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9Informing Progress - Shaping the Future

FOIL UPDATE 22nd June 2023

Breaking the chain of causation

Reviewing *Jenkinson v Hertfordshire CC [2023] EWHC 872 (KB)*

Context

Mr Jenkinson stepped into an uncovered manhole in Hertford and suffered a fractured right ankle. The injury required multiple surgeries over three years, so he brought a personal injury claim against the council.

The council admitted liability, and disputed quantum but, when they obtained medical opinion from an orthopaedic surgeon, the council were advised that the ankle surgery (performed by an NHS Trust) was substandard and that if only it had been performed correctly the claimant would have been able to return to work in three-six months rather than have needed multiple operations and extended time off.

This raised the question of the extent of the council's liability to the claimant and if that liability could be restricted. Essentially, the council now wanted to amend their defence and argue that whilst they accepted they were responsible for the initial fall, resulting in the fracture, their liability ceased at the point at which the Trust took over and provided the claimant with substandard medical care. In essence the chain of causation between the claimant and the council was broken by the intervention of the Trust and their negligent clinical care.

The Procedural Position

The council sought permission to amend their defence and bring in the Trust but permission was initially refused by DJ Vernon. As a result, the council appealed and were successful before Mr Justice Baker, permission to amend their defence being granted.

The Legal Issues and Points to Take Away

To summarise the Q and A Mr Justice Baker considered at the appeal hearing:

Q: What does a defendant need to establish to break the causation chain?

A: That the consequences of the defendant's wrongdoing have been eclipsed by an intervening act.

Q: Does that requirement change when the new/intervening act was one of medical treatment?

A: No, grossly negligent medical treatment is not required, mere negligence is enough.

In conclusion, contrary to the proposition (*Webb v Barclays Bank [2001 EWCA Civ 1141]*) that where medical treatment is provided to a victim of a tort that care has to be 'grossly negligent' to break the causation chain, in fact mere negligence is apparently now enough i.e., the standard/normal test of causation applies and there is no special rule when medical treatment is the 'intervening act'.

This decision potentially opens up more cases i.e., RTA, EL/PL claims to causation arguments so that those who act for medical practitioners/healthcare entities could see a flurry of letters of claim/contribution claims coming their way.

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