

JERSEY / JUDGMENT

Le Claire -v- Brown [2015]

JRC 093 (07 May 2015)

[2015] JRC 093

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judgment

the commissioner: 1. On 4 th March, 2015, the Court approved the settlement of this personal injuries claim reached between the parties, the plaintiff acting through his curator, Advocate Jeremy Heywood. The Court authorised the curator to both compromise the claim on that basis and to take receipt of the monies payable by the defendant in respect of the claim. 2. The plaintiff, who is 22, commenced these proceedings by Order of Justice dated 8 th January, 2014, in his own name, but as of 23 rd January, 2015, he has been the subject of a curatelle, on the basis, as we understand it, that although following his serious injuries he is able to hold a conversation and express a view, he is not capable of managing and administering his property and affairs, and in particular, the monies payable under the proposed settlement. 3. The defendant was the insured driver who struck the plaintiff on 20 th February, 2011. The claim arises from injuries sustained following that accident, as the result of which the plaintiff sustained, inter alia , a traumatic brain injury. 4. Following the filing of pleadings, the Master ordered that the matter proceed by way of a split trial with the trial of liability due to take place between 20 th and 22 nd April, 2015. Following the exchange of witness statements, certain expert reports and a draft schedule of loss, prepared on the plaintiff's behalf the matter proceeded to a joint settlement meeting on 23 rd January, 2015, at which, subject to Court approval, the claim was compromised on a global basis in the sum of £675,000. 5. The application invoked the inherent jurisdiction of the Court on the basis of the judgment in the case of V (As Administratrix of the Estate of A) v The Minister for Health and Social Services

[2014] JRC 137 in which the Court approved the settlement of a personal injuries claim on behalf of a minor. In that case, the Court held that it was necessary for it to exercise its power of approval in respect of settlements on behalf of minors on the basis that such approval:- (i) Ensured that settlements are reached in the best interests of the defendant party. (ii) Provides the defendant with a binding discharge in respect of the claim, thereby providing finality in respect of the litigation; and (iii) Provides finality and protection to the party bringing the claim on the dependant's behalf in that it prevents a dependant from bringing a claim against his or her guardian upon reaching majority on the basis that the settlement was somehow inadequate. 6. Advocate Benest submitted that the guidance set

out in *V v The Minister* was of equal application to the settlement of legal proceedings such as these, where one party happens to be subject to a curatelle. 7. At paragraph 23 of that judgment, the Court cited the judgment of the Court of Appeal in *Crociani v Crociani*

[2014] JCA 095, when in the context of the Court's inherent jurisdiction, Beloff J said this at paragraph 13:- "The utilisation of an inherent jurisdiction is better reserved within its appropriate but not well defined limits (Ditto P 187) for circumstances not embraced by legislation primary or secondary." 8. In the case of a curator, there is primary legislation under which a curator is able to apply to the Court in relation to the conduct of legal proceedings, namely Article 43(17) of the Mental Health (Jersey) Law 1969 which is in these terms:- "(17) Where it appears to a curator to be necessary or expedient for any of the purposes of paragraph (15) to arrange for or authorize - (a) ... (b) ... (c) the conduct of legal proceedings in the name, or on behalf, of the interdict ... (d) ... the curator shall apply to the Court for consent to the curator's action setting out the grounds on which the curator considers such action to be necessary or expedient for any such purpose and the Court, except in a case where a power to be exercised under sub-paragraph (d) of this paragraph is a power of appointing trustees or retiring from a trust, shall appoint 2 Jurats to examine the application and the grounds on which it is founded and, if both the Jurats so appointed are satisfied that the proposed action of the curator is necessary or expedient as aforesaid, they shall deliver to the curator their consent in writing to the action to which the application relates, and, where both the Jurats so appointed are not satisfied, they shall submit to the Court a report in writing setting out their reasons for withholding their consent and the Court shall make such order in the matter as it thinks just:" 9. Article 17 leaves it to the discretion of the curator as to whether it is necessary or expedient to apply to the Court, but in this case, it would have been open to the curator to apply under Article 43(17) for consent for him to agree the settlement. Although that would have provided the curator with protection as against the interdict, it is an application that would not ordinarily involve the defendant and would not therefore give the defendant a direct discharge from the Court that had approved the settlement. 10. Advocate Benest questioned whether "the conduct of the legal proceedings" was wide enough to cover the compromise of the claim and hence the need to invoke the Court's inherent jurisdiction, but we see no reason to interpret these words restrictively. In our view, they cover all aspects of the conduct of litigation, including a compromise of that litigation. 11. However, we could see benefit in the process followed in *V v The Minister*, because it brings both the plaintiff and the defendant before the Court that approves the settlement, and thus provides finality. The substance behind Article 43(17) is to enable curators to seek the authorisation and thus protection of the Court, which has a supervisory role over curators, (akin to that exercised by the Court over trustees) and there is nothing to prevent a curator applying to the Court under Article 43(17) but making the defendant a party to that application, so that the defendant can receive a direct discharge. Article 43(17) provides for the matter to be considered in the first instance by two Jurats, but ultimately, all such applications are referable to the Court and it would seem appropriate for any such

