



Neutral Citation Number: [2024] EWHC 25 (KB)

Case No: QB-2012-5954

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11 January 2024

Before:

DEXTER DIAS KC
(Sitting as a Deputy High Court Judge)

Between:

MHE
**(a child and protected party by SE, her mother
and Litigation Friend)**

Claimant

- and -

Wye Valley NHS Trust

Defendant

Julian Matthews (instructed by **Minton Morrell Solicitors**) for the **Claimant**
Clare Watson KC (instructed by **DAC Beachcroft LLP**) for the **Defendant**

Hearing date: 6 December 2023

Approved Judgment

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DEXTER DIAS KC

Dexter Dias KC:

(Sitting as a Deputy High Court Judge)

1. This is the judgment of the court.
2. This is an application for the court to give its approval, pursuant to the court's inherent jurisdiction, of a settlement of a personal injury claim.
3. The claimant is a child and protected party (CPR 21.2(1)). I have today granted an anonymity order, about which I say more shortly. Therefore, the claimant will be known as MHE. She is now 14 years old and lacks capacity. She appears by her litigation friend, who is her mother, and who shall be known as SE. The claimant is represented by Mr Matthews of counsel. The defendant is Wye Valley NHS Trust. The defendant is represented by Ms Watson KC.
4. While acknowledging the vital importance of the open justice principle and the "public watchdog" function of the press (*Thoma v Luxembourg* [2001] ECHR 240 at [5]), I judge that the Article 8 ECHR right to privacy and private life imperatives here significantly outweigh the Article 10 ECHR freedom of expression rights of the press and public. That is why I have granted an anonymity order in accordance with *JX MX v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96. The order conforms with the latest APIL / PIBA template order.
5. Due to the rail strike today, the hearing was conducted remotely using the MS Teams platform. However, the case was listed in the usual way, giving members of the public and press an opportunity to join the hearing remotely. I am completely satisfied that no one was prejudiced by the mode of hearing adopted in the prevailing circumstances.

Background

6. In July 2009, the claimant's mother was in a hospital operated by the defendant while she gave birth to the claimant. Shoulder dystocia, a condition whereby the baby's shoulders become trapped behind the mother's pelvic bone, occurred. Various manoeuvres were attempted to free the claimant but were not successful. The consultant was called and ultimately there was a successful delivery. However, as a result of the delay in effecting delivery, the claimant was exposed to a period of acute lack of oxygen. This caused significant damage to her brain. Her well-being "Apgar score" after one minute of life was 1 out of 10. She was found to have severe metabolic acidosis. She suffered neonatal seizures and was referred to the Special Care Baby Unit at Bristol Royal Hospital for brain cooling therapy. She had to receive specialised treatment there for approximately 10 days.
7. There has been full admission of liability by the defendant. Liability was accepted by a letter dated 23 January 2012. The defendant admitted that its breach of duty included the failure to deliver the child with sufficient or safe speed during birth. Judgment was entered by consent on 10 May 2012 by Master Yoxall for damages to be assessed.

Given the claimant's age, stays of proceedings were sought and granted to 1 June 2021. Interim payments were made.

8. The claimant has difficulty with fine motor skills and coordination and struggles to use a knife and fork. She struggles with the finer aspects of dressing, and many of the activities of daily living. She requires help (or assistive aids) with most of the day's activities. She has a tremor in her hands. She has a right eye concomitant convergent squint, with restriction of eye movements in all directions, and requires glasses. She is at risk of choking. She has delayed speech, and her speech can be slurred towards the end of a long day. Although she attends mainstream school, she requires one-to-one support. She has had emotional and behavioural difficulties and has psychological support. Her speech is delayed, and she suffers from cognitive fatigue. She is easily led and remains vulnerable.
9. Neuropsychological assessment has shown that the claimant has overall intellectual ability in the low-average range, but with weakness in visual processing speed, severe memory impairment and difficulties with academic learning and attainment. She suffers from problems with attention and aspects of executive functioning. Her everyday adaptive behaviour and functional independence is in the extremely low range. Her day-to-day functioning is significantly impaired by her memory and executive functioning difficulties. Her neuropsychological difficulties will remain debilitating throughout her life. She will continue to have difficulty with organising herself, problem solving, being aware of dangers and risks, and maintaining attention, with a resultant need for a high level of support to ensure her health, safety and emotional well-being.
10. Her cerebral palsy is permanent. She will always need some assistance in most activities of daily living, and she will remain compromised with many tasks, particularly those requiring bimanual skills. She is unlikely to obtain any or any significant remunerative employment, and will be unable to live independently. She is likely to remain vulnerable to exploitation and abuse.
11. The claimant has been assessed as having a residual lifetime risk of developing epilepsy as a result of her brain injury. There is an additional but extremely small risk that this would be resistant to treatment by medication. Her life expectancy has been reduced by her neurological injury. It was agreed by the neurological experts to be to "approximately age 77".
12. With these deficits and difficulties, the case resolved into a question of quantum of damages. On 8 February 2023, the matter was set down for the assessment of damages trial to begin on 6 December 2023. The trial was scheduled for 8 days with live evidence from 14 experts. However, there was a joint settlement meeting on 27 July 2023 and then further discussions between counsel on a number of days in September, October and November, leading to the settlement that now awaits the court's scrutiny.

Approval

13. I am grateful to both legal teams for the great care with which they have prepared this case and the obvious sensitivity with which they have presented it.

