



Neutral Citation Number: [2021] EWHC 377 (QB)

Case No: D26YJ417

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LIVERPOOL DISTRICT REGISTRY

Date: 23rd February 2021

Before :

MR JUSTICE FORDHAM

Between :

BGIM

(a protected party by her father and litigation friend, JGIM)

Claimant

- and -

KYLE NEWBY

Defendant

Christopher Melton QC (instructed by Irwin Mitchell LLP) for the **Claimant**
Peter Burns QC (instructed by Keoghs LLP) for the **Defendant**

Hearing date: 23 February 2021

Judgment as delivered in open court at the hearing

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

Note: This judgment was produced for the parties, approved by the Judge, after using voice-recognition software during an ex tempore judgment in a Coronavirus remote hearing.

MR JUSTICE FORDHAM :

1. The purpose of today's hearing is for me to consider whether the proposed settlement of the damages claim in this case is in the best interests of the Claimant. The Claimant is a protected party and a protected beneficiary. She brings these proceedings by her father – her dad – who is also her litigation friend. A professional deputy has been appointed by the court of protection to manage the Claimant's financial affairs, the Court of Protection having been satisfied in April 2018 that the Claimant lacked capacity to make decisions for herself in relation to matters concerning property and finances. The Claimant is treated as lacking capacity for the purposes of the need for this Court's approval of a proposed settlement, in circumstances where experts instructed on her behalf have assessed the Claimant as lacking capacity and needing to be treated as a protected party.
2. An anonymity order was made in this case on 4 December 2018. No challenge has been made today to the continuation of that order and I am satisfied, having regard to the principles in X v Dartford and Gravesham NHS Trust [2015] 1 WLR 3647, that the anonymity order should continue. It is because of the anonymity order that I will be describing people using impersonal labels rather than names. I have already referred several times to "the Claimant", and to her "dad". I know they understand, from what was explained at the hearing, that the legal representatives and the Court have no wish to 'depersonalise' these proceedings. What we do need to do, though, is to ensure that the anonymity order is a proper and watertight protection.
3. The mode of hearing was a remote hearing by MS Teams, which I am satisfied was necessary and justified during the pandemic. It deprived me of the opportunity to see and meet the Claimant and members of her family – her dad and her mum – and anyone else who would or might have attended physically in a court room with them. I have, however, been able to have something of a 'chat' – albeit a bit 'one way' – with the members of the family earlier in the hearing as I look, through my screen, into their home and seeing their faces and the family picture which (rather brilliantly) happens to be on the wall behind them. The open justice principle was secured by publication of this case and its start time in the cause list, together with an email address usable by any member of the press or public wishing to observe the hearing.
4. It is not necessary for me to go into a lot of detail. The Claimant is now aged 25. In 2014, when she was aged 18, she sustained a moderate-severe traumatic brain injury in a road accident when her car was violently struck by a car driven by the defendant. By the court's order of 4 December 2018 an apportionment of liability as agreed by the parties, 70:30 in the Claimant's favour, was approved. A trial of quantum (damages) was fixed for 22 November 2021.
5. At a joint settlement meeting in January 2021 the parties agreed a proposed settlement, subject to the approval of the Court. What is proposed is that there should be a lump sum award of £3.9 million to be transferred, subject to certain deductions, through to the Claimant's deputyship account and handled by the deputy in accordance with directions made by the court of protection and such further orders as the Court of Protection may make. The deductions are as follows. A sum of £250,000 reflecting interim payments already made by the defendant; a payment of £64,143.97 to the compensation recovery unit; and a provisional costs retention sum of £198,733.20. It is

proposed that a sum of £52,500 be available to be paid out of the deputyship account to the Claimant's parents – mum and dad – in respect of 70% of past gratuitous care.

6. I have had the benefit of reading the opinion of Christopher Melton QC which sets out the reasons where the Claimant's legal team considers that a settlement in this form and in these figures is in her best interests. I have also read a report on structure of the settlement by a financial planner and a witness statement by the Claimant's solicitor. There was also a corrective email which came to me confidentially this morning and corrected a non-material erroneous figure in one part of that statement. Having considered those materials, together with the other documents in the case, to which I have been referred, I agree that this is a sensible settlement from the Claimant's point of view. I am happy to give my approval to the settlement and make an order in the form proposed. I am satisfied that the parties have considered whether damages should wholly or partly take the form of periodical payments, and that there are good reasons in the circumstances of this case for the settlement being of a lump sum nature. I approve the deductions, retention and payment out to which I have referred. I am satisfied, based on the materials which I have read, that the settlement must be seen in the round.
7. Mr Melton QC emphasised at the beginning of today's hearing, and it is appropriate that I do the same at the end of this ruling, that the Claimant – who sits near the screen at home and is able to hear what I say – had her life changed and in a very dramatic way on 11 February 2014. She, and her loved ones and those who support her, I know, have experienced dark and difficult times since that life-changing day. As Mr Melton QC also emphasised – as do I – the Claimant has had the fantastic support of family and a team including a team of lawyers and a rehabilitation team. I have no doubt that she would want to thank them, and I want to thank them, for the support that I know they have all given to her. I also know that they would want to thank each other. Mr Melton QC emphasised – as do I – that the Claimant has done really well, in that 7-year period since February 2014, with that help and support, in the steps taken to turn life around. I was told, and I am very glad to have heard, that she is in a far better place today than was or could have been imagined just a year or two ago. I was told of the pride that her family including her mum and dad have in her. The ringing phrase that was used in Court today was that she has been 'bouncing back'. Everybody knows, and I know, that it will not be easy, looking ahead and in the steps which lie ahead. We are also, all of us, aware that this is a 70% damages recovery case. But it is clear that the support available, and this settlement, will allow the Claimant's life very significantly to be improved. It is very clear to me that the Claimant's family will continue to do all within their power in order to make this award work to protect the Claimant's well-being and enhance her enjoyment of life; and that the compromise of the proceedings takes away much of the uncertainty that a trial would have entailed, and enables the family now to move on.