

THE HIGH COURT**[2014 No. 3027 P.]****BETWEEN****CLAIRE LALOR****PLAINTIFF****AND****NATIONAL MATERNITY HOSPITAL****DEFENDANT****JUDGMENT of Mr. Justice Cross delivered on the 3rd day of July, 2015**

1. The plaintiff in this case, which is an assessment of damages, was born on 2nd November, 1985, is a qualified hairdresser and is the younger of two children. After her Junior Certificate, in which she did well, she left school to pursue her favourite career, as a hairdresser. The plaintiff described her psychological health as being that of a bit of a "worrier". She suffered some depression which resulted in counselling when her elder brother, to whom she is and still is very attached, left home to live with his girlfriend when she was 16. She also suffered psychological stress due to alleged bullying at the workplace which also resulted in counselling. In 2010, after an unwanted pregnancy, she went to England where a Termination was performed at the Marie Stokes Clinic. After this Termination, she was offered one counselling session by the Clinic which was clearly inadequate as she required further counselling when she returned to Ireland.

2. At around the time of the Termination, she met her future partner, David, who was very supportive of her, in her grief, and they later commenced a relationship. In 2012, she became pregnant. This, like I suppose well over 90% of all pregnancies in the history of mankind was an "unplanned" event but I accept that the plaintiff was after an initial surprise delighted with the news. Her partner was also delighted and very supportive. The plaintiff had, on previous occasions, been prescribed with "emergency contraceptives" but on this occasion she was happy for the pregnancy to proceed. She attended some breastfeeding classes and initially intended to breastfeed the child.

3. During the pregnancy, she attended the National Maternity Hospital after a fainting episode in a car and her iron was low and she admitted to some feeling of a low mood or depression at the time and was prescribed medication.

4. The plaintiff was somewhat overdue and was a bit stressed by this and she claimed that she attended the National Maternity Hospital with a view to be induced but this did not occur. Eventually, she attended on 24th December, 2012, and she was induced and her labour proceeded relatively smoothly but then after an epidural, she was pushing for some three hours without any progress and became exhausted and developed vomiting when oxytocin was given to her and she required an assisted delivery with both forceps and suction because of the potentially dangerous situation that the baby's shoulder was stuck. The birth, itself, was accordingly traumatic and the baby, Alana, appeared to be quiet when she was born and was taken into the resuscitation area and was only put on the plaintiff's chest for a short time. The same day, the baby was brought down to the ward to see the plaintiff and she was very emotional but could not hold the baby as she could not sit up in bed due to presumably the circumstances of the birth and undoubtedly suffered a very difficult birth. She could not feed the baby and indeed, and she herself had to be "spoon fed" by her mother. She also felt helpless.

5. I accept the proposition that after the birth, the plaintiff who was a somewhat vulnerable person psychologically did suffer from what can be described as Post Natal Depression.

6. Thankfully the baby, after initial concerns, proved to be entirely healthy and is thriving. The plaintiff, however, felt helpless as being unable to deal with the baby when she returned home with her partner and her mother stayed with her.

7. The plaintiff makes no complaint in respect of the circumstances of her pregnancy or the birth of the baby as described above.

8. The plaintiff was discharged on 27th December, but was in considerable pain. She had difficulty in sitting and severe difficulty in bowel movement and was very concerned about her health, and in particular about a smell that was developing in her lower regions. Approximately one week after she was discharged, the public health nurse visited the plaintiff who still could not properly hold or "bond" with her daughter. In particular, the plaintiff complained about a bad smell from her lower region which was noticed by the nurse who advised her to return to the hospital which she did on 2nd January, 2013. The hospital did not perform a full examination on her but a doctor prescribed antibiotics, wrongly believing that she was suffering endometritis. The plaintiff returned home but she developed significant and serious sweating, pelvic pain and sleep disturbances. She was unable to hold or feed her daughter. By this time, any "Post Natal" type depression due to the circumstances of the birth would ordinarily, I find without the further difficulties, the subject matter of these proceedings, have been over. However, the plaintiff's psychological symptoms persisted and she also continued to have significant physical pain. I find that the plaintiff's symptoms are as described since the start of 2013 are all to be related to her complaints in this case.

9. On a subsequent visit, approximately a week later, the public health nurse then advised her to return to the hospital due to the ongoing pain and symptoms as well as the significant smell. She was examined in hospital on 9th January, 2013, but not internally by a doctor and given further antibiotics. She was extremely physically unwell for the following week and had a pain and distress which she described to the court in vivid but no way exaggerated form. She was constantly changing her undergarments up to ten times each day, was frequently bathing and showering and was greatly distressed.

10. On a third occasion she returned to the hospital, on 16th January, 2013 and by this stage the smell was "disgusting", "horrible" and she was examined by a lady doctor who diagnosed that a swab had been left in her vagina which was removed by the doctor and like a "mini-football". She was entirely appropriately extremely distressed by this incident and I entirely accept her evidence about this and all other matters as being a truthful witness. She was, on some occasions, vague about her recollection but everything she

said was, I believe, an honest attempt to recollect the past as she believed it to be. I find that the trauma both physical and psychological that the plaintiff underwent because of the presence of the swab was extreme.

