

THE HIGH COURT

[1997 No. 9955 P]

BETWEEN

PAUL FITZPATRICK

PLAINTIFF

AND

AIDA WHITE, AS THE NOMINEE OF THE ROYAL VICTORIA
EYE AND EAR HOSPITAL

DEFENDANT

JUDGMENT of Mr. Justice White delivered on the 3rd day of June, 2005.

The Plaintiff herein is a 37 year old musician. He was born with a squint in his left eye. As a child, he had an operation to correct this squint. On the 4th day of March, 1994, he attended the Defendant's Hospital for elective surgery to improve the cosmetic appearance of his eye. Subsequent to this surgery, the Plaintiff experienced double vision with his eye. Further surgery was carried out, but the Plaintiff continues to experience double vision.

The Plaintiff claims damages for negligence in respect of the operation carried out on the 4th day of March, 1994, principally on the basis that the Defendant's Hospital, its servants or agents, failed to inform him, in advance, that double vision was a possible consequence of the surgery. He further alleges negligence, in a general way, in relation to the manner in which the operation was carried out, but such claim has not been pursued to any great extent.

Negligence is denied. The Defendant accepts that it was obliged to inform the Plaintiff of the risk of double vision. The Defendant claims that the Plaintiff was informed of the risks of double visions.

To succeed herein, the Plaintiff must establish, on the balance of probabilities not only that a warning was not given, but also that, had a warning been given, he would not have undergone the operation.

Quite clearly, the Plaintiff asserts that he was not warned or informed of the risk of double vision.

In evidence, the Plaintiff stated that he attended by appointment at the Defendant Hospital in November 1993. There he was seen by Ms. Fitzsimons, Orthoptist, who carried out a series of eye tests, and who arranged for him to see Mr. Moriarty, Consultant Surgeon.

The Plaintiff again attended the Hospital in December 1993. There he again saw Ms. Fitzsimmons who introduced him to Mr. Moriarty. He stated that his conversation with Mr. Moriarty consisted of Mr. Moriarty saying "I was discussing with Ms. Fitzsimmons, you would like your eye straightened" he replying "I would like it done" and Mr. Moriarty saying "yes". He stated that nothing was said to him at this meeting as regards possible risks, complications, or side effects to the operation.

The Plaintiff again attended the Hospital on the 4th day of March, 1994, on which occasion surgery was carried out on his left eye by Dr. Goggin. Prior to meeting the Doctor he stated that he had been given a pill, a sedative. The Plaintiff was in a gown, and on a bed in a ward, when he met Dr. Goggin. The Plaintiff described his conversation with Dr. Goggin as having lasted maybe ten minutes. He stated that in this conversation there was no mention of any possible complications, or side effects, arising from the surgery. He stated that the only question he asked Dr. Goggin was as to the chances of his eye being straight, to which the Doctor replied it would not be 100% straight, that there would be a good cosmetic improvement, and that when he got into his fifties he may need to get it corrected again.

The plaintiff experienced difficulties with his eye following surgery. He stated that, in addition to suffering headaches and double vision, he was unable to move his eye. He was given eye exercises, and he stated that whilst carrying out these exercises something snapped in his eye, causing it to turn totally in the opposite direction in his head.

In January 1995 further surgery was carried out on the Plaintiff's eye, but, notwithstanding such surgery, the Plaintiff continues to complain of double vision, which double visions he states has, and continues to, adversely affect his enjoyment of life, and which adversely affected his studies, and ruined his career prospects.

Under cross-examination, the plaintiff was adamant that he had not been warned of the risks of double visions, and volunteered that, had he been so warned he would not have gone ahead with the operation.

It is quite clear to me that Dr. Goggin, if he had adhered to his usual practice, would have informed the Plaintiff of the risk of double vision resulting from the operation.

Dr. Goggin gave evidence that he did not recall his meeting or conversation with the plaintiff. He was, however, in a position to give evidence as to his usual practice prior to carrying out the particular type of operation. He stated that, in the first instance, he would make a brief assessment of the patient's general fitness. Having carried out this assessment, he would discuss the nature of the procedure with the patient, and would suggest to the patient that he consider the risks involved. In explaining the risks involved, he would set out the common complications, and the catastrophic, but uncommon complications, which might occur. He described the common complications as being twofold, under or over correction, and Diplopia (Double vision). Having done so, he would then ask the patient to sign a form consenting to the operation.

Dr. Goggin's handwriting on the admission sheet relating to the Plaintiff, confirms that he followed the first step of his usual practice prior to the Plaintiff's operation. The Plaintiff's question to Dr. Goggin, and the Doctor's reply thereto,

suggests that the Doctor followed the second step of his usual practice prior to carrying out the Plaintiff's operation. The Consent form confirms that Dr. Goggin followed the fourth step of his usual practice.

