

CITATION: State Farm Mutual Insurance Company v. Her Majesty the Queen, 2018 ONSC 4258
COURT FILE NO.: CV-17-579271
DATE: 20180706

ONTARIO
SUPERIOR COURT OF JUSTICE

IN THE MATTER OF AN ARBITRATION UNDER
THE *ARBITRATION ACT*, 1991, S.O. 1991, c. 17

AND IN THE MATTER OF THE *MOTOR VEHICLE
ACCIDENT CLAIMS ACT*, R.S.O. 1990, c. M.41

AND IN THE MATTER OF A DISPUTE BETWEEN INSURERS UNDER
ONT. REG. 283/95, AS AMENDED
MADE UNDER THE *INSURANCE ACT*, R.S.O. 1990, c. I.8

BETWEEN:)
)
STATE FARM MUTUAL INSURANCE) Mark Donaldson, for the Applicant/
COMPANY) Respondent in Appeal
)
Applicant/Respondent in Appeal)
)
- and -)
) John Friendly and Michael Scott, for the
HER MAJESTY THE QUEEN IN RIGHT) Respondent/ Appellant
OF ONTARIO AS REPRESENTED BY)
THE MINISTER OF FINANCE)
)
Respondent/Appellant)
)
)
)
) HEARD: March 28, 2018

REASONS FOR DECISION

SANFILIPPO J.

Overview

[1] Latchman Sanichar and her sister-in-law, Asha Basdeo (the “Claimants”) were injured in a single vehicle automobile accident while passengers in an uninsured van. At the time of the

accident, the Claimants were living with Prakash Doodram, who is Latchman's son and Asha's nephew. Prakash's automobile insurance was provided by State Farm Mutual Insurance Company. The Claimants applied to State Farm for statutory accident benefits on the basis that they were, at the time of the accident, principally dependent on Prakash.

[2] State Farm paid statutory accident benefits to the Claimants but denied that Prakash's State Farm policy is responsive. State Farm contends that the Claimants were not principally dependent on Prakash for care or financial support at the time of the accident and thereby do not qualify for coverage under Prakash's State Farm policy. If correct, the Province of Ontario's Motor Vehicle Accident Claims Fund would be responsible for the benefits paid and payable to the Claimants. The Fund is the last resort for statutory accident benefits for victims of motor vehicle accidents where no automobile insurance is available.

[3] State Farm and Ontario submitted this dispute to arbitrator Shari L. Novick who found that neither Latchman nor Asha was principally dependent on Prakash for care or financial support at the time of the accident. As such, the arbitrator concluded that State Farm was not the priority insurer. The arbitrator ordered that Ontario, through the Fund, repay State Farm for amounts paid in benefits and that the Fund pay State Farm its costs on a substantial indemnity basis.

[4] Ontario appealed, and seeks a review of the arbitrator's decision on a reasonableness standard. Ontario does not challenge the arbitrator's finding that the Claimants were not principally dependent on Prakash for *care*, but rather appeals the arbitrator's finding that the Claimants were not principally dependent on Prakash for *financial support*. State Farm does not oppose Ontario's appeal on the issue of costs, conceding that the arbitrator erred in awarding costs on a substantial indemnity basis when the parties agreed in their arbitration agreement that the successful party would receive costs on a party and party basis.

[5] The issues to be determined on this appeal are the following:

1. Was the arbitrator's determination that Asha was not principally dependent on Prakash for financial support at the time of the accident reasonable?
2. Was the arbitrator's determination that Latchman was not principally dependent on Prakash for financial support at the time of the accident reasonable?

[6] To determine whether the arbitrator's decision was reasonable, I must examine whether the arbitrator's decision-making process was justifiable, transparent and intelligible, and whether the resultant decision falls within a range of acceptable outcomes that are defensible in respect of the facts and the law. The arbitrator's decision would be unreasonable if the arbitrator failed to carry out the proper analysis, if the decision is inconsistent with underlying legal principles or if the outcome ignores or cannot be supported by the evidence.

[7] For the reasons that follow, I have determined that the arbitrator's decision that Asha was not principally dependent on Prakash for financial support at the time of the accident was not reasonable. This part of the appeal is granted. However, the arbitrator's decision that Latchman was not principally dependent on Prakash for financial support at the time of the accident was

reasonable. This part of the appeal is dismissed. The appeal on the issue of costs was not contested and is granted.

I. BACKGROUND

[8] The relationship between Prakash and Latchman, and the relationship between Prakash and Asha provide the factual background for determination of this dispute. Latchman and Asha have not worked in Canada. Prakash and his sister, Devi Doodram, have provided them with family support. The arbitrator's challenge was to sift Prakash's financial support from that provided by Devi and to determine whether Prakash's financial support of the Claimants at the time of the accident met the threshold required for the Claimants to be his dependents.

[9] Latchman, a mother of five, arrived in Canada in 1993. Prakash is one of Latchman's sons and Devi is one of Latchman's daughters. In September 2010, Devi and Prakash lived within a short walking distance of each other.

[10] Devi lived with her husband and their two children. Prakash lived with his wife and three children. The evidence showed that for several years prior to the accident Latchman resided six months of the year with Prakash and six months of the year with Devi. In September 2010, Latchman lived with Devi and her family although she would also spend time at Prakash's house. The arbitrator found that the parties "all lived very close to one another, enabling family members to wander between the homes on a regular basis": Arbitrator's Decision of June 23, 2017 (the "Decision"), para. 46.

[11] In September 2010, Latchman's brother, Mohan Basdeo, and his wife, Asha, immigrated to Canada. Asha is Latchman's sister-in-law and Prakash and Devi's aunt. Upon their arrival in Canada, Asha and her husband moved in with Devi and her family.

