



[2025] JMSC Civ 65

IN THE SUPREME COURT OF JUDICATURE OF JAMAICA

IN THE CIVIL DIVISION

CLAIM NO. 2014HCV05689

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|----------------|--|--------------------------------|
| BETWEEN | INDIANA PRENDERGAST | 1st CLAIMANT |
| AND | OMAR WILLIS | 2nd CLAIMANT |
| AND | SPALDINGS DIAGNOSTIX MEDICAL LABORATORY | DEFENDANT |

IN OPEN COURT

Lord Anthony Gifford K.C., Mr. Hugh Thompson and Ms. Maria Brady instructed by Gifford, Thompson & Shields appeared for the 1st and 2nd Claimants

Mr. Ravil Golding instructed by Janet A. Patmore, Attorney-at-Law, appeared for the Defendant

HEARD: 15th, 16th and 17th November 2021 and 3rd June 2025

Tort – Negligence – Medical Testing Laboratory – False Positive HIV Test Result – Psychiatric Injury – Duty of Care – Does a duty of care extend to a third party who suffers harm consequential to the primary victim’s injury – Was the duty of care breached

C. STAMP, J

[1] I acknowledge and sincerely apologize for the delay in delivering this decision. Please be assured that notwithstanding the delay, I have taken the necessary time to carefully consider all aspects of the case to ensure that justice is served.

BACKGROUND

- [2]** This case concerns a claim in tort for negligence arising from a preliminary HIV screening conducted by the Defendant on the 1st Claimant, Ms. Prendergast. The screening yielded a positive result, which was subsequently communicated to Ms. Prendergast. It was later established that the result was a false positive. The primary issue before this Court is the determination of whether the Defendant is liable for psychological harm allegedly sustained by both the 1st Claimant, Ms. Prendergast, and the 2nd Claimant, Mr. Willis, who is her spouse.
- [3]** The primary facts are not in dispute. In January 2010, Ms. Prendergast sought to obtain a life insurance policy from Guardian Life Insurance Company (“Guardian Life”). Guardian Life was initially named as a defendant in the action, but that claim was later discontinued. A precondition of issuing the life insurance policy is that the prospective insured must undertake certain medical tests, including an HIV test. A sales representative of Guardian Life made the arrangements with the Defendant for the Claimant to perform the test and paid for the test on behalf of Guardian Life.
- [4]** On the 5th day of January 2010, Ms. Prendergast attended the medical laboratory operated by the Defendant, situated in Spaldings, Clarendon, and provided a blood sample for the purpose of an HIV test. Two months later, in March 2010, she had not received the test result, but Mr. Willis was contacted by the sales representative who told him that something was wrong, and Ms. Prendergast should speak with the Defendant regarding the test results. Ms. Prendergast then made inquiries of the Defendant and was informed by an employee that they would have her private physician, Dr. Wright, contact her regarding the result of the test.
- [5]** The Defendant contends that the result had been sent to Dr. Wright within a few days of becoming available and it was his responsibility to communicate this to his patient. Dr. Wright’s office was also located in Spaldings just a couple of buildings away from the defendant’s laboratory. However, Ms. Prendergast was not

contacted by Dr. Wright and no consultation occurred then. A further two months elapsed until May 2010 when the insurance sales representative told her that her policy had been terminated and she should see a doctor. Ms. Prendergast contacted the Defendant once again and was advised that efforts would be made to reach Dr. Wright so that he could communicate the result of the test to her. Despite these assurances, Ms. Prendergast did not receive any communication from the doctor, nor did she visit or contact him at that time regarding the test results.