I am not satisfied, on the balance of probabilities, that Dr. Goggin failed to warn the Plaintiff that there was a risk of double vision resulting from the operation.

I did not find the plaintiff to be a credible witness.

The "white lie" told by the Plaintiff when first seeking elective surgery is perhaps understandable, nevertheless it demonstrates a capability on his part to be untruthful.

The Plaintiff is either a poor historian, or else, he has been untruthful in relation to when he commenced his studies at the Conservatory of Music and Drama. He gave evidence to this Court that he not commence his foundation course, (a one year course) until 1994. On the other hand, he informed his own Occupational Therapist, Brenda Keegan, that he successfully completed his foundation course in the summer of 1994. Further, it appears from Mr. Ryan's Medical Report of the 15th day of April 1994, that the Plaintiff informed him that he was a musical student, and, as such, he had to practice approximately four hours a day. He sought to explain his description of himself to Mr. Ryan as being because he was receiving informal assistance in preparing for his formal training, and yet his application for the foundation course is dated as having been received by the college the 24th day of March, 1994.

In his evidence in chief, and, initially under cross-examination, the Plaintiff attributed his exam failure in 1996 solely to his double vision. However, in the course of his further cross-examination, it transpired that he had been involved in a road traffic accident in November 1991 in which he apparently sustained, inter alia, a back injury. The contents of certain Medical Reports obtained by the Defendant in relation to that accident were put to him. From the Report of the 17th day of July, 1996, prepared by Dr. Cleary, the Plaintiff's General Practitioner, it is clear that, at that time, he was attributing his poor exam performance to the 1991 accident. Dr. Cleary's Report reads:-

"This man is a patient of ours. He was involved in a bad accident in November 1991 when he injured his back. Gradually over the years the back pain got worse. In the last year it interfered greatly with his ability to practice his music. There is no question but that this contributed adversely to his exam performance."

In his evidence in chief, the Plaintiff stated that he suffered from headaches. Although he did not specifically attribute them to his double vision, he gave me the distinct impression, that they resulted from his double vision. Again, it is clear from an undated Medical Report from Dr. Murphy, prepared after an examination carried out on the 3rd day of October, 1994, that, at that time, he was attributing "occasional blurred vision with migraine type headaches" to the 1991 accident. When cross-examined as to his complaint of headaches, he stated that it was up to the Doctors to decide why he had them.

Mr. Hanratty in the course of his cross-examination, questioned the Plaintiff in detail on matters which, at first sight might not appear to be particularly relevant, such as the exact detail of the adjustment of the stitch by Dr. Goggin on the day following his surgery. When Mr. Hanratty suggested to him that he had forgotten having received an anaesthetic, he stated that he did remember having received an injection. It was pointed out that the anaesthetic was in the form of eye drops (as per the Hospital Records) to which he replied he recalled an injection having been given on some occasion. On reflection, it seems to me that his initial response to Mr. Hanratty was designed to demonstrate a recall of detail of all events surrounding Dr. Goggin's operation.

Having assessed the medical evidence herein, I have reservations in relation to the extent and effect of the plaintiff's double vision, and consider him to be exaggerating, particularly in the light of his having returned to Mr. O'Connor on the 13th day of May, 1997, complaining of double vision/headaches for "a year".

Not having held in favour of the Plaintiff on the issue of a failure to warn him of the risks attached to his elective surgery, it is perhaps unnecessary to address the issue as to whether or not he could have undergone the surgery notwithstanding such a warning. Nevertheless, if I was required to determine the issue, I would do so against the Plaintiff.

The Plaintiff gave evidence that, as a result of a comment passed on a social occasion, he began to feel self conscious about his squint. This was the reason he sought to explore the possibility of elective surgery. On his evidence, his sole question to Dr. Goggin was directed towards cosmetic effect. The manner in which the Plaintiff volunteered, under cross-examination, that had he been warned of the risks of double vision he would not have undertaken the operation, leads me to believe that perhaps the Plaintiff was appraised, or appraised himself of the requisite proofs herein. Such appraisal, of itself ought not to be a determining factor on the issue, however, I consider that the Plaintiff's sole, or at least prime concern, was cosmetic effect, and that irrespective of whether or not a warning had been given, his attitude towards surgery would not have altered.

Mr. John Patrick Lee, a Consultant Ophthalmic Surgeon, was called as an expert witness on behalf of the Plaintiff. He was critical of the carrying out of the operation in the first place, and of the failure on the part of the Surgeon to seek to dissuade the Plaintiff from having the surgery. He was further critical of a risk warning being given so close to an operation. However his evidence, falls short of establishing negligence on the Defendant's part.

Accordingly the Plaintiff's claim is dismissed.

