

COURT OF APPEAL FOR ONTARIO

CITATION: Abu Hammam v. Usher, 2012 ONCA 818

DATE: 20121126

DOCKET: C54286

Laskin, Blair and Rouleau JJ.A.

BETWEEN

Lena Abu Hammam, Adel Abu Hammam and Suhalin Abu Hammam,
Noorlin Abu Hammam, Mera Abu Hammam and Ahmed Abu Hammam,
by their litigation Guardian, Lena Abu Hammam

Appellant (Plaintiffs)

and

Dr. Ann K. Usher

Respondent (Defendant)

Karl Arvai and Christos Nicolis, for the appellant

Peter W. Kryworuk and John A. Nicholson, for the respondent

Heard and released orally: November 20, 2012

On appeal from the judgment of Justice Lynne C. Leitch of the Superior Court of Justice, dated August 9, 2011.

ENDORSEMENT

[1] The central basis of the appellant's appeal is that the trial judge made palpable and overriding errors in her findings of fact by misapprehending cogent evidence and failing to consider or reconcile other material evidence. The appellant contends that these failings of the trial judge undermined her key

finding that the cause of the bleeding was the IUD and not a laceration or perforation resulting from the respondent's negligence on July 19, 2001.

[2] We do not agree with the appellant's position. Accepting that some of the evidence may have supported the appellant's theory of the case, there was ample other evidence to support the trial judge's findings. She gave thorough and thoughtful reasons for rejecting the appellant's theory and accepting the respondent's theory. We cannot say that in doing so she committed any reviewable error.

[3] We acknowledge that in her reasons, the trial judge did not deal with every inconsistency between the respondent's trial evidence and other evidence such as the hospital's records and the respondent's discovery evidence. Her failure to do so does not justify appellate intervention in these circumstances. It is evident from her reasons as a whole that the trial judge accepted the respondent's trial testimony.

[4] Finally, we see no ground to interfere with the trial judge's exercise of discretion on costs.

[5] Accordingly, the appeal is dismissed, with costs in the amount of \$25,000, inclusive of disbursements and applicable taxes.

"John Laskin J.A."
"R.A. Blair J.A."
"Paul Rouleau J.A."