[12] In December 2010, Devi separated from her husband. Devi, her two children, Latchman and Asha all moved out of Devi's house. Devi and her two children moved in with another family member. Latchman and Asha moved into a shared room in Prakash's house. The arbitrator found that by reason of Devi's marital separation, the Claimants were compelled to move because Devi no longer had use of a house in which to host them.

[13] The arbitrator found that between mid-December 2010 and the accident of February 25, 2011, Asha resided in Prakash's house. The arbitrator found that during this same time, Latchman resided in Prakash's house except for the period of December 30, 2010 to February 1, 2011 when Latchman travelled to Guyana with Prakash and his wife.

[14] In the period leading to the accident, Latchman received \$1,150 per month in Ontario Disability Support Program payments ("ODSP"). Asha did not have any source of funds from the time of her arrival in Canada in September 2010 to February 22, 2011 when, three days before the Accident, she received her first benefit cheque from Ontario Works in the amount of \$620 per month.

[15] On February 25, 2011, Devi, her two children, Latchman, Asha and her husband were travelling to Niagara Falls in an uninsured van driven by Devi's husband. A single vehicle accident occurred causing serious injury to Latchman and Asha.

II. LEGAL FRAMEWORK

[16] Latchman and Asha do not have driver's licenses. They do not own motor vehicles and so have not subscribed for automobile insurance. They were not listed as drivers or named insureds under any automobile policy of insurance. The van they were in at the time of the accident was not insured. This means that the only policy of insurance that was possibly available to Latchman and Asha for statutory accident benefits was the policy of automobile insurance issued by State Farm to Prakash and, then only if they qualified for coverage under that policy as being principally dependent on Prakash.

[17] If coverage for statutory accident benefits were not available to the Claimants under Prakash's State Farm policy, then the Claimants would have recourse to the Motor Vehicle Accident Claims Fund administered by Her Majesty the Queen in Right of Ontario as represented by the Minister of Finance through the *Motor Vehicle Accident Claims Act*, R.S.O. 1990, c. M.41. Ontario, through the Fund, provides statutory accident benefits to those injured in motor vehicle accidents who do not qualify for coverage under any Ontario policy of automobile coverage, in accordance with s. 268(2)(1)(iv) of the *Insurance Act*, R.S.O. 1990, c. I.8.

[18] Latchman and Asha submitted applications for statutory accident benefits to State Farm on the basis that they were "insured persons" under Prakash's State Farm policy by reason of their status as "dependants" of Prakash. To qualify, they must meet the definition of "insured person" contained in s. 3(1) of the Statutory Accident Benefits Schedule, Ont. Reg. 34/10:

"insured person" means, in respect of a particular motor vehicle liability policy,

- (a) the named insured, any person specified in the policy as a driver of the insured automobile and, if the named insured is an individual, the spouse of the named insured and a dependant of the named insured or of his or her spouse,
 - i. if the named insured, specified driver, spouse or dependant is involved in an accident in or outside Ontario that involves the insured automobile or another automobile, or ... [Emphasis added]

[19] Section 3(7)(b) of the Statutory Accident Benefits Schedule defines "dependant" for the purpose of determining whether Latchman and/or Asha are dependant on Prakash for the purpose of their application:

- (b) a person is a dependant of an individual if the person is principally dependent for financial support or care on the individual or the individual's spouse. [Emphasis added]

[20] State Farm paid statutory accident benefits and sought a determination through arbitration that State Farm is not responsible for Latchman and Asha's statutory accident benefits because they were not dependants of Prakash at the time of the accident.

III. THE DECISION UNDER REVIEW

A. The Arbitration

[21] The arbitration was conducted pursuant to an arbitration agreement entered between Ontario and State Farm on January 11, 2017 (the “Arbitration Agreement”). The arbitrator was tasked with determination of the “priority dispute” initiated by State Farm under Ont. Reg. 283/95 against Ontario and also against RBC General Insurance Company, who was said to be the insurer of the van involved in the accident. RBC was released from the arbitration because the van was determined to be uninsured.

[22] The issues for determination by the arbitrator were the following:

1. At the time of the accident, was Latchman principally dependant for financial support or care upon her son, Prakash, the State Farm insured?
2. At the time of the accident, was Asha principally dependant for financial support or care upon her nephew, Prakash, the State Farm insured?

[23] The arbitrator decided that Latchman and Asha were not principally dependant upon Prakash for either financial support or care at the time of the accident. As a result, the arbitrator found that the Fund, not Prakash’s State Farm policy, is required to pay the claims by Latchman and Asha, ordering as follows:

- a) The Fund was ordered to repay State Farm for all statutory accident benefits paid to Latchman and Asha;
- b) The Fund was ordered to pay State Farm’s legal costs associated with the arbitration on a substantial indemnity basis as well as all fees and disbursements.

[24] Ontario appealed, asking that the arbitrator’s decision be set aside, and that State Farm be declared the priority insurer of Latchman and Asha.

B. Ontario Does Not Appeal the Arbitrator’s Decision on Principal Dependency for Care

[25] The arbitrator identified that the principal dependency required for the Claimants to qualify as insured persons under Prakash’s State Farm policy would be satisfied if dependency were established for *either* financial support *or* care. Either type of dependency would be sufficient, both are not required for Latchman and/or Asha to be dependent on Prakash.

[26] The Notice of Appeal did not specify whether the appellant was challenging both the determination of principal dependency for care and principal dependency for financial support. In argument, the appellant clarified that Ontario does not appeal the arbitrator’s finding that the Claimants were not principally dependent on Prakash for *care* at the time of the accident.

