Neutral Citation Number: [2011] IEHC 435

THE HIGH COURT

2009 698 P

BETWEEN

PAUL HEGARTY

PLAINTIFF

AND

MERCY UNIVERSITY HOSPITAL CORK

DEFENDANT

JUDGMENT of Ms. Justice Irvine delivered on 25th day of November, 2011

Background Facts

1. The plaintiff in these proceedings is now 34 years of age and he resides with his partner in Glanmire, County Cork. The couple have one child who is 11 years of age.

2. The within proceedings concern the care that was afforded to the plaintiff between 6th February and 5th April, 2007, whilst under the care of the medical and nursing staff at the defendant hospital in respect of a very serious health condition, namely, Ulcerative Colitis, a type of inflammatory bowel disease.

3. The plaintiff developed Ulcerative Colitis in 2001. Between 2001 and 2007, he was treated for ulceration of his large bowel by his General Practitioner, Dr. Grufferty, and Mr. Buckley, consultant gastroenterologist. He was also hospitalised on a number of occasions. Matters came to a head on 6th February, 2007, when the plaintiff's condition deteriorated to the extent that he required emergency admission to the defendant hospital where he was admitted under the care of Mr. Buckley.

4. At the time the plaintiff was admitted to hospital, it was hoped that conservative management might bring his condition under control. Regrettably, his health deteriorated to the point that on 12th February, 2007, he had no choice but to submit to an emergency subtotal colectomy as he had developed what is described as toxic megacolon. His bowel had become enormously dilated and this brought with it the risk of perforation and potentially fatal Peritonitis.

5. The emergency surgery was carried out by Mr. Maylone, locum consultant surgeon, and this involved the removal of the major part of the plaintiff's large bowel and the closing off of the rectal stump which was left in situ. An ileostomy was then fashioned from the small bowel and the plaintiff was left with a stoma in the abdomen supporting a colostomy bag.

6. The plaintiff, who initially appeared to be progressing well following surgery on 12th February, 2007, developed an oozing wound and became quite ill by 18th February, 2007. On 20th February, the plaintiff was taken back to theatre for an exploration under general anaesthesia and, on the defendant's account of events, for such other surgery as might then be deemed necessary. That surgery was carried out by Mr. McGreal, consultant general and vascular surgeon. In the course of that operation, the plaintiff was found to have developed one of the rare but well-established complications of this type of surgery, namely, a leak from the rectal stump which caused a pelvic abscess and this infection in turn had caused the plaintiff's wound to break down. It seems that the suturing to the rectal stump broke down due to the fact that the plaintiff had been taking steroids on an ongoing basis and the use of steroids in this manner adversely affects the body's ability to heal. The surgery was extensive and involved the repair of the rectal stump and the repositioning of the ileostomy such that the stoma was placed higher in the abdomen than had originally been the case. Further, a drain was brought out through the original stoma site and a drainage bag attached. Accordingly, when the plaintiff woke up, to him it seemed as if he had two stomas and two colostomy bags. In the course of the surgery, what is described as a Wittmann Patch was inserted. This is a Velcro-like device where each side of the Velcro is sewn to the skin. The device is used where multiple further operations are planned and it serves as a temporary method of opening and closing the abdomen without suturing. Because of the infection in the plaintiff's abdomen, it was clear that the abdomen would have to be opened on many occasions to allow it to be washed out as part of the process of eradicating infection. Such a procedure was carried out on approximately twelve further occasions.

7. As a result of what was described as the "rectal blow out" and pelvic abscess, the plaintiff was prescribed a wide range of antibiotics to deal with coliforms and enterococci identified in the course of microbiological examination. One such antibiotic was Linezolid, a drug considered appropriate for the control of the plaintiff's infection. This was introduced on 26th February, 2007.

8. The plaintiff made steady progress following the second surgical procedure of 20th February, 2007. However, a pelvic swab taken on 27th February, 2007, was reported positive for MRSA on 1st March, 2007. As a result, the plaintiff was moved to an isolation unit where family visiting him had to wear gowns and gloves. As he was already taking Linezolid, to which MRSA is considered to be sensitive, his medication did not require any alteration by reason of this finding.

9. There is a dispute between the parties as to the information furnished to the plaintiff regarding the results of ongoing tests carried out to monitor his MRSA status. However, it is accepted by the plaintiff that some seven to ten days prior to his discharge from hospital,l he was aware that he had had at least one negative MRSA test result and that he had been earlier advised that he required three negative results before it could be definitively stated that he did not have MRSA. It is also agreed that as of 5th April, 2007, the date when plaintiff was discharged from hospital, he had had three negative MRSA test results and that this fact had been communicated to him with a reassurance that he was no longer at any risk in respect of MRSA.

