

*Judgment: approved by the Court for handing down
(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

H
(by his mother and next friend)

Plaintiff:

-v-

WESTERN EDUCATION AND LIBRARY BOARD

Defendant:

STEPHENS J

Introduction

[1] The plaintiff, H, brings this action against the defendant the Western Education and Library Board which is responsible for amongst other schools the Londonderry Model Primary School. On Monday 6 April 2009 the plaintiff was a pupil then aged nine at that school. At about midday he was participating in a dress rehearsal for the school play, which rehearsal and the play was organised by the teachers at the school. Another pupil who was participating was dressed as a fairy and she had been permitted by her teachers to carry a wand which had a star at its end. She waved the wand which struck the plaintiff in his eye. It is accepted that the plaintiff was struck with the wand, though there is a dispute as to which eye was struck with the plaintiff maintaining that it was his left eye. The plaintiff alleges that as a result of that blow he has lost the sight in his left eye. He also alleges that the defendant, its servants and agents were negligent in that those supervising the dress rehearsal permitted a pupil to have a wand with a star at its end in circumstances where it should have been anticipated that it would be or might have been waved in close proximity to other pupils with the risk of injury.

[2] The central issues that arise for my determination are:

- (a) Whether the plaintiff was struck in his right or left eye. If the plaintiff was struck in his right eye then he sustained nothing apart from the most transient and de minimus injury to his right eye. If that was the case then the plaintiff would lose this action.
- (b) If the plaintiff was struck in his left eye then whether his subsequent loss of sight in that eye was attributable to the blow or whether for instance the loss of sight was caused by a coincidental and idiopathic inflammatory process in his left eye. If the loss of sight in his left eye was due to a cause unrelated to the blow to that eye then the plaintiff would have sustained nothing apart from the most transient and de minimus injury to his left eye and again if that was the case the plaintiff would lose this action.
- (c) If the plaintiff was struck in his left eye and if that blow caused him to lose the sight in his left eye then whether the defendants or any of its servants or agents were negligent.

[3] Mr Brian Fee QC and Mr John O'Hare appeared on behalf of the plaintiff. Mr Ringland QC and Mr Elliott appeared on behalf of the defendants. I am grateful to both sets of counsel for the careful presentation of the issues in this case.

Factual background

[4] I start the description of my findings in relation to the facts of this case with an assessment of the credibility of the plaintiff and of the plaintiff's mother. I found both of them to be extremely open and honest. I have no hesitation in relying on the veracity of their evidence. There were occasions where they expressed some doubt about the exact sequence of events given the period of time that had elapsed. Indeed there were also occasions on which the plaintiff could not remember events which clearly did occur. I formed a most favourable impression of both of them as witnesses. I consider having seen the plaintiff in the witness box that he could not articulate or else had honestly forgotten the degree of pain that he was in at the time of the incident and the duration of that pain. However where the plaintiff or his mother were able to give an account I consider that the account was completely honest. I give one example. It was suggested that if the loss of sight in the plaintiff's left eye was attributable to a blow, then it was not attributable to the particular blow which occurred on 6 April 2009, but rather to some subsequent and undeclared incident. I totally reject that suggestion. I have no doubt having seen both the plaintiff and his mother give evidence that neither of them would countenance for one moment not revealing a subsequent blow to the plaintiff's left eye. Neither of them could have been unaware of such a blow because the force involved has to be severe.

[5] Mrs McMorris a school teacher called on behalf of the defendant held the plaintiff in high regard describing him as a very pleasant pupil. I agree with her assessment and as I have indicated I consider that both the plaintiff and his mother were patently open and honest. I have arrived at conclusions on the balance of probabilities based on their evidence and the evidence of the other witnesses including the expert medical evidence. That involves to some extent making allowances for the plaintiff forgetting some aspects of his condition after it occurred on 6 April 2009.

Factual background

[6] The plaintiff was in a class taught by Mrs McMorris, I will use her married name. The dress rehearsal took place in the school assembly hall. In total there were about 200 pupils taking part with some 12 adults supervising consisting of 8 to 10 teachers together with classroom assistants. All 200 pupils would have been on the stage during the course of the dress rehearsal.

[7] Ms Donna O’Kane was the teacher with responsibility for the girl with the fairy wand. The girl’s father showed the dress and the wand to Ms O’Kane on the morning of the dress rehearsal. She examined the wand which was in essence a stick with a star on the end. Ms O’Kane stated that the edge of the star was slightly rounded without any sharp edges. I accept her evidence that there were no sharp edges not only the basis of my assessment of her as a witness but also on the basis that there was no corneal abrasion as a result of the plaintiff being struck in the eye by the wand. Ms O’Kane gave evidence that she considered that the wand was suitable and she had no concerns about it and this was particularly so given that the girl was a quiet child. She also said that she told the girl to be careful. She stated that she watched the pupils very carefully during the dress rehearsal and she and none of the other teachers saw the wand being waved around by the girl. None of them saw the plaintiff being hit with the wand.

