We know the child was on the roadway and we know that there were parked cars at

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4 or about the scene. It would not be farfetched to conclude that
5 the child entered onto 6th Avenue intending to cross the road at or
6 about the point where he was hit. It is acknowledged that the
7 defendant driver did not see the child before the accident.
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9 The allegations of negligence in paragraph 4(b) are:
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11 A. That the defendant City, failed to take
12 adequate steps to ensure the safety of school
13 children on the roadway.

14 That is an all-inclusive, generalized allegation. The
15 plaintiff has particularized that he is alleging against the City
16 that the speed limit is excessive is at 50 km. an hour and that
17 parking should not be allowed on both sides of the road.
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19 In this 18(a) application, and this will have to be limited to
20 that, I cannot find that speed is a factor in this case. The
21 evidence of the defendant driver is that he was going some 30 to 35
22 kms. an hour. There is no evidence in front of me on this narrow
23 hearing to the contrary. Consequently, even if the speed limit was
24 reduced, there is nothing to say that that would have been a factor
25 at all in avoiding or preventing this accident.
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27 As to parking on both sides, I fail to understand its
28 relevance at all. It may be that an allegation that there should
29 be parking on neither side would have some relevance, but to simply
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4 allege that parking on both sides is dangerous, does not advance
5 anything that I can see is relevant to this case. I just point out
6 the obvious that if the plaintiff's case is that there should not
7 be parking on both sides, then there may well, in this case, have
8 been parking on the north side which still would have left the
9 traffic parked on the south side.
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11 I think it is fair to conclude that the fact that those cars
12 were parked is relevant in this accident in that I can only fairly
13 conclude that the child came out from in front of or behind one of
14 those vehicles. I do not think the child went over any of them,
15 and there is no reason to think the child was in one of them.
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17 The other allegations under paragraph 4(b) are with respect to
18 failing to warn school children of vehicular traffic in the area.
19 I can see nothing in that allegation on this hearing. There is
20 evidence that school children are warned. There is evidence here
21 from a parent that the plaintiff was warned and knew that there
22 were school guards in place.
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24 Another allegation is failure to post adequate or any notice
25 or warning signs or signals. That, once again, is somewhat
26 general, but I have dealt with signs that have been placed. It is
27 for another hearing to decide whether or not Mr. Karim knew of the
28 sign at 16th Street, but there is evidence that he lived in that
29 area and that he on this occasion was going south on 16th and made
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4 a left turn onto 6th Avenue. There were school guards present and
5 he was aware of them. It is difficult to draw any conclusion other
6 than that he knew of the school being present a couple of blocks
7 from his home. It would be illogical to think that he did not know
8 that school children crossed 6th Avenue. A general obligation by
9 the City to post notices is one thing, but in the context of this
10 case, I must take into account some facts regarding Mr. Karim.
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12 There is a fourth allegation of failing to divert vehicular
13 traffic in an appropriate fashion. I have heard no evidence that
14 there was negligence in that regard. As to causation there is no
15 evidence whatsoever to associate negligence in that regard, if
16 there was any, with this accident.
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18 The *Inspiration Management* case, and I am here speaking from
19 memory, does not oblige the 18(a) hearing judge to find that a full
20 trial on the issue would necessarily have the same outcome. I will
21 therefore deal with this in two ways.
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23 First, I am of the opinion on this hearing there has been no
24 case whatsoever made out against the defendant City. Conversely,
25 what I am saying is that the City has demonstrated to me that there
26 is no case against it.
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28 On the second branch, I am prepared to say that I am satisfied
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4 that even out of full hearing of this no case could be made out by
5 the plaintiff against the City.
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7 I have the same matter in front of me with respect to the
8 Board of School Trustees. It is different only in that the
9 plaintiff consents to the action being dismissed against the Board
10 of School Trustees. Other counsel take no position. I am now well
11 enough aware of the matters in this case that without hearing
12 further from counsel for the School Board that the application for
13 an 18(a) dismissal is also granted.
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15 (DISCUSSION)
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17 **THE COURT:** Does it leave anything more for today?
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19 (DISCUSSION)
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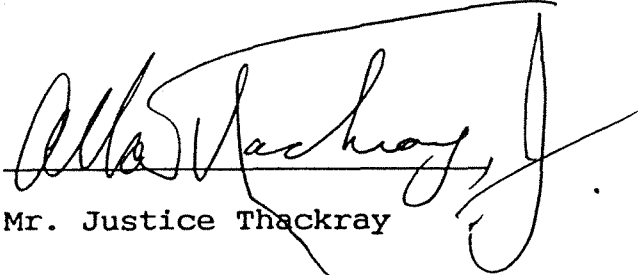
21 **THE COURT:** Well, I will make myself available anytime, Mr.
22 McNeeney. You can have me morning, noon or night, all week. I am
23 not saying necessarily for four days, but I take it at the moment
24 you are asking if I would hear the motion, of course I will. Now,
25 if you want to set it for 9:00 in the morning or 9:30 in the
26 morning, it is fine with me.
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28 (DISCUSSION)
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4 THE COURT: Well, I think you and he can have a chat about it.
5 I am not going to impose anything on Mr. McNeeney.
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7 (DISCUSSION)
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9 THE COURT: I will be around, Mr. McNeeney and you can anytime
10 get before me, I am happy to hear you. Thank you.
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16 Mr. Justice Thackray
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