Court of Appeal File No. C-38564

SUPERIOR COURT OF JUSTICE

B E T W E E N :

SHERRI LYNN ZAVITZ, TERRY GRAHAM and MACKENZIE GRAHAM by his litigation guardian, SHERRI LYNN ZAVITZ

Plaintiffs

- and -

LONDON BRIDGE CHILD CARE SERVICE INC., and 502 SPRINGBANK DR., LONDON INC.

Defendants

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PROCEEDINGS AT TRIAL

BEFORE THE HONOURABLE MR. JUSTICE J. F. McGARRY and A JURY at LONDON, Ontario, on March 25, 26, 27, 28 and April 2 and 3, 2002

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VOLUME ONE

APPEARANCES:

Ms. B. Legate — counsel for the plaintiffs

J. M. Dillon, Esq. — counsel for the defendants

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know, gradually diminishing as time goes on. So my suggestions were to try to find what we term a sedentary or semi-sedentary job which allows her to sit primarily and ahh, to avoid the prolonged weight-bearing and activity.

MS. LEGATE: Now, I come to an area, sir, where I'd like to take the doctor to...

THE COURT: ...Right. Alright. Thank you.

Ladies and gentlemen, I have to make a ruling with respect to some matters that the Doctor will be discussing with us. So we're going to take our morning, you'll be taking your morning recess, and it will be a little bit longer than normal. Thank you.

CLERK OF THE COURT: Members of the jury, you have a prolonged recess.

...JURY RETIRED 11:02 a.m.

[REPORTER'S NOTE: VOIR DIRE COMMENCED]

THE COURT: I think in the circumstances I am going to allow the video to be shown. It is basically, the doctor has indicated that it would be of assistance to the jury to see it and assistance to him in describing the injury and the outcome. The inflamed portion of the injury, I think, can be explained by the doctor and he can be cross-examined. If you wish to do that now, I would be content that you do that, but it is again consistent with both his evidence as to what he would expect and the plaintiff's evidence as to what she has felt over the last five years.

In reading Justice Shaunessey's(ph) decision, I would like to follow his format to the extent that I am satisfied that it is both relevant and necessary in the circumstances, as pointed out by him in the video that he was reviewing, there are few headings, little editorializing and the doctor was asked whether or not the comments made with respect to the injury were appropriate, and he said that they were, and they are consistent with the evidence given by the plaintiff as well. It is, as pointed out by Justice Shaunessey(ph) similar to any commercial that you might see for Advil headaches or whatever it is.

So in my view, it will not in any sense inflame the jury and I am going to permit the video to be shown.

We will take a 15-minute recess.

...COURT RECESSED 11:20 a.m.

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U P O N R E S U M I N G : 11:38 a.m.

STEWART BAILEY: RETURNED TO STAND

THE COURT: Thank you.

...JURY RETURNED 11:39 a.m.