



Neutral Citation Number: [2024] EWHC 2569(KB)

Case No: KB-2018-001251

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11th October 2024

Before :

Elizabeth O'Neill (sitting as Deputy High Court Judge)

Between :

ERE	<u>Claimant</u>
(a protected party by her father and Litigation Friend FRF)	
- and -	
East Suffolk and North Essex NHS Foundation Trust	<u>Defendant</u>

Julian Picton KC and Tejina Mangat (instructed by **Ashtons LLP**) for the **Claimant**
Alexander Anselme KC (instructed by **Kennedys Law LLP**) for the **Defendant**

Hearing dates: 7 October 2024

Approved Judgment

This judgment was handed down remotely at 10.30am on 11th October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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DEPUTY HIGH COURT JUDGE ELIZABETH O'NEILL

Elizabeth O’Neill (sitting as Deputy High Court Judge):

1. This is a claim for personal injury and loss suffered by the Claimant as a result of alleged negligence in respect of clinical care provided by the Defendant to the Claimant on or about 3 August 2015.
2. The Claimant, who today is 32 years old, is a Protected Party under CPR 21.2(1). Her father is acting as her litigation friend. An anonymity order was made on 30 June 2020 and continues to remain in place for the reasons set out therein.

The application

3. The purpose of the hearing is for the court to consider whether the proposed settlement on the quantum of damages for this claim, as agreed by both parties, is in the best interests of the Claimant as required under CPR 21.10. The court’s approval of the settlement is required as the Claimant is a protected party. In considering the settlement, the court must act in the best interests of the protected party and in the interests of justice, whilst having regard to the overriding objective.

Background

4. In July 2015 the Claimant was aged 23, fit and healthy, and worked in a customer facing role at a financial institution. On 18 July 2015, the Claimant gave birth to her first and only child. Following the birth of her child, the Claimant was discharged from hospital on 21 July 2015, with no concerns about her health noted in maternity records. Following her discharge, however, the Claimant became breathless and had palpitations. On 2 August 2015, she was admitted to the Defendant’s hospital and received treatment, but suffered a cardiac arrest in the early hours of 3 August 2015.
5. Although the parties do not fully agree on the extent of the Claimant’s injuries and prognosis, it is not disputed that as a result of the cardiac arrest, the Claimant suffered a severe degree of hypoxic brain damage on 3 August 2015, which has resulted in significant cognitive impairment and organic personality change, such that the Claimant will not be able to undertake paid work and will require care for the rest of her life.
6. On discharge from hospital the Claimant was wheelchair reliant and required considerable care and support. After a short period in the care of her partner, the relationship broke down, and the Claimant and her child moved in with her parents, who adjusted their home in order to care for her and her child. In November 2018, due to the Claimant’s intolerance of noise, she and her child moved into rented accommodation close to her parents, who have continued to provide daily care for her.
7. The Claimant and her son received what is acknowledged by all parties to be unstinting care and support from her parents, who have provided the majority of her care and her child’s care, despite suffering health problems of their own. The court notes that the nature of the care provided by the Claimant’s parents has been exceptional. To provide but one example, by establishing a clear routine in which they prepare their grandson for bed and deliver him to his mother’s house in his pyjamas to sleep there, and by remaining on-call for their daughter in the event of any difficulties,

they have enabled the Claimant to have valuable time alone with her son and develop a loving and caring relationship with him. Despite the challenges she faces, the Claimant makes efforts to improve her condition, most recently by taking up swimming and hydrotherapy. She is very attached to her son.

8. The Claimant's son also receives care from his father and paternal grandmother, who look after him several days a week.

The proposed settlement

9. Proceedings were issued on 1 August 2018. On 30 June 2020, following agreement between the parties on the issue of liability only, judgment was entered by consent. Mr Justice Martin Spencer ordered for damages to be assessed and determined on the basis that the Claimant is entitled to recover compensation equal to 75% of the full liability assessment value of the claim, on the basis that, but for the negligence, the Claimant would not have suffered a cardiac arrest or any consequential brain damage or any neurological injury.
10. The trial on quantum was listed to start today. On 30 July 2024, the parties discussed possible settlement in a "round table" settlement meeting. Following additional discussions and evidence from experts, agreement was reached on a proposed settlement comprising two elements:
 - i) A lump sum of £3,850,000. This element of the award includes general damages and interest, past losses and interest, and all future losses except for future annual care and case management.
 - ii) Periodical payments for care and case management annually:
 - a) From 15 December 2024 to 15 December 2060 inclusive (to last payment at age 68.9) of £86,544 pa;
 - b) From 15 December 2061 to 15 December 2070 inclusive (to last payment at age 78.9) of £157,500 pa;
 - c) From 15 December 2071 for life (at and from age 79.9) of £180,000 pa.
11. The periodical payments will be indexed to ASHE 6115, 80th centile, and the first adjustment for this and all other periodical payments will be on 15 December 2025.
12. In considering the suitability of the proposed award, I have had regard to the comprehensive and detailed advice prepared by Julian Picton KC and Tejina Mangat, together with the papers filed in support of this application including the schedules of loss and witness and expert evidence submitted by both parties. The settlement is approved by the Claimant's litigation friend.
13. Taking this all into account, I am satisfied that the proposed settlement is in the best interests of the Claimant, given the litigation risks and the fact that a number of significant issues relevant to quantum remained in dispute, such as the prognosis for the Claimant's neuropsychiatric and neuropsychological condition, her physical condition and, in association with both, the extent to which care and support will be required in future.

14. With respect to the structure of this award, and in particular the question whether the damages should wholly or partly take the form of periodical payments, I have had regard to the helpful confidential report prepared by Richard Cropper. After considering this clear and full advice, and the facts of this case, I am satisfied that the order for periodical payments for future care and case management, in combination with a lump sum award for the other heads of loss, is the form of award which best meets the Claimant's needs.
15. I am also satisfied that the requirements of CPR 41.7-9 and PD41B have been met, including the requirement for the court to be sure that continuity of payment under the Order is reasonably secure pursuant to section 2(3) and 2(4)(c) of the Damages Act 1996.
16. I note that a Deputy for the Claimant's property and financial affairs has been appointed jointly with the Claimant's mother. I also approve the proposed payment of £124,631.13 to the Claimant's parents in respect of their past gratuitous care and other expenses in line with CPR 21.12.
17. This was a complex case, and I commend the parties for reaching a settlement which is in the best interests of the Claimant and in the interests of justice. Last, I note the generosity and devotion displayed by the Claimant's parents in their care of the Claimant and her son. I trust that this settlement will enable permanent arrangements to be put in place for the Claimant that bring the whole family peace of mind, and wish the Claimant and her parents the very best in this next chapter.