C. The Appeal of the Arbitrator's Cost Order was Not Opposed

[27] The Arbitration Agreement provides that the successful party at the arbitration would be awarded party and party costs, specifically at para. 11: "...The successful party shall be awarded party and party costs of the Arbitration either to be agreed upon or to be fixed at the discretion of the arbitrator." The arbitrator awarded costs on a substantial indemnity basis, at para. 68 of the Decision: "The Fund shall also pay State Farm's legal costs associated with this arbitration on a substantial indemnity basis."

[28] The appellant submitted that the arbitrator erred in awarding costs contrary to the terms of the Arbitration Agreement. State Farm did not contest that the arbitrator erred in awarding costs on a basis other than party and party.

[29] Ontario's appeal of the arbitrator's decision on costs is granted.

D. Issues for Appeal

[30] This appeal turns on a review of the arbitrator's decision on the issue of principal dependency for financial support in relation to each of the Claimants. The issues to be determined on this appeal are as follows:

1. Was the arbitrator's determination that Asha was not principally dependent on Prakash for financial support at the time of the accident reasonable?
2. Was the arbitrator's determination that Latchman was not principally dependent on Prakash for financial support at the time of the accident reasonable?

[31] To determine these issues, I will outline the arbitrator's reasoning and analyse the reasonableness of the arbitrator's decision in two-steps: is the arbitrator's reasoning as set out in the decision justifiable, transparent and intelligible and; does the decision fall within the range of acceptable outcomes.

IV. ANALYSIS: WERE THE ARBITRATOR'S DECISIONS ON PRINCIPAL FINANCIAL DEPENDENCY REASONABLE?

A. The Arbitrator's Reasoning

[32] State Farm had the burden of establishing, on a balance of probabilities, that the Claimants were not principally financially dependent on State Farm's insured, Prakash, at the time of the accident. No accounting evidence was tendered into evidence at the arbitration. Asha and Latchman did not provide evidence under oath or testify at the arbitration, for medical reasons. The evidence tendered to the arbitrator regarding the financial dependency of the Claimants was provided by Devi and Prakash and from documentary records filed.

[33] The arbitrator identified that the determination of principal dependency for financial support on Prakash required assessment of the duration and amount of dependency, including the financial and other needs of the Claimants over an appropriate time frame, as seen at para. 52 of the Decision:

The four factors endorsed by the Court of Appeal in the seminal decision in *Miller v. Safeco*, (1985) 50 O.R. (2d) 797 direct me to assess the duration and amount of dependency, the financial and other needs of the Claimant, and her ability to be self-supporting. I must also choose the appropriate time frame for the analysis by examining “a period of time which fairly reflects the status of the parties at the time of the accident” (*Oxford Mutual Insurance Co. v. Co-operators General Insurance Co.* [2006] O.J. No. 4518 (Ont. C.A.)).

[34] To determine whether the Claimants were principally financially dependent on Prakash at the time of the accident, the arbitrator was required to conduct the two-step analysis prescribed by *Miller v. Safeco* and *Oxford Mutual*: first, to assess the Claimants’ financial and other needs to determine whether they are self-supporting or whether they are financially dependent and, if financially dependent; to then assess whether there was a principal dependency relationship by Latchman and/or Asha on Prakash at the time of the accident.

[35] The arbitrator did not make express findings regarding whether Asha and Latchman were financially dependent at the time of the accident. In the case of Asha, financial dependency can be inferred from the reasons as the arbitrator found that Asha had no income or source of funding other than Ontario Works benefits, which the arbitrator excluded from her analysis. In the case of Latchman, this is less clear from the reasons because the arbitrator melded her assessment of whether Latchman was financially dependent on *anyone* with her finding that Latchman was not principally financially dependent on Prakash.

[36] The appellant submits that the arbitrator misapplied the evidence, and failed to carry out the proper analysis in using a 6-month dependency analysis to assess Asha and by using a 12-month dependency analysis to assess Latchman’s principal financial dependency on Prakash at the time of the accident. The appellant states that a three-month dependency analysis ought to have been conducted in each instance because this reflects the ground-shift that occurred in the financial support of the Claimants when Devi separated from her husband in mid-December 2010. The appellant contends that the arbitrator failed properly to take into account that after the date of the marital separation and continuing until the date of the accident, Devi was not able to provide any financial support to Asha or to Latchman, but rather the only financial support available to them was provided by Prakash.

[37] I agree that the arbitrator applied a time frame for dependency analysis that was too long to fairly reflect the status of the parties at the time of the accident. In the case of Asha, this resulted in an outcome that was unreasonable. In the case of Latchman, the outcome nonetheless falls within a range of reasonableness. To explain this, I will outline the applicable standard of review and will refer to the principles set out by the Court of Appeal in the directly-applicable decision in *Intact Insurance Company v. Allstate Insurance Company of Canada*, 2016 ONCA 609, 131 O.R. (3d) 625 [*Intact Insurance*]. I will detail the analysis that results in my determinations.

B. The Standard of Review

Review for Reasonableness

[38] The Arbitration Agreement provides, in paragraph 7, that “either party may appeal the arbitrator’s decision on a point of law or a point of mixed fact and law to a Judge of the Ontario Superior Court of Justice, without leave of the Court, within thirty (30) days of the date of the arbitrator’s written decision”. This appeal was advanced within this thirty-day period.

