

Case Note On Douse V Western Sussex Hospital NHS Foundation Trust

TARA O'HALLORAN
OLD SQUARE



OLD SQUARE
CHAMBERS 

Case note

Hollie Douse (a child suing by her father and litigation friend Chris Douse) v Western Sussex Hospitals NHS Foundation Trust [2019] EWHC 2294 (QB). Ben Collins QC from Old Square Chambers represented the successful Claimant, instructed by Sue Bowler of Coffin Mew.

Background

The Claimant suffered a serious hypoxic ischaemic injury during the course of her birth by Caesarean section, which led to severe disability. The Defendant accepted that injury was caused by the operative procedure, which lasted approximately 16 minutes. The issue was whether or not the obstetric registrar was negligent in failing to deliver the Claimant within a shorter period of time, in particular within 5 minutes, which would have avoided injury.

The registrar had encountered difficulty because the baby's head was deeply impacted in the pelvis and deflexed in the ROP position. She was unable to deliver despite attempting a number of different techniques, including: using the midwife to apply pressure per vaginam, tilting the bed head down to allow some gravitational pull, an inverted T cut, and administration of terbutaline to relax the uterus and reduce contractions.

The on-call consultant was called and she arrived 14 minutes after the procedure began. She too encountered difficulty with a deeply impacted head, and gave evidence that it was necessary to 'scout around' for space behind the baby's head in order to obtain some sideways movement and allow flexion. She applied force to each side of the baby's head to create rotation and was able to deliver Hollie within 2 minutes (she said it usually took her about 10 seconds). The Claimant was born in poor condition and taken for resuscitation.

The issue

The issue for the court was whether the registrar had failed to respond adequately to a difficult but recognised situation, or whether the circumstances of the delivery were wholly exceptional.

The standard of care

The Claimant reminded the court that the standard of care did not depend upon the experience of a clinician, but rather on the nature of the task being performed. A hospital doctor should be judged by the standard of skill and care appropriate to the post which he or she was fulfilling, and where a doctor was "acting up", that standard should be derived from the role being undertaken: **FB v Princess Alexandra Hospital NHS Trust [2017] EWCA Civ 334**. In other words, the registrar was fulfilling the role of an obstetrician competent to undertake Caesarean sections without supervision.

Expert evidence

The Claimant's expert asserted that no reasonably competent obstetrician would have failed to deliver by Caesarean section in the prevailing clinical circumstances. The degree of impaction was unlikely to have made delivery within 5 minutes impossible and the various measures adopted by the registrar were unlikely to have changed the situation so as to enable the consultant to deliver in only two minutes.

The Defendant's expert did not believe the registrar could reasonably have been expected to try other techniques, and that her approach was in accordance with a competent body of obstetric registrars. He likened the consultant's ability to deliver within two minutes to a sort of "jam jar" effect, i.e. that the measures adopted by the registrar had facilitated the consultant's ability to deliver.

Judgment

HHJ Wood QC found that the baby's head was more deeply impacted than anticipated, which created significant difficulties for the registrar and the consultant. But he did not find any material change in the clinical picture facing both doctors. He rejected the Defendant's submission that the various measures adopted by the registrar had made the delivery easier for the consultant. In his opinion, the consultant was able to deliver because of techniques that had not, but should have been used by the registrar. He did not consider it necessary to make a finding as to why the registrar had not adopted these techniques – i.e. whether due to lack of training or skill or other reason – it was sufficient to conclude that they should have been used, so as to enable delivery within 5 minutes. The Defendant was therefore liable.

Comment

The discovery of an impacted foetal head, in the course of a Caesarean section procedure expected to be routine, is inevitably a heart-stopping moment for an obstetrician. It is hard not to feel some sympathy for a registrar doing her best in an extraordinarily pressurised situation. Obstetrics is a speciality that is particularly sensitive to time and if a consultant is not on site, there may be no opportunity for a registrar to obtain assistance. But for the purposes of practitioners, this case is a helpful reminder that the standard of care does not depend upon the experience of the doctor, but rather on the nature of the task being performed. The clinician performing that task may be expected to try all available techniques to achieve a positive outcome. And where one doctor is able to deal with a difficult clinical picture where another has failed over a significant and crucial period of time, a judge may well conclude that there is an evidential burden on the Defendant, if not a requirement for an explanation, to show a material change in circumstance facing each doctor.