

B.C. appeal court upholds government negligence that caused child's brain injury

BY NEAL HALL , VANCOUVER SUN OCTOBER 1, 2009

VANCOUVER — The B.C. government has lost an appeal of a negligence finding over a social worker's mistake that allowed a father to permanently injure to his four-month-old baby.

The grandmother of the baby is seeking more than \$6 million in damages for the future care of the child, now six, who suffered a brain injury after he was violently shaken by his father on Sept. 16, 2002.

The father had been left alone with the child, despite an earlier "no contact without supervision" order imposed on the father, a convicted child abuser who earlier fractured the leg of his two-year-old child in Manitoba.

Three weeks before the Sept. 16, 2002 assault, a social worker had removed the no contact unsupervised order. No explanation was given by the social worker why the order was removed.

But after it was removed, the father elatedly stated he could now do as he wanted with his son.

Up until then, he had never been left alone with the child.

The child's maternal grandmother, a 58-year-old woman who lives near Castlegar, sued the father and the government for assault and negligence.

B.C. Supreme Court Justice Janice Dillon, in a ruling last February, found the father was liable to pay damages for assault and negligence, and the Crown was liable to pay damages for negligence.

The government appealed the trial ruling, but in a decision released Thursday, the appeal court found the trial judge did not err in finding a breach of the standard of care on the evidence presented at trial, and further did not err in finding that the breach was a cause of the child's injuries.

The father was identified in the judgment only by initials, R.M. The child was identified as B.M.

The child was initially declared in need of protection after R.M. was convicted of aggravated assault of his other child. The father now is serving his sentence for that crime.

Vancouver lawyer Robert Gibbens, representing the grandmother of B.M., said Thursday that damages still must be determined at a four-week trial starting Nov. 16. He said the plaintiffs are seeking more than \$6 million for the future care of the child.

The appeal court judgment is online at: <http://www.courts.gov.bc.ca/jdb-txt/CA/09/04/2009BCCA0413.htm>

The trial judgment is online at: www.courts.gov.bc.ca/jdb-txt/SC/09/02/2009BCSC0214.htm

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