[39] In *Intact Insurance*, at para. 35, the Court of Appeal stated that whether a person is “principally dependent” on another is a question of mixed fact and law: relying on *Oxford Mutual Insurance Co. v. Co-operators General Insurance Co.* (2006), 83 O.R. (3d) 591 (C.A.). The Court of Appeal has “confirmed that, on appeals from insurance arbitrations involving an interpretation of dependency under [statutory accident benefits], mixed fact and law questions are reviewed for reasonableness”: *Intact Insurance*, at para. 35, applying *Oxford Mutual*, at para. 23; also, *The Dominion of Canada General Insurance Company v. Unifund Assurance Company*, 2018 ONCA 303; *Belairdirect Insurance v. Dominion of Canada General Insurance Company v. State Farm Mutual Insurance Company*, 2018 ONCA 101, 419 D.L.R. (4th) 389.

[40] Even if the appeal involves an extricable question of law, a reasonableness standard will generally apply: *Intact Insurance*, at paras. 53-54. The arbitrator’s decision is entitled to deference unless it was unreasonable: *Oxford Mutual*, para. 23.

Applying the Reasonableness Standard

[41] The reasonableness review standard was set out by the Supreme Court in *Dunsmuir v. New Brunswick*, 2008 SCC 9, [2008] 1 S.C.R. 190. The Court stated, at para. 47, that the reviewing court examining a decision for reasonableness must inquire into the “qualities that make a decision reasonable, referring both to the process of articulating the reasons and to outcomes”. To do so, a two-step process is required, first to examine the decision-making process and then to assess the outcome, as explained in *Dunsmuir* at para. 47:

In judicial review, reasonableness is concerned mostly with the existence of justification, transparency and intelligibility within the decision-making process. But it is also concerned with whether the decision falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and law.

[42] In *Newfoundland and Labrador Nurses' Union v Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, [2011] 3 SCR 708 the Supreme Court emphasized that the focus of judicial review remains on the outcome or decision itself, and not the process by which that outcome was reached. Abella J. explained at para. 14 that “the reasons must be read together with the outcome and serve the purpose of showing whether the result falls within a range of possible outcomes”. In *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, Binnie J. described, at para. 59 that the reasonableness standard calls for deference by the reviewing court, which must not substitute its own view of a preferable outcome, understanding that there are a range of possible, acceptable reasonable outcomes which are defensible in respect of the facts and law.

[43] The Decision would be unreasonable if the arbitrator failed to carry out the proper analysis, if the decision is inconsistent with underlying legal principles or where the outcome ignores or cannot be supported by the evidence: *Halifax (Regional Municipality) v. Canada (Public Works and Government Services)*, 2012 SCC 29, [2012] 2 S.C.R. 108, at paras. 43, 47-49; *Intact Insurance*, at para. 65.

C. The Decision in *Intact Insurance*

[44] The appellant relies heavily on the Court of Appeal decision in *Intact Insurance* and stresses that its analysis is directly applicable to this appeal. In *Intact Insurance*, a mother and her two daughters (the “Injured Parties”) sustained injuries in a motor vehicle accident that occurred seven weeks after the mother separated from her husband and moved with her children to cohabit with a new partner in a different town. The evidence showed that the marital separation and resultant move were intended to be permanent, although the parties conceded that the future was uncertain. The new partner was responsible for most of the Injured Parties’ expenses as he was the only member of the household contributing to expenses.

[45] The Injured Parties applied for statutory accident benefits from the insurer of the vehicle that they were traveling in at the time of the accident. This insurer argued that the insurer of the vehicles owned by the new partner should pay the benefits on the basis that the Injured Parties were principally dependent for financial support on the new partner at the time of the accident, and thereby qualified as “insureds” under his automobile policy.

[46] The insurers submitted their priority dispute to arbitration. The arbitrator was satisfied that if he were to look at the seven-week period before the accident, he would find that the Injured Parties were financially dependent on the new partner. If he were to examine the twelve-month period prior to the accident, financial dependency would not be established. The determination of financial dependency hinged on the time frame used for the dependency analysis.

[47] The arbitrator concluded that the evidence did not establish that the new relationship was “one of permanence”. As a result, the arbitrator applied a twelve-month dependency analysis over a seven-week dependency analysis on the basis that he was required to consider the “big picture”.

[48] The reviewing judge set aside the arbitrator’s decision, but applied a correctness standard to this determination. The Court of Appeal corrected the standard of review from correctness to reasonableness and upheld the reviewing judge’s decision on the basis that the arbitrator’s decision was not reasonable.

[49] The Court of Appeal held that the arbitrator erred in concluding that he could only apply a “short” time frame when the relationship under consideration is likely to be permanent: *Intact Insurance*, at para. 68. The dependency analysis required the arbitrator to examine the relationship between the dependent party and the provider of support during “a period of time which fairly reflects the status of the parties at the time of the accident”: *Intact Insurance*, para. 69. In applying *Oxford Mutual*, the Court of Appeal emphasized that “the time period for a dependency analysis must reflect the facts of the case”: *Intact Insurance*, at para. 69. The

approach taken by the arbitrator was unreasonable because it was inconsistent with legal principles, at para. 70 of *Intact Insurance*:

In contrast, the arbitrator carved out the category of “transient” or “recent” relationships and created a permanence requirement for all of them. Then the arbitrator relied on his conclusion that the relationship between Paula and Kyle was unlikely to succeed when choosing a one-year time period over a seven-week time period. Reading the arbitrator’s decision, it is clear that this is the only reason why he chose a year-long period where the Claimants were not dependent on Kyle over a seven-week period where they were. In my view, the arbitrator applied a categorical approach. This approach is unreasonable because it is inconsistent with the applicable legal principles and is simply too divorced from the actual question: what period accurately reflects the true nature of the particular relationship at issue at the time of the accident?

