

THE HIGH COURT

[2014 No. 472 P]

BETWEEN

AARON MONDS (A MINOR SUING BY HIS FATHER AND NEXT FRIEND HENRY MONDS)

PLAINTIFF

AND

INDEBIT COMPANY UK LIMITED AND P.W. SHAW AND COMPANY LIMITED

DEFENDANTS

JUDGEMENT of Mr. Justice Bernard J. Barton delivered the 18th day of December 2015

1. The Plaintiff was born on the 9th of November 2001. He is one of four children and resides with his parents at Blatinoran, Kinnegad, Co. Westmeath. Until this September he attended St. Ciaran's National School, Castlejordan. Apart from being a chronic asthmatic, the Plaintiff suffers with a mild intellectual disability which principally manifests itself in the form of speech and language difficulties and in respect of which he has received speech and language therapy. The Plaintiff's language difficulties would appear to have been first assessed and diagnosed in August 2006 following a referral made by his pre-school teacher who was concerned not only with his speech and language difficulties but also with difficulties experienced by him interacting with his peers.

2. The Plaintiff did not meet the criteria for a diagnosis of autistic spectrum disorder but he was diagnosed with mild intellectual disability and a special needs assistant and resource hours in school were recommended. Whilst a student in St. Ciaran's, he had a special needs teacher, Ms. Murphy and a resource teacher, Ms. Edel Flynn.

3. In January 2011 a further speech and language assessment was carried out by Ms. Whitehead at the Springfield Centre, Mullingar. This assessment was also carried out at the request of the Plaintiff's teacher. At that time the Plaintiff was considered to have significant language difficulties and it was recommended that he would have a one-to-one support in school as well as continuing speech and language therapy. This assessment was followed by a psycho-educational assessment in April of the same year carried out at the request of the school. The report commissioned at the time confirmed that the Plaintiff had severe language and intellectual difficulties: it concluded that the Plaintiff was underperforming his chronological age by some three years on average. This picture of the Plaintiff is presented in the context of a family history of language difficulties particularly within his maternal family.

4. The Plaintiff's asthma is medically controlled but on occasion can flare up; historically the Plaintiff was hospitalised for one night in Mullingar General Hospital with a severe attack in 2008 and again assessed at the A & E on the 13th of March 2009. He had a further hospital admission following a severe asthmatic attack between the 1st and 4th of May 2012. He needed an antibiotic as well as oxygen and steroids to recover from that particular episode.

5. Various described as fearful, shy and sensitive, the Court was unable to make its own assessment of the Plaintiff since he was not present in court or called as a witness. Accordingly, the Court is dependant on the evidence of his parents and the experts who were retained to examine and report.

6. It is against this background that a fire involving a Hotpoint dishwasher occurred in the home of the Plaintiff on the 26th of June 2010. The Court is not concerned with liability, since this has been conceded. What is at issue in this case, however, is the cause and extent of the sequelae complained of by the Plaintiff, which is alleged to have arisen as a result of the fire, and in respect of which he brings these proceedings.

7. The Plaintiff's mother gave evidence that their home was badly damaged by the fire. They managed to get out of the house. Having done so, her husband went back in to see whether there was anything he could do to put out the fire. The Plaintiff and his brothers and sister were in bed when the fire broke out. There was a lot of smoke in the house. The Plaintiff witnessed the fire and also saw his father go back into the house before the fire was brought under control.

8. The evidence of the Plaintiff's parents was that by June 2010 they were well aware of the Plaintiff's mild intellectual disability and that this affected his language, his speech as well as his ability to interact and communicate. As a result of the fire, the family moved to alternative accommodation whilst remedial works were undertaken and so it was not until the spring of 2011 that they were able to return home.

9. There was some controversy as to whether the family returned home in January, March or April 2011. However, after they returned home the Plaintiff exhibited signs of anxiety when bedtime was approaching. He had difficulties getting to sleep and when he did he would often wake up with nightmares; expressing fears that the house was going to go on fire.

10. Following the fire, and whilst the family were in alternative accommodation, the Plaintiff did not appear to be affected otherwise and on the evidence there appears to have been no manifestation of a psychological reaction to the event of the fire until after the family had returned home. No mention of any adverse psychological reaction by the Plaintiff to the events of the fire was made in the assessments of him in January and April 2011. The delay in the onset of symptomology was a significant component in the causation issue between the parties.