- [6] According to Ms. Prendergast, rumours that she had tested positive for HIV had begun to circulate within her community which was located just about 3 miles from the laboratory and the doctor's office.
- [7] On the 13th day of July 2010, Ms. Prendergast attended the office of Dr. Wright where he informed her that the result of her preliminary HIV test was positive. She provided to him an additional blood sample, which he sent to the Defendant for confirmatory testing. Ms. Prendergast asserts that, following the submission of this second sample, she made numerous attempts to contact the Defendant to inquire about the result but was not provided with any definitive information. Instead, she was requested to provide a third blood sample, which she declined to do. The Defendant contends that the blood sample provided by Dr. Wright was unsuitable for confirmatory testing, the quantity being insufficient and the two-day delay after the blood was collected, and thus a third sample was sought.
- [8] In August 2010, Ms. Prendergast engaged a separate and independent medical facility to again test her for HIV. This test established that she was HIV negative.
- [9] The Claimants assert that the Defendant failed to exercise reasonable care in the conduct of the test, the transmission of its result, the preservation of confidentiality, and in the treatment of Ms. Prendergast. As a consequence, they endured severe psychological trauma and distress, suffered loss and incurred expenses which they attribute to the negligence of the Defendant.

THE CLAIMANTS' CASE

[10] The Claimants have particularized the alleged negligence of the defendant as follows:

- i) The misdiagnosis of HIV test*
- ii) Failing to inform and/or properly educated the first Claimant.*
- iii) Failing to deliver information with sensitivity and confidentiality.*
- iv) Failing to employ a competent staff.*
- v) Failing to correctly carry out procedure.*
- vi) Failing to exercise due diligence in order to arrive at a result.*
- vii) Exposing the first and second Claimant to stigma, discrimination and prejudice.*
- viii) The non-transmission of said results in a timely manner to the relevant parties and/or institutions.*
- ix) The non-exercise of due care and diligence by certain personnel in light of the delicacy of the situation.*

[11] Ms. Prendergast asserts that as a consequence of the negligence she suffered significant harm including suicidal thoughts, severe depression, insomnia, crying spells, a loss of appetite, decreased libido, and anxiety. Additionally, her relationship with her partner, Mr. Willis, was profoundly affected with increased tensions and mistrust leading to the deterioration of their intimate life. Financial burdens and stigma associated with the alleged HIV diagnosis further compounded her distress necessitating cognitive behavioural therapy.

[12] Mr. Willis has similarly detailed the adverse impact on his psychological well-being, including adjustment disorder with depressed mood, decreased libido, financial strain, and stigma. He also states that his relationship with Ms. Prendergast

suffered significantly from the tension and mistrust which led to the deterioration of their intimate life.

- [13]** In light of these averments, the Claimants seek general and special damages, interest on the awarded damages, costs and any additional relief deemed just by the Court.

THE DEFENDANT'S CASE

- [14]** The Defendant denied the allegations of negligence. It maintains that the standard procedure in the industry for HIV testing mandates that positive results from an initial screening test be forwarded to the private physician of the individual tested. The physician is then expected to provide counselling and prepare the individual for the subsequent confirmatory testing. In this case, the screening test was conducted on the 5th day of January 2010, and the corresponding result were dispatched to the 1st Claimant's physician, Dr. Wright, some days thereafter in January 2010 with a request for Ms. Prendergast to submit an additional sample for confirmatory testing. It was incumbent upon Dr. Wright to communicate these developments to the Claimant.

- [15]** Notably, there existed no arrangement obligating the Defendant to directly furnish Ms. Prendergast with the screening test results and thus they refrained from doing so. Furthermore, while negative results were transmitted to the insurance company that had engaged the Defendant's services, no protocol was in place to supply positive results either to the insurance company or directly to the individual tested. In this case, the positive result was neither conveyed to Guardian Life nor any of its agents, nor did the Defendant request that they contact the 1st Claimant.

- [16]** The Defendant further asserted that it received a sample from Dr. Wright, attributed to Ms. Prendergast, on the 15th day of July 2010, the sample having been collected on the 13th day of July 2010. However, this sample was deemed unsuitable for the purposes of confirmatory testing and thus the Defendant required a freshly obtained sample from Ms. Prendergast. Despite this requirement, Ms. Prendergast

did not attend to provide the sample until August 2010. On this occasion, she refused to give the sample, thereby precluding the Defendant from conducting the confirmatory test.

[17] In view of the foregoing, the Defendant avers that it bears no liability for any harm or injury allegedly sustained by the Claimants as a result of the false positive HIV test.

