

**APPROVED**

**[2022] IEHC 205**

THE HIGH COURT

2013 No. 3923 P

BETWEEN

MARY RYAN  
(A PERSON OF UNSOUND MIND NOT SO FOUND SUING THROUGH HER  
MOTHER AND NEXT FRIEND)

PLAINTIFF

AND

IARNRÓD ÉIREANN  
TIPPERARY COUNTY COUNCIL

DEFENDANTS

**JUDGMENT of Mr. Justice Garrett Simons delivered on 8 April 2022**

**INTRODUCTION**

1. These personal injuries proceedings are taken on behalf of a young woman with severe intellectual disabilities (“*the injured party*”). The Defendants have offered to compromise the proceedings on certain terms. The offer has been made by way of a formal tender without admission of liability.
2. At the time the tender was made, the injured party had not yet reached the age of 18 years and was, accordingly, a minor or infant in the eyes of the law. As such, the injured party lacked legal capacity to enter into a binding settlement. It was necessary, therefore, to make an application to the High Court for a ruling on whether the proposed settlement offer should be accepted.

NO FURTHER REDACTION REQUIRED

3. The application for a ruling on whether the tender should be accepted had been listed before this court on 12 July 2021. However, the application could not proceed on that date because further medical evidence was required.
4. The application ultimately returned before the court on 24 March 2022. As of that date, the injured party had achieved her age of majority.
5. Order 22, rule 10 of the Rules of the Superior Courts provides as follows:

“(1) In any cause or matter in which money or damages is or are claimed by or on behalf of an infant or a person of unsound mind suing either alone or in conjunction with other parties, no settlement or compromise or payment or acceptance of money paid into Court, either before or at or after trial, shall, as regards the claims of any such infant or person of unsound mind, be valid without the approval of the Court.

(2) No money (which expression for the purposes of this rule includes damages) in any way recovered or adjudged or ordered or awarded or agreed to be paid in any such cause or matter in respect of the claims of any such infant or person of unsound mind, whether by verdict or by settlement, compromise, payment into Court or otherwise, before or at or after the trial, shall be paid to the plaintiff or to the next friend of the plaintiff or to the plaintiff’s solicitor unless the Court shall so direct.

[...]”

6. As appears, where proceedings are taken on behalf of a person of unsound mind, it is necessary to make an application to court for approval of any proposed settlement. In particular, the acceptance of money paid into court is not valid without the approval of the court.
7. Although no formal finding has yet been made to the effect that the injured party is a person of unsound mind, I am satisfied on the medical evidence and from hearing sworn evidence from her mother that the injured party lacks the mental capacity to give an informed consent to the proposed settlement.

8. The medical evidence establishes that the injured party is profoundly intellectually disabled. The injured party is mostly non-verbal, ambulatory and requires help in dressing, toileting and feeding. Thus, notwithstanding that the injured party is no longer a minor, the approval of the court is nevertheless required before the proposed settlement could be accepted on her behalf and become legally binding. Accordingly, I propose to exercise the High Court's inherent jurisdiction to consider the proposed settlement on her behalf.
9. For the reasons explained below, I approve the settlement and will also direct that an application now be made to have the injured party considered for wardship.

#### **FACTUAL BACKGROUND**

10. The injured party is 19 years of age having been born in January 2003. The injured party has been diagnosed from an early age with autism and associated learning disability. The injured party lives with her loving parents who have provided excellent care and support to her at all times.
11. The family home is leased from the second named defendant, Tipperary County Council. The family home backs onto a railway line. The claim for personal injuries arises out of an incident on 12 March 2012. On that date, the injured party had made her way through or over a fence at the back of the family home and entered onto the railway line. The injured party was then hit by a train and suffered significant injuries. The principal allegation made in the personal injuries action is that the Defendants either (i) had failed to put in place an appropriate wall or fence between the family home and the railway line, or (ii) had failed to maintain properly such fencing as had been provided.

