Neutral Citation no. [2005] NIQB 55 | *Ref:* **MORF5326**

Judgment: approved by the Court for handing down | *Delivered:* **29/06/05**

(subject to editorial corrections)

SHEARER A MINOR

-v-

GILMORE

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Morgan J

[1] The plaintiff was born on 10 March 1995. The defendant was his childminder who looked after him three days per week. On 7 January 1998 he was bitten on the left cheek and forehead by the defendant's dog. There is no issue between the parties on liability.

[2] His childminder took him to Downe Hospital where the wounds were sutured under local anaesthetic. Unfortunately the wound on the left cheek failed to heal and he was transferred to the Ulster Hospital Dundonald on 14 January 1998 when the wound was further debrided and resutured under general anaesthetic.

[3] He now has a scar below the left eye which is dark in colour and wide. It constitutes a significant cosmetic blemish. Mr Gordon was of the view that scar revision to produce a paler, finer scar would be worthwhile if the patient wanted it when he was older.

[4] Subsequent to the incident and treatment the plaintiff developed behavioural changes. He started bedwetting. He woke up at night with nightmares and would need to be soothed by his parents for 5 or 10 minutes before getting over again. He became irritable during the day and his mood state changed frequently. He talked intermittently about the dog biting him which the doctors have interpreted as a symptom of flashbacks. He became aggressive and angry with people his own age and also showed evidence of obsessional behaviours in his daily routine. On a couple of occasions his young brother had fallen and required stitches and the plaintiff had become distressed and wanted to comfort him.

[5] On 26 May 1998 he was referred to child psychiatry. It was noted that he displayed severe temper tantrums, was hitting out and wanted to hurt and cut his mother and father. He would urinate on the carpet and his sleep was

disturbed. He was seen on 29 September 1998 by Dr Cormack who diagnosed Post Traumatic Stress Disorder. She continued to see him until June 2000 when she discharged him noting that his behaviour had settled. Although I heard evidence of other stressful events in the child's life such as the removal from his childminder, the arrival of a new baby and a recent change of house I do not understand that there is any real difference between the parties on the diagnosis or the fact that the behavioural symptoms were a consequence of that illness and a measure of the extent to which the child was affected.

[6] The plaintiff had started primary school in September 1999. His teacher during first year had found him difficult to control, disruptive and argumentative. The medical evidence of Dr Cormack which is agreed demonstrates that there was an improvement in his behaviour in the course of that year. Thereafter it seems clear that there were problems from time to time. His school reports for the next two years refer to difficulties with turn taking and lack of concentration in class. In September 2002, however, the difficulties in school increased as a result of his aggressive behaviours and a referral to educational psychology was arranged. The plaintiff was diagnosed as suffering from ADHD and Asberger's Syndrome. He now takes medication to assist his concentration and hyperactivity. It is clear, however, that there has been a continuing problem in relation to aggressive behaviours exhibited as a result of the plaintiff's frustration when he is unable to achieve a goal. Both Dr Mangan for the plaintiff and Dr Bownes for the defendant agreed that behavioural problems were not diagnostic of Asberger's syndrome but both agreed that they can emerge as a result of the frustrations which a sufferer may not be able to control. Dr Mangan contended, however, that the aggressive behaviours exhibited as a consequence of the Asberger's syndrome were in some part contributed to or enhanced by reason of the exposure of the child to such behaviours as a symptom of his PTSD. She accepted that aggressive behaviour was not of itself a symptom of PTSD but that such behaviour was a reaction to the stresses of the condition. It was hardly surprising, therefore, that she accepted that such a reaction to the frustration of Asberger's syndrome would not have been unusual.

[7] Dr Bownes appeared disposed to accept in his report of 7 June 2004 that the earlier PTSD had been a secondary factor in the development of the child's later behavioural problems. He resiled from this, however, in his evidence. When asked to explain the basis for his change of view he could only offer the fact that he had reflected and come to a different conclusion. He suggested that in some way he was influenced by the evidence he had heard from the plaintiff's mother but I could not understand how that evidence altered what was clearly available on the papers in this case. In those circumstances it seems clear to me that I should approach his evidence on this issue with caution and I am unable to give it significant weight.

[8] I approach this case on the psychiatric side on the basis that there was a significant PTSD which required treatment delivered by professionals and parents under their supervision for a period of approximately 20 months. The symptoms of that condition had resolved within two and a half years but the child would be vulnerable if exposed to a further stress event. I accept that the incident and its effects made some contribution to the degree of behavioural difficulties subsequently exhibited because of his other conditions. He is now receiving appropriate help in relation to those conditions although it will no doubt be a long term project. The contribution in my view is more difficult to sustain as time goes on and different life events at school and home intervene.

[9] Taking into account the terminology used in the Guidelines for the Assessment of General Damages I consider that this is a case of significant facial scarring in a young and vulnerable male and that the psychiatric damage is at the lower end of the moderately severe range. I assess general damages at £60,000.