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**Campbell v. Sorbara**

Between  
Marlene Campbell, Plaintiff, and  
Vincent James Sorbara and Donna Marlene Steele, Defendants

Ontario Judgments: [1988] O.J. No. 1600  
Action No. 309521/87

**Ontario District Court - York Judicial District**  
**Toronto, Ontario**  
**Matlow D.C.J.**

September 30, 1988

R.M. Bogoroch, for the Plaintiff.

L.T. Forbes, Q.C. and C. Patterson, for the Defendants.

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**MATLOW D.C.J.**— The plaintiff brings this action for damages by reason of a right tubal ligation performed on her during the course of a caesarian section by the defendant, Donna M. Steele, under the direction of the defendant, Vincent James Sorbara, on March 4, 1985. At that time Dr. Steele was a resident in obstetrics and gynecology and participated in the procedure as part of her medical training. Dr. Sorbara is a specialist in obstetrics and gynecology and at all material times was the plaintiff's attending physician.

No complaint is made by the plaintiff regarding the manner in which the defendants performed the procedure. Her only complaint is that it was performed without her consent.

I have come to the conclusion that the plaintiff's complaint is justified and that she is entitled to succeed in this action. What follows are some of my findings of fact which have led me to this conclusion.

The written consent which the plaintiff signed before undergoing the procedure referred only to a repeat caesarian section which is what the plaintiff expected to undergo. There was nothing in this document which referred to a tubal ligation.

The plaintiff denied that she had ever orally requested Dr. Sorbara to perform a tubal ligation. Dr. Sorbara, on the other hand, testified that she had given her consent orally and his testimony was corroborated to a large extent by his office nurse, Carmen Marson.

I find that there probably were some prior discussions between the plaintiff and Dr. Sorbara regarding the subject of tubal ligations but it is clear that at no time did the plaintiff orally or by implication authorize Dr. Sorbara to perform the procedure on her.

Dr. Sorbara testified that, by January 17, 1985, he had received the plaintiff's consent and that she had authorized him to perform the procedure at a time to be chosen in his discretion when sufficient medical grounds existed to justify it. I do not believe this part of Dr. Sorbara's testimony. I am satisfied that it reflects a fabricated retroactive rationalization on the part of Dr. Sorbara and Mrs. Marson to justify what occurred.

Some of the factors which have led me to these findings are as follows.

By their appearance and demeanour and by what they testified, Dr. Sorbara and Mrs. Marson impressed me as unreliable witnesses who claimed to have the exceptional ability to recall minute events long passed. On all of the evidence I am satisfied that their claims were grossly exaggerated.

The notes to which Dr. Sorbara and Mrs. Marson referred to refresh their memories were clearly not sufficient to enable them, without more, to give the often identical or very similar descriptions of minute events long passed as they purported to do. By way of contrast, unaided by any note Dr. Sorbara was unable to recall that Dr. Steele had brought it to his attention prior to performing the procedure on the plaintiff that the consent form signed by the plaintiff did not make reference to a tubal ligation.

As well, the notes referred to by Dr. Sorbara and Mrs. Marson did not always support their testimony. Although it is their testimony that I must consider and not their notes, I consider that the contents of their notes can properly be considered by me in determining the weight that should be given to their testimony. For example, Dr. Sorbara's notes made on January 17, 1985, stated that the plaintiff "was still thinking of a tubal ligation". Yet Dr. Sorbara and Mrs. Marson relied on this note to support their testimony that the plaintiff then actually consented to having a tubal ligation.

Dr. Sorbara clearly admitted on his examination for discovery that the tubal ligation was performed without the plaintiff's consent. Yet, in a subsequent letter sent by his solicitors to the plaintiff's solicitors and in his testimony before me at trial, he gave inconsistent and contradictory versions on the key issue of consent.

Dr. Sorbara's claim that the plaintiff had consented to the tubal ligation was inconsistent with other portions of his testimony. For example, it was inconsistent with his claim that, although the plaintiff clearly wanted to have a tubal ligation and was likely unable to receive this procedure at St. Michael's Hospital, she refused his suggestion that she go to another hospital. If the plaintiff had wanted to have the tubal ligation as badly as Dr. Sorbara and Mrs. Marson claimed, she would surely have gone elsewhere after receiving Dr. Sorbara's suggestion.

I also do not believe Dr. Sorbara's testimony that he had made a prior inquiry of the chairman of the Family Life Committee at St. Michael's Hospital regarding the likelihood of the Committee giving the approval to a tubal ligation being performed on the plaintiff. Having regard to Dr. Sorbara's experience at St. Michael's Hospital and the facts of the plaintiff's case, it would have made no sense for him to make such an inquiry. It would have been absolutely clear that the Committee would not approve.

I find that the approval given by the chairman of the Committee was not given before the tubal ligation was performed but afterwards in order to attempt to regularize what had already taken place.

And, finally, if the plaintiff had given her consent to Dr. Sorbara by January 17, 1985, it is beyond my comprehension why the consent was not in some way confirmed or at least discussed between that date and the time when the tubal ligation was performed.

If the plaintiff had orally consented to having the tubal ligation as Dr. Sorbara claimed, a doctor as experienced as Dr. Sorbara would also have obtained her written consent and he would not have relied only on her oral utterances to justify such a significant medical procedure.

The plaintiff, on the other hand, impressed me as an honest and generally reliable witness. Although the extent of the plaintiff's conversations with Dr. Sorbara and Mrs. Marson was probably greater than she could recall, I accept her evidence on the issue of consent. Even without invoking the burden of proof on the issue of consent which rests on the defendants, she is entitled to succeed.