The Liability Issues

10. Towards the end of the evidence in the proceedings, counsel on behalf of the plaintiff, Dr. John White, S.C., told the Court that there were really only two issues which the court was required to consider in respect of liability and these he stated were as follows:-

(1) whether or not the defendant, its servants or agents, were negligent in failing to properly appraise the plaintiff of the findings made in the course of the second surgical procedure, namely a leakage of the rectal stump which caused a pelvic abscess and wound infection; and/or

(2) whether the defendant, its servants or agents, were negligent in failing to adequately advise the plaintiff of the significance, in a clinical setting, of the MRSA positive finding from the pelvic swab reported on the 1st March, 2007, having regard to the fact that:-

(i) only one such positive test result was available; and

(ii) the plaintiff at the relevant time had been taking linezolid since the 26th February, 2007, a drug known to be capable, in certain cases, of bringing MRSA infection under control in as a short duration as two days.

Allied to this issue was the further question as to whether or not the defendant, post-1st March, 2007, misled the plaintiff, deliberately or otherwise, into falsely believing that he continued to have MRSA infection until the date of his discharge from hospital on 5th April, 2007.

11. The plaintiff maintains that the negligence on the part of the defendant in failing to fully outline to the plaintiff the complications of his initial surgery, which were identified in the course of the second surgical procedure, caused the plaintiff to attribute all of his medical problems to MRSA infection following a positive report of 1st March, 2007, rather than to the real cause, namely a leak of the rectal stump.

12. Before moving on to consider my findings in relation to the aforementioned issues, I believe that it is important, in the context of the facts which are in dispute in this case, to refer to a number of peripheral matters which I believe to be of significance. The first of these is that prior to the issue of any proceedings advices were sought from Dr. Ian Murray-Lyon, consultant gastroenterologist, who, in an initial report prepared in December 2008, advised the plaintiff's solicitors that he could find no fault in the manner in which the plaintiff had been treated in the defendant hospital. Following a consultation between Dr. Murray-Lyon and the plaintiff's solicitor and counsel in London, proceedings were later instituted on a basis substantially different than those actually advanced in the course of the hearing. In particular, it is to be noted that the pleadings were premised upon the existence of some type of conspiracy on the part of the defendant to hide from the plaintiff the true nature of the complications which were discovered in the course of the second surgical procedure on the 20th February, 2007. A number of the relevant pleas can be summarised as follows:-

(i) that the defendants had concealed from the plaintiff the true nature of the complication which arose following his initial surgery, namely a leakage of the rectal stump causing pelvic abscess and wound infection;

(ii) that the defendant advised and represented to the plaintiff and his family that the complication/complications which arose from his initial surgery and which were identified in the course of the second surgical procedure and his consequential symptoms were caused by MRSA infection; and

(iii) that the defendant was negligent in failing to advise the plaintiff that he had never contracted MRSA infection.

13. It is of further significance that Dr. Murray-Lyon in that section of his second report dated 21st July, 2001, that refers to his terms of reference, stated that his instructions were to the effect that the patient had been led to believe that MRSA had been the cause of his protracted illness.

Findings of Fact

14. The liability issues in this case cannot be decided without making a number of significant findings of fact in relation to issues where there was a substantial dispute between the parties. Having had the benefit of hearing and seeing each of the witnesses give their evidence and having had sight of the evidence contained in the plaintiff's hospital records, I have had little difficulty in resolving the areas of conflict between the parties. In coming to my conclusions, I have taken into account all of the matters referred to by the parties in their written submissions and have had particular regard to the transcript of the evidence relevant to such submissions.

Was the plaintiff advised fully as to the complications of the first surgical procedure?

15. I wholly reject the plaintiff's assertion that he was never advised of the true nature of the complication which arose from his initial surgery and I am satisfied as a matter of fact that he was fully advised and was given all of the relevant factual and clinical information in relation to same. Further, whilst the allegation was not pursued by the plaintiff, I think it is important, having regard to the seriousness of the allegation raised in the pleadings, to state that I am absolutely satisfied that there was no effort on the part of the defendant to conceal the complications which arose following the plaintiff's initial surgery. In coming to this conclusion, I have had, *inter alia*, particular regard to the following matters:-

(i) The complication that arose following the initial surgery was a well recognised but rare complication of subtotal colectomy surgery for a patient whose healing powers were substantially reduced by reason of years of steroid use. Consequently, there would have been no reason to withhold the true nature of that complication from the patient when it became apparent in the course of the laparotomy of 20th February, 2007.

(ii) I accept the evidence of Mr. McGreal, who carried out the laparotomy in the course of which the initial complication was identified, that he spoke to the plaintiff twice on the each of the first two days following the surgery he performed on 20th February, 2007. I found Mr. McGreal to be a careful and reliable witness and I accept his evidence that in the course of the aforementioned visits, he fully explained to the plaintiff precisely what he found in the course of the surgery, namely that the rectal stump had broken down and that steroids had played their part in the non-healing of the suturing of the stump, that he had developed a pelvic abscess as a result and he would need several subsequent procedures to wash out the abdomen to deal with infection. I further accept Mr. McGreal's evidence that the plaintiff seemed to understand the information which he repeatedly delivered to him in the days following the operation.