[8] When the dress rehearsal was finished the children were told by the teachers to line up on the stage in order to make an orderly return to their classroom. The plaintiff was directly behind the young girl dressed as a fairy carrying her wand. As the plaintiff was in the line the girl cast a spell with the wand by waving it about and it struck his eye, he says his left eye. There was some equivocation by the plaintiff as to the number of times that the girl waved the wand around, but he frankly stated that he did not really have a memory of her swinging the wand around more than once. He repeated this by saying

“To be honest I can’t really remember how many times it was or whether it was the first or second.”

He did however remember the wand coming towards him and it was coloured white. He then said before the wand came towards him he definitely did not see

it before as opposed to not remember seeing it before. That it was fair to say that the only memory he had of the wand was on the one occasion that it was coming towards him and it hitting him in his left eye. The plaintiff stated that after this his eye was painful and he then went on to give an account that after a minute or so the discomfort in his eye went away. However I consider that account of the pain diminishing so quickly to be a function of the plaintiff's lack of memory of the pain that he had at the time. I also consider it to be a reflection of the plaintiff's character playing down pain and inconvenience.

[9] After the pupils had come off the stage Mr Sherridan, the Principal of the school took some photographs. So on 6 April 2009 within minutes of the dress rehearsal finishing photographs were taken and those photographs included a photograph of the plaintiff in his lion costume. Those photographs were taken with the aim of recording the plaintiff in his costume and were not taken to record any injury that the plaintiff had sustained to his eye, Mr Sherridan then being unaware of this incident. However they do show both of the plaintiff's eyes and on the basis of those photographs the expert ophthalmic surgeon called on behalf of the defendant Mr Page FRCS formulated a diagnosis. In his initial report dated 18 June 2014 he had accepted that:

"Severe blunt injury to the eye can certainly cause severe inflammation in the eye and a retinal detachment which in some cases can have devastating outcomes such as this."

Then having seen the photographs and on the basis of those photographs by letter dated 27 October 2014 he stated:

"On examining the photograph I can clearly see the left eye of [H] and in my opinion there does not appear to be any evidence of a recent eye injury."

In cross-examination he was asked whether he would make a diagnosis on the basis of a photograph to which he replied in effect that it would be inappropriate to do so. Any examination of an eye would entail requiring the patient to look up and down and to the left and to the right thereby exposing different portions of the eye to the examining doctor. That cannot be done by looking at a photograph. I consider that the photographs taken by the headmaster cannot exclude a severe blow to the plaintiff's left eye on 6 April 2009.

[10] I return to the sequence after the rehearsal. After the photographs were taken, the plaintiff reported to his teacher Mrs McMorris that his eye had been struck with a wand. She stated that she asked the plaintiff which eye had been struck and he indicated that it was his right eye. She examined his right eye and could see nothing wrong with it. She also gave evidence that although she was

concentrating on his right eye the left eye was also clearly in view and there was nothing wrong with his left eye. There was no watering and no redness and the plaintiff said that he could see clearly. Mrs McMorris took the plaintiff to a colleague Mrs Coyle and she also examined the plaintiff's right eye in the presence of Mrs McMorris and there was nothing found on examination by either of them. I find as a fact that the plaintiff was struck, as he stated in evidence, in his left eye. It may well have been that in his excitement after participating in the rehearsal for the school play that the plaintiff indicated the wrong eye, but in the event I consider that both teachers looked at the incorrect right eye.

[11] The plaintiff's mother gave evidence that on 6 April 2009 after the plaintiff returned from school he told her about being struck in the eye, but that he had no discomfort and went straight out to play. She looked at his eye and saw that it was slightly red underneath and she also looked at the eye the next day and she saw that it was reddish underneath and that it was watering a lot. She contacted her GP by telephone on 7 April 2009 because the eye was slightly red and watering. The plaintiff's aunt is a nurse and she was with the plaintiff's mother when she made the telephone call to the general practitioner. The general practitioner advised her over the telephone that it sounded like conjunctivitis and he prescribed eye drops, that is Fucithalamic Ophthalmic eye drop 1% to applied twice daily.

[12] The plaintiff attended school and he participated in both of the performances of the school play which occurred on the days after the incident on 6 April 2009. On 21 April 2009 the plaintiff was taken to the Altnagelvin Eye Clinic as the iris of his left eye had changed in colour from blue to green also his left eye was streaming although he was not in any pain and he was going about like normal. The plaintiff was examined at Altnagelvin and then kept in hospital for a few days. He was followed up at Altnagelvin after his discharge as in-patient and subsequently referred to the Royal Victoria Hospital, Belfast where he was seen by Mr Best FRCS on 10 September 2009. At that stage visual acuity was 66 in right eye and hand motions in his left eye.

