

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

SANDRA WATSON

-and-

HUNTER AND OTHERS PRACTISING AS BRYSON STREET SURGERY

MORGAN J

[1] The plaintiff claims damages for personal injuries sustained by her at Bryson Street surgery on 29 July 1998. She was a patient of the practice and her GP was Dr Clements. He was treating her for alcohol dependency.

[2] The plaintiff's evidence was that the day before her accident she had been drinking with her partner. She had been drinking cider and vodka from approximately 11 a.m. until 11 p.m. and then went to bed. The following day she decided that she wanted to go off drink and in order to do so she wanted Librium from her GP. She says that she phoned Dr Clements and spoke to him. Her account of the conversation is that he said that if she was down by 5 p.m. that afternoon there would be a prescription for her. It appears to be common case that the phone call was made at 4 p.m.

[3] She phoned a taxi and when it arrived walked out to get into the car. The taxi took her to the surgery and stopped so that the passenger side was nearest to the surgery entrance. She says that as she went to go in she met a girl coming out with a buggy. She held the door and then walked into the hall leading to the waiting room of the surgery. It had been a showery day with rain on and off. She says that she walked over some tiles a distance of approximately 2 feet onto a mat which was about 4 feet deep and 6 feet broad. She stepped off the corner of the mat onto the tiled area leading into the waiting room when she felt her left leg go under her sideways towards the right. She fell to the ground and she says that a receptionist and Dr Clements came out to help her. She said that one of the ladies in the reception area had waved her into the waiting room. She fell before she got there. She said her clothing was wet and dirty on her left side and she attributed this to the

wetness of the floor. Her foot started to swell and became very sore and Dr Clements wrote a letter which he gave to the taxi man and told him to bring her to the Ulster Hospital. She then left the surgery to go there having collected her husband on the way.

[4] In cross-examination she agreed that she had suffered from alcohol dependency for many years and occasionally had drunk very heavily. She had suffered some physical consequences including swelling of her ankles as a result. She also said that her memory was not good and that she was getting medication to assist in respect of it. She denied that she had been offered an appointment with Dr Clements. She agreed that in the course of her treatment she could phone Dr Clements at any time and he would see her. She said that on this occasion, however, he had simply told her that a prescription would be available. She agreed that on previous occasions she had been able to get into the premises over the mat and tiles. She agreed that she got drunk on a couple of drinks. She also agreed that she got very drunk at times. She agreed that on entering the surgery she had stepped onto the tiles before the mat and then walked across the mat. She had not noticed the moisture on the floor before she fell. She assumed that the floor and the mat were wet because of the wetness of her clothes. She believed that her head hit the step shown in photographs three and four. She said she did not go forward but slipped to the side. She said that she was almost in the waiting room when she fell. She said that Dr Clements and the receptionist were with her in moments after her fall. She said that she was in considerable pain after the fall and although she remembered the receptionist assisting her up from the floor she could not remember Dr Clements. She said that she was crying but not swearing and she did not remember that she was shouting or yelling. She said that she had consumed no alcohol at all that day. She denied that she was unsteady on her feet or smelt of alcohol. She denied that she showed any signs of the consumption of alcohol. She did not understand why Dr Clements described her as intoxicated and placed 4 pluses beside the symbol for alcohol in the note referring her to the Ulster Hospital. She pointed out that Librium would not be provided to her if in fact she was still drinking. She said that in her conversation Dr Clements had explained that the appointments for the surgery were taken up but he said that he would provide her with a prescription. If they had not been booked up Dr Clements would have seen her. She wasn't sure if she had received Librium in the preceding year. The doctor admitting her to hospital had also recorded 4 pluses beside the symbol for alcohol. It was suggested that this was simply a transcription of what Dr Clements had written although her explanation was that this may simply have recorded alcohol from the previous evening.. It was put to her that blood samples taken at the hospital sometime after 6:30 p.m. that evening showed a reading of 308 mg in 100 mL of blood. She denied that she had fallen forward and landed on the floor as she pushed the surgery door open. It was suggested to her that her head, trunk and upper limbs fell inside the surgery hall whereas the lower legs were still outside. She denied

that. The clinical note on her admission to hospital stated that she fell outside the doctor's surgery. She suggested that the history might have been given by her husband but had not been given by her. She said she remembered telling the doctors that she had fallen inside the surgery.

[5] Mr Irvine was the taxi driver who had taken the plaintiff to the surgery. He explained that he had picked up the plaintiff on a number of occasions and he found that when she was drunk she was nasty and obviously impaired in her walking. On this occasion he said that she walked normally to the car, was civil during the journey and did not smell of alcohol. He said it had been raining on and off during the day and that the rain stopped as they were getting to the surgery. He said that he saw her get out of the car, hold the door open and walk in. As she did so he drove on some distance to turn the car. When he returned he could see the plaintiff's legs and feet at the edge of the door and someone holding the door open. He saw someone lift her up and Dr Clements then gave him a letter for the hospital. He said that the plaintiff did not appear to him to be drunk.