12. As a result of the accident, the injured party suffered a concussion, a collapsed left lung, a fractured right arm, abrasion to her left groin and lacerations to her groin and ankle. The injured party had been assessed on admission to hospital as having a score of 3/15 on the Glasgow Coma Scale and had initially been intubated and admitted into the intensive care unit.
13. Relevantly, the results of a CT scan of her head were as follows:

“There is a possible tiny peripheral contusion high in the right frontal lobe otherwise the brain is unremarkable in appearance.

Review of bony settings shows no vault fracture.”
14. The injured party was discharged from hospital a number of days later.
15. Counsel on behalf of the injured party has offered the opinion that, had the sequelae of the accident been confined to those described above, then the notional full monetary value of the claim would be in the order of €75,000.
16. Unfortunately, the injured party subsequently developed epilepsy. There had been some initial confusion as to when the first episode occurred. It appears now, however, that the injured party suffered a seizure in October 2013, that is approximately eighteen months after the accident. The injured party was kept in hospital overnight.
17. The next episode occurred in July 2015 when the injured party suffered a further prolonged seizure at home. Again, the injured party was taken to hospital and discharged the following day.
18. The injured party’s mother, Breda Ryan, gave evidence to the court on 24 March 2022. Ms Ryan explained that there has been a “*big change*” in her daughter since the accident. Prior to the accident, her daughter had been very mobile and enjoyed going out to the town, the shops or the beach. It now takes two people

to mind her and she rarely leaves the house. Ms Ryan's own life and that of her husband have changed: they need to monitor their daughter constantly for her own safety. A wheelchair is used to take her out. Her daughter will be starting to attend an adult service on weekdays and currently avails of riding for the disabled.

### **WHETHER OFFER OF SETTLEMENT IS REASONABLE**

19. The Defendants have made an offer of settlement in the sum of €400,000 together with legal costs.
20. The reasonableness of any offer of settlement is assessed by considering what the likely outcome would be were the claim to proceed to full hearing before a trial judge, and comparing that hypothetical outcome to what would be paid under the offer of settlement. This exercise will require consideration of issues such as whether liability is contested, and the amount of damages which are likely to be recovered were the proceedings to go to trial. If liability is in issue, then the amount of the proposed settlement may be less than the notional "*full*" value of the claim. It may nevertheless be sensible to accept this discounted sum, rather than to allow the case to go to trial and run the risk that liability would be decided in favour of the defendant; no damages would be recovered; and costs awarded against the plaintiff.
21. This exercise has to be performed on the basis of far more limited information than would be available to the trial judge. The court must instead draw upon its knowledge of the risks inherent in litigation, and attempt to identify potential weaknesses in the claim which may affect the outcome of the proceedings. Counsel on behalf of the person of unsound mind will have provided a

confidential opinion to the court that candidly sets out the strengths and weaknesses of the case. Ultimately, however, the decision on whether to approve the settlement resides with the court alone.

22. In the present case, the notional “*full*” monetary value of the claim depends largely on whether a causal link can be established between the accident and the subsequent onset of epilepsy. This assessment falls to be made by reference to a number of medical reports as follows.
23. The court has the benefit of two reports from a consultant paediatrician/paediatric neurologist. The first report is dated 23 September 2017 and expresses the opinion that the epileptic seizures are not related to the accident. Rather, it is said that the injured party had always been at “*high risk*” of developing epilepsy due to her underlying intellectual disability. The consultant cites population studies which indicate that the prevalence of epilepsy in autistic subjects with intellectual disability can be as high as 21.5% compared with 8% in autistic people without intellectual disability. The consultant suggests that this explains the diagnosis of epilepsy rather than the same being caused by post traumatic seizures after a moderate head trauma (defined as loss of consciousness for less than 24 hours with or without skull fracture).
24. The consultant’s initial report had been based on a misunderstanding as to the precise chronology of events. In particular, it seems that the consultant had not been told that the first episode of epilepsy occurred within eighteen months of the accident: the consultant seems to have thought that it had occurred some three years later.
25. The consultant has, very helpfully, provided a supplemental report dated 5 November 2021 which offers the following opinion:

“Given the severe head injury (Glasgow coma scale on arrival <8) she sustained and the brain contusion her univariate rate ratio risk of seizure is 8.9 (16.6 – 55.2), Anneger J, Pasternak S, Seizure 2009;9:453-457. The incidence of Post traumatic epilepsy in patients with severe TBI based on the GCS classification is 17% and for moderate TBI 6.9% (Keret A et al, Seizure 2018; 58: 29-34).

The head injury coupled with her pre-morbid intellectual disability have both increased the risk for developing posttraumatic epilepsy.”

26. The court has also had the benefit of a report from a consultant community paediatrician dated 7 October 2019. This consultant has also expressed the view that the epileptic seizure is more likely to have been caused by something other than the accident. The consultant observes that the injured party had a normal CT scan at the time of the accident and opines that her most recent scans show significant changes which would be in keeping with an alternate diagnosis rather than due to the trauma at the time of the accident.
27. The medical view which is most supportive of there being a causal link between the accident and the onset of epilepsy is that of a consultant neurologist from Cork University Hospital. In a report dated 10 August 2020, the consultant offers the following opinion:

“In truth [the injured party] has 2 significant ‘risk factors’ for development of epilepsy namely (a) autism and (b) traumatic brain injury. I think that it is very difficult to be certain that the head injury on March 12<sup>th</sup>, 2012 caused [the injured party’s] epilepsy and epilepsy is linked to autism. However, I think it is *plausible* that the head injury is causally implicated in [the injured party’s] epilepsy. The delay in development of seizures for 15 months after the accident is not unusual in post-traumatic epilepsy. It may be reasonable to speculate that [the injured party] had an innate predisposition to seizures due to her autism but the head injury precipitated seizures, albeit many months after the accident.”

\*Emphasis as per the original.

28. Counsel for the injured party has explained that, during the course of negotiations, the Defendants' side furnished a copy of their medical evidence on a "*without prejudice*" basis. This report has, with the consent of the parties, been exhibited as part of the application to approve the proposed settlement. This report is dated 21 September 2020 and has been prepared by a consultant paediatric neurologist.
29. The report is very comprehensive and is of considerable assistance in providing the court with an overall view of the competing arguments likely to be made were the matter to go to full hearing.
30. The following conclusions are stated in the report:

"CONCLUSION

Overall it is my opinion that the major contributors to [the injured party's] current level of neurological disability are firstly, her existing diagnosis of autism and learning disability, and secondly, the neurological event, characterised as a 'stroke' by her parents which occurred in 2016.

It is clear that the head injury in 2012 was a significant event which caused setbacks in her confidence, hypersensitivity to outside stimuli and her environment, and level of independence at the time. One would have expected all of this to recover, and she would appear to have been making progress until the regression in 2016. The head injury may also have been the cause of her epilepsy, which has overall been well-controlled on medication.

From the available information documented above on the [the injured party's] pre-existing state, it is clear that, given her pre-existing severe autism and learning disability, she would always have required supervision, and would never have been capable of living independently.

The 'stroke' event in 2016, which caused neurological regression and permanent brain injury, occurred in the context of a febrile illness which caused severe prolonged uncontrolled seizures with associated brain injury."