11. Some two days after the swab was removed, she was extremely ill and returned for the fourth time to the hospital where she was advised by a doctor that she was suffering from "Post Natal Depression". The plaintiff was very angry at this as whatever about her psychological symptoms, she clearly also had severe physical pain and distress from what occurred to her. She was admitted, however, to a single room but was angry at the thought that she was being told that this was "in my head". She was, at this stage, advised of the difficulty of the birth of the baby and the fact that the baby's shoulder had been stuck and appears to have misunderstood a question about how the baby's shoulder was, with a suggestion that it may have been dislocated which is not apparently the case.

12. The plaintiff went home from the hospital and continued to suffer from swelling and chills and fever and diarrhoea. She had softness of breath. The diarrhoea was such that it was black in colour and essentially the plaintiff was unable to hold any food down. She was taken to Beaumont Hospital by her father on 31st January, 2013. She had low blood pressure and a high white cell count. She was diagnosed with C.difficile which is a significant infection, as a result of the unnecessary antibiotic treatment that the plaintiff was placed on before the swab was diagnosed. In Beaumont, there was a query in relation to a possible pulmonary embolus (lung clot) in view of the shortness of breath. Attempts were made to perform an angiogram but the access was not possible as the needle did not find veins and the plaintiff who has an intolerance for needles eventually wanted and insisted the attempt for the angiogram to be halted. The plaintiff was, accordingly, placed on Warfin for six months as an anticoagulation. She was advised not to become pregnant in this period. I cannot fault the plaintiff for eventually declining the needle to perform the angiogram as I have seen the photographs of extensive bruising on the plaintiff's arms caused by failed attempts to locate a vein.

13. Ultimately, no pulmonary embolus was present but the plaintiff did undergo the course of Warfin and that combined with her psychiatric distress meant that intimacy with her partner was not resumed for some time and this clearly was a source of distress, especially for her partner. The plaintiff has now separated from her partner but it is not part of her case that this separation is as a result of the events described. The plaintiff was acutely embarrassed and still is in relation to the diagnosis of C.difficile and in April 2015, she attended in the Blackrock Clinic for a breast enlargement procedure, she was distressed by the fact that she was put to the end of the queue and the medical staff all wore protective gowning etc. for the procedure.

14. As a result of the diagnosis of C.difficile, the plaintiff became almost obsessive about cleanliness and was extremely fearful that the baby would be infected. I accept she also suffered a significant blow to her self esteem.

15. However, I accept that while the plaintiff herself is very concerned about the prospect or possibility of further C.difficile infections that the evidence from Dr. Rothburn is that the plaintiff now is under no greater risk of further C.difficile infection than any other member of the public. I do also accept that given that the plaintiff's past experience, she is clearly more worried and concerned than an ordinary individual who had no such infection would be and she is acutely aware of what any infection might do to her.

16. The defendants accept liability for the insertion and swab in the plaintiff and their failure on two examinations to detect that swab. The defendants also accept their liability for the C.difficile infection and its consequences.

17. I have been furnished with the reports of Dr. Paul Lannon, the plaintiff's GP and I have heard the evidence from Dr. Michael Rothburn and Dr. Paul McQuade on behalf of the plaintiff as well as the evidence of Dr. Sheehan on behalf of the defendant.

18. The plaintiff is clearly entitled to be compensated in respect of the very significant physical injuries that she suffered as a result of the defendant's negligence, the pain and the smell and the diarrhoea she experienced.

19. It is, however, the psychological and psychiatric sequelae that presents the only real dispute. I accept the evidence both of Dr. McQuade and of Dr. Sheehan that the plaintiff was, prior to the birth of the baby a "vulnerable" person to psychiatric problems. She had suffered the distress of separation when her beloved elder brother left home, she suffered from a bullying incident at work, she suffered from the trauma and separation of a Termination of pregnancy after which one counselling session was apparently offered by the Clinic in England and the plaintiff had to have subsequent counselling in this country. She also had some, although mild, depressive episode during the pregnancy itself.

20. In addition, I fully accept the circumstances of the baby's birth were traumatic and stressful. I accept what Dr. Sheehan has said that as a result of all these factors, the plaintiff would have a high risk of Post Natal Depression. I also accept, however, the evidence of Dr. McQuade that whatever about what occurred in the hospital itself and the distress that the plaintiff was under at that time, that the subsequent psychological and psychiatric difficulties of the plaintiff are not to be described as Post Natal Depression. Dr. Sheehan does use that term but was careful in his evidence to qualify "Post Natal Depression" as being, in effect, any depression after a birth. If what the plaintiff suffered from was "merely" "Post Natal Depression", I believe that the plaintiff would have been prescribed Prozac almost immediately after the birth and that this treatment would have lasted as Dr. Sheehan said classically for about six months. In fact, the plaintiff was not prescribed Prozac until March 2013, some three months after the birth and I believe this supports the contention of Dr. McQuade that what the plaintiff continues to suffer from is not any "Post Natal" type depression but is a depression or adjustment disorder caused by the events, the subject matter of these proceedings.

