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IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN COMMON LAW

SUIT NO. C.L. M066 OF 1980

BETWEEN	MILDRED MILLEN	PLAINTIFF
AND	THE UNIVERSITY HOSPITAL OF THE WEST INDIES BOARD OF MANAGEMENT	DEFENDANT

FOR NEGLIGENCE

Tenn for Plaintiff

Goffe for Defendant

On 6th July 1984.

JUDGMENT

VANDERPUMP J.

This Defendant is a body corporate established by The University Hospital Act.

Sec.4

Sec.5(1)

"The duties of the Board shall be -

(a) to construct, equip, furnish, maintain, manage, control and operate the University Hospital together with all such schools for the training of hospital nurses or hospital technicians of any description as the Board may think requisite for ensuring that the University Hospital is at all times adequately provided with hospital nurses and technicians;

(b) to make all such appointments as may be necessary to enable the duties imposed by paragraph (a) to be fully and effectually performed".

National Health Services Act

Nowhere in this Act is there a provision for medical specialist services as in the English Act.

Sec.3(1)

'Tis true that Section 9(2)(b) enables the Defendant to make regulations to 'provide for the accommodation, maintenance, care and treatment of.....any patient admitted to the hospital' but that in myvview does not include doctors.

para. 1

It is surprising to see the Statement of Claim gayly alleging that the Defendant was at all material times a body whose duty it was under and by virtue of the provisions of the University Hospital Act to manage control and administer the hospital..... and to employ and engage thereat Medical Specialists, Practitioners

para. 1

and the Defendant (just as gayly) admitting it! Defendant also admi-

paras. 2,3 para.4 that the Plaintiff was a patient in the hospital at divers times and and that on the 14th December 1973 a Shirodkar suture was inserted in her as also that she was treated there between 1970 and 1974 and 1976. Has not admitted by whom treated, however, has not admitted that it was by Medical Specialists its servants or agents.. indeed it seems to have denied this by the general traverse at the end.

Section 3(b) of the Act speaks of facilities for the instruction of medical students and coloumn 1 page 300 of the University College Hospital (fees) Regulations 1965 has as v Medical treatment and accommodation. Mr. Goffe has submitted that the hospital exists to provide medical services to the public under the provisions of the Act which created a Board to provide services at the hospital. It does appear that doctors were employed there at the material time. Plaintiff knows of at least two. It would be strange for a hospital not to have doctors but nurses and technicians only!

What has to be determined is whether these doctors were the servants or agents of the Defendant at the material time and if so whether they were negligent then. This hospital was a teaching hospital.

Cassidy vs Ministry of Health 1951 1AER 574,586

"Where ..... the doctor or surgeon, be he a consultant or not, is employed and paid, not by the patient, but by the hospital authorities..... the hospital authorities are liable for his negligence in treating the patient". It is clear that here the doctors that treated Plaintiff were not her private doctors, she did not even know their names! Does appear that they were in Defendant's employment at the material times. Defendant therefore liable on the doctrine of respondeat superior for their acts then.

Gold v Essex 1942 2 AER 237, 249 also 244

For where a Defendant does that which he promises or professes by a servant or agent it is liable for their adts on the doctrine of respondeat superior. Before this suture was inserted Prof Wynter a specialist in obstetrics and gynochology at this hospital was consulted and agreed to the proposed course. Her wrong was incompetent in relation to child bearing. This suture was to maintain the cervix in a fixed undilated possession during pregnancy.

Was Defendant's servant or agent negligent?

There were two different operations, one in December 1973 and one the following March involving two different doctors. The act of negligence complained of took place in the latter operation. The doctor there was seeking to remove the suture. He was not entirely successful. He left back a portion.