[50] The appellant submits that this parallels the current case because the length of the dependency analysis ought to have considered the impact that Devi’s marital separation had in altering the dependency relationship. The appellant contends that had the arbitrator done so, a three-month dependency analysis would have been applied and both Claimants would have been found to be principally dependent on Prakash for financial support at the time of the accident.

[51] In analyzing the two issues raised by this appeal regarding the principal financial dependency of Asha and Latchman on Prakash, I will examine whether the arbitrator’s decision-making process was justifiable, transparent and intelligible, and whether the resultant decision falls within a range of acceptable outcomes that are defensible in respect of the facts and the law.

D. Analysis

Issue #1: Was the arbitrator’s determination that Asha was not principally dependent on Prakash for financial support at the time of the accident reasonable?

Was the Arbitrator’s Decision-Making Process Regarding Asha’s Dependency for Financial Support Justifiable, Transparent and Intelligible?

[52] The first step in the arbitrator’s analysis was to assess whether Asha was financially dependent, at all. The arbitrator found that Asha had never been employed in Canada: she earned no income. The arbitrator found that Asha applied for and ultimately received Ontario Works benefits in the amount of \$620 monthly [Decision, para. 20]. These benefits were received by Asha three days before the accident and were principally directed at paying rent for Asha’s husband. The arbitrator excluded these benefits from her assessment, at paras. 59 and 60 of the Decision:

[Asha] applied for social assistance benefits in late February 2011, and it appears that the first cheque was issued to her a few days before the accident. ... It is not clear whether any benefit cheques were cashed before

the accident took place. Given the facts surrounding this issue, I find that these funds should not be considered in the analysis.

...

My findings may have been different if [Asha] was in receipt of assistance a month or two after arriving in Canada. The fact that she may have received these funds a few days prior to the accident, if at all, and that they were sought so that Devi's husband could receive rent in exchange for [Asha's] husband remaining to live in [Devi's house] persuades me that they should be excluded from the analysis.

[53] The arbitrator also found that the amount of Asha's benefits from Ontario Works was less than one-half of the Low-Income Cut-Off such that Asha could not have been financially independent based on these earnings alone: Decision, para. 37. Having excluded the only source of funding that Asha had, the only finding that could be made was that Asha was financially dependent as she had no incoming money: no source of income; no funding.

[54] The question then for the arbitrator was to determine whether Asha's financial dependence was principally supported by Prakash at the time of the accident. To do so, the arbitrator had to assess Asha's dependency relationship with Prakash by use of a time frame that "fairly represented the status of the parties" at the time of the accident. The arbitrator determined that the appropriate time frame to assess Asha's principal financial dependency relationship was six months, at paras. 62 and 63 of the Decision:

The evidence indicates that [Asha] lived at Devi's home from early September 2010, when she arrived from Canada, to mid-December, a period of just over three months. She then left with Devi and [Latchman] and moved into a bedroom in Prakash's basement with [Latchman]. She did not return to Guyana when [Latchman] did, and presumably stayed at Prakash's home until the accident occurred the third week of February. In total, she would have lived there for a period of just over two months.

In these circumstances, I find that the appropriate time frame to consider for the question of whether [Asha] was dependent on Prakash is the full six months that [Asha] was in Canada.

[55] The arbitrator provided no reasons for her finding that six months was the appropriate length for analysis of the dependency relationship other than that this was the entirety of the time that Asha was in Canada before the accident. There is no analysis to answer the question posed in *Intact Insurance*: "what period accurately reflects the true nature of the particular relationship at issue at the time of the accident?"

[56] The arbitrator's analysis was that Asha was financially supported by the person with whom she resided. During the time that she was with Devi, from September 2010 to mid-December 2010, Asha was financially supported by Devi and after mid-December 2010 to the accident, Asha was financially supported by Prakash. The arbitrator found that Prakash did not financially support Asha during the time that she resided with Devi, and Devi did not financially

support Asha at the time that she resided with Prakash. The arbitrator found that during the time that Prakash provided for Asha, he gave Asha “varying amounts of cash” [Decision, paras. 21 and 22]. The arbitrator found that Asha did not contribute toward the household expenses of the home in which she was hosted because she had no money to contribute.

[57] The arbitrator’s dependency analysis was thereby entirely “residence-centric”: meaning that the person providing room, board and necessities to Asha was the person on whom Asha was principally financially dependent. By applying a six-month dependency analysis, the arbitrator concluded that Asha was not principally dependent for financial support on Prakash at the time of the accident because she had, within the six month period prior to the accident, spent more time living with Devi [para.63 of Decision]:

I am not persuaded that the evidence indicates that [Asha] was principally dependent for financial support on Prakash during this [six-month dependency] period. Devi testified that when [Asha] lived with her, she provided for all of her needs. She received free room and board, but Devi’s evidence suggested that she also provided her winter clothing and a heavy coat for this Claimant, who had not spent a winter in Canada before. Given the lengthier time that she lived with Devi, and the assistance provided, the application of the *Miller v. Safeco* factors does not result in a finding of principal financial dependence on Prakash, the State Farm insured.

[58] I have some doubt that “true nature” of a dependency relationship in the case of financial dependents can be determined simply by comparative calculation of duration of living arrangements. The “true nature” of the dependency relationship involves examining the relationship as well between the parties, the reason why the support is being provided and any limitations being provided on the support. I have more to say about this in relation to the appeal of the arbitrator’s determination of Latchman’s principal financial dependency.