ISSUES

[18] The issues arising for determination are as follows:

- (i) Whether the Defendant owed a duty of care to the Claimants.
- (ii) Whether the Defendant breached its duty of care to the Claimants.
- (iii) Whether the Defendant's breaches caused the harm and injury claimed.
- (iv) Whether, if the Defendant was in breach of its duty, the harm and injury alleged were foreseeable and sufficiently proximate to the Defendant's conduct. Psychological harm as alleged in this case, necessitates additional considerations of foreseeability and the proximity of the relationship between the parties.

SUBMISSIONS

[19] I thank counsel for their submissions and assure the parties that I have carefully considered all the material presented to the court, even though I have not adverted to every argument or legal reference. No disrespect is intended by this. Given the reasoning behind the decision, a more detailed discussion of the submissions was unnecessary.

The Claimants' Submissions

- [20] Counsel for the Claimants submitted that the injury suffered was reasonably foreseeable as anyone who is told that she is HIV positive would suffer some mental anguish. Further, there is proximity in the relationship between the Claimants and the Defendant because the laboratory technicians employed by the Defendant must have contemplated that the test would affect Ms. Prendergast and her sexual partner. Additionally, it was submitted that because Ms. Prendergast went to the lab and personally contracted the Defendant to do the test by paying them, the Defendant was authorised to submit the test results to her and they were negligent in failing to do so. Reliance was placed on the case of **Caparo Industries v Dickman** [1990] UKHL 2.
- [21] It should be noted at the outset that there was no evidence that Ms. Prendergast personally contracted with the lab laboratory and paid them for the test.
- [22] Counsel also submitted that the false positive HIV test result issued by the Defendant, the inordinate delay in communicating the initial results to the 1st Claimant, the failure to promptly initiate a confirmatory test, and the subsequent failure to conduct the confirmatory test despite the provision of a second sample, were direct or materially contributing factors that caused the severe psychological distress endured by the 1st Claimant, which, by extension, also adversely impacted the 2nd Claimant.

The Defendant's Submissions

- [23] Counsel for the Defendant stressed that the burden of proving negligence rests on the Claimants and this was not discharged. The doctrine of *res ipsa loquitur* is inapplicable in the instant case because the fact that there was a positive screening result followed by a negative screening result six months later is not by itself proof that the first test was negligently conducted. There ought to be evidence of the specific breaches alleged to prove that the test was negligently conducted. Therefore, any injury or loss which resulted cannot be attributed to the defendant.

LAW AND ANALYSIS

[24] The fundamental principles governing the tort of negligence are well established. It requires that the claimant prove the following elements:

1. **Duty of Care:** That the defendant owed a duty of care to the claimant.
2. **Breach of Duty:** That the defendant's actions or omissions fell below the standard of care reasonably expected. In this case the issue arises whether the defendant's adherence to industry protocols, if that is the case, absolves it of a duty to immediately and directly inform the claimant of the test results.
3. **Causation:** That the defendant's breach of duty directly caused the claimants' harm or injury.
4. **Damages:** That the claimants suffered actual harm recognized as actionable under law, in this case, psychological harm. As regards the second claimant, liability for psychological injury is subject to limitations, however the standard test of reasonable foreseeability is to be applied and a sufficiently close relationship of affection will readily be presumed in the case of close relatives. (See: *Alcock v Chief Constable of South Yorkshire* (1992) 1 AC 310 and K. Anderson J's useful and instructive analysis of the relevant factors in *Natoya Swaby & Anor v Southern Regional Health Authority & Anor* [2012] JMSC Civ 151 at pages 9-11.)

Was the duty of care breached?

[25] It is readily acknowledged that the Defendant owed a duty of care to the 1st Claimant and to her spouse, the 2nd Claimant. This duty encompassed taking reasonable precautions in conducting the HIV test, timely transmission of the results to the 1st Claimant or her designated physician, maintaining appropriate

confidentiality regarding the information, and treating the 1st Claimant with sensitivity and care in light of her circumstances.

- [26] The Defendant did not dispute the allegation that the Claimants suffered psychological harm upon learning of the false positive HIV test result. Nor did the Defendant challenge the assertion that the results were not communicated to the 1st Claimant until July 2010 by which time persons within the Claimants' community became aware of the result, exacerbating the Claimants' distress. The Defendant claims that it acted reasonably in all the circumstances. The Court proceeds to examine whether on a balance of probability it is proven that the defendant was negligent in: (1) the administration of the HIV test, (2) transmission of the result, and (3) safeguarding the confidentiality of the test result. The court also considers whether employees of the Defendant demonstrated hostility or insensitivity toward Ms. Prendergast.