application to be referred directly to the Court. We therefore deemed this application to have been made under Article 43(17). 12. The Court sat in private (in the absence of Advocate Corbel) to consider the advice obtained on behalf of the plaintiff and the issue of whether the settlement was reasonable, and in doing so, we considered the factors set out in paragraph 32 of *V v The Minister*. We had before us the same documents as set out in paragraph 33, other than a counter schedule of loss. 13. The total loss potentially claimable in this case was very substantial, but this was a case in which liability was denied and there was a significant possibility that the plaintiff's claim would fail entirely. The basic problem was that the plaintiff stepped or ran out into the path of the defendant's car on a dark night wearing headphones and dark clothes. It could not be demonstrated that the defendant was speeding. It would not be appropriate to go into further detail in this judgment, save to say that the advice of counsel was clear, and we had no difficulty in approving the settlement. The curator has a copy of that advice and it can therefore be shown to any successor curator or indeed to the plaintiff himself should that ever be considered to be helpful, so that the reasons accepted by the Court for approving the settlement can be understood. 14. As in *V v The Minister* (paragraph 35), one of the objectives of the Court in such an application is to protect the interdict from any lack of skill or experience of his legal advisers. This case had been taken on by Stewarts LLP (specialists in personal injuries claims and particularly in the field of catastrophic brain injuries) at the instigation of the plaintiff's mother on a "no win no fee" basis, and they had carried the costs of the not insignificant disbursements. They had in turn instructed first Walkers and then Benest Law in Jersey. David Platt QC had been instructed to provide the opinion given to the Court. We had no concerns over the skills and experience of those advising in this case. 15. The Court should also seek to protect the interdict on the issue of costs for the reasons set out in paragraph 19 of *V v M* and the Court considered this at an adjourned hearing. At the time of the settlement meeting, the plaintiff's costs were estimated at £175,000, which would have meant a net payment to the plaintiff of £500,000. In fact, the costs as at the date of the hearing amounted to £244,000, which would leave £431,000 in the hands of the plaintiff. 16. This case involved complex medical as well as liability issues and we were not surprised at the level of costs which had been incurred. No issues arose on the face of the breakdown we were provided with, but it will, of course, be for the curator to scrutinise the same carefully and be satisfied as to the amounts claimed. 17. Advocate Benest suggested that in approving the settlement, we should set a limit on the legal costs that could be deducted from the settlement beyond £500,000 at 10% of that sum, namely £50,000 which would secure £450,000 for the plaintiff and allow £225,000 for legal fees. After consideration, we set that limit at 7½% of £500,000, namely £37,500, which would net £462,500 for the plaintiff. 18. Finally, in *V v M* (paragraphs 37-45) the Court was concerned as to the application of the monies on behalf of the minor. Curators are more closely regulated by the Court, both in relation to the exercise of their powers and by the requirement to file annual accounts (Article 43 of the Mental Health (Jersey) Law 1969), but even so, we were given an explanation as to how the curator intended to deal with the funds received for the benefit of the plaintiff. A concern of the Court was the

potential cost of having a professional curator in respect of a relatively modest fund and the possibility that his fees may be disproportionate to the income, which this fund will generate. It was clear from discussion that there were good reasons in this case why it was not felt appropriate for the mother to be appointed curator and there would appear to be no one else within the family who could take on that role on an honorary basis. It was also clear that Advocate Benest's firm were fully cognizant of the need to ensure that any fees charged were proportionate. 19. In the premises, the Court agreed the terms of the settlement and by consent, ordered that the proceedings be irrevocably discontinued upon the terms of that settlement. We now set the limit of the legal fees that can be deducted from that settlement at £212,500 so as to secure £462,500 for the plaintiff. *Authorities V (As Administratrix of the Estate of A) v The Minister for Health and Social Services*

[2014] JRC 137 . *Crociani v Crociani*

[2014] JCA 095 . *Mental Health (Jersey) Law 1969*. Page Last Updated: 27 Sep 2016 BAILII:
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