[59] The arbitrator’s use of a six-month period for dependency analysis as opposed to the three-month period from December to the accident date has the same flaw as the arbitrator’s use of the 12-month period in *Intact Insurance* instead of the seven-week period found appropriate on appeal. In each case, the arbitrator failed to take fully into consideration the impact of a matrimonial separation and, in each case, stated that the new relationship had to be permanent in order to be relevant. Devi’s marital separation resulted in a “new normal” in the financial support of Asha because Devi no longer had a house in which to host Asha and because Devi no longer had access to financial resources to financially support Asha. Prakash had greater financial capabilities to provide support as both he and his wife worked outside the home: Decision, para. 11.

[60] Counsel for State Farm contended that Devi’s marital separation was not “permanent”, pointing to evidence that the travel on the day of the accident was part of a family outing to Niagara Falls to attempt reconciliation between Devi and her estranged husband. It is speculation to surmise that this meant that Asha’s financial dependence on Prakash was temporary as she was about to return to live with Devi. This is the same analytical flaw that was identified in *Intact Insurance*. There is no need to establish a “permanence requirement” in determining principal financial dependency. There is even less reason to speculate concerning the future of

the relationship. The assessment must be of the “true nature” of the dependency relationship *at the time of the accident*.

[61] The arbitrator’s assessment in the dependency analysis of Asha’s living arrangements with Devi before Devi’s marital separation attributed inappropriate weight to a support structure for Asha that no longer existed. By applying a six-month dependency analysis, the arbitrator diluted Prakash’s financial support of Asha in the three-month period prior to the accident by averaging Prakash’s support with the financial support provided by Devi in the three-month period prior to her marital separation. This analysis evaluated Asha’s financial support relationship as if along an unbroken continuum, with insufficient analysis given to the shifting support relationship leading to the time of the Accident. It was inconsistent with legal principles to provide equal significance to a prior financial support relationship with the financial support relationship that replaced it and continued to the time of the accident.

[62] As in *Intact Insurance*, the arbitrator’s importation of a “permanence requirement” on Asha’s support relationship with Prakash was inconsistent with applicable legal principles and evidence was misapplied that affected the assessment of the dependency relationship. The result was that an inappropriately long dependency period was applied to the assessment of principal financial dependency. The arbitrator’s decision-making on the issue of Asha’s principal financial dependency at the time of the accident was not justifiable or transparent.

Was the Arbitrator’s Decision regarding Asha’s Principal Financial Dependency Within a Range of Reasonable Outcomes?

[63] The arbitrator found that at the time of the accident, Asha had no source of income or funding and that she lived in Prakash’s house by necessity as she had nowhere else to live. The arbitrator found that Asha was financially dependent at the time of the accident. The arbitrator determined that Prakash was the sole provider of Asha’s room and board and necessities during the time that Asha lived with him. The Decision contains no evidence that, in the three months leading to the accident, there was a basis on which reasonably to conclude that Asha’s principal financial dependency could be on anyone other than Prakash. Nevertheless, the arbitrator concluded that Asha was not principally dependent on Prakash for financial support at the time of the accident.

[64] I find that the arbitrator’s determination that Asha was not principally dependent on Prakash for financial support at the time of the accident is not within a range of reasonable outcomes. It is not reasonable to determine that a person in Asha’s financial situation at the time of the accident, with no source of income or funding, no employment and nowhere to live, is not principally financially dependent on the only person providing room, board, and money by reason that another person had provided these necessities at an earlier time.

Issue #2: Was the arbitrator’s determination that Latchman was not principally dependent on Prakash for financial support at the time of the accident reasonable?

[65] The issue of Latchman's dependency on Prakash at the time of the accident follows the same analytical outline as that just conducted in relation to Asha's principal dependency on Prakash, but with a different outcome.

Was the Arbitrator's Decision-Making Process Regarding Latchman's Dependency for Financial Support Justifiable, Transparent and Intelligible?

[66] Again, the first step in the arbitrator's analysis was to assess whether Latchman was financially dependent, at all. In assessing Latchman's financial dependency, the arbitrator found that Latchman collected \$1,150 each month in ODSP payments but she did not work and had no other source of income: Decision, para. 13. The arbitrator found that Devi and Prakash provided room and board for their mother during the times that she resided with them, Devi until mid-December and Prakash from that point until the accident on February 25, 2011, but that Latchman did not contribute any of her ODSP benefits toward payment of the household expenses: Decision, paras. 7, 13, and 51.

[67] State Farm submitted that Latchman was not financially dependent because Prakash's monthly household expenses of between \$3,000 and \$3,200 each month constituted a pro-rated share of household expense to each of the six family members of between \$500 and \$533 per month. Since Latchman collected ODSP benefits that were more than twice this pro-rated amount of household expense, Latchman could not have been financially dependent.

[68] In paragraphs 51 and 52 of the Decision, the arbitrator outlined the evidence that she relied upon in finding that Latchman was not principally dependent on Prakash for financial support at the time of the accident:

The above evidence indicates that in the twelve months prior to the accident in late February 2011, [Latchman] lived at Devi's house for approximately eight months. She stayed at Prakash's house for just under six weeks (two weeks in December before going to Guyana and not quite four weeks after returning). She spent extended periods in Guyana twice – once for six weeks in the spring and then five weeks in late December and January 2011. While she collected ODSP payments of approximately \$1,150 per month, she did not contribute any of these funds to either Devi's or Prakash's household, and the evidence from both Devi and Prakash was that when their mother was living in each of their homes, they covered her expenses. There was no evidence to suggest that Prakash paid for his mother's food or other expenses when she was living at Devi's house prior to December 2010.

Considering the above, I am not persuaded that [Latchman] was principally dependent for financial support on Prakash at the relevant time.