Kerr's Operative Obstetrics P169

"I must now state with every emphasis that the operation of cervical encirclement carries with it a very real danger. A woman who unexpectedly goes into labour after the "purse string" has been applied, faces an obstructed labour. Lash records a case of rupture through the anterior part of the cervix above the level of the inserted ligature and Cushner.....of a rupture through the posterior wall. I myself have heard also of a death in early pregnancy from sepsis the uterus being unable to expel its contents because of the previous operation. There will I fear be many more disasters of a like nature in the years to come. I cannot urge too strongly that the surgeon who ligatures a patients cervis must hold himself responsible for the welfare of that patient during her subsequent pregnancy; and the patient herself must be made to understand the possible danger which confronts her should she go into labour and neglect to obtain medical assistance." Emphasis mine.

It is common ground that the suture should be removed two weeks before the date on which the child is expected. Here it was sought to remove it after labour had actually begun! Plaintiff was taken to the theatre. "I was flat on my back, feet apart, he put something like an ice shaver into my womb and started to operate on me. I felt a sharp thing thrust into my womb and I screamed and called out. I felt the same sharp thing again. I was in pain and agony. I said, 'Doctor,you is a wicked bitch!' Whereupon he flung down the instrument and walked away."

Plaintiff's doctor has given as his opinion that during

that operation the section with the knot was severed and removed by the doctor or severed and left in place (along with exhibit 3) and later on fell out spontaneously. It could leave her body without her knowledge especially if she had pain which could obscure it. In the circumstances it seems to me the latter that is the more probable. Having inserted the suture in December there was a duty of care cast on Defendant not only as regards her welfare but as regards its removal at the appropriate time. If the Plaintiff had been properly schooled by Defendant she would have returned then to have it removed. At the eleventh hour a blundering attempt is made and at its highest a piece only is removed and at its lowest (perhaps the more probable) both remain, the knot only being severed. That cannot be said to be satisfactory. Having put it in it was under a duty to remove it, at least before delivery. This Defendant has failed to do. Some hours before birth a piece only is taken out. 5 of Defence says exhibit 3 left there accidentally. Mr. Goffe says through an error of Judgment. He did not enlarge on that. Was it that doctor thought that he had taken out both pieces? No evidence from the defence on this. Here there was a situation involving the use of some special skill and the test is the standard of the ordinary skilled man exercising and professing to have that special skill. "If a surgeon fails to measure up to that standard in any respect (clinical judgment or otherwise) he has been negligent and should be so adjudged". If he had used proper care in what he was about he would not have left exhibit 3 in Plaintiff. I find him negligent and thus Defendant.

Whitehouse vs Jordan 1981 1WLR 267,276-277

Cassidy sup P580,1

Did Plaintiff suffer any damage as a consequnce?

It was common ground that Plaintiff had an infected cervix with trichomonas infection and that this was a pre-existing condition. The question is whether this condition was aggravated by the presence of exhibit 3. In a healthy cervix it would not cause irritation. A

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normal cervix pregnant or non pregnant is really insensitive but trichomonas infection soreness could make it more sensitive hence her reaction to doctor's efforts and to the presence of exhibit 3. Dr. Cole said Plaintiff would be suffering a constant irritation in her vagina from exhibit 3 by virture of the way he saw it freely pointing in the vagina by a sharp point. During sex that aggravation would be aexaggerated in her.

He went on to say that its presence in her body had at least aggravated a situation and possibly provided the condition for super infection in an area which normally contains bacteria anyway and other pathogens. And it had been suggested that before that she had a chronic situation then the denuded area with the foreign body constantly bleeding and with stale blood forming a nutrient medium for bacterial growth then a flare up of a chronic situation now becoming an anutechronic inflammation there was a distinct possibility of a situation arising de novo as a result of the foreign body. Underlining mine.

