

Neutral Citation : [2024] NIMaster 14	<i>Ref:</i>	
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<i>Judgment: approved by the Court for handing down (subject to editorial corrections)</i>	<i>Delivered:</i>	21/6/24

IN THE HIGH COURT OF JUSTICE OF NORTHERN IRELAND

KING'S BENCH DIVISION

BETWEEN:

AB

Plaintiff

and

Logan Wellbeing Belfast Ltd

First Defendant

Logan Medical Belfast Ltd

Second Defendant

Ruth Ellen Logan

Third Defendant

Miss Leonard (instructed by Finucane Toner) for the Plaintiff

KRW Law Advocates Ltd for the 3rd Defendant

Master Bell

Introduction

[1] This is an assessment of damages in respect of the plaintiff whom I have anonymised by the random initials AB. The plaintiff has specifically instructed her

counsel to seek a written judgment and this judgment is anonymised in order to protect her right to privacy.

[2] The background to the action is that in 2015 AB began fertility treatment with a Health and Social Care Trust provider. This was unsuccessful and it took a mental toll on her.

[3] AB subsequently attended at fertility clinics in Belfast and Dublin and in 2019 she became pregnant with twins but sadly lost both. The outcome involved a surgical procedure. As a result of this she became increasingly low in mood and her General Practitioner prescribed antidepressant medication.

[4] In October 2019 AB was told about fertility treatment offered by Logan Wellbeing. She researched the company on the internet, contacted it, and was seen the next day. AB, reflecting on her extensive previous contacts with fertility clinics, considered that the clinic looked appropriate.

[5] At Logan Wellbeing AB was told that there was no problem and that she would be able to conceive. Despite the absence of a proper physical examination, AB began to doubt what she had been told in previous fertility clinics. A treatment protocol was drawn up. AB said that she recognised the terminology being used and assumed that the person treating her was appropriately qualified.

[6] In March 2022 AB was sent information in relation to a television programme detailing fraudulent treatment that had been offered by Logan Wellbeing. She subsequently told a doctor that, when she heard this, "her stomach shrank." She watched the programme and was "taken right back to the start." She was "angry and in a horrible dark place." AB was "ashamed at being taken in." She noted the considerable financial stress that she and her husband had experienced as a result. Notably, AB told her doctor that she could not bring herself to have another round of IVF treatment even though this was already paid for.

[7] AB then consulted a solicitor who sent a Letter of Claim on her behalf to Logan Wellbeing Belfast Ltd on 27 June 2022. There was no response. A writ was then served on that defendant on 13 January 2023. The writ claimed that misrepresentations were made to AB by Ms Logan and the services rendered were negligent and ineffective. It also claimed that AB suffered psychiatric injuries as a result and had also incurred financial loss for the services rendered through consultations, treatments and prescriptions for medication. A writ was then also served on the second defendant, Logan Medical Belfast Ltd on 17 February 2023. An application to join the third defendant, Ruth Ellen Logan, was granted on 9 March 2023 and an amended writ was served on all three defendants on 18 May 2023. No Memorandum of Appearance was filed by any of the three defendants. Accordingly, AB's solicitors sought, and were granted, a default judgment on 4 December 2023.

[8] On 29 February 2024 the action was listed before me for an assessment of damages. Mr Durkin of KRW Law Advocates Ltd appeared on behalf of the third defendant and indicated that he was instructed to apply to the court for the setting aside of the default judgment against the third defendant. I directed that the third defendant should have three weeks to file such an application. No such application has been filed since then.

[9] On 17 June 2024 the matter was again listed for assessment of damages. Mr Durkin appeared for the third defendant, this time out of courtesy to the court. He explained that he had received no instructions from his client and therefore was unable to offer any submissions to the court. The evidence presented to the court and the submissions by counsel for the plaintiff were therefore unopposed. Mr Durkin's appearance was nevertheless important in that it demonstrated that the third defendant was aware that the proceedings were listed before the court on that date. I therefore informed Miss Leonard that it would not be necessary for AB to formally prove under Order 37 Rule 1 that the defendants had been served with a Notice of Appointment giving details of the date and time of the hearing.