It was conceded on behalf of the defendants that no situation of emergency existed which justified the carrying out of the tubal ligation on the plaintiff without her consent.

I turn now to the amount at which the plaintiff's non-pecuniary general damages should be assessed. There are no other claims advanced on her behalf.

Because the plaintiff's left fallopian tube had been removed as a result of a prior ectopic pregnancy, the tubal ligation performed by the defendants effectively rendered the plaintiff sterile. Although Dr. Sorbara testified that, generally, tubal ligations can be surgically reversed with a subsequent pregnancy success rate of about 75%, no evidence was presented by either side of the suitability of this particular plaintiff, having regard to her past medical history, as a candidate for this procedure. Nor was there any evidence presented of her chances of being able to give birth again even if the tubal ligation were reversed. I proceed, therefore, on the basis that the tubal ligation procedure likely cannot be reversed with respect to the plaintiff.

There are both subjective and objective factors that must be considered in assessing the plaintiff's damages.

Dealing first with the subjective factors, it is obvious that the impact on any woman of a tubal ligation varies with the extent to which she favours or opposes having the procedure done to her. If she wants to have it done it is a benefit to her when it is actually done. If, however, she does not wish to have it done, the imposition of such a procedure on her is an injury. Whether or not she wishes to have it done is entirely a matter for the woman to decide, regardless of the medical indications.

In the case at bar I find that the plaintiff did not want to have the tubal ligation done and that she wanted to have at least two more children in addition to the two that she then had. Whether or not her wish was realistic is entirely another matter. I also find that the plaintiff now feels that, because she is unable to bear children, she is less than whole and is now less desirable to eligible Jamaican men with whom she would like to form a stable relationship. She is now twenty-six years old, still unmarried and I can appreciate how the plaintiff feels.

Objectively, however, what the plaintiff lost as a result of the tubal ligation performed by the defendants was not the use of a well-functioning reproductive system but one which had been ravaged by two caesarian sections and one ectopic pregnancy. When Dr. Sorbara performed the second caesarian section he encountered various problems because of the condition of the plaintiff's uterus. As a result, viewed objectively from a medical point of view, the performing of a tubal ligation on the plaintiff was clearly a prudent measure. I have no doubt that, when he instructed Dr. Steele to carry out the procedure under his supervision, Dr. Sorbara felt that he was acting in the plaintiff's best interest medically and that he was sparing her from the ordeal of undergoing the procedure separately at some subsequent time. Had this tubal ligation not been performed when it was, the plaintiff, if she were inclined to accept medical advice, would probably have consented to having it done at a subsequent time. As well, had this tubal ligation not been performed when it was, had the plaintiff become pregnant again she would have been at risk with respect to another ectopic pregnancy or of suffering a ruptured uterus.

It is clear that the plaintiff's hope for more children, viewed realistically, rested precariously on her severely damaged reproductive system.

With respect to the effect of the tubal ligation on the plaintiff's ability to find a suitable life partner, I find that, despite the importance with which many Jamaicans regard the ability of women to bear numerous children, the plaintiff's real loss as a result of undergoing the tubal ligation is slight. As indicated earlier, her ability to bear children was already impaired. She is still young and she is attractive and intelligent. If she is so inclined she should still be able to find eligible men who would be interested in having a long term relationship with her.

Although I found the evidence of the two anthropologists who were called on behalf of the plaintiff interesting and although I accept their statements regarding many prevailing attitudes among Jamaicans on the subjects of sex and family life, I feel obliged to limit the use that I can properly make of their evidence. In particular, I think that it would be wrong to apply evidence of general application to all Jamaicans. Just because certain views and practices may be prevalent does not mean that they are necessarily shared by all Jamaicans.

A very significant portion of the evidence before me was the plaintiff's own admission that, since the time that this tubal ligation was performed on her, she has not consulted any other medical specialist to ascertain if that procedure could be surgically reversed. It seems to me that, had the plaintiff really felt severely injured by what the defendants had done to her, she would have pursued this possibility. If she was not aware earlier that this possibility existed, when the subject was raised during the course of her examination for discovery she should have known that it might well be a matter of relevance at this trial. From the plaintiff's failure to pursue this possibility at all I draw the inference that she was prepared to accept the continuation of her present medical condition as inevitable or, for some other unknown reason, she was not interested in having it reversed.

No monetary payment to the plaintiff can fully compensate her for the injury that she has suffered as a result of the conduct of the defendants. However, the payment of money to her can provide her with some solace for her misfortune. The amount must be fair and reasonable to all of the parties and must reasonably reflect the gravity of the injury that was inflicted. In the circumstances of this case, I assess the plaintiff's damages at \$25,000.00.

For these reasons judgment will issue in favour of the plaintiff against both defendants for \$25,000.00. Dr. Steele must be found liable only because she was misled by Dr. Sorbara on the question of the plaintiff's consent which Dr. Steele quite properly raised with Dr. Sorbara. Her decision to proceed with the tubal ligation was, in the circumstances, reasonable but still, as it turned out, actionable by the plaintiff. The plaintiff is also entitled to prejudgment interest pursuant to the Courts of Justice Act and her costs of this action. If any counsel wishes to make submissions in support of some other disposition with respect to prejudgment interest or costs the Trial Co-Ordinator will fix a time for that purpose.

MATLOW D.C.J.