[69] The arbitrator did not expressly state, as a subordinate component of the assessment of principal financial dependency, whether Latchman was financially dependent at the time of the accident. Rather, the arbitrator incorporated her finding on this point into a broader determination that Latchman was not principally financially dependent on Prakash, without first answering the question of whether Latchman was financially dependent on *anyone*. The

appellant submitted that the arbitrator found that Latchman, like Asha, was financially dependent. Indeed, in its Notice of Appeal, the appellant states that the arbitrator found that Latchman was “principally financially dependent on Prakash while he provided accommodation to [her]”: Notice of Appeal, para. 3. I do not read the Decision as containing such a finding by the arbitrator. I could infer from the arbitrator’s reasons a finding that Latchman was financially independent at the time of the accident [Decision: paras. 51, 52 and 55] on the basis of the arbitrator’s application of the principle set out in the case law that if a person has the means to provide for at least 51% of his or her needs, the person cannot be dependent: *The Dominion of Canada General Insurance Company v. Intact Insurance Company*, 2015 ONSC 3689 at para. 10. However, I will infer that through the arbitrator’s melding of this issue with the broader issue of financial dependency on Prakash, the arbitrator implicitly found that Latchman was financially dependent at the time of the accident.

[70] In either event, I have some doubt that the true nature of the dependency relationship turns on a precise arithmetic calculation of income or benefits available to meet expenses. While the mathematic calculation of the 51% dependency assessment is an important factor, it is not the only consideration: *State Farm v. Buryan*, 2013 ONSC 670. The analysis of the pro-rated share of Prakash’s household carrying costs is imprecise and does not fairly reflect the expenses that Latchman would confront if Prakash’s support were not provided. I agree with Myers, J. in *Allstate Insurance Company of Canada v. ING Insurance Company of Canada, et al.*, 2015 ONSC 4020, at para. 13 that “the assessment of needs based on approximations of household expenses is always going to be both inaccurate and expensive.”

[71] I turn now to the second part of the arbitrator’s analysis, the length of the dependency analysis. In ascertaining the length of dependency analysis, the arbitrator held that a twelve-month time frame was appropriate for assessment of Latchman’s principal financial dependency on Prakash, at paras. 53, 54, and 55 of the Decision:

I find that a period of twelve months is more in keeping with the court’s direction in the *Oxford Mutual, supra*, decision. The evidence suggested that while [Latchman] spent some time at Prakash’s house throughout 2010, it would not be accurate to state that she lived more at Prakash’s home than Devi’s, save for the six-week period identified above. That period is an anomaly, and in my view, does not reflect the reality of the family’s circumstances.

While the evidence suggests that Devi and her husband experienced marital difficulties over an extended period, Devi had not actually left the home with her two sons until mid-December 2010. It is difficult to predict what would have occurred with her living arrangements had this not happened, but a retrospective view of the period preceding the accident suggests that the six weeks spent at Prakash’s house was an unusual event.

While Prakash undoubtedly provided for most of her needs for the six weeks that she lived at his home, that is not sufficient to ground a finding of principal dependency. The courts have direct us to use a “big picture” approach to determining principal dependency [citations omitted]. I agree

that this approach is most useful in determining financial dependency cases. I find that given the evidence in this case, this approach would result in the same outcome as a straight application of the *Miller v. Safeco* factors, namely that [Latchman] was not principally dependent on Prakash for financial support at the relevant time.

[72] The arbitrator misapplied the evidence concerning the amount of time that Latchman spent at Prakash's house prior to the accident. Devi's evidence, which was accepted by the arbitrator [Decision, para. 44], was that Devi and Prakash had, since 2008, each taken Latchman into their homes for six months of the year. The arbitrator's finding that in the twelve months before the accident Latchman had stayed with Devi for eight months and Prakash's house for just under six weeks was not consistent with the evidence, which was that Latchman had spent at least as much time in Prakash's house in the twelve months pre-accident as with Devi.

[73] Just as a mechanical calculation of income, or benefits, as against pro-rated share of expenses is not definitive in determination of financial dependence, neither is an arithmetic calculation of the number of days that Latchman spent in the homes of Devi and Prakash determinative of the nature of the relationship giving rise to principal dependency. This is just one indication of dependence for financial support. The dependency assessment is more than counting days: it is an assessment of the nature of the relationship by which financial support is offered. The time frame needed to assess the dependency relationship can consist of days, weeks, months or even years, so long as it provides an accurate and fair assessment of whether the person was principally dependent for financial support on another at the time of the accident: *Oxford Mutual Insurance Co. v. Co-operators General Insurance Co.* (2006), 83 O.R. (3d) 591 (C.A.).

[74] In *Liberty Mutual Insurance Co. v. Federation Insurance Co. of Canada*, [2000] O.J. No. 1234 (C.A.), the Court of Appeal affirmed the arbitrator's finding that the span of the dependency analysis must parallel the span of the relationship on which the dependency is based: "Relationships change from time to time, perhaps suddenly. Transient changes may alter matters for a short period, but not change the general nature of a relationship." The evidence showed that Latchman had routinely shared time in both Devi and Prakash's households leading to the accident and that both these adult children were committed to the financial support of their mother. The manner by which that financial support was provided by each of Devi and Prakash would be affected by their immediate circumstances, but each would provide financial support when needed.

[75] A three-month dependency analysis shows that Latchman had financial support from Devi, through room, board and necessities, prior to Devi's marital separation. Devi's financial support of her mother was shared with her brother, Prakash, and contributed to by Latchman through her ODSP benefits. The arbitrator had a basis on which to find, whether on a three-month dependency analysis or a twelve-month dependency analysis, that the financial support of Latchman was a shared enterprise between her daughter, Devi, and her son, Prakash, who would supplement what Latchman needed financially: each doing what they could, when they were able. This was the nature of the dependency relationship found by the arbitrator to be in place at the time of the accident. This determination of the dependency relationship was justifiable on the evidence.

