Spellman v Portsmouth Hospitals University NHS Trust

Document Information

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Jurisdiction: England & Wales

England

Wales

Citation: [2024] All ER (D) 10 (Aug)

[2024] EWHC 2011 (KB)

Decision date: 31 July 2024

Court: King's Bench Division

Representation: Cara Guthrie (instructed by Irwin Mitchell LLP) for the claimant.

Anna Hughes (instructed by DAC Beachcroft) for the Trust.

Catchwords:

MEDICAL PRACTITIONER - NEGLIGENCE - LIABILITY AND CAUSATION

MEDICAL PRACTITIONER – NEGLIGENCE. The King's Bench Division dismissed the claimant's claim for damages following a trial of the issues of liability and causation where the claimant asserted that the defendant NHS Trust had breached its duty of care to her by failing to identify Cauda Equina Syndrome (CES) during the radiological review of an MRI scan the day after an alleged fall at work. The claimant argued that her General Practitioner (GP) had failed to identify compression which required urgent surgery and that her report was reassuring when it should have been to the opposite effect. The claimant had had a history of back pain, surgical interventions and longstanding urological problems. She argued that had the MRI been interpreted correctly she would have received decompression surgery the next day, leading to a better outcome. The court found that the claimant's GP was confident in her evidence that she had accurately assessed the MRI scan and had not overlooked any significant pathology indicative of cauda equina compression, which was the purpose of the MRI imaging. Further, the onset of the claimant's symptoms could not be relied on as supporting the presence of compression since the medical notes reflected an untruthful history and her urological and pain symptoms had never been shown to be definitively attributable to CES. The court held that it could not be said that the scan was not reasonably reported on the basis that there was no fixed standard so that, inevitably, there was a degree of subjectivity in reporting scans. The information showed no radiological evidence of cauda equina compression. Since it was not there to be found, the fact that it was not identified represented an accurate assessment of the scan and not a breach of duty.

Summary

Background

The judgment is available at: [2024] EWHC 2011 (KB)

The claimant had a medical history of chronic back pain, surgical interventions and longstanding urological problems. Between 2005 and 2006, she underwent three spinal surgeries on the L4/L5 vertebrae. MRIs performed during the investigations did not reveal any cauda equina compression. Subsequently, the claimant asserted that the defendant NHS Trust (the Trust) breached its duty of care to her by failing to identify Cauda Equina Syndrome (CES) during the radiological review of an MRI scan on 6 June 2017 following an alleged fall at work the previous day. CES was a serious condition caused by compression of the nerve roots and could cause paralysis and loss of bowel or bladder control if not treated promptly. Where there was a diagnosis of CES urgent surgery might be required to relieve pressure on the nerves and prevent permanent damage. The nerve roots and cauda equina were surrounded by cerebrospinal fluid (CSF) that surrounded and protected the brain and spinal cord which appeared as a bright area in standard MRI scans.

The claimant's case was that the work-related fall on 5 June 2017 had triggered back pain that radiated down her legs and into her left buttock. She consulted her general practitioner (W) the next day but did not say that she had fallen, instead she stated that her symptoms had started three days before. In her evidence she stated that she had lied because she did not think that she had been taken seriously on previous occasions. The claimant was referred to hospital under the CES pathway and the history she gave there was also untruthful. The claimant claimed that the MRI scan performed on that day was misread as showing only mild spinal canal narrowing (stenosis) and that the reporting radiologist failed to identify significant cauda equina compression and argued that had the MRI been interpreted correctly she would have received decompression surgery by the morning of 7 June 2017, leading to a better outcome. Damages were agreed at £300,000, net of sums due to the Compensation Recovery Unit and contingent upon the claimant proving breach of duty and causation.

Issues and decisions

Whether the claimant had CES, or whether the initial MRI report (mild stenosis) was accurate and/or reasonably reported.

The claimant argued that W had failed to identify compression which required urgent surgery and that her report was reassuring when it should have been to the opposite effect.

The standard of care for radiology reporting was to be determined in accordance with the general *Bolam/Bolitho* clinical negligence principles (see *Bolam v Friern Hospital Management Committee* [1957] 2 All 1957] 2 All ER 118, *Bolitho (administratrix of the estate of Bolitho (deceased)) v City and Hackney Health Authority* [1997] 4 All 1997] 4 All ER 771). It was well established that there were two stages. The interpretation of image content was a factual matter while the subsequent determination of whether a report was reasonable (non-negligent) required a court to assess whether the radiologist's actions were consistent with the expected standard of care in interpreting and communicating imaging (see [77], [78] of the judgment).

The scan on 6 June 2017 was subject to movement artefact. W was well aware of the significance of the scan and its urgency. She commenced her report before scanning had been completed and asked the radiographers to obtain better scans if possible. It was reasonable not to re-scan given her decision that it may not have provided any better quality scans. It was nevertheless diagnostic for a consultant radiologist (and agreed to be so by the expert radiologists); W was entitled to treat it as such. The claimant was on an urgent CES pathway and there was no reason in those circumstances to seek to repeat the scan. The radiologists were best placed to give definitive evidence on the issue of CSF levels particularly when faced with a poor quality scan where individual images may have been differentially affected by patient movement or lordosis. On the evidence, the imaging had not identified any point at which there was sufficient constriction for the spinal nerves to be clumped together and subject to compression (see [116], [119], [120] of the judgment).

W was confident in her evidence that she had accurately assessed the MRI scan and had not overlooked any significant pathology indicative of cauda equina compression, which was the purpose of the MRI imaging. She emphasised her careful adherence to the Cauda Equina Pathway guidelines and her long and frequent experience in reviewing scans to identify whether there was CE compression. She confirmed the presence of CSF at the relevant spinal levels according with the expert's view and contradicting any suggestion of artefact (see [121] of the judgment).

The onset of the claimant's symptoms or the position between the 6 and 12 June could not be relied on as supporting the presence of compression since the medical notes reflected an untruthful history. Her medical history was complicated, and her urological and pain symptoms had never been shown to be definitively attributable to CES (see [122], [123] of the judgment).

Even if the case were to be advanced on the basis that, irrespective of lack of evidence from the scan, there was nevertheless underlying cauda equina compression and that the reassuring nature of the report contributed to a misdiagnosis or underestimation of other symptomology by the clinicians, it could not be said that the scan was not reasonably reported. There was no fixed standard so that, inevitably, there was a degree of subjectivity in reporting scans. The information showed no radiological evidence of cauda equina compression. Since it was not there to be found, the fact that it was not identified represented an accurate assessment of the scan and not a breach of duty (see [124]-[127] of the judgment).

Accordingly, the claimant had not established that there was any breach of duty on the part of W and the claim would be dismissed (see [128] of the judgment).

Bolam v Friern Hospital Management Committee [1957] 2 All ER 118, [1957] 1 WLR 582 applied

Maynard v West Midlands Regional Health Authority [1985] 1 All ER 635, [1984] 1 WLR 634 applied

Bolitho v City and Hackney Health Authority [1997] 4 All ER 771, [1998] AC 232 applied

Penney v East Kent Health Authority [2000] Lloyd's Rep Med 41, [1999] All ER (D) 1271 applied

Brady v Southend University Hospitals NHS Foundation Trust [2020] All ER (D) 22 (Feb) applied

Claim dismissed.

Barrister.