[6] In cross-examination he said that he had seen the plaintiff in a number of states of drunkenness. When drunk she would swear on occasions. He said that he dropped her off and saw her open the door to let a girl out. When he returned he saw her legs and feet on the floor and the door open. He said her legs and feet were inside the door. Someone was standing inside the door holding the door open and he could see their fingertips. He identified the spot where he said her feet were.

[7] Mr Hamilton was a consultant engineer. He inspected the premises on 27 March 2003. He prepared the photographs which were used by the plaintiff. He said that the mat was 4' x 6'. The distance from the mat to the tiles at the entrance to the hall was approximately 2 feet and the distance from the edge of the mat to the steps at the far end of the hall was similar. He said that the tiles were smooth, glazed and slightly profiled. When wet he said that they were slippery. He said that the hazard from the steps could be minimised by systematic drying. He said that there was no evidence of such system in the discoverable documents. He said that if the plaintiff's body was lying with her head towards the stairs and her feet towards the door this would tend to indicate a stumble rather than a slip. He said that given the place where Mr Irvine had indicated her feet were it was unlikely that the door would have closed without hitting the plaintiff's feet. He said that if her feet were in that position he would not expect that her head would have been near the stairs.

[8] Mr Halliday gave evidence proving his reports and the nature of the plaintiff's injury which was a nasty tri-malleolar fracture.

[9] For the defendant Dr Clements indicated that he knew the plaintiff well and that he had treated her for some time. His practice was to ensure that there were slots after his normal appointments for emergencies. He remembered the plaintiff ringing at approximately 4 p.m. on the day of her accident. He did not recollect the exact conversation. He said that his practice was that if someone requested Librium he would invite them to come down to the surgery and see him so that he could organise a prescription. This was so that he could discuss with them issues surrounding their alcohol consumption and also establish whether there were any other physical consequences. He said that he remembered making an arrangement with the plaintiff on the day of her accident. He had finished his normal surgery and was waiting for the plaintiff in the reception area with Mrs Morrow and the practice manager. He said that he was standing at a window looking on to the entrance hall. The plaintiff arrived about 5:30 p.m. and he remembered the door opening and the plaintiff falling in through the door on to the ground. He said her head, trunk and upper thighs were inside the door but her lower legs were outside the entrance. He thought that no part of her body was on the mat. He and Mrs Morrow went to assist. They lifted her up and placed her on a chair. He saw visible swelling on her ankle which was clearly extremely painful. He said that the plaintiff was intoxicated and verbally abusive and that she was uncooperative and at times incoherent. In the chair he noticed her swaying from side to side. She was emotionally uninhibited. She was crying and he thought her very painful ankle was a factor in her presentation. He advised her to go to casualty and wrote a note of referral. The taxi driver had come in and he told him to take her to the hospital and gave him the referral letter. He had no recollection of any wetness or slipperiness in the hall.

[10] In cross-examination he agreed that Librium would not be given in conjunction with consumption of alcohol. He recollected that he spoke to the plaintiff on the telephone and it was suggested to him that he must, therefore, have been satisfied that the plaintiff was not consuming alcohol if he invited her to attend the surgery. He said that his policy was to keep his door open and talk to those who wanted to stop drinking. He said that it was in the nature of alcohol addiction that patients came to the surgery although they had been drinking that day. He tended to discuss with them whether they really want to stop. He said that he knew that she had consumed alcohol to some degree on the telephone but had not mentioned this in his direct evidence. He agreed that he would not require a patient to attend the surgery if they were drunk. He accepted that it was possible that on occasions the plaintiff's daughter had collected a prescription for Librium. He had no recollection of such an occasion. He denied that he had told the plaintiff that a prescription would be ready for her. If that had been the case he would not have waited for her. He had no recollection of a lady with a pushchair. He agreed that if he was standing and looking where he said he was he could not have missed such a lady. He said that his referral letter in which he described

the plaintiff as intoxicated and suffering from excessive alcohol consumption was accurate. He agreed that if it had been raining then the floor would have been wet and that there were no systems for drying the floor during afternoon surgery hours in those circumstances. He was unable to explain how the plaintiff suffered a tri-malleolar fracture but said that he was not competent to give expert evidence on that issue.

[11] Dr Carson has a doctorate in pathology. He examined the hospital notes and records. He noted that the plaintiff was recorded as having 308 mg of alcohol in 100 mL of blood. He would expect a person to be visibly intoxicated at that level although he accepted that people were different. Whether a person smelt of alcohol would depend on the nature of the alcohol consumed. He said that if a person stopped drinking they eliminated alcohol at a constant rate of 18 mg per 100 mL every hour. He said that the alcohol level might have been approximately 30 points higher at 5 p.m. that day.

[12] In cross-examination he agreed that if someone abused alcohol they may be able to tolerate it to a greater extent. He said the plaintiff probably would know that one could only get Librium if one had stopped taking alcohol. He agreed that it was less likely that one would show the signs of alcohol if one had built up resistance. People differed. He suggested that what might not be obvious to a taxi driver should be to the doctor. He said that if the plaintiff had not had any alcohol since 11 p.m. the previous night this would suggest that her alcohol level was over 650 mg per 100 mL of blood at that time. He said that such levels were impossible. If she had stopped drinking at 11 p.m. the previous evening all the alcohol should have been eliminated by 6:30 p.m. the following day.