11. Apart from experiencing difficulties in getting the Plaintiff to go to bed at night and his awakening with nightmares or vivid dreams related to the fire, the Plaintiff also developed a peculiar and abnormal behaviour before and sometimes after he had gone to bed whereby he would go around the house to check whether all of the electrical appliances in the house were switched off and unplugged.

12. There were visits to the G.P, Dr Thornton, in January and April 2011; the first for a flu vaccination and the second in respect of the Plaintiff's asthma. There was no mention of the Plaintiff having nightmares or being afraid or generally of being fearful on either

occasion. An explanation was offered by Mrs. Monds. She thought it was only after the family settled back into the house in or about April that the problem became manifest.

13. It was heavily emphasised by the defendant in the course of the trial that it was not until the 19th of September 2011 that the Plaintiff was brought to see Dr. Thornton with complaints of trouble settling in bed, of the behaviour of going into every room in the house turning off electrical fittings and switches, and removing plugs in order to reassure himself that the house was not going to burn down.

14. Dr Thornton's notes on that date refer to the family being out of the house until January 2011, that the Plaintiff had had night terrors since, that the Plaintiff had irrational fears about plugs and that he should be referred to a psychologist. He expressed an opinion in a report prepared for the Court that, as a result of the fire, the Plaintiff had suffered a form of post-traumatic stress.

13. In this regard, he referred the Plaintiff to Dr. Leonia Gravante, consultant child and adolescent psychiatrist; she assessed the Plaintiff in November 2011. He was seen in the company of his parents and described by Dr. Gravante in her report and in evidence as being a very fearful boy who was shy and who had difficulty explaining his feelings and fears. She diagnosed him as suffering from an obsessive compulsive disorder consequent upon the fire. In her view the Plaintiff's intellectual disability rendered him more susceptible than most to anxiety as a result of which he had developed a compulsive behaviour which, with the passage of time, ultimately became a disorder. The Plaintiff's psychological problems were treated by Dr. Gravante; he and his mother attended for a number of sessions of what was described as psycho-educational therapy.

15. In her evidence Dr. Gravante expressed the view that the Plaintiff was a very vulnerable child and, on a scale of 1 to 10 concerning intensity of symptomology, she rated him 7/8. She explained that because of the Plaintiff's personality and disabilities he was more sensitive and vulnerable to stress and that consequently he was rendered less able to cope with that stress. It was her evidence that the checking and rechecking behaviour exhibited by the Plaintiff was an obsessive compulsive disorder. After some six to eight sessions with Dr. Gravante, the Plaintiff improved in terms of his behaviour. He still had the checking habit but this was reduced and, on a scale of 0 to 10 in terms of intensity of symptoms, that had reduced from 7/8 to 4 out of 10. Dr. Gravante was quite satisfied that the Plaintiff's obsessive compulsive disorder qualified under the ICD10 categorisation as a psychiatric illness. As to that She agreed that therapy would be more effective and would be quicker in a child without disability. Although the Plaintiff's symptoms had significantly abated, the Plaintiff could not be described as having a resolved obsessive compulsive disorder; in her view he still had symptoms of a residual post traumatic stress disorder.

16. At issue between the parties were two primary issues. Firstly, one of causation and, secondly, whether the Plaintiff had suffered any psychological sequelae which could properly be categorised in law as injuries consequent upon the fire. In this regard Dr. McInerney, consultant psychiatrist, prepared a report on behalf of the defendant for the assistance of the Court and gave evidence at the trial. She had prepared a report in which she expressed the opinion that the plaintiff had suffered neither physical nor psychological sequelae as a result of the fire. Dr. Gravante was cross-examined on the basis of that report. Dr. Gravante disagreed with that opinion. As far as she was concerned, the Plaintiff's obsessive compulsive disorder was directly attributable to the fire and only manifested itself after its occurrence. She had had a referral from the GP, a history from the parents, and the assessment reports on the plaintiff to which reference has been made earlier in this judgment. She had subsequently left private practice and hadn't reassessed the plaintiff so couldn't comment on the views of Dr. Dalton, consultant psychiatrist, who had examined and reported on the plaintiff subsequently, however, she stood over the views expressed in her own report as to the position at that time.