Negligence in Conducting the HIV Test

- [27] The Claimants contended that the occurrence of a false positive test result suffices to establish negligence, invoking the doctrine of *res ipsa loquitur*. Conversely, the Defendant argued that the HIV test was performed competently in accordance with prevailing industry standards, and that false positives in preliminary screening tests are recognized occurrences and not indicative of negligence as they necessitate confirmatory testing.
- [28] It is apt to begin this analysis by reference to the evidence of Dr. Doreth Garvey, a consultant psychiatrist whose evidence I found to be truthful and reliable. She testified at the instance of the Claimants regarding the psychological trauma that they suffered. However, when cross-examined by Mr. Golding, she said that as a medical doctor she was familiar with the protocols for HIV testing and she confirmed that preliminary screening HIV tests are not conclusive, and that further testing is necessary to establish a definitive result. She also agreed that the manufacturer of the testing device recommends further tests in case of a

preliminary positive result. This, she said, means that the manufacturer recognizes that the test may give a false reading as there is a recognized margin of error and a false reading does not reflect on the competence of the person who did the test. Dr. Garvey's evidence aligns with the Defendant's position set out in the evidence of Mr. Frederick Palmer, the operations manager of the Defendant and the technician, Miss Colleen Russell, who supervised the administration of the test.

- [29] The court accepts this evidence, thus *res ipsa loquitur* cannot apply and is negated. As stated by Morris LJ in ***Roe v Minister of Health*** [1954] 2 QB 66 at page 88, the principle of *res ipsa loquitur* is no more than a convenient way of expressing that certain occurrences do not ordinarily take place absent negligence. Once such an inference is established, the burden shifts to the defendant to provide a satisfactory explanation for the occurrence. No such inference is here established. The false positive result in the initial screening does not in any way reflect adversely on the due diligence of the staff of the Defendant. Consequently, I find no evidence of the Defendant's conduct of the HIV test that constitutes negligence.

Negligence in Transmitting the Results

- [30] The Claimants allege that the Defendant failed to inform Ms. Prendergast of the test result in a timely manner and failed to properly educate her regarding its implications. Ms. Prendergast asserts that she was first informed of the positive result by Dr. Wright, her personal physician, on July 13, 2010, despite her having sought information from the Defendant and Guardian Life on multiple occasions prior to that date.
- [31] The evidence of Mr. Palmer, the operations manager, was largely unchallenged and is accepted. He explained that the Defendant's policies and procedures required it to furnish the life insurance company with the results of tests if they are negative. If it were positive, the policy was to furnish it to the doctor of the individual tested who bore the responsibility for communicating the results to the patient and

providing counselling before a confirmatory test is done. The Defendant had no obligation under the contract with the insurance company to supply test results to the individual tested. When the patient attended the laboratory for the test the contact information of the patient's doctor is collected so that the result, if positive, could be sent to the doctor.

[32] Dr. Garvey also testified that the established practice in the profession is that it is the patient's personal doctor and not the laboratory that bears the responsibility to communicate a positive HIV test result to the patient and to counsel her.

[33] Ms Colleen Russell, the medical technologist supervising the test, testified that the Defendant complied with standard procedure by transmitting the results to Dr. Wright within days of their availability. I found Ms Russell to be a truthful witness. At the time of her testimony, she had long moved on from her employment to the Defendant. Her demeanour was that of an objective witness with no interest to serve. I find her evidence that the test result was transmitted to Dr. Wright within a few days after it became available to be true. There was no unreasonable delay. Thereafter it was the responsibility of the doctor to contact the 1st Claimant to arrange a consultation.

[34] Dr. Wright did not testify in the trial and there is no evidence to gainsay Miss Russell's testimony on this matter apart from the bare assertion by the 1st Claimant, uttered very late during her cross-examination, that Dr. Wright first received the results from the laboratory by telephone call from Ms Russell on the 13th of July 2010 during her consultation with him at his office. I do not accept this evidence. I find it very improbable that Miss Russell, having spoken to the 1st Claimant and instructed her to consult with her doctor on several occasions from at least March 2010, failed to transmit the results to the doctor until the 13th of July 2010.

