Neutral Citation No. [2014] NIQB 127 | *Ref:* **STE9471**

Judgment: approved by the Court for handing down | *Delivered:* **01/12/2014**
*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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ROBERTA JOANNE JORDAN

Plaintiff

-v-

NORTHERN HEALTH AND SOCIAL SERVICES TRUST

Defendant

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STEPHENS J

[1] The plaintiff, Roberta Joanne Jordan, brought this action against the defendant, the Northern Health and Social Services Trust, alleging negligence in and about the treatment provided to the plaintiff at the Causeway Hospital. Mr O'Donoghue QC who appeared on behalf of the plaintiff with Ms Kelly opened the case and called Professor Gupta, MSc, MD, FRCOG, a Professor of Obstetrics and Gynaecology and an independent medical expert. Professor Gupta gave evidence in chief and was cross-examined by Mr Stitt QC who appeared with Mr Ham on behalf of the defendant. The medical evidence was clear as to the minor consequences of the alleged failure to provide the plaintiff with appropriate medical treatment. After the trial of the action had commenced the plaintiff and the defendant agreed general damages at £2,500. There was no claim for special damages. Towards the end of the first day's evidence the action was compromised on terms endorsed with liberty to apply.

[2] In effect I had heard all of the plaintiff's expert medical evidence. I had available to me the defendant's medical reports. I have been asked to express a view on the basis of the evidence that I heard as to the duration of any symptoms that could have been caused by any breach of duty on behalf of the defendant. The defendant contends that none of the benefits that the plaintiff received could be attributed to any breach of duty and it wishes to rely on any views that I may express in an appeal against the defendant's liability to repay the benefits that the plaintiff received. Given that I heard all of the plaintiff's medical expert evidence in relation to that issue and had access to the defendant's medical reports I am content that it is an appropriate case to express such a view.

[3] The plaintiff claimed that after an operation which took place on 10 July 2009 she developed a wound infection on 15 July 2009 and that if it had been treated correctly with appropriate antibiotics it would have resolved very rapidly, that is within a period of a couple of days. Instead of that the infection continued from 15 July 2009 until 21 July 2009 when she was admitted to the Antrim Area Hospital. She then received the correct treatment and by 27 July 2009 everything had resolved and she was discharged from hospital. In my view on the evidence that I heard the causative impact of any alleged negligence on behalf of the defendant came to an end by 27 July 2009 when she was discharged from hospital. There was a suggestion of an adjustment disorder but it was made clear on the opening of the case, in my view correctly, that there were a number of other stresses in the plaintiff's life at the time and that there was no substance in this allegation. I consider that there was no on-going effect of the alleged negligent treatment after 27 July 2009. By 25 October, 2009 when benefits started to be paid to the plaintiff, there was no impact whatsoever from the alleged negligent treatment of the plaintiff. On the evidence that I heard I cannot conceive of any connection whatsoever between the benefits that were paid to the plaintiff and the alleged medical negligence of the defendant.

[4] In addition to those observations I have two other observations to make. The first is about how medical notes and records are to be presented in medical negligence cases. By making this observation in relation to medical notes and records I seek to avoid the situation arising, which arose in this case, where there are two sets of medical records being used with one set having been prepared by the plaintiff's solicitors and the other set having been prepared by the defendant's solicitors. As a consequence witnesses prepared their evidence and counsel prepared the case on the basis of different bundles which were not in the same order, did not have the same page numbers and did not contain the same documents. There are additional costs in preparing separate bundles of medical notes and records. The trial is slowed down as one has to go from one bundle to another. It is unprofessional and wastes time and costs. Counsel and solicitors should ensure that there is only one set of medical notes and records to be used in court and that all the witnesses and the parties use that set. If there is a failure to achieve this then in some cases the appropriate response is to disallow the costs of the preparation of one of the bundles on the basis that the responsible lawyers undertake that the client should not pay. In the most complicated medical negligence actions it may be necessary to adjourn the hearing which would result in a considerable amount of additional costs being incurred. The clients should not have to meet those costs which would have to be paid by the responsible lawyer. It should be anticipated that the court's powers under Order 62 rule 11 of the Rules of the Court of Judicature (NI) 1980 will be exercised to protect the client and to ensure that the individuals that have caused an increase in the amount of costs will be responsible for those costs. That rule enables the Court whenever costs have been incurred unreasonably or improperly in any proceedings or have been wasted by failure to conduct proceedings with reasonable competence and expedition, to order the solicitor whom it considers to be responsible (whether personally or through a servant or agent) to repay to his client costs which the client has been ordered to pay to any

other party to the proceedings; or to order the solicitor personally to indemnify such other parties against costs payable by them; or to order that the costs as between the solicitor and his client be disallowed; or to direct the Taxing Master to enquire into the matter and report to the Court, and upon receiving such a report the Court may make such order as it thinks fit.

[5] The sequence appears to me to be that the defendant provides to the plaintiff a bundle of medical notes and records by way of discovery and ordinarily it is that bundle which is then provided to the plaintiff's expert witnesses and also to the defendant's experts. Unless there is a good reason to the contrary that initial bundle provided on discovery should be the bundle of medical notes and records that is page numbered and is made available for use in court. If there is a good reason why that bundle should not be used then there is an obligation on the party seeking to use some other bundle to ensure that there is agreement as to use of that other bundle. Failing agreement the matter should be raised at a review hearing. There should not be a proliferation of different bundles, one prepared by the plaintiff's solicitor and one prepared by the defendant's solicitor. Inevitably there will be documents in the discovered documents that are not relevant and inevitably some people may wish to reorganise them in a different way, but I would caution against interfering with the bundle of documents that was initially provided by the defendant and as far as this court is concerned it should ordinarily be made the bundle that is referred to in the court proceedings by all the witnesses and by all counsel.

[6] The second observation is that some more structured consideration involving lawyers could be given to bringing definition to the issues to be addressed by the medical experts at their joint meetings. The joint meeting of experts in this case was useful but it could have achieved greater added value if more focus had been brought to the issues with the assistance of the lawyers involved. The essential issues were:

(a) whether the medical practitioner acted in accordance with a practice accepted as proper for an ordinarily competent medical practitioner by a responsible body of medical opinion; and

(b) if "yes", whether the practice survives *Bolitho* judicial scrutiny as being "responsible" or "logical".

Those central core issues should be addressed at the joint meeting of experts. In addition each case will require definition to be brought to the particular questions that arise and in that respect joint discussion between the respective lawyers should occur in advance of the experts meeting to make sure that the right questions are framed and addressed.