17. Dr. Dalton is a consultant child and adolescent psychiatrist. She prepared a report dated the 18th of May 2015. She had the benefit of the report of Dr. Gravante dated 2nd of December 2013 and also had access to Dr. Thornton's report dated the 9th of September 2013. At the time of her assessment, the Plaintiff was preparing to go to Oakland Secondary School in Edenderry in September 2015. His obsessional symptoms were described as having settled significantly and were confined to checking plugs and electrical equipment at night. According to her report, the Plaintiff would go down to the kitchen once or twice a week in the event that the dishwasher alarm would go off and that he would simply go to check that the dishwasher was safe. This reporting was at variance with the evidence of the Plaintiff's mother, which was that the dishwasher was not turned on after he went to bed. The Plaintiff was not suffering from any flashbacks but he was still having nightmares two to three times a month.

18. Dr. Dalton's report described the Plaintiff as liking school, having a group of friends and being interested in woodwork which included making tables and chairs. He loved cars and had dogs and lambs on the family farm. He was described as not having any behavioural problems and no other symptoms of an obsessive compulsive disorder. He told Dr. Dalton that he was looking forward to starting his new school. Clinical examination showed no evidence of anxiety, though speech and language disorder was evident at interview. Dr. Dalton described the Plaintiff's obsessive compulsive disorder as having resolved with some residual checking rituals which she thought were residual symptoms of a post traumatic stress disorder. The nightmares were fire related. The learning difficulties magnified the trauma for the Plaintiff and likely slowed down his recovery. Her prognosis was satisfactory. The symptoms were residual and did not now meet the threshold for obsessive compulsive disorder. One had to understand that a person with learning disabilities would more likely be impacted than somebody who did not have such difficulties. The disability was described in terms of a difficulty understanding and processing questions and information.

19. Asked for her view on the delay in the onset of symptomology, Dr. Dalton expressed the opinion that the return to the family home was essentially a trigger for the onset. The Plaintiff had undergone a considerable amount of therapy; firstly under Dr. Gravante and then, subsequently, in terms of group family therapy in the Springfield Centre, Mullingar. The most significant improvement occurred between the time when Dr. Gravante last treated him in 2013, and 2015 when Dr. Dalton saw him. She too disagreed with the opinion of Dr. McInerney when that was put to her.

20. Dr. McInerney, who gave evidence in line with her report, confirmed that it would have been helpful to have sight of medical notes and records which she had asked to have made available to her. The Plaintiff attended for assessment in the company of his mother and father but, in reality, it was his mother, who read copious notes at the consultation, with whom the interview took place with the result that Dr. McInerney did not have an opportunity to interact with the Plaintiff. She was, however, aware of the family history and of the Plaintiff's intellectual disabilities, having sight of the educational assessment reports.

21. It was accepted that stress has been identified as a factor in the cause of asthmatic attacks; asthmatic sufferers being generally more sensitive than the general population. She observed that stress wasn't identified as a trigger to the admission in May 2012 and, indeed, Dr. Thornton himself questioned whether that acute asthma attack could have been causally related to the fire; the Plaintiff's parents thought it was.

22. Dr. McInerney accepted that the Plaintiff was vulnerable and unable to verbalise as a child. His sensitivity and shyness was always present. Her evidence was that the family and, in particular, the Plaintiff's siblings, would generally give in to him and that he

was rather spoiled. She was quite certain that by the time she saw the Plaintiff he was not exhibiting any symptoms. The Plaintiff's checking was consistent with an anxiety disorder and the nightmares were indicative of that anxiety.

23. Dr. McInerney, who practiced in treating children as well as adults, agreed that Dr. Dalton and Dr. Gravante were child psychiatrists with a special interest in child psychology. She agreed that had she had access to medical notes and records that would have been very helpful in making a clinical assessment and forming an opinion. She did not have the questionnaire which Dr. Gravante had had the Plaintiff's mother complete. She accepted she did not have the benefit of an interaction with the Plaintiff and agreed that the referral by the GP to a psychologist was appropriate at the time. It was also prudent and understandable that the parents had tried to deal with the issues first before going to see their GP. She agreed that Dr. Gravante had given excellent advice and care and her view was not to be taken as a criticism of that treatment.

24. Treating the Plaintiff's problem in a family setting was appropriate and was the best approach. Ultimately, she accepted that the Plaintiff had a psychological reaction at the time to the trauma and that when she said that he didn't in her report, what she had meant to say by that was that the Plaintiff didn't have any psychological sequelae or injury at the time of her interview with the Plaintiff's mother, as opposed to an earlier point in time. She thought that the Plaintiff had made very good progress as a result of what was appropriate treatment. She also agreed that the fire was an extremely traumatic event for the Plaintiff. Acknowledging that the Plaintiff would be at some risk of reoccurrence, this was attributable to his background disability which made him vulnerable.

