



Neutral Citation Number: [2021] EWHC 402 (QB)

Case No: B901V019

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LIVERPOOL DISTRICT REGISTRY

Date: 24th February 2021

Before :
MR JUSTICE FORDHAM

Between :
EEE
(a child proceeding by her Father and Litigation Friend BBB)

Claimant

- and -
LIVERPOOL WOMEN'S NHS FOUNDATION
TRUST

Defendant

Elizabeth-Anne Gumbel QC (instructed by Jackson Lees) for the **Claimant**
Margaret Bowron QC (instructed by Hill Dickinson LLP) for the **Defendant**

Hearing date: 24 February 2021

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. The purpose of today's hearing is for me to consider whether the proposed settlement of the damages claim in this case is in the best interests of the Claimant.
2. There was no challenge to the making of the anonymity order requested and I made the order sought, being quite satisfied, having regard to the principles articulated by the Court of Appeal in X v Dartford and Gravesham NHS Trust [2015] 1 WLR 3647, that an anonymity order is necessary and appropriate. Because of the anonymity order and the important protection that it provides for the Claimant and for her family – and so that there is no doubt or difficulty in terms of what can be reported concerning this case – I am not, in this ruling, going to be using any names or addresses or referring to any locations or specific dates. I will use words like “the Claimant”, “mum” and “dad”, and “the brother”. Anything I say can be reported and this ruling will be available in the public domain.
3. The mode of hearing was a remote hearing by MS Teams. I am satisfied that that mode of hearing was necessary, justified and appropriate in the context of the pandemic. A remote hearing eliminated any risk to any person from having to travel to or be present in a court room. No party's interests were prejudiced by the mode of hearing. The open justice principle was secured. The case and its start time, together with an email address usable by any member of the press or public, were published in the Court's cause list.
4. The Claimant is 10 years old. She was born at the Liverpool Women's Hospital in 2010. These proceedings arise out of the injury which was caused to her during the course of her mum's labour and her birth. The case advanced on the Claimant's behalf is that injuries, including neurological damage, were caused or materially contributed to by negligent breaches of duty in the management of her mum's care after admission into hospital. There was an admission of liability on behalf of the hospital in 2015. Specific admissions were made on causation: that had the Claimant being delivered no later than a particular time she would have sustained no brain damage or other neurological damage. Judgment was entered by the Court in 2015 and the first of several interim payments of damages were made. The proceedings were stayed to enable the extent of the Claimant's injuries to be better ascertained when she was a bit older.
5. By reason of the severity of the brain damage and the other injuries sustained at the time of her birth the Claimant lacks capacity and is likely to remain a protected beneficiary into and throughout her adulthood. Her dad acts as her litigation friend in these proceedings. A Deputy has been appointed.
6. The Claimant is dependent on others for all aspects of her daily living and will require full-time care for the rest of her life. She has very severe cognitive disabilities. She has a full life expectancy to age 91. What is proposed is that there should be a lump sum award of £5.4 million together with ASHE 6115 'index'-linked periodical payments: beginning at £54,000 a year until December 2023, then £83,000 a year until December 2028, then £120,000 a year until December 2031, £135,000 to December 2036 and £155,500 a year from December 2037 for the rest of her life. Two deductions are proposed from the lump sum of £5.4 million. The first is the £850,000 paid in interim payments. The second is a sum of £66,477 to reflect what the law calls “gratuitous past care” by mum and dad. The balance of £4,483,523 will be paid to the Claimant's

Deputy's account. The overall capitalised value of the award has been put at £18,133,235.

7. I have had the benefit of reading a very thorough and detailed Advice of Ms Gumbel QC. That Advice sets out the reasons why the Claimant's legal team consider that a settlement in this form and in these figures is in her best interests. I have considered it carefully, together with the other papers in the case to which I have been referred. I agree that this is a sensible settlement from the Claimant's point of view. Mum and dad will be assured that there will always be sufficient funding to maintain her care, particularly given the substantial periodical payments that are to be made throughout her life. I am happy to give my approval to the settlement and an order in the form proposed can and will be made.
8. Judges understand that cases come before us, often in the form of files of papers to read and lawyers to listen to – and at this time of the pandemic in hearings involving looking at each other through screens – which involve us entering into people's lives, often at a critical time, and often with decisions having very serious and significant implications. That is certainly true of settlements of clinical negligence proceedings relating to protected parties, requiring Court approval.
9. What I have read and heard in this case tells me that the Claimant's care to date has substantially been provided by the dedicated and devoted care of mum and dad. It has been provided in a setting in which there is also the brother, who has care needs of his own. I have seen reference to what mum and dad have done in always placing the Claimant's care, and the brother's care, as their first priority. I have seen their parental care provision described as being of an "exceptionally high standard". I have also read witness statements in which mum and dad explain to the Court how life is and has been and what they would want for the future.
10. On behalf of the hospital today Ms Bowron QC has repeated the apology given by an on behalf of the hospital, for what happened 10 years ago, and should not have happened 10 years ago. She has expressed, in open court today, the Defendant NHS Trust's deep regret; and the assurance from the Trust to the Claimant's family that lessons have been learned. Ms Bowron QC described the Claimant – in a phrase that will stay with me long after this hearing – as "a gutsy little girl" who has put up with and coped with, and will continue to put up and cope with, so much; and who is surrounded by such wonderful care and love and attention. I would want to associate myself, and everyone else involved in this case, with those observations.
11. I am confident that I can properly claim to speak for the that "gutsy little girl" – the Claimant – herself when I express admiration and thanks to mum and dad; and thanks also to the brother, to the legal team, and to the wider support team including experts, carers, friends and supporters. It is a good thing when a legal case is over, when unavoidable legal and other costs and risks have been avoided, and when a suitable and appropriate agreement has been reached, as it has in this case. I approve the settlement.