31. The same report addresses the stroke in January 2016 as follows:

“The ‘stroke’ which was diagnosed during her hospitalisation in Our Lady’s Childrens Hospital, Crumlin, in 2016. It is very clear, in conversation with [the injured party’s] parents, that this event was a profound setback for her, with a major impact on her level of independence, self-confidence and mobility, and resulting in a major deterioration in her behaviour, including relapse of her self-soiling, etc. From my available information as documented, it is very clear that she sustained a severe injury to the right hemisphere of her brain during this episode. There was no evidence of blocked blood vessels such as one might see in the context of an ischaemic stroke (lack of blood supply to the brain). The cause of this episode does not appear to have been determined. She had a high fever of 40 degrees Celsius at presentation, indicating an intercurrent febrile illness, possibly viral. She also had a very high white cell count, indicating some kind of infection at that time. I have seen such events before, without identified cause. One could hypothesise that there are unidentified underlying genetic or metabolic factors which lead to this presentation. There is a condition known as FIRES (Febrile Illness Refractory Epileptic Seizures), which is poorly understood, and her presentation might be consistent with this. Another condition, Hemiconvulsion Hemiplegia Syndrome, may be relevant, in which a severe prolonged convulsive seizure leads to permanent brain injury and hemiplegia.”

## **DISCUSSION AND DECISION**

32. This court has had the benefit of a number of very helpful reports from medical practitioners with expertise in paediatric neurology. The furthest that the evidence goes is to indicate that the head injury sustained in the accident, coupled with the injured party’s premorbid intellectual disability, increased the risk of epilepsy and that there is a “*plausible*” connection between the accident and the subsequent onset of epilepsy. However, in order to succeed at the trial of the action, it would be necessary to establish causation on the balance of probabilities.
33. Matters are further complicated by the fact that the injured party suffered a stroke in January 2016 which caused neurological regression and permanent brain

injury. The balance of the medical evidence appears to be that the stroke was a significant intervening event and that there is no established causal connection between the injuries sustained in the accident and the stroke itself. Thus, even if, despite the doubts expressed above, a connection could be made between the accident and the onset of epilepsy, most of the additional challenges now faced by the injured party are attributable to an intervening event, namely the stroke. There is no convincing evidence to link this stroke in January 2016 to the accident some four years earlier.

34. Were these proceedings to go to full hearing, there is a real risk that the damages awarded would be less than the €400,000 which has been tendered. This is because the injured party might not succeed in persuading the trial judge that there was a causal connection between the accident in 2012 and the subsequent health difficulties suffered, including both the onset of epilepsy and the stroke. I am satisfied, therefore, that it is in the best interests of the injured party to accept the tender amount now. The sum involved, namely €400,000, is a significant amount and would allow for improvements in the injured party's day-to-day circumstances.

### **CONCLUSION AND FORM OF ORDER**

35. For the reasons set out herein, I have concluded that the sum tendered in settlement of the proceedings, €400,000, should be accepted on behalf of the injured party.
36. It is apparent from the evidence before the court that the injured party's parents have provided excellent care and support to their daughter. This is confirmed by all of the medical reports. Breda Ryan gave evidence to the court and explains

that since the accident the level of care required has increased in that her daughter now requires constant supervision. The parents will have incurred additional day-to-day expenses, and these should be recompensed. I will, therefore, make an order directing that a sum of €50,000 should be paid out to the benefit of the parents. The monies should be paid to the Plaintiff's solicitor on his undertaking to pay it over to the parents.

37. The balance of €350,000 is to be paid into court to the credit of the action and to the credit of the injured party. I also direct that an application should now be made to have the injured party considered for wardship. If the injured party is, ultimately, made a ward of court then the monies can be managed thereafter through the Wards of Court Office.
38. An order will also be made directing that the Plaintiff is to recover her costs from the Defendants, to include all reserved costs, the costs of discovery and the costs of the ruling application. The costs are also to include the costs of an application for admission to wardship. All costs to be adjudicated under Part 10 of the Legal Services Regulation Act 2015 in default of agreement between the parties.

*Appearances*

Stephen Lanigan-O'Keeffe, SC and Philip Sheahan, SC for the Plaintiff instructed by English Leahy Solicitors (Tipperary)

Approved  
S. M. M. S.