(iii) I accept the evidence of Mr. McGreal and the evidence of Mr. Andrews that the principle purpose of seeing a patient post-operatively is to discuss with them the findings made in the course of the surgery. Having accepted Mr. McGreal's evidence that he had four meetings with the plaintiff in the two days following the surgery of 20th February, 2007, I cannot accept that in the course of these meetings he did not fully explain what he found during the laparotomy and the

consequences for the plaintiff in terms of future treatment and recovery.

(iv) In rejecting the plaintiff's evidence that he received no proper explanation as to the complications found in the course of the second surgical procedure, I have also had regard to the nursing notes. Those notes make reference to a message being left with the operating theatre at 23.50 on the night that Mr. McGreal had operated on the plaintiff asking him to contact ICU to speak with the plaintiff's family. The note records that Mr. McGreal agreed to speak with family members the following morning and further record Mr. McGreal attending with his team twice the following day. To my mind it is inconceivable that Mr. McGreal would not have explained to the plaintiff what had occurred given that he had been specifically asked to attend for such purpose.

(v) Given that I am satisfied that Mr. McGreal spoke to the plaintiff regarding the complication which arose subsequent to his initial surgery, I believe that his operation note and subsequent clinical note support his evidence that he fully explained to the plaintiff precisely what he had found in the course of that surgery. Each of these notes refers to the dehiscence of the wound and the opening of the rectal stump, the existence of an abscess which required drainage and the need for ongoing inspection of the abdomen. I have no reason to believe that in explaining to the patient the nature of the complication he would have departed from what is described in these notes.

(vi) I reject the plaintiff's evidence that he himself did not seek an explanation from Mr. McGreal as to the nature of the complication which had arisen following his original surgery, particularly in light of the fact that when he woke up from the second operation he thought that he had two stomas and two colostomy bags as opposed to the one stoma and one colostomy bag which he had prior to that second operation. Further, following Mr. McGreal's surgery, the plaintiff was brought to theatre every second day under general anaesthetic so that his abdomen could be washed out. Having regard to the intrusive nature of these ongoing procedures and the requirement that the defendant would obtain the patient's informed consent thereto, I cannot accept the plaintiff's evidence that he did not ask and was not informed of the nature of the complication which required such ongoing intervention.

(vii) I accept the evidence of Mr. Andrews that he explained to the plaintiff that he had had a blow out of the rectal stump and that this had caused pelvic infection when he attended with him for the purposes of obtaining his consent to at least one of the wash outs of his abdomen. I accept his evidence that not only does he remember explaining the complication to the plaintiff on one such occasion but I also accept his evidence that it was his standard practice in such circumstances to explain the reason for the surgery that was about to be performed and to satisfy himself that the patient understood what was to occur so that he could give his informed consent to same. Further, the formal consent form itself refers to the fact that the surgeon explained to the patient the reason for the proposed surgical intervention.

(viii) The discharge note by Dr. Salwa to Dr. Grufferty dated 8th June, 2007, fully describes the complication of the subtotal colectomy surgery with a clear reference to a blow-out of the rectal stump and the subsequent development by the plaintiff of a large pelvic abscess requiring laparotomy. Further, the letter of Mr. Maylone to Dr. Grufferty dated 5th July, 2007, sets out clearly for the plaintiff's General Practitioner the precise complication that occurred in the course of the initial surgery. These letters demonstrate the plaintiff's medical team had every intention that all of those concerned with the plaintiff's care would fully appreciate the complications which had occurred following upon the subtotal colectomy. These letters robustly undermine the plaintiff's contention that there was a conspiracy to hide the complications that arose from the initial surgery and/or to ascribe those complications to MRSA infection.

(ix) The plaintiff's own evidence as to what he was told following the second surgical procedure was inconsistent. He initially maintained that nobody had explained to him why he had had the laparotomy on 20th February, 2007, or any of the subsequent debridements. He later accepted that Mr. McGreal told him that he had had to re-site the stoma and that he would need further wash outs and debridements. On that account of events, the only matter that Mr. McGreal did not advise him of was of the fact that the rectal stump had broken down. Later in the course of his evidence, when denying that Mr. Maylone had explained to him that there had been a leak from the rectal stump, he said he believed that Mr. Maylone had attempted to conceal what had actually happened in the course of surgery or that maybe it was just that he "couldn't be bothered" telling him about what had happened. He felt that there could have been a conspiracy between the surgeons and nurses to keep information back from him. This conspiracy theory, which was not pursued on the plaintiff's behalf, is one which is entirely undermined by the medical notes, the operation note, the nursing notes and the two discharge letters referred to at (viii) above.