The medical evidence

[13] On 21 September 2009 the plaintiff was seen at Altnagelvin Hospital by Ophthalmic Senior House Officer and then Mr Kamalarajah, Consultant Ophthalmic Surgeon. Mr Kamalarajah made a number of findings on that day and over the ensuing months. I will not set out all of them but they included:

- (a) The anterior chamber on the left side was deeper than the right side. Mr Kamalarajah in evidence stated that this was consistent with a severe blow to the left eye causing the back of the anterior chamber to be forced backwards. He stated that you do not get a deep anterior chamber with idiopathic uveitis.

- (b) There was anterior uveitis, that is inflammation in the front compartment of the eye which Mr Kamalarajah considers was caused by blunt trauma to the left eye.
- (c) There was posterior synechia which indicates that the inflammation had been present for some time, possibly Mr Kamalarajah said for some weeks. In fact the blow occurred over two weeks before the first examination at Altnagelvin Hospital and accordingly I consider this finding is consistent with inflammation commencing at the time of the blow to the left eye on 6 April 2009.
- (d) The pressure in the left eye was significantly low. Low pressure is often seen with blunt injury as the injury damages that part of the eye which produces fluid and which maintains eye pressure.
- (e) On 16 June 2009 the plaintiff was noted to be developing significant cataract in the left eye. This can be caused by either blunt trauma or idiopathic uveitis. However the timescale was consistent with blunt trauma as opposed to idiopathic uveitis.
- (f) There was bleeding into the vitreous cavity which is another indicator of blunt trauma to the left eye. Vitreous haemorrhage indicates damage to the back of the eye and Mr Kamalarajah was of the opinion that the vitreous haemorrhage was caused by the blunt injury.
- (g) The change of colour of the iris was caused by bleeding in the eye and the resulting iron causing staining of the eye.
- (h) The left pupil did not react to light appropriately and this was caused by damage to the optic nerve. Again that is consistent with trauma.

[14] I accept the evidence of Mr Kamalarajah in preference to the evidence of Mr Page. There are some contra indications to this being uveitis caused by severe blunt trauma. I have dealt with the photographs. I also have considered how the plaintiff dealt with the pain and how he presented, but I consider that overwhelming medical evidence is that the plaintiff did in fact sustain a severe blunt trauma to his left eye and the only trauma to which the plaintiff was exposed was that which occurred on 6 April 2009. I conclude that the plaintiff lost the sight in his left eye as a result of the trauma that he sustained on 6 April 2009 when he was struck in the left eye by the wand held by the pupil.

Liability

[15] I turn to consider the issue of negligence. I accept the evidence of Ms Donna O’Kane. I consider that she did form an appropriate assessment of both the wand and also of the pupil that was holding the wand. There would be many pupils whom one would not trust with an object such as this but the overwhelming evidence is that the particular girl was timid and not likely to behave in an inappropriate manner with the wand. The rehearsal was appropriately supervised. The girl was not seen to be waving the wand around. There was no anticipation of any danger nor should there have been. I find as a fact that this was the first and only occasion on which she did wave the wand. In those circumstances I do not consider that the plaintiff has established any fault on the part of the defendant.

Conclusion

[16] I enter judgment for the defendant against the plaintiff.

[17] There are two further matters with which I should deal. The first is that ordinarily I would set out what my assessment would be of damages so that if there is an appeal and the Court of Appeal allows the appeal entering judgment for the plaintiff then all issues could be resolved at the same time before the Court of Appeal. However, in this case I hesitate to adopt that course as to my mind it would add to the emotional upset of this litigation for the plaintiff and his close family members. If there is an appeal then at that stage and prior to the appeal being heard I will give a further judgment in relation to the assessment of damages so that all issues are before the Court of Appeal.

[18] The second matter is that after the incident occurred on 6 April 2009 Mr Sherridan, the Principal, visited the plaintiff in hospital and gave an oral account to the plaintiff’s mother as to how the accident occurred. He is to be commended for doing so. Subsequently the plaintiff’s mother asked him to provide the records kept by the school in relation to this accident. That was in Mr Sherridan’s experience an unusual request and he referred the matter on to those with responsibility in the Western Education and Library Board who advised him that he should not do so. I mention this to make it clear that where, as here, a child has sustained what was a grievous injury at school, which has a life time effect on his bodily integrity, the only correct response to such a request from the child’s mother was to immediately make all the relevant documents available to her.