14. Today, Ms Watson KC most responsibly explained how the defendant is very glad to reach a mutually satisfactory agreement in this case and recognises the dedication of the claimant’s family. She also repeated the sincere and unreserved apology for the defendant’s failure to provide the claimant and her mother with the appropriate medical care that they both were entitled to.
15. The purpose of today's hearing is for the court to consider whether the proposed settlement of damages agreed between the parties is in the best interests of the claimant. The court is required to approve the terms of settlement in this case as she is a both a child and a protected party by reason of her lack of capacity. It is an elementary proposition that court approval engages questions of judgment. It must act in the interests of justice and the best interests of the protected person and have regard to the overriding objective. As stated by Lady Hale in *Dunhill v Burgin* [2014] UKSC 18 at [20], the purpose of approval hearings in accordance with CPR 21.10(1) is

“to impose an external check on the propriety of the settlement.”

16. Part 21 of the CPR includes rule 21.10. Its subheading is “Compromise etc. by or on behalf of a child or protected party”. The rule provides insofar as it is material:

21.10

(1) Where a claim is made –

(a) by or on behalf of a child or protected party;

no settlement, compromise or payment (including any voluntary interim payment) and no acceptance of money paid into court shall be valid, so far as it relates to the claim by, on behalf of or against the child or protected party, without the approval of the court.

17. In a case where the court’s approval under the inherent jurisdiction is sought, the court should be provided with an opinion from the claimant’s legal representatives on the merits of the settlement or compromise. The confidential advice of Mr Matthews is dated 27 November 2023 and is an invaluable and comprehensive document. It sets out with great clarity and precision why the settlement is considered by the claimant’s legal team to be appropriate, by reference to an assessment of the quantum of recoverable loss, weighing the risks and uncertainties of litigation and the strengths and weaknesses of the evidence.

18. I have also read the detailed and complex expert reports that speak to this case, contained in the hearing bundle that extends to 1150 pages. The structure of the settlement is as follows:

Gross lump sum		£5,557,500
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	<p><u>Plus</u> periodical payments</p> <p>From 15.12.24 at £57,500.00</p> <p>From 15.12.2028 (age 19.4) at £110,000.00</p> <p>From 15.12.2039 (age 30.4) for life at £144,000.00</p>	
	<u>Less:</u> Interim payments	£-650,000
Total:		
Net lump sum:		£4,907,500

19. The periodical payments are indexed to ASHE 6115 (80th centile) with the first uplift for inflation to be on 15 December 2024.
20. The defendant’s liability under the Social Security (Recovery of Benefits) Act 1997 to the Compensation Recovery Unit is modest at £6,053.10. The sum payable for gratuitous care and laundry costs is £92,695. The court declares that it is payable out of the damages to the claimant’s litigation friend. There is an agreement that part of the past care sum will be apportioned to the claimant’s father for his contribution towards caring for his daughter.
21. When a proposed award includes periodical payments, the court is obliged to consider the appropriateness of the payment structure. CPR 41.7 provides that the court must:

“... have regard to all the circumstances of the case and in particular the form of award which best meets the claimant’s needs, having regard to the factors set out in the practice direction.”
22. Part 41 of the Rules and Practice Direction 41BD taken together list the relevant factors including the scale of the annual payments and the preferences of both the claimant and the defendant.
23. I am satisfied that I have been able to perform the required *Dunhill* propriety check. I agree that the both the settlement level and its structure are sensible from the claimant’s point of view. I can readily see the advantages of periodical payments within the

structure of an award that is required to meet lifetime needs that may extend over many years. Therefore, I find that this settlement is in the claimant's best interests. On that basis I approve the settlement under CPR 21.10.

24. A Professional Trustee was appointed on 9 August 2013 to manage the claimant's affairs, and a Professional Financial Deputy was appointed on 2 November 2018. The Deputy also felt that the settlement was appropriate to meet the claimant's ongoing needs.
25. To conclude, I would like to say something about what the claimant is like. Today, she attends school and does her very best, despite her challenges and deficits. She has one friend now, and that has helped a lot, but she is perceived as being "a lot different" to most children, her mother tells the court, so children of her age find it difficult to connect to her. She loves cooking, especially cakes and spaghetti bolognese, and watching YouTube.
26. All this has unquestionably been a tremendous strain on the claimant and her family. I have read the very affecting statements provided by both the claimant's parents. Her mother describes how when the claimant was a baby, she missed out on bonding with her due to the serious medical issues her child was experiencing. Due to her cognitive challenges, her daughter would have "tantrums and meltdowns" in public, and people would judge them and think they were "bad parents". Her mother had to divert a lot of her attention and time to care for and support her daughter to the detriment of her other children. Her father speaks about how the severe challenges his daughter had to contend with put great strain on the marriage. This confirms how a serious injury such as this claimant experienced radiates throughout a close-knit family. The court appreciates that no amount of money can turn back the clock and put their family in the position they would have been in had the injury to the claimant not occurred. Money cannot do that. It is simply the best we can do. A proxy for the quantification of the pain and suffering, heartbreak and anxiety that has followed the defendant's negligence. But I do hope that the end of these proceedings will be a relief and this long-awaited financial settlement will make life a little easier. The court pays tribute to the unstinting and selfless dedication of the claimant's parents, but most especially her mother, upon whom the chief burden has fallen. They have given their child the best possible chance in life.
27. I have emphasised to the claimant's mother that this judgment will be published to the National Archives so that a copy will always be available to the claimant - this is her case. I wish her family, and the claimant especially, the very best for the future.