(x) Dr. Murray-Lyon, who gave evidence on behalf of the plaintiff, produced two reports for the plaintiff's solicitors. There is nothing in his first report of 5th September, 2008, which refers to his having received instructions that the patient had not been informed as to the nature of the complications which arose from the surgical procedure of 12th February, 2007. Neither did he advise, from his consideration of all of the relevant medical records, that he had any reason to believe that the patient had not been kept appraised of the said complications.

(xi) None of the complications encountered by the plaintiff between 12th February, 2007, and 1st March, 2007, could during that period have been ascribed to MRSA as it was only on 1st March, 2007, that the first positive microbiology report was received. It is inconceivable, therefore, that having regard to the significance of the complication which arose following the first operation and which resulted in a major laparotomy and three further washouts under general anaesthesia prior to 1st March, 2007, that the patient was not advised as to the nature of the medical complication that had required such intervention.

16. For the aforementioned reasons, I am satisfied as a matter of fact that there was no lacunae in the medical or clinical information furnished to the plaintiff as to the complications that had arisen subsequent to his subtotal colectomy that could have caused him subsequently to attribute those complications to MRSA. I am also satisfied that the complications which had arisen and which were identified in the course of the laparotomy were explained to the plaintiff in terms which he ought to have been readily able to understand.

What was the plaintiff told about MRSA?

17. Before the Court can reach any conclusion on the plaintiff's allegations of negligence surrounding the alleged failure on the part of the defendant to adequately advise him of the clinical significance of the MRSA positive finding from the pelvic swab reported on 1st March, 2007, it is necessary to resolve the evidential conflict between the parties as to what the plaintiff was actually told about MRSA in the context of his care at the defendant's hospital.

18. The plaintiff stated that on 1st March, 2007, a member of the nursing staff told him he had MRSA and that he was not to get too

worried. She advised him that he would be put on antibiotics and he would be placed in an isolation ward to protect others from infection. She told him that she had been asked to break the news to him by his medical team given that she had had MRSA herself the previous year and she had been able to return to work once she had had three clear test results.

19. The plaintiff said that after he was told he had MRSA he became very worried about his health and that after every abdominal washout he would ask the relevant nurse for the results of the microbiology tests carried out on swabs taken in the course of those procedures. He said that on each occasion he was advised that he still had the infection. The plaintiff said that his family knew he was distressed and that consequently they had asked to talk to somebody from infection control. After this request, Mr. Maylone came to see him in the presence of his sister and partner. His sister questioned Mr. Maylone and he appeared to be angry at being asked questions. He said that Mr. Maylone told them that MRSA had been found in the fluid of his wound and that he was trying to save his life. He asserted that there was no further conversation regarding his clinical condition or the role of MRSA in relation to his ongoing treatment. He also maintained that Mr. Maylone had no other conversation with him in the course of which he had explained the complications arising from his initial surgery. As a result of the conversation with Mr. Maylone, he stated that he assumed that the MRSA infection would kill him, that it was not responding to treatment and that it had been the cause of all of his complications from the outset. He said that he knew from the news media that MRSA was incurable.

20. Having initially maintained that he had been told by the nursing staff that all of his test results were positive until the date of his discharge, the plaintiff later said that about seven to ten days beforehand he was told that one of the MRSA screens was negative, but that he would have to wait for three consecutive negative test results to be given the all clear. On 5th April, 2007, the day of his discharge, the plaintiff told the Court that he was advised that three clear test results had been obtained and that he was therefore clear of MRSA infection.

21. The plaintiff maintained that, notwithstanding the aforementioned advice, he continued to believe that he was infected with MRSA although somewhat more reassured by the results of negative MRSA testing carried out following a further hospital admission in respect of meningitis some weeks later. However, his concerns were only fully alleviated when he came to understand, as a result of a report by Dr. Murray-Lyon in September 2008, that he had never had MRSA in the first place and that the test result from the swab of 27th February, 2007, was in fact a false positive.

22. The plaintiff's evidence regarding the meeting with Mr. Maylone was supported by the evidence of his sister, Ms. Eileen Greenwood, and his partner, Ms. Jones. They said that they had had a very brief meeting with Mr. Maylone in the plaintiff's room on or about 7th March, 2007, in the course of which he indicated that MRSA had been found in the fluid of the plaintiff's wound, that he was doing everything he could to deal with that infection and that he was trying to save the plaintiff's life.

23. Ms. Jones accepted that she had heard nothing about MRSA until after 1st March, 2007, and that no nurse or doctor had ever advised her that the plaintiff's complications up to that point in time had had anything to do with MRSA. She accepted that while she was concerned about MRSA, she had not asked Mr. Maylone whether or not MRSA was responsible for the second surgical procedure or any of the subsequent washouts.

