



**Healthcare  
Update**

March 2014

**MARGARET HAUGHEY -v- NEWRY AND MOURNE HEALTH AND SOCIAL CARE TRUST [2013] NICA 78**

**Facts**

The appellant underwent surgery in 1998, due to bladder incontinence. The procedure, Burch Colposuspension (CSP), involved the elevation of the bladder neck by placement of sutures in the anterior vaginal wall. After the surgery, the appellant complained of severe back pain, and following tests, it was noted that there was an accumulation of urine in the appellant's kidney which was due to an obstruction in the ureter. Further surgery was performed involving the removal of some of the sutures that had been placed on the right-side during the original procedure. The appellant later issued a Writ alleging negligence by the respondent Trust and its servants and agents. The appellant argued that the ureter had been obstructed by kinking occurring due to the stitches being inserted in too high a position during the original operation, and that the surgeon involved had not been sufficiently experienced in performing this particular surgical technique.

At Trial, the respondent called three surgeons from the hospital, two who had been involved in the first procedure, and one who had performed the subsequent surgery, as well as a consultant gynaecologist with an interest in urogynaecology. The appellant called a consultant gynaecologist and obstetrician with a special interest in urogynaecology. The appellant's expert contended that the obstruction could not have occurred unless the stitches had been incorrectly placed. The surgeon who performed the second operation, stated that the stitches had been correctly placed in the first operation, and that she would have observed if this was not the case. The Trial Judge preferred the evidence submitted on behalf of the respondent, and found that the surgery had not been negligently carried out, but that the appellant had suffered a recognised complication.

**The Appellant's Submission**

In the Trial Judge's decision, he referred to the principle of *res ipsa loquitur* and rejected the application of the principle in the case. He stated that even if no complete explanation could be found for the injury suffered by the plaintiff, this did not mean that the defendant had been negligent *per se*. He emphasised that the burden of proof rested with a plaintiff to demonstrate negligence on the balance of probabilities. On behalf of the appellant, it was argued that the Trial Judge's consideration of the principle of *res ipsa loquitur* had coloured his judgement. It was also argued that the Trial Judge had treated all four doctors called by the respondent as expert witnesses, when, in fact, only one was an expert witness, and the others were merely witnesses of fact. The appellant also raised the issue of the independence of the doctors giving evidence, given the size of the Northern Ireland jurisdiction, and the limited number of specialists in the area.

## The Respondent's Submission

It was submitted on behalf of the respondent that whilst the Trial Judge referred to the principle of *res ipsa loquitur*, he did not rely upon it in his reasoning. It was argued that the Trial Judge was entitled to take into account the evidence of the factual witnesses, in conjunction with the evidence of independent medical experts and the medical literature.

## Judgment of Higgins LJ

Higgins LJ held that the Trial Judge had only referred to the *res ipsa loquitur* principle by way of analogy. It was held that the Trial Judge was entitled to rely on the factual evidence given by the doctors involved in the treatment of the appellant, and to accept their evidence that the stitches had been correctly placed. It was held that the Trial Judge had been well aware of the limited number of specialists in this field in Northern Ireland; he had accepted the honesty and integrity of the witnesses and did not have to deal separately with the issue of independence. It was highlighted that all experts sign the Expert's Declaration, and that parties are entitled to call experts from within the jurisdiction despite the fact that the specialists within a limited field may be known to each other.

Higgins LJ noted that inherent in the appellant's submission was the suggestion that the evidence of an expert witness in a clinical negligence case should be preferred to the evidence of other medical witnesses, whose evidence was regarded as truthful, because the evidence came from a witness regarded as an expert. Higgins LJ stated that in contested clinical negligence cases the Court must consider independent expert evidence in conjunction with the evidence of the doctors involved in treatment. The evidence of an independent medical expert was not necessarily to be preferred over the factual evidence submitted in a particular case. The appeal was therefore dismissed.

To view or download a copy of the original judgment, please [click here](#).

## Contact



Roger McMillan  
Partner | Head of Healthcare  
+44 (0)28 9034 8868  
roger.mcmillan@carson-mcdowell.com



Anna McCarthy  
Assistant | Healthcare  
+44 (0)28 9034 8822  
anna.mccarthy@carson-mcdowell.com