Trichomonas infection can cause bleeding, a woman suffering from it could have vaginal sores and a portion of the blood he saw in the vagina could have been caused by it. Plaintiff said she experianced great agony in childbirth and afterwards she was still in pain. She went home. She was in torture, she could not pass urine or stool ite. without pain. Her vagina was under sores and abscesses 1974, 1975. She had abdomenal breath stopping pains and nervousness. It was grief, she could not sleep. She was in agony, torture, misery. Could not have sexual intercourse. She went back to the hospital and got some tablets. In 1976 she got worse, she could not walk, she was almost paralysed! 'Twas in that year on the 5th November that she went to Dr. Cole who examined her. The following year her strength started to come back, she stopped losing blood from her vagina. On the 7th June 1982 in the box she said her right leg was numb and cramp, couldn't wash clothes nor do much long standing. During sex her right leg drop down

and she had to tell him to stop, could not take it! Pain inside her vagina then, no sores. On a balance of probabilities I accept Plaintiff's evidence as to her condition up to the time she saw Dr. Cole. It is noteworthy that all was not experienced by her before 12th March 1974.

Dr. Cole examined her vagina with a speculum. Therein he found blood, stale and fresh. There was bleeding from a site on the cervix at which site also he beheld with his naked eye the points of a plastic material, around this site was pussy. The whole area was quite offensive. There was a mild discharge coming from the cervical os area. This was a sign of infection, and he came to the conclusion that there was infection of the vagina and the external cervical area and that there was a pelvic inflammation. He concluded that exhibit 3 caused the infection. The condition he saw was consistent with exhibit 3 being left in her, in his opinion. Fever after delivery made it incumbent on the doctor to enquire into the cause, a post natal examination would have detected it, the exhibit. She had fever when he examined her, that means she had an infection. He took out the piece of the Shirodkar suture and packed the vagina with sterile gauze and acroflavin after cleaning it. Early 1977 she seemed to have recovered.

Professor Wynter said that what she complained of in June 1982 was not due to the exhibit being left in her. He could not deny that she had experienced a vagina odour and discharge.

The suture was sterile, inert and in the depth of healthy tissue it remains so. It could not become a locus for bacteria to multiply. It will not encourage or have bacteria. Stitch is not the source of the infection. It could be left in place without any adverse effects indeed in his experience of some fifteen years a piece had been left behind no adverse effect.

hospital and any exercise of a medical nature that takes place could be deemed to be in furtherance of teaching. Should I be wrong in this the action would succeed and I would award her for pain and suffering for the nearly 2½ years the sum of $15,000.00.

5 of Reply says that the unconditional appearance waived the protection of the statute. Mr. Tenn said not relying on that, indeed O12/1/3 sets out the effect of unconditional appearance which is the waiver of an irregularity and none here.

Being statute barred the action fails and there will be Judgment for Defendant with costs to be agreed or taxed.

Q. Could the protrusion of exhibit 3 from the cervix become a focus of infection?

A. Could be focus as meaning site or point but not focus as meaning source or origin, could be. Trichomonas infection causes heavy vaginal discharge, odour maybe bleeding.

Q. Shirodkar suture has been shown to be associated with an increased risk of infection and should be removed once established labour has begun.

Infections and Pregnancy by Coid 360

A. I do not know of it but I would accept it as published work. I accept his findings. Underlining mine.

Later on the professor was asked the same question again when he said that there were conditions using the Shirodkar Suture where in time matter of infection holds but not in all cases.

I find that the presence of the exhibit 3 aggravated her pre-existing condition of an infected cervix. In a normal case she is entitled to recover damages vs Defendant.

Is Plaintiff statute barred?

Mr. Tenn has submitted with some force that unless this operation is connected to teaching a public duty was not being performed. In that case it would be a closed hospital or to be regarded as such and the Public Authorities Protection Act would not apply to bar this action brought by Plaintiff. She recovered early 1977 and filed writ in 1980. More than a year had elapsed. Very fairly Mr. Tenn continued to submit that if Plaintiff's operation was connected with teaching then it was a public duty and the Act would apply.

I do not feel that there has to be any evidence as to teaching at the material time. The hospital is set up as a teaching