24. Ms. Jones stated that after each washout the plaintiff had asked the nursing staff about the microbiology results from swabs taken and that on each occasion the nursing staff had reported the relevant microbiology tests as being positive for MRSA infection. She said that the plaintiff had never been told of the negative microbiology test results reported on 5th or 20th March, 2007. The first time that the plaintiff was told about a negative test result was about seven to ten days before he went home.

25. The defendant's evidence differed from that of the plaintiff in a number of material respects. Further, in the course of cross-examination, the plaintiff was forced to accept that he had in fact been told of each and every clear swab result as it had become available, he having earlier maintained that the nursing staff had lied to him regarding the results and that he had not been advised of any clear test results until seven to ten days prior to discharge.

26. Mr. Maylone stated that he did not recollect having a conversation with the plaintiff of the type which had been described by him, his partner and sister. He told the court that he could not have stated that MRSA had been found in the fluid in the wound as he knew the MRSA positive test result had come from a swab taken from the pelvis. Further, he could not have discussed MRSA in such a way that could have lead the plaintiff or his family to believe that the complications following from his initial surgery had been caused by MRSA, or that MRSA placed his life at risk as this simply was not true. Mr. Maylone gave evidence that he was called to speak to the plaintiff's family some days after the MRSA infection had been identified. He remembered having a lengthy discussion of approximately 40 minutes duration with Ms. J. and Ms. G. outside the plaintiff's room. He stated that in the course of that meeting, he fully explained to them the complications flowing from the plaintiff's original surgery, the reason for the continued washouts of the abdomen and the significance of the positive MRSA finding in the context of his ongoing management and in particular his temperature readings.

27. As to the dispute between the parties as to whether or not a meeting took place between Mr. Maylone, Ms. G. and Ms. J. outside the plaintiff's isolation room of a significant duration, I accept Mr. Maylone's evidence that he had such a discussion in the week or so subsequent to the plaintiff's diagnosis with MRSA. I have reached this conclusion having paid particular regard to the plaintiff's written submissions in relation to this issue and also having taken into account the fact that initially neither Ms. Greenwood nor Ms. Jones had been cross-examined on the basis that Mr. Maylone would give evidence regarding such a meeting and that they had to be recalled for such purpose. In considering the plaintiff's submissions on this issue, I have taken into account the statement by counsel for the defendant that, from his instructions, he should have put this conversation to the relevant witnesses but had omitted to do so and from which statement I believe I should accept that he had instructions regarding this conversation which unfortunately he had overlooked at the time of conducting his cross-examination.

28. I also accept Mr. Maylone's evidence that his dealings with the plaintiff and his family were not confined to the skeletal meeting in the plaintiff's room as recounted by the plaintiff, his sister and partner. I found Mr. Maylone to be an impressive witness and on the balance of probabilities I find his evidence as to the nature and duration of the meeting which he had with the plaintiff and his family sometime shortly after his diagnosis with MRSA to be much more credible than the evidence of the plaintiff and his family whose evidence I believe may well have been coloured by the present litigation and also their ongoing personal fears regarding the significance of MRSA.

29. Accordingly, I am satisfied to accept Mr. Maylone's evidence that he spent some time with the plaintiff's partner and sister in the course of which he explained to them the significance of his MRSA infection in the then relevant clinical setting, which included a discussion regarding the patient's recovery from the complications of his initial surgery and his ongoing concerns regarding the patient's continued spiking temperature.

30. I also accept Mr. Maylone's evidence that he did not tell the plaintiff or his family that MRSA had been found in the fluid of his wound as this would have made no sense given that the positive swab had been reported from a specimen obtained in the pelvis. Neither am I satisfied that at any stage he said anything to the plaintiff or his family from which it might reasonably have been inferred that his life was in danger as a result of MRSA infection. Indeed, I am satisfied as a matter of fact that at no stage did any of the nursing or medical staff give any information to the plaintiff or his family from which they might reasonably have considered that MRSA was of any major clinical significance to either his condition, his prospects for recovery or that MRSA had been responsible for any of the complications encountered following his subtotal colectomy.

31. I believe that my aforementioned conclusions are supported to a substantial extent by the limited mention or emphasis on MRSA in the plaintiff's medical records and nursing chart. These notes undermine the likelihood of Mr. Maylone having communicated with the plaintiff or his family in a manner that might forseeably have caused the plaintiff to believe that MRSA had been the cause of his initial complications or was such as to place his life or health at any significant risk. Likewise, the two discharge letters to which I have referred earlier at para. 15(viii) of this judgment, one of which was written by Mr. Maylone and which makes no mention whatsoever of MRSA, undermines the probability of any such communication having taken place between Mr. Maylone, the plaintiff or his family.