25. In this regard, I think it is appropriate to observe that it was also the view of Dr Gravante that simply because the Plaintiff is currently exhibiting only residual symptomology, there could be no guarantee that the obsessive compulsive disorder would not return. In fact it is common to have partial remission and for symptoms to manifest themselves throughout a person's life. By its nature, and having regard to the Plaintiff's disabilities, there was a risk that this could occur in the future.

Decision.

26. Accepting as I do the evidence of Dr. Gravante and Dr. Dalton, I am satisfied that the Plaintiff suffered psychological injuries as a result of the fire in his home on the 28th of June 2010. Described as 'night terrors' in the notes of his G.P., the Plaintiff suffered from vivid dreams and nightmares; generally involving fire and burning. He has intellectual disabilities which impact on his speech, language and ability to interact and communicate with others. His condition made him vulnerable to developing adverse psychological sequelae as a consequence of the fire as well as the development of an obsessive compulsive disorder; which I accept is a recognised psychiatric illness. There can be little doubt but that the Plaintiff was distressed as a result of what happened and that his nightmares and 'night terrors' were a symptom of his anxiety. His checking habit was initially very pronounced with the Plaintiff going to check all electrical appliances in the home before going to bed. He developed what to the ordinary observer might be regarded as irrational fears of the reoccurrence of a fire. He needed psychiatric intervention and therapy. The treatment afforded to him was appropriate and, having finished individual sessions of therapy with Dr. Gravante, when she retired from public practice, the Plaintiff continued - at Dr. Gravante's suggestion - with group therapy in Mullingar, which was particularly beneficial. In this regard, by the time the Plaintiff came to be assessed by Dr. Dalton in May of this year, he had made very significant progress.

27. The plaintiff's residual symptoms are now such that he would no longer qualify for diagnosis with obsessive compulsive disorder. He still has some checking habits but these are not nearly as pronounced as they used to be. He has no flashbacks but he does have occasional nightmares and still has a tendency to worry about the possibility of a fire at night time. These sequelae have been described in the medical evidence as residual symptoms of a post traumatic stress disorder consequent upon the fire in the Plaintiff's home. I accept that evidence. The risk of reoccurrence of obsessive compulsive disorder cannot be completely ruled out, particularly given the Plaintiff's vulnerability arising from his intellectual disabilities. However, Dr. Dalton, the psychiatrist who most recently reviewed and assessed the Plaintiff, was optimistic and gave it as her opinion that the residual symptomology was resolving and that the Plaintiff's prognosis should be satisfactory.

Conclusion.

28. The Defendant is bound, as a matter of law, to take the Plaintiff as found at the time of the commission of the wrong. In this case the Plaintiff was a particularly vulnerable individual due to his pre-existing intellectual disabilities which made him more susceptible to the effects of the trauma arising from his witnessing the fire in his home and his father's attempts to put the fire out. His speech, language and communication difficulties unquestionably hampered the rate of recovery and which was the object of the psychological therapy afforded to him. Although the Defendant was not responsible for the underlying condition, it is no defence at law that because of it and the vulnerabilities associated with it, that the risk of the Plaintiff reacting the way he did and developing an obsessive compulsive disorder, was increased, or that it would delay the rate of recovery which might otherwise have been expected in a person without such disabilities.

29. The Plaintiff suffered anxiety and distress. It took a significant amount of time and therapy to bring the Plaintiff to his present position. He remains symptomatic, albeit at a significantly reduced level and the prognosis for him is good. On that basis and whilst the possibility or risk of recurrence cannot be excluded altogether and must be taken into account, the Court considers it unlikely that the Plaintiff will develop a relapse or recurrence of symptoms warranting a further diagnosis of obsessive compulsive disorder. In this regard, I think it significant that unlike Dr. Gravante, Dr. Dalton had the benefit of assessing and interacting with the Plaintiff subsequent to his undergoing and completing therapy.

30. Applying the well settled principles of law to the assessment of compensatory damages to be awarded to the Plaintiff in this case, the Court considers that a fair and reasonable sum for pain and suffering to date, commensurate with the injuries suffered, is €35,000, and €15,000 in respect of the future, making in total the sum of €50,000 for general damages to which must be added the sum of €1,244.56 in respect of agreed special damages giving a total of € 51,244.56, and the Court will so order.