Was the Arbitrator's Decision regarding Latchman's Principal Financial Dependency Within a Range of Reasonable Outcomes?

[76] The arbitrator's finding that Latchman was not principally financially dependent on Prakash is based on a determination that any financial needs that Latchman had that were not covered by her ODSP benefits were jointly committed to, and jointly supplied by Devi and Prakash. I agree with State Farm that the appeal should be dismissed in the case of Latchman so long as the arbitrator's decision on this issue falls within a range of reasonable outcomes which are defensible in respect of the facts and law. I find that it does.

[77] Judicial review focuses on the reasonableness of the outcome or decision itself and allows reviewing courts "to connect the dots on the page where the lines, and the direction they are headed, may be readily drawn" so long as there are dots to connect: *Komolafe v. Canada (Citizenship and Immigration)*, 2013 FC 431 at para. 11 (F.C.T.D.). As Binnie, J. stated in *Canada v. Khosa*, at para. 59: "... as long as the process and the outcome fit comfortably with the principles of justification, transparency and intelligibility, it is not open to a reviewing court to substitute its own view of a preferable outcome."

[78] Unlike Asha, Latchman had a source of her own funding. As such, the assessment of Prakash's financial support is properly evaluated from a starting point of \$1,150 per month in benefits. Latchman had some ability to sustain herself financially, unlike Asha who had none. This gave Latchman a role in her own financial support even if this should fall short of financial independence.

[79] Further, whether a three-month dependency analysis is applied, or a twelve-month dependency analysis, the nature of the financial support relationship for Latchman had three components: Latchman herself, Prakash and Devi. On the critical issue of whether Prakash was relied upon *principally* to provide financial support to Latchman at the time of the accident, it was reasonable for the arbitrator to conclude that this was not established. The evidence before the arbitrator was that Devi remained attentive, throughout, to her mother's needs, for both care and financial support.

[80] The appellant contended that the arbitrator conflated Devi's provision of *care* to her mother with Devi's provision of *financial support* and did not distinguish them as separate analytical silos. I do not agree. The arbitrator accepted that Devi's ongoing attentiveness to her mother's care established that Devi would attend to her mother's room, board and necessities when critical for her mother's care. This occurred after Latchman's release from hospital when Latchman (but not Asha) returned with Devi to Devi's house in order to best be cared for there [Decision, para. 50].

[81] The arbitrator's determinations in relation to Latchman are thereby different than in relation to Asha both in terms of her findings in relation to Latchman's own resources and in relation to Devi's ongoing commitment to provide financial support to Latchman in the case of necessity. The arbitrator determined that Prakash's provision of financial support at the time of the accident, while found to be a meaningful contribution, did not meet the threshold of causing Latchman to be *principally* financial dependent on Prakash. I find this determination to come within a range of reasonable outcomes.

Summary of Analysis

[82] Reasonableness is a deferential standard that is predicated on the principle that certain questions that come before an arbitrator do not lend themselves to one result but rather give rise to a number of possible, reasonable outcomes.

[83] Asha was financially dependent, at all times, and in receipt of room, board and financial support from Prakash at the time of the accident. There was no evidence that anyone else provided financial support to Asha in the time period after her move into Prakash's house some three months before the accident. I find that it is not reasonable to determine that a person in Asha's financial situation at the time of the accident is not principally financially dependent on the only person providing the basic necessities of room, board, and money by reason that another person had provided these at an earlier time.

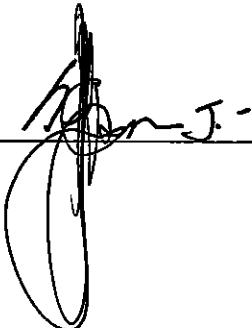
[84] Latchman received funding. Her financial supporters for shortfall were both Devi and Prakash. Although Devi was unable to financially support Latchman in the period after her marital separation, she remained committed to doing so in Latchman's times of need. I have concluded that the arbitrator's finding that Latchman was not principally dependent on Prakash for financial support at the time of the accident falls within a range of reasonable outcomes which are defensible in respect of the facts and law.

V. Disposition

[85] The appeal is granted in part. Specifically, the appeal is granted in relation to the arbitrator's decision that Asha was not principally dependent for financial support on State Farm's insured, Prakash, at the time of the accident. The arbitrator's determination that State Farm is not the priority insurer of Asha is set aside. The appeal is dismissed in relation to the arbitrator's decision regarding Latchman's principal financial dependency on Prakash. The arbitrator's determination that State Farm is not the priority insurer of Latchman is affirmed. The appeal by Ontario on the issue of costs is granted.

VI. Costs

[86] The parties agreed that the successful party on this appeal would receive the sum of \$7,500, all inclusive in costs. In light of the divided success on this appeal, I order that there shall be no award of costs to either party.



Sanfilippo J.

CITATION: State Farm Mutual Insurance Company v. Her Majesty the Queen, 2018 ONSC
4258
COURT FILE NO.: CV-17-579271
DATE: 20180706

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

STATE FARM MUTUAL INSURANCE COMPANY

Applicant/Respondent in Appeal

– and –

HER MAJESTY THE QUEEN IN RIGHT OF
ONTARIO AS REPRESENTED BY THE MINISTER
OF FINANCE

Respondent/Appellant

REASONS FOR DECISION

Sanfilippo J.

Released: July 6, 2018