32. The report of Dr. Murray-Lyon dated 5th September, 2008, I believe lends further support to the aforementioned findings. That report was prepared following a consideration of all of the plaintiff' medical records and with the benefit of a statement of facts prepared by the plaintiff's solicitor. That extremely detailed report makes no mention of the plaintiff being fearful for his life as a result of MRSA infection. In fact, the report is remarkably silent on the issue of MRSA. It merely states that MRSA was isolated on one occasion thus, in the author's opinion, rendering it insignificant in the context of the plaintiff's septic complications.

33. Having regard to the plaintiff's written submissions, I believe that I should also say that I heard no evidence that could satisfy me as a matter of fact that the defendant or any of its staff failed to respond directly and truthfully to any questions asked by the plaintiff regarding his health or the complications encountered. In fact, in the course of his own evidence the plaintiff denied asking any such questions before his diagnosis with MRSA and agreed that prior to 1st of March, 2007, he did not and could not have believed that MRSA had anything to do with the complications that had at that stage arisen and which were under active treatment. He also accepted that he was never advised at any stage of his hospitalisation that any of his complications were due to MRSA.

34. I am also satisfied that after 1st March, 2007, apart from the meeting with Mr. Maylone, the only direct questions that the plaintiff may have asked regarding his MRSA status were in relation to microbiology test results. In this respect, I am satisfied on the balance of probabilities that as each test result which was clear became available that he was told of that result. Indeed, the plaintiff himself accepted this to be so in the course of cross-examination. Regardless of this admission, it would in any event have been illogical to conclude that the nursing staff would have given the plaintiff false information in relation to the microbiology results of 5th and 20th March, 2007. Why would the nursing staff, who were so concerned about the plaintiff's ongoing anxiety that they asked for him to be psychiatrically reviewed on the 16th March, misreport as being positive negative test results which they would have known would have gone some distance to reducing his anxiety regarding his MRSA status?

35. Finally, in relation to findings of fact to be made in respect of MRSA, I am satisfied from the evidence of Prof. Frances Gould, Consultant Microbiologist, that the plaintiff in this case did in fact contract MRSA and that the microbiology report dated 1st March, 2007, relating to the pelvic swab of the 27th February, 2007, which describes the presence of "MRSA +++" establishes the true existence of infection. This was not a false positive reading.

36. To conclude, I am therefore satisfied, as a matter of fact, inter alia, that the plaintiff was advised on 1st March, 2007, that MRSA had been isolated on a pelvic swab, that antibiotics would be administered to take care of that infection and that he would be moved to an isolation ward to protect others. He was also reassured by the nurse who explained his infection to him. She told him not be too concerned about the infection as she herself had had it the previous year and was able to return work as soon as she had three negative test results and in this context advised him that he needed three negative test results before he could be considered to be clear. Thereafter, he was advised of the results of all of the microbiology reports as they became available, including those which were negative for MRSA, before finally being discharged on 5th April, 2007, with a full reassurance that MRSA had been eradicated following three negative microbiology results. I am further satisfied that in the aftermath of the plaintiff's diagnosis with MRSA that he was seen by Mr. Maylone and that he was fully appraised of the significance of MRSA in the clinical setting in which it presented and that Mr. Maylone explained to the plaintiff, as Mr. Andrews and Mr. McGreal had already done, that the complications which developed following his initial surgery had been caused by an abscess which developed consequent upon a rupture of the rectal stump which in turn had been caused by wound dehiscence. Finally, as a matter of fact, I am satisfied that neither the plaintiff nor his family were ever advised that any of his complications should be attributed to MRSA, a situation accepted by each of them whilst under cross-examination. I am also satisfied that the significance of the MRSA positive finding recorded on 1st March, 2007, was transmitted to the plaintiff in a manner which he ought to have been well capable of assimilating and understanding.

Causation

37. For the aforementioned reasons, if the plaintiff came to the conclusion that any of the complications arising from his original surgery were caused by MRSA or that MRSA was a significant contributing factor to the resolution of those complications, those concerns were not caused by any positive act or omission on the part of the defendant, its servants or agents. They did nothing which might reasonably have been expected to cause the plaintiff to believe that his symptoms of post-operative infection and disease were caused by MRSA infection. Neither as a matter of fact did the defendant, its servants or agents advise the plaintiff's family members that MRSA was responsible for the complications of his initial surgery, nor was of any real clinical significance to his potential recovery therefrom.

38. Even if Mr. Maylone had used the words which have been attributed to him by the plaintiff, these could not reasonably have been anticipated to lead the plaintiff to the belief that his surgery of 20th February, 2007, and the subsequent washouts were caused by MRSA.

The Plaintiff's Psychological Welfare

39. For the purposes of completeness, it is also necessary for me to make some findings of fact in relation to the true state of the plaintiff's mental health from the date he was first advised of his MRSA infection on 1st March, 2007. It is, however, relevant in this context to note that long before 1st March the plaintiff was experiencing significant levels of anxiety and stress due to his medical problems. Prior to his hospitalisation in February 2007, the plaintiff had experienced years of ill health and regular hospitalisation. He did not always feel that hospitalisation was in his best interest, and on a number of occasions he actually discharged himself against

medical advice. To compound matters, his subtotal colectomy was carried out on 12th February, 2007, in circumstances where his life was in danger. Even with an optimum outcome to that surgery, the plaintiff would undoubtedly have experienced a great deal of upset and anxiety given that it involved a colostomy.