21. I believe that were it not for the admitted negligence of the defendants, the plaintiff would have recovered from any post birth upset in a short time and would not have had the psychological trauma that she did. I also accept, however, that the plaintiff's presentation in the period after the defendant's negligence is, "multi-factorial" in its origin. The defendant's negligence was, in my view, the "trigger" to the plaintiff's complaints and in that sense, the defendants, must, of course, take the plaintiff, as they find her, but her continuing symptoms have some origin in the plaintiff's underlying disposition.

22. I note that Dr. Sheehan would tend to discount the "historic" factors e.g. separation from brother, bullying, Termination etc. but would emphasise the circumstances of the birth and pregnancy as being causative of the plaintiff's depression.

23. Dr. Sheehan diagnosed the plaintiff as suffering from a depression which by the time of his examination was no longer operative.

24. Dr. McQuade, however, diagnosed, a "chronic adjustment disorder", which continues, with ongoing anxiety fear and distress. This distress rendered the plaintiff vulnerable and more worrisome than would otherwise be the case. The plaintiff does not blame her subsequent separation from her partner, David, upon the negligence of the defendant.

25. Dr. McQuade who saw the plaintiff on a number of sessions each lasting a number of hours before his first report, advised the plaintiff to undergo counselling but the plaintiff has not yet done so but Dr. McQuade still believes would benefit from this.

26. I do not believe that the plaintiff is to be "faulted" for not availing of counselling so far as I do not believe her psychological state was yet ready for this.

27. The plaintiff has indicated that she may attend counselling in the future and Dr. Sheehan on behalf of the defendant does not believe that she requires any. I think that the plaintiff would be advised to listen to Dr. McQuade who clearly developed a good professional relationship with her and should any further complications or trauma occur to avail of counselling. Clearly, I believe that by now the plaintiff would be in a fit state to do so.

28. I accept that the plaintiff is still suffering from the effects of the admitted negligence of the defendant. In this regard, I prefer Dr. McQuade's evidence to that of Dr. Sheehan. I accept, however, that what Dr. McQuade has said and this was also the view of Dr. Sheehan that the outlook for the plaintiff is good. I believe that once the litigation that is underway has concluded that the plaintiff is likely to have a significant stress removed from her life. I fully accept that one of the side effects of this litigation is that the plaintiff has to relive the very stressing events that occurred in 2013.

29. The plaintiff developed a fear and distrust of the medical profession which was not unreasonable from a subjective point of view. This fear, I accept, as Dr. Sheehan said is easing in that whatever occurred at the hands of the defendants, the plaintiff had no complaints in relation to her treatment in Beaumont and when she went to the Blackrock Clinic for the breast enlarging process she was and is still full of praise for their efforts. The plaintiff does claim on an actuarial basis that she, as a result of this fear will be obliged to take out a VHI insurance on the maximum rate of €3,450 per annum which is a total of €2,652.49 over and above a standard VHI policy.

30. I accept that for the moment it is not unreasonable for the plaintiff to want to be treated in a private clinic and that this fear results from the injuries sustained as a result of the admitted negligence of the defendant. I do not, however, accept that the plaintiff would be entitled to this figure for life on an actuarial basis as I believe that the plaintiff is going to make a good recovery and I will allow the sum of €10,000 in respect of this heading to account for approximately four years at the extra premiums.

31. In addition, the plaintiff has claimed the sum of €3,704.87 from loss of earnings and other special damages at €730 totalling the sum of €4,434.87 to which should be added the sum of €10,000 for the VHI expenses totalling as special damages of €14,434.87. The plaintiff also claims as a further item of special damages that in the event the plaintiff should suffer any further C.difficile infection that any medical insurance may not cover hospitalisation given that this was a condition that she suffered from within five years of her taking out private health insurance. I must reject this as a heading of special damages as I accept the evidence that the plaintiff has no more likelihood than other citizen of C.difficile infection and C.difficile previously suffered is not a factor and therefore, the insurance company would not be justified in withholding payment.

32. The plaintiff's physical injuries have been documented. Her psychiatric injuries are very clear. She suffered what has been described by Dr. Sheehan as a depression on the lower end of the spectrum but I have seen the plaintiff and I believe that she suffered in a major way and is still suffering significantly from the adjustment disorder as diagnosed by Dr. McQuade and that this has had a significant effect on her life, to date. I do believe, however, that with counselling she is going to improve. I note that she has the support of her parents and of her brother and also I believe of her former partner and accordingly, I must conclude that her prognosis is good. Psychiatric and psychological injuries are probably always under-regarded by courts but doing the best I can, I will assess general damages for her physical and psychiatric injuries to date in the sum of €100,000 and €25,000 into the future totalling the sum of €125,000 general damages to which I will add the special damages of €14,434.87 bringing a total of €139,434.87, which I believe is fair and reasonable in all the circumstances.