

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
**DIVISIONAL COURT**

**Lederer, Sheard, Ryan Bell JJ.**

<b>BETWEEN:</b>	)	
	)	
Donna Taylor	)	Barry Evans, Counsel for the Plaintiff
	)	(Appellant)
Plaintiff (Appellant)	)	
	)	
<b>– and –</b>	)	
	)	
Daniel Durkee and Gregory Durkee	)	
Defendants (Respondents)	)	Christopher Caston and Michelle Farb,
	)	Counsel for the Defendants (Respondents)
	)	
	)	
	)	<b>HEARD:</b> January 31, 2020 at Oshawa

2020 ONSC 737 (CanLII)

**REASONS FOR DECISION**

**RYAN BELL J. (Orally)**

[1] The question here concerns a determination of whether the threshold requirements of s. 267.5 of the *Insurance Act* have been met. The decision appealed from found that they had not. The plaintiff appeals and submits that the applicable standard of review is correctness.

[2] In the case of *Ayub v. Sun*, 2016 ONSC 6598 (Div. Ct.), at para. 22, this Court stated that:

The trial judge’s conclusion that the appellant failed to meet the threshold is a question of mixed fact and law. That conclusion should not be disturbed unless the appellant can satisfy the Court that the trial judge committed a palpable and overriding error.

[3] We see no reason to depart from that determination.

[4] Counsel for the plaintiff submits that there is palpable and overriding error in the case before us. This failure is said to be demonstrated by the determination that there was conflicting medical evidence without any explanation of that finding in circumstances where the expert called on behalf of the plaintiff was found to have qualifications beyond those of the expert called by the defendants. There is no requirement that a specific finding of credibility be made as between experts.

[5] The second palpable and overriding error alluded to by counsel for the plaintiff is that the evidence of the chiropractor, Dr. Bain, was not referred to in the reasons of the trial judge. There is no requirement that reference be made to each witness in the reasons of the court.

[6] The trial judge, in his careful reasons, reviewed the evidence consistent with the process outlined in O. Reg. 381/03, s. 4.3 that the plaintiff adduce evidence of a physician trained for and experienced in the assessment or treatment of the type of impairment that is alleged and, in addition to the evidence of the physician, shall adduce evidence that corroborates the change in function that is alleged to be a permanent serious impairment of an important physical, mental or psychological function. On this basis, we find no palpable and overriding error.

[7] For these reasons, the appeal is dismissed.

**LEDERER J.**

[8] I have endorsed the Appeal Book as follows: “For reasons given orally, the appeal is dismissed. Costs to the defendants of \$5,000.”

\_\_\_\_\_  
Ryan Bell J.

I agree \_\_\_\_\_  
Lederer J.

I agree \_\_\_\_\_  
Sheard J.

**Date of Oral Reasons for Decision:** January 31, 2020

**Date of Release:** February , 2020

**CITATION:** Taylor v. Durkee, 2020 ONSC 737  
**DIVISIONAL COURT FILE NO.:** DC-18-1136  
**DATE:** 20200226

**ONTARIO**  
**SUPERIOR COURT OF JUSTICE**  
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Lederer, Sheard, Ryan Bell JJ.

**BETWEEN:**

Donna Taylor

Plaintiff (Appellant)

– and –

Daniel Durkee and Gregory Durkee

Defendants (Respondents)

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**REASONS FOR DECISION**

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**RYAN BELL J.**

**Date of Oral Reasons for Decision:** January 31, 2020

**Date of Release:** February 26, 2020