40. Regrettably, the plaintiff did not get an optimum result from the subtotal colectomy surgery and he became dramatically unwell as a result of the complications earlier described requiring a major laparotomy in the course of which the stoma had to be re-sited. The sepsis that developed required ongoing abdominal washouts under general anaesthetic, every second day. Three of these had already been carried out at the time he was advised of the MRSA positive finding. It is little wonder that the plaintiff felt somewhat overwhelmed at that point in time as was later noted in the medical chart on 16th March, 2007, in the course of a psychiatric review. There it is stated that for a few hours, sometime in the early period of his isolation, he felt he was not going to live because of MRSA and that he was tired of all of the ongoing surgery. However, as of 16th March, 2007, the consultant psychiatrist who assessed the plaintiff found him to be pleasant and cooperative. He was stated to have normal mood with a good insight into his problems. No psychosis was found and no review considered necessary.

41. Having heard and considered the evidence, I am satisfied that it is reasonable to believe that the plaintiff was extremely upset and distressed for the greater part of his hospitalisation throughout the months of February, March and April 2007. He was distressed for a multitude of reasons, including his need for the initial surgery, the complications which arose therefrom, his subsequent MRSA infection with consequential isolation and his need for ongoing abdominal washouts. It is also reasonable to presume that whatever stress the plaintiff was experiencing as of 1st March, 2007, was heightened by the information conveyed to him regarding his MRSA infection, regardless of the efforts of the medical and nursing staff to reassure him. It is also reasonable to conclude that the worst of this upset was well over by 16th March, 2007, and that he was as well as could have been anticipated at the date of his discharge.

42. As to the level of the suffering contended for by the plaintiff, I do not accept his evidence as to the extent of his alleged anxiety and concern regarding MRSA after his discharge from hospital. His evidence in this regard was inconsistent. At one point, the plaintiff stated that he had concerns for a number of months after he was discharged from hospital notwithstanding negative MRSA testing on his discharge. At another time he stated that he continued to be fearful of MRSA until September 2008 when he was led to believe that he had never had MRSA in the first place. Regardless of these inconsistencies, I am satisfied that the plaintiff's actions following his discharge from hospital are inconsistent with his assertion that he continued to suffer from significant worries regarding MRSA infection. In particular, I have been influenced by the following matters:-

> (a) The plaintiff visited his general practitioner six times in June and ten times in July 2007 and did not raise any concerns with him regarding MRSA.
>
> (b) The plaintiff was re-admitted to Cork University Hospital with meningitis on 15th April, 2007, where he had repeat testing for MRSA and of which he was fully aware. It is difficult to understand how, in the context of these additional test results which were negative, the plaintiff could have continued to worry about MRSA.
>
> (c) The plaintiff re-attended the defendant's outpatient department on a number of occasions following his discharge from hospital on 5th April, 2007, and he did not raise any concerns regarding MRSA during such review.
>
> (d) The report of Dr. Murray-Lyon dated 5th September, 2008, makes no mention of receiving instructions to the effect that the plaintiff had concerns that any of his complications might ever have been attributable to MRSA or that MRSA continued to concern him notwithstanding his clear test results as of the date of his discharge.

Breach of Duty

43. Having dealt with the factual dispute between the parties, there is not a great deal of discussion to be had regarding the liability issue. However, I will briefly refer to a number of matters which are of significance having regard to the submissions of the parties.

44. Firstly, I am satisfied that as a matter of law the defendant was under a duty to furnish the plaintiff with accurate information regarding his condition and to keep him appraised of all significant developments in relation to his health. That duty carried with it an obligation to furnish that information in a manner which the plaintiff might reasonably have been expected to understand. However, as a matter of law, if, having furnished such information to a patient, the patient misunderstands that information or misinterprets it due perhaps to external forces such as their own belief or knowledge regarding their medical condition, those responsible for the patient's care cannot be rendered liable for any consequences arising from such misinterpretation.

45. Secondly, I am not satisfied, having regard to the expert evidence given by Prof. Gould, consultant microbiologist, and Mr. Richard Stephens, Consultant Thoracic and General Surgeon, that there is an obligation on a hospital to convey to a patient the results of all tests carried out in the course of their medical treatment. In particular, no such obligation extends to microbiology test results as this would pose an insuperable burden on medical and nursing staff and it does not happen as a matter of routine practice. Clearly, if any such test results become highly significant or material to the patient's condition or their need for treatment, the same must be explained to the patient.

