



**St John's
Buildings**

AB

(A Protected Party by his Mother and Litigation Friend CD)

and

CD

and

George Eliot Hospital NHS Trust

First Claimant

Second Claimant

Defendant

CASE SUMMARY

COMPLEX CEREBRAL PALSY CLAIM

Michael Redfern KC and Henry Vanderpump

Barristers

St John's Buildings

At the end of a second joint settlement meeting and before trial this claim was settled in the sum of £2.5 million with costs to be agreed or assessed. The Defendant refused to consider a periodical payment order.

The Claimant's mother was admitted for induction of labour at 37+ three weeks gestation. AB was delivered eight years ago. His mother had a history of gestational diabetes and at the time of delivery there was reduced amniotic fluid.

At delivery AB was flat, had poor tone, was pale, dusky and intermittently gasping with a heart rate of 70 beats per minute. It could not be conclusively demonstrated whether AB had suffered any prolonged partial asphyxia or acute profound asphyxia. His Apgar scores were two at one minute, four at five minutes and five at ten minutes. These of course reflected breathing effort, heart rate, muscle tone, reflexes and skin colour.

AB suffered a Grade 2 moderate hypoxic ischaemic encephalopathy. He developed focal infarcts, intracerebral haemorrhage and occipital subdural haematoma. There was some meconium staining and inspiratory stridor.

The Claimant's paediatric expert concluded with some difficulty that AB had probably suffered mild cerebral palsy with significant effect. AB's obstetric expert said that had he been delivered 30 minutes or more earlier he would have been born intact. The Defendant's obstetric expert asserted that there was no delay in delivery, that as AB's heart rate had reached 100 beats per minute within four minutes of delivery and that there was no damaging asphyxial event. He contended that any blood gas analysis would not have revealed evidence of acidosis and that AB's condition was possibly genetic in origin or otherwise idiopathic.

The Claimant's expert paediatrician considered that there was mild cerebral palsy which was not a view shared by the Defendant. There were none of the usual signs indicative of prolonged partial or even acute profound asphyxia. The Defendant's paediatric neuroradiologist denied the existence of any confirmatory evidence of cerebral palsy on MRI scanning and could find no damage consistent with such a finding.

The Claimant's obstetric expert stated that the cardiotocograph (CTG) became pathological about one hour before delivery and that delivery should have occurred within the following 30 minutes. The Defendant's obstetrician disagreed on the basis that he contended that the CTG recovered in a manner inconsistent with any damaging mechanism likely to cause cerebral palsy. There had been some investigation of possible genetic causation which was inconclusive. The Defendant's case quite simply was that no blood gas analysis would have identified any relevant confirmatory acidosis, that there was no breach of duty and causation was idiopathic.

AB has a normal expectation of life. He was eight years of age at the date of the approval hearing before Ritchie J on 21 June 2024. Had this been a cerebral palsy claim caused by birth asphyxia with severe lifelong damage then the value of the claim would have been in excess of £15 million.

More recently there has been evidence that AB's earlier significant developmental delays were steadily improving and that there is a distinct possibility that he will have capacity and be able to lead an independent life, possibly with assistance, but be able to undertake some form of work albeit at lesser level than his brother and sister who are undergoing tertiary education.

In the early years it was thought that the Claimant's lifelong need would be for 24 hour care but this prospect has diminished with the passage of time. His current problems include coordination difficulties, hypermobile joints, difficulty with toileting and mild developmental delay which the educational report indicates is improving. The Defendant's concerning argument was that these disabilities represented mental delay rather than frank damage from an asphyxial event.

At the end of a long second joint settlement meeting the parties agreed overall compensation in the sum of £2.5 million plus costs. This included payment to mother, CD of £100,000 for psychiatric damage as a primary victim and past care.

Taking account of the Claimant's CRU liability, the amount awarded to him was £2,393,716.00. The Defendant refused to consider a Periodical Payment Order. The Claimant recovered approximately 30% of the full value of his claim which the Judge had no hesitation in approving.

MICHAEL REDFERN KC and

HENDRY VANDERPUMP

23rd July 2024

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