Medical Evidence

[10] The medical evidence consisted of a report from Dr Adrian East, consultant forensic psychiatrist. He is the Regional Advisor in psychiatry to the Royal College of Psychiatrists in Northern Ireland and is Chair of the forensic faculty of the Royal College of Psychiatrists in Northern Ireland. Dr East examined AB on 7 September 2023. There were no features present in AB's early life which significantly affected her mental health.

[11] AB told Dr East that she had been left low in mood and that she withdraws from her family. She told him that she "just goes to work and then back home" as she is not able to take enjoyment from life. She remains "angry and irritable." AB also told the doctor that her sleep was reduced as she would experience thoughts "going round and round" in her head. She also described reduced concentration and a much greater level of anxiety. Her appetite had been reduced but was now recovering.

[12] Dr East found that AB presented with the following symptoms;

- (a) Low mood. AB had been low in mood since the failure of her earlier fertility treatment. This was exacerbated by the loss of the twins in early 2019.
- (b) Negative thoughts. AB has become withdrawn from her family and she is not able to enjoy life. She now has difficulty trusting others and cannot bring herself to engage in another course of fertility treatment.
- (c) Biological symptoms. AB has disturbed sleep and her appetite was initially reduced.

[13] Dr East concluded that, taken together these symptoms were diagnostic of a major depressive episode. He noted that AB had suffered an episode of depression and anxiety in 2014. This would have predisposed her to the current major depressive episode. He also noted that AB had been involved in a road traffic collision in February 2023. This would have had a small but significant role in perpetuating her major depressive episode.

[14] Dr East's conclusion is as follows:

"I believe that the major contributory factor to [AB's] major depressive episode was the fertility treatment she received at Logan Wellbeing. [AB] was already suffering from a depressive illness when she began this treatment and she was at a low ebb given her history of failed fertility treatment, the loss of twin foetuses and the social isolation associated with the COVID pandemic. When in this vulnerable state she was given false information which served to artificially elevate her mood. This made the blow of the realisation that she had been exploited even harder. As a result her mood deteriorated markedly and she developed all of the features of a major depressive episode.

There is some evidence that [AB's] mood is beginning to improve. She reported to me an increase in appetite. I note that [AB] has also been able to keep working. However her family life and daily activities have been severely impacted by this major depressive episode. Hence I would describe this as being of moderate disability."

Award of Damages

[15] The 6th Edition of the Guidelines for the Assessment of General Damages in Personal Injury Cases in Northern Ireland states that:

The factors to be taken into account in valuing claims for psychiatric damage include the following:

- (i) Ability to cope with life, education and particularly work
- (ii) Effect on relationships with family, friends or contacts
- (iii) Extent to which treatment would be successful
- (iv) Future vulnerability
- (v) Prognosis
- (vi) Extent and/or nature of any associated physical injuries
- (vii) Whether medical help has been sought.

[16] In respect of "Moderate Psychiatric Damage", the Guidelines suggest that such

an award is appropriate in cases where, while there may have been the sort of problems associated with factors (i) to (vii) above, there will have been marked improvement by trial and the prognosis will be good. The Guidelines suggest that the award should be in the region of £15,000 – £60,000. The Guidelines nevertheless state that it is recognised that, in psychiatric injury cases, the facts of a particular case may justify an award in excess of the guideline figures and/or an award of aggravated damages.

[17] When assessing damages, the plaintiff is entitled to general damages for pain and suffering to date and into the future. AB is a 43 year old woman who has determinedly tried to have a child. Her treatment from Logan Wellbeing has left her in a position where she cannot bring herself to undergo another round of IVF treatment. The loss of time during which she might have engaged with a reputable clinic has undoubtedly caused her much emotional pain.

[18] Having regard to the evidence presented to the court, I consider that the facts of the case justify an award outside the usual range. I therefore award AB the sum of £80,000 in respect of general damages against all three defendants. I also award her the amount of £6,530 for special damages in respect of the payments which she made to Logan Wellbeing Ltd. I further award her interest at the court rate from the date of the issue of the writ. Finally, I award her the costs of the action and I certify for counsel.