



Neutral Citation Number: [2020] EWHC 3903 (QB)

Case No: QB-2017-003213

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London  
WC2A 2LL

Date of hearing: Monday, 27<sup>th</sup> April 2020

**Before:**

**MR JUSTICE CHAMBERLAIN**

**Between:**

**ABC**  
**(AS protected party, by his litigation friend DEF)**

**Claimant**

**- and -**

**BASILDON & THURROCK HOSPITALS NHS FOUNDATION  
TRUST**

**Defendant**

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**MR HENRY WITCOMB QC for the Claimant**  
**MISS DEBRA POWELL QC for the Defendant**

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**Approved Judgment**  
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## **MR JUSTICE CHAMBERLAIN:**

1. The purpose of today's hearing is for me to consider whether the proposed settlement of the claim in this case is in the best interests of the Claimant. There is an anonymity order in this case made on 31<sup>st</sup> August 2017 by Master Eastman. That means that the claimant will be referred to as ABC (a protected party suing by his mother and litigation friend DEF) and if this case is reported that must not be done in a way that will lead to the identification of the claimant or his family.
2. The Claimant is 20 years old, but because he lacks capacity these proceedings have been brought on his behalf by his mother as litigation friend. He was born on 8<sup>th</sup> April 2000 at the very young gestational age of 27 weeks at the Basildon Hospital in Essex. He had a twin, who died tragically at the young age of 13 days. He was delivered after her. He had to be resuscitated, including by artificial ventilation. He suffered severe injury in the form of intracranial haemorrhage in the germinal matrix area of his brain. This has given rise to asymmetric spastic cerebral palsy.
3. The case advanced on behalf of the Claimant was that his mother should have been given antenatal corticosteroid treatment in the days before the birth and that this might have improved his lung function at birth and avoided or reduced the need for mechanical ventilation. The defendant accepted that the failure to give the mother corticosteroids was negligent, but said that these would not have made any difference. If these proceedings had not settled, that issue would have had have been resolved by the court.
4. The Claimant is a middle child. He lives with his mother and two sisters. His mother separated from his father in 2007. The Claimant, his mother and two sisters are a close family unit, and from what I have seen the mother has devoted herself to looking after the Claimant in an exceptionally impressive way. The family live near the Claimant's maternal grandmother, to whom he is also close.
5. The Claimant went to a local mainstream primary school, secondary school and sixth form college. He has a number of GCSEs and has undertaken two work placements. He volunteers at the Thurrock Thameside Nature Park, has taken self-defence and judo classes, and has attended a local walking group with his grandmother. Like many people of his age, he also enjoys playing computer games. He does however have impaired motor control in his right arm and hand and in both legs. The dexterity in his right hand has improved to some extent, but his lower limb function has not. His gait is severely affected and his balance is poor. He trips and falls frequently and uses a stick. He is likely to have to use a wheelchair outside and possibly inside too in later life. He has some difficulties with psychomotor speed, i.e. the speed of information processing. He also suffers from anxiety, and his development is a little behind that of some of his peers. It is considered that he will be able to live independently from the age of about 25 with some but not 24-hour support.
6. As I have said, the Defendant disputed causation, and if it had not been for this settlement that issue would have had to be determined at trial. If the Defendant had succeeded, no damages would have been payable. The reasonableness of the settlement must be approached with that firmly in mind.

7. I have read the advice of Mr Henry Witcomb QC for the Claimant. In it he analyses with great clarity and precision the strengths and weaknesses of the arguments both legal and factual that would have been made on liability. I am satisfied, on the basis of his analysis of those issues, that it is entirely justified to accept a settlement that reflects litigation risk in the way he has outlined.
8. As to quantum, I have seen the schedule and counter-schedule. I have noticed that the settlement provides for periodical payments, and I agree that that is the preferred outcome in a case involving an award of this kind. The Defendant is an NHS Trust, and I am satisfied that consideration has been given to the security of the payments. For the purposes of section 2 of the Damages Act 1996, I am satisfied that the continuity of payments under the order is reasonably secure, that the periodical payments are to be paid free of taxation under sections 731 and 734 of the Income Tax (Trading and Other Income) Act 2005, and that the form of the order is that which best meets the Claimant's needs in accordance with CPR Parts 21 and 41.
9. The order agreed provides for the payment of a lump sum of £2,396,959 inclusive of CRU liabilities of £11,916.15 and interest. The remainder is made up of periodical payments in 3 stages: the first relating to the period while the Claimant is expected to live at home; the second relating to the transition period when he is transitioning into his own home; and the third relating to the period representing the rest of his life when he will be living on his own. Of the lump sum, £154,143 is to be held in trust by Thomson Snell & Passmore LLP, which will in due course apply to be appointed as deputy. That sum is to be paid to his parents and maternal grandparents in respect of gratuitous care. Once appointed as deputy, Thomson Snell & Passmore are to seek directions as to the allocation of that sum as between the three individuals I have just mentioned.
10. Overall, the capital value of the settlement is £5,996,661, which represents 71.42% of the pleaded total of £8,396,652. I am satisfied that these figures are appropriate ones which it is the Claimant's best interests to accept. I am therefore happy to indicate that I approve the settlement in the terms set out in the order provided to me.

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**This judgment has been approved by Chamberlain J.**