[35] The Court also finds that it was the standard operating procedure of the Defendant not to communicate test results directly to patients, but rather to convey positive results to the patient's physician and negative results to the requesting insurance

company. The court also accepts that, in accordance with these procedures, the Defendant did not communicate the false positive result to anyone other than Ms. Prendergast's physician who received the results within days after the test was conducted. There is no evidence before the court to suggest that the Defendant deviated from this protocol or that it improperly disclosed the results to any unauthorized party. The Defendant adhered to its established protocols, acted in accordance with recognized medical procedures, and did not improperly communicate or mishandle the test results. Consequently, I find that the Defendant was not negligent regarding the transmission of the results or regarding educating Ms. Prendergast about their implications.

Confidentiality

- [36] The Claimants allege a breach of confidentiality, asserting that individuals within Ms. Prendergast's community became aware of the positive HIV test result.
- [37] The thrust of this allegation seems to have been aimed primarily at the Guardian Life which was the 2nd Defendant at the time the claim was filed. The Particulars of Claim states that "*the first claimant is from the small community of Spaldings of which the first defendant's office is also located in that said community and word began to spread from an undisclosed source that she and her partner, ie, the second claimant, has HIV*" and that "*the sales representative of the second defendant also resides in the said community of Spaldings.*" The implication is that it is probable that the sales representative deduced that the result was positive when a negative result was not communicated to Guardian Life and disclosed that conclusion in the community. That account, whether probable or not, does not implicate this Defendant in any breach of confidentiality. The Particulars of Negligence merely aver that the Defendant failed "to deliver the information with sensitivity and confidentiality." However, there is no evidence that the disclosure of the positive test result was caused by any negligence of the Defendant.
- [38] This averment is accordingly dismissed.

Hostile and Insensitive Treatment

- [39] The Claimants allege that the Defendant treated Ms. Prendergast with hostility and insensitivity. This allegation was not particularised and no evidence was presented to substantiate the claim. Ms Russell's testimony does not reveal any conduct that could be characterized as hostile or insensitive.
- [40] Ms. Prendergast also claimed that the Defendant exacerbated her distress by refusing to accept a blood sample collected by Dr. Wright for confirmatory testing. However, evidence on behalf of the Defendant indicated the sample provided was unsuitable, and the Defendant requested a proper sample directly from the patient. She declined to do so, and this precluded a confirmatory test.
- [41] The Court finds that the Defendant's decision was reasonable in accordance with the protocols affirmed by Dr. Garvey in cross-examination that the established practice in the field is that blood samples for confirmatory testing are to be taken by the laboratory. I am satisfied that the Defendant duly discharged its duty of care when it sought to obtain a second sample from Ms. Prendergast for the purpose of conducting a confirmatory test.
- [42] The Court finds that the allegation of hostile and insensitive treatment has not been substantiated.

CONCLUSION

- [43] In light of the foregoing analysis, the court finds that the claim for negligence against the Defendant cannot be sustained. There was no breach of the Defendant's duty of care and any psychological distress suffered by the Claimants cannot be attributed to any wrongful act or omission on the part of the Defendant. The evidence establishes that the Defendant adhered to its standard operating procedures, acted in compliance with accepted medical practices, and took appropriate steps to ensure the proper handling and communication of the test

results. The occurrence of a false positive result, while unfortunate, is a known possibility in preliminary HIV screening and does not, in and of itself, establish negligence. Moreover, the court is satisfied that the Defendant neither improperly disclosed nor mishandled the test results in any way. Having determined that no breach of duty occurred in relation to Ms. Prendergast, it follows that any alleged duty to Mr. Willis could not have been breached, as his claim is entirely contingent upon a prior breach of duty owed to Ms. Prendergast.

DISPOSITION

[44] The court hereby orders that:

1. Judgment to be entered for the Defendant.
2. Costs to the Defendant to be taxed if not sooner agreed.

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C. Stamp
Puisne Judge