

## Written Brief

Lu, Brandon - 70356795

Pidutti, Julia - 15968878

Angelica Carlson v. Dr. Markus Hoffman of Hoffman Family Medical Clinic

*Ontario Court of Justice*

### Statement of Facts:

Angelica Carlson sought medical help after three months of abdominal pain, vomiting, weight loss, nausea, and appetite loss, insisting her symptoms were purely physical with no history of mental illness. Her doctor, Dr. Markus Hoffman, diagnosed her with bulimia nervosa, attributing her symptoms to psychosomatic factors, and referred her to a psychiatrist. Despite Carlson's claims of no improvement, Dr. Hoffman declined to provide any alternative care. Six weeks later, she was diagnosed with Crohn's Disease in the emergency room after severe gastrointestinal inflammation.

### Legal Reasoning for Plaintiff's Grounds of Appeal:

1. *The defendant owed a duty of care to the injured party*
  - As established in *Hill v. Hamilton-Wentworth Police Services Board [2007]*, professionals owe a duty of care to those affected by their actions and breaching this duty leads to liability.
2. *The defendant failed to provide an apt standard of care that any reasonably prudent family doctor would provide*
  - As affirmed in *Armstrong v. Ward [2021]*, the standard of care owed to Carlson is objective and based on procedural guidelines which consider all the facts, rather than subjective and based on personal preferences. Dr. Hoffman failed to adhere to the objective standard of care owed to Carlson by relying on his personal preferences instead of procedural guidelines.

- While Dr. Hoffman's initial diagnosis of bulimia nervosa may be seen to be a common misdiagnosis for an uncommon disease, Dr. Hoffman "declined to provide any alternative care plan until the psychiatrist had attempted treatment for an eating disorder and ruled out any psychosomatic factors", implying that Carlson requested alternative services. Pursuant to Section 7 of Ontario Regulation 856/93, made under the *Medicine Act, 1991*, professional services are to be discontinued if the patient is given a reasonable opportunity to arrange alternative services.

### 3. *Angelica Carlson sustained severe damages*

- After six weeks under Dr. Hoffman's provision of care, Carlson suffered damages of inflammation in her gastrointestinal tract and extreme pain which resulted in Carlson's rush to the emergency room in the middle of the night.
- Left untreated, these symptoms can eventually lead to life-threatening complications and serious health issues such as colon cancer.

### 4. *But for the negligent party's breach of care, the damages suffered by Angelica Carlson would not have occurred*

- Dr. Hoffman's negligence directly caused the damages suffered by Angelica Carlson, a risk which any reasonable doctor would have foreseen from ignoring persistent physical symptoms like Carlson's. Dr. Hoffman should thus be held liable when a foreseeable risk is not mitigated and results in harm, a principle established in *Waldick v. Malcolm [1991]*.
- Dr. Hoffman's failure to conduct additional tests or refer Carlson to a specialist to rule out physical conditions or provide alternative diagnoses represents a lack of foresight which exposed Carlson to avoidable harm. *Nelson (City) v. Marchi [2021]* underscores that an inaction or omission may result in breach of the standard of care.
- While medical evidence might not reveal specifically when Carlson's condition worsened due to the six-week delay, the court can infer that earlier diagnosis and treatment would have reduced her harm based on a balance of probabilities as established in *Snell v. Farrell [1990]* and *Clements v. Clements [2012]*. Dr. Hoffman's negligence thus increased the risk of harm borne by Angelica, for which Dr. Hoffman should be held liable.

### **Legal Reasoning for Defendant:**

1. *The defendant owed a duty of care to the injured party*
  - As her family doctor, Dr. Hoffman owed Carlson a duty of care and as established in *Hill v. Hamilton-Wentworth Police Services Board [2007]*, professionals owe a duty of care to those affected by their actions.
2. *The defendant provided an apt standard of care that any reasonable professional would provide*
  - The defendant provided an apt standard of care that any reasonable professional would provide, and cannot be held liable for errors in judgment with a common diagnosis for an uncommon disease, as established in *Booth v. St. Catharines (City) [1948]*, and *Hill v. Hamilton-Wentworth Police Services Board [2007]*. In fact, a medical principle, “When you hear hoofbeats, think horses, not zebras”, establishes that doctors should consider the most likely, or common diagnosis first, before exploring more uncommon diagnoses.
  - Upon the initial diagnosis, Dr. Hoffman’s actions were consistent with Section 7 of Ontario Regulation 856/93, made under the *Medicine Act, 1991*, which requires that professional services are not to be discontinued unless (i) the patient requests it, (ii) alternative services are arranged, or (iii) the patient is given a reasonable opportunity to arrange such services.
  - Carlson did not request the services to be discontinued, nor did she arrange alternative services. Given that mental health counselling takes an average of 15-20 sessions before a patient sees a change in their symptoms, with an average of 1-2 sessions per week, Carlson would not have experienced a change in her symptoms until, at least, 7.5 weeks of treatment. At the six-week mark, Dr. Hoffman had no reason to believe he should provide alternative services, which could risk exacerbating the severe medical consequences that follow denial of diagnosis. The court in *Waldick v. Malcolm [1991]* supports that the standard of care does not demand perfect outcomes or error-free decisions, but rather reasonable actions under the circumstances taken in good faith.
3. *Angelica Carlson sustained damages*

- After six weeks of psychiatric treatment, Carlson was rushed to the emergency room in extreme pain due to inflammation in her gastrointestinal tract.
4. *The damages suffered by Angelica Carlson would have occurred regardless of Dr. Hoffman's actions as her condition was the result of the natural progression of Crohn's Disease and not by any breach of care*
- The but-for causation test fails to establish that damages suffered by Angelica Carlson would not have occurred.
  - As established by *Snell v. Farrell [1990]*, causation cannot be assumed without sufficient evidence linking the breach to the harm. After three months of suffering from her symptoms, the six weeks of non-invasive treatment from the psychiatric sessions are insufficient to link Dr. Hoffman's misdiagnosis with the damage suffered by Carlson.
  - Moreover, even if Dr. Hoffman's actions or inactions can be seen to satisfy a causal link, as established by *Mustapha v. Culligan of Canada Ltd. [2008]*, the principle of "remoteness" must be considered. The harm caused by Dr. Hoffman is too remote to be reasonably connected to Dr. Hoffman's conduct, given that his treatment was non-invasive and lasted six weeks compared to the 3 months that Angelica did not seek treatment.