46. Having regard to the aforementioned matters and the findings of fact that I have already made, I am satisfied that there was no failure on the part of the defendant to keep the plaintiff fully informed regarding his medical condition, or that by any act or omission the plaintiff was caused to come to an erroneous view of his complications or the significance of his MRSA infection. Further, as already stated, I am satisfied as a matter of fact that the plaintiff was actually furnished, as he belatedly admitted, with all of the microbiology test results which had been procured in respect of his MRSA status.

47. Thirdly, I reject the plaintiff's assertion that the defendant was under a duty, because of the fact that there was only one positive MRSA result available as of 1st March, 2007, to advise the patient that the diagnosis had been made on the basis of a single MRSA positive pelvic swab and that it would need to be confirmed by further positive test results or that his isolation was precautionary only. No expert testimony was furnished in support of any such alleged duty. Indeed, the evidence of Prof. Gould was definitive on this issue insofar as she stated that because of the strength of the MRSA reading, i.e. "MRSA +++" that this was definitive evidence of infection without further confirmation and that isolation in such circumstances was not only precautionary but mandatory.

48. Fourthly, I am not satisfied that the plaintiff established that there was an obligation on the defendant to advise the patient at the time he was told of his MRSA infection that he was on the drug linezolid and that this drug had the capability of clearing MRSA infection within two days in some cases. Not only did the court have no evidence from which it could conclude that the failure to so

advise the plaintiff in this case was to depart from an acceptable standard of care, but the height of the evidence on this issue was that in some cases linezolid had the capacity to eradicate MRSA within two days. Further, there was no evidence that linezolid in the present case would necessarily or probably have cleared the infection within two days.

49. The plaintiff's argument regarding the defendant's alleged obligation to advise the patient as to the possible effects that linezolid might have on his MRSA infection is also fundamentally flawed from a causation prospective. The fact of the matter is that, regardless of whatever drug regime was administered, the patient had to be treated and isolated because he was infected and could not have been reassured regarding clearance until such time as he had three negative test results. Further, from a causation perspective, it was the plaintiff's evidence that, notwithstanding three clear test results carried out in the course of the relevant hospitalisation and like results available to him following his hospitalisation for meningitis, he persisted with the belief that he was at risk from MRSA. He was not disabused of such belief allegedly until he was advised of the content of Dr. Murray-Lyon's report in September 2008. Consequently, the plaintiff has not, in any event, established as a matter of causation that if he received inadequate reassurance that it made any difference to his outcome. As he stated himself in evidence, he knew from the media that he believed that MRSA was a killer disease regardless of the fact that he accepted that no such advice had ever been given to him by the defendant, its servants or agents.

50. Finally, in the context of breach of duty, I am satisfied that the plaintiff has not established that there was a duty on the defendant to ensure that it was a member of the medical staff that first advised the plaintiff of the MRSA infection. I am satisfied on the expert evidence that it is entirely appropriate that such information would be communicated to the patient by an adequately trained member of the nursing staff and I am satisfied in the present case that Nurse Sylva Murphy, a clinical nurse manager, was adequately trained for such purpose.

Damages

51. Lest my findings as to fact which are relevant to the liability and causation issues prove unsustainable, I believe that I should also go so far as to state that even if I had found in the plaintiff's favour on those issues, I would in any event have been obliged to dismiss the plaintiff's claim on the grounds that he has not established that he sustained a compensatable injury. Clearly, in the absence of any compensatable injury there is no cause of action under which damages can be claimed.

52. The height of the plaintiff's evidence was that he experienced very high levels of stress and anxiety in or about the time he was diagnosed as being MRSA positive. The Court heard no evidence from any medical practitioner to the effect that the plaintiff had, as a result of the negligence alleged, developed any recognisable psychiatric injury. Evidence of any actionable injury was seriously lacking in the case advanced on the plaintiff's behalf and without actionable damage, stress and anxiety alone are insufficient to support a claim. Negligence is not complete until an alleged breach of duty goes on to cause damage to the extent recognised by the law and no such damage was demonstrated in this case. Thus, having regard to the decisions of the court in a long line of legal authority, which perhaps had its infancy in the decision of the Supreme Court in *Kelly v. Hennessy* [1995] 3 I.R. 253 and was more recently considered by Clark J. in *Larkin v. Dublin City Council* [2008] 1 I.R. 391, the plaintiff's claim as a matter of law is not sustainable.

53. Regardless of the sympathy I have for the Plaintiff because of his misfortune, so early in life, to have developed a devastating bowel condition which will have lifelong consequences for him, I must nonetheless for the reasons already stated dismiss this claim which, on the evidence, I consider amounted to a wholly unmeritorious, unjustified and unwarranted attack on the medical and nursing staff of the defendant hospital who I am satisfied at all times provided him with excellent care over a period when the his life and health were at grave risk and without which he might not have survived.