[13] The final liability witness was Mrs Morrow who worked at the relevant time as a receptionist in the surgery. She had retired for some seven years. She said that she was in the reception area with Dr Clements and the practice manager. There was no one else in the premises. She was standing beside Dr Clements at the window looking on to the hall. She said that the door was pushed open and the plaintiff fell in through the door. She ended up on the floor and fell in and about the mat. Her body was partly on the mat and partly on the tiles between the mat and the entrance. Most of her was inside. She fell forwards. She didn't think that the door was able to close because of the position in which the plaintiff was lying. She assisted Dr Clements to place the plaintiff onto a seat. Her impression was that the plaintiff was very drunk. Her language was appalling, she was loud and there was something more than that. She had never seen the plaintiff drunk before although she had seen her on other occasions.

[14] She doubted that the plaintiff's condition was as a result of the shock of the injury. She could not say whether Dr Clements was on her right or left. She thought that she was at the window for a few minutes before the plaintiff

arrived. She agreed that she had been talking to Dr Clements and the practice manager. She denied that she had been distracted as a result of this. She accepted that it was difficult to remember some of the detail because of the passage of time.

[15] For the plaintiff Mr Morrow QC, who appeared with Mr Babington, submitted that the plaintiff was entitled to succeed if she demonstrated that she slipped on an area which was hazardous for pedestrians. He contended that the defendants' premises were available for the infirm including people suffering from the plaintiff's dependence and accordingly people with drink taken were invited to the premises. The issue, therefore, is whether I can be satisfied on the balance of probabilities that she fell in the circumstances alleged by the plaintiff.

[16] The evidence of the plaintiff about her consumption of alcohol prior to the fall is entirely unsatisfactory. I am satisfied on the evidence of Dr Carson that the plaintiff consumed a considerable amount of alcohol on the day of her fall and that her reading at the time when she entered Mr Irvine's taxi must have been close to 350 mg of alcohol in 100 mL of blood. That represents a significant degree of drunkenness. None of the witnesses allege that she smelled of alcohol and it seems to me likely that this was because she had consumed a considerable amount of vodka that day. I have concluded that the plaintiff's evidence on this issue is either untruthful because she wishes to improve her claim or alternatively inaccurate because she has no real memory of her alcohol consumption which would be consistent with her receipt of medication for memory difficulties. On either view it is difficult for me to give any material weight to the plaintiff's account of the incident.

[17] I have no reason to believe, however, that the account given by Mr Irvine, the taxi man, is other than his best recollection of the events. Although he did not detect that the plaintiff was drunk I infer that this was because she was able to hide it. He explained that he left the plaintiff off at the surgery but had to double park to do so. His view of the surgery entrance was, therefore, past the cars which were parked outside it. He explained that he had moved off before the plaintiff fell and did not see the fall. That suggests to me that he must have moved off at or about the time that the plaintiff was entering through the door. I accept that he has a recollection of a lady with a pushchair at the door at that time. I consider, however, that his view of the doorway would have been no more than a glance at that stage as he was undoubtedly preparing to move his vehicle in order to turn it. In light of the evidence from Dr Clements and Mrs Morrow I conclude on the balance of probabilities that the lady with the pushchair was outside premises at that time close to the doorway through which the plaintiff was preparing to enter.

[18] When Mr Irvine turned his taxi he came back to take up a position where the driver side was close to the surgery but still as I understand it

double parked. At that point he could see the feet of the plaintiff which he indicated were approximately 1 foot inside the doorway. He described how the plaintiff was lying with her head towards the inside of the hall. Mr Hamilton, the engineer, indicated that in such a position the door would not be able to close and I find that by the time that Mr Irvine had returned the practice manager was in fact holding the door and that her fingertips were seen by Mr Irvine.

[19] Mr Hamilton also indicated that if the plaintiff was lying in the position described by Mr Irvine that strongly suggested a stumble rather than a slip causing the plaintiff to be projected forwards. That explanation for the accident is entirely consistent with the account given by Mrs Morrow who places the position of the plaintiff in virtually identical terms to Mr Irvine. Dr Clements asserted that the plaintiff's feet were still outside the entrance of the door way but I consider on the balance of probabilities that he is wrong about this. I suspect that this arises from the fact that the door itself could not be closed because it would have interfered with the plaintiff's legs in the position in which she fell. Mr Hamilton further indicated that if the plaintiff's position was as indicated by Mr Irvine and Mrs Morrow this was inconsistent with the slipping case made by the plaintiff and in any event her position on the floor was different from that which she alleged in her evidence.

[20] I have concluded, therefore, that on the balance of probabilities that she stumbled as she entered the premises and fell forwards landing on her front. There is no suggestion that the slippery nature of the floor, if wet, could have contributed to any stumble at that point and I can only speculate as to what may have been the reasons for the stumble. In any event I am satisfied that the plaintiff has not established that she sustained her injuries are the result of any act of the defendants, negligent or otherwise. Accordingly I must dismiss the action.