Neutral Citation No. [2011] NIQB 56 | *Ref:* **TRE8236**

Judgment: approved by the Court for handing down | *Delivered:* **24/6/2011**

*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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BETWEEN:

CHRISTINE HAMILTON, A MINOR by HAMILTON AS NEXT FRIEND

Plaintiff;

-and-

DEPARTMENT OF REGIONAL DEVELOPMENT

Defendant.

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TREACY J

[1] The plaintiff whose date of birth is 7 February 1992 was a 14 year old schoolgirl on 3 July 2006 when she sustained injuries as a result, she alleges, of having been struck by a falling lamp standard in Mica Street.

[2] The case as pleaded included paragraph 3 of the statement of claim:

> "On or about 3 July 2006 the plaintiff was lawfully *walking* on the pavement at the said public highway when she was struck by a falling lamp standard and as a result she sustained serious personal injuries, loss and damage."

[3] In replies to particulars dated 9 November 2009, paragraph 2, states that the lamp standard was caused to fall by reason of *persons climbing* upon it and then in paragraph 3 the time of the accident is given at 8.30 pm.

[4] Paragraph 4 of the replies states that the minor plaintiff was *walking* close to the base of the lamp standard at the time of the accident. Paragraph 6 is to similar effect.

[5] Para 7 of the replies attributed the dangerous and defective lamp standard to *vandalism* (the court was informed that no criminal injury claim was ever lodged on the minor plaintiff's behalf).

[6] Paragraph 13 made the case that the lamp standard was *bent and deformed* which was not something which had previously appeared in the particulars of negligence pleaded in the statement of claim.

[7] In amended replies (pursuant to an order of the Master) dated 15 January of 2010 the plaintiff alleged at paragraphs 10, 13 and 19 that the lamp standard had been in a state of disrepair *for some considerable time before the accident* and also that it was a danger per paragraph 17 to passing *pedestrians*.

[8] So that was the case as pleaded by the plaintiff.

[9] Accordingly in short form the minor plaintiff's case was that the lamp standard was bent and deformed, had been in a state of disrepair for some considerable time, that the dangerous and defective condition had been caused by vandalism, that the lamp standard was caused to fall by reason of persons climbing on it and that at the time of the accident the minor plaintiff was walking close to the base of the lamp standard.

[10] However the ambulance note which was placed in evidence gives a significantly different version of the accident. It states, inter alia that the minor *plaintiff* was *playing/swinging* on a lamp post when it snapped in two, the top half hitting her in the face. Mr Henry, the ambulance man also recorded, contrary to the plaintiff's account that she was *not* knocked out.

[11] Before turning to the obvious significance of that note the agreed medical report from Dr Noland records the following in the history section:

> "Christine and her mother tell me that on 3 July 2006, now 6 ½ months ago, she was *standing* on the street near her house. She tells me that *a boy* had been swinging on a lamp post. She tells me that her *friend* shouted for her to watch out but she did not realise what was happening and she understands that the top half of the lamp post had snapped and it fell towards her striking her on the right side of her face and her left arm. She was knocked to the ground but she was *not* knocked out."

[12] I agree with the defendant's submissions that the ambulance note contains the most credible account of the accident for the following reasons, many of which have been identified in the helpful written submissions of Ms Simpson who appeared on behalf of the defendant.

(1) The ambulance note is contemporaneous having been made by Mr Henry, who is very experienced, within 10 to 15 minutes of the accident occurring.

(2) On the evidence the most likely source of this account was the plaintiff's mother who did not give evidence. Mr Henry stated he had been careful to take an accurate note so that he treated the plaintiff's injuries appropriately. This is hardly surprising. He recalled taking the account from an adult. The plaintiff's father who did give evidence had not asked any questions from the *friends* of the plaintiff who had left her to her house nor did he ask the plaintiff. None of her friends remained in the house. Accordingly the most likely source of the account is the plaintiff's mother. I also note that these friends were never identified or called as witnesses.

(3) The account in the ambulance note appears much more plausible than the plaintiff's evidence which was that she was struck not, as pleaded, whilst walking but rather whilst *hip hop dancing*. Moreover the nature of her injuries to the side of her face rather than the top of her head appear more consistent with this account.

(4) The medical notes (A&E notes *and* the history taken by Dr Nolan) confirm as stated by Mr Henry that the minor plaintiff was *not* knocked. As I have already pointed out Mr Henry indicated that this was an important matter for him to ascertain since it would determine the nature of the treatment to be provided and again the medical notes and Mr Henry's note are inconsistent with the plaintiff's account that she was knocked out.

(5) Mr Henry is a witness wholly independent of the parties to these proceedings.

[13] Mr Henry's note may also explain why there has been so many versions of how this accident is said to have happened. The plaintiff for example denied in evidence that she knew any of the individuals involved. A claim which is inconsistent with the A&E report which refers to a *friend* swinging on the post; inconsistent with the account in Dr Nolan's report that a *friend* had shouted for her to watch out. It also sits uncomfortably with the evidence of Mrs O'Reilly who said the plaintiff's *cousin* was present at the time of the accident. I should say that I did not find Mrs O'Reilly a reliable witness and by the end of the case

the plaintiff's counsel wisely sought to place little or no reliance upon her account.

[14] In various replies to the defendant's enquiries the plaintiff had maintained that she could not identify the person or persons swinging on the lamp post and that the identities of the persons involved in the incident were "unknown to the plaintiff". These replies are inconsistent with the A&E note referring to her friend swinging on the lamp post which note is itself inconsistent with the first version contained in the ambulance note (which had her swinging on it).

[15] In evidence, but not in the pleadings or replies, the plaintiff maintained that there was a hole at the base of the lamp post. This does not in those terms appear in the pleaded case or in the replies although in fairness to the plaintiff particular J of the statement of claim is in these terms:

> "Failing to work at otherwise treat the surface of public pavement around the said lamp standard and the lamp standard itself so as to render it safe in the presence of pedestrian users."

[16] Moreover the pleaded case was that the lamp post was *bent and deformed* and had been in a state of disrepair for a *considerable* time. The evidence was that there are only three street lights in Mica Street. Just 3 days before the accident an inspection was carried out by a DRD highway inspector, Mr Gormley, who gave evidence. He stated, and I accept, that he looked at the lamp standard and would have noticed if any were bent and deformed, which they were not. Moreover he did not notice any hole at the base of the lamp post which, if he had noticed it, would have been recorded.

[17] In summary I am not persuaded that the plaintiff sustained her injuries in the manner she described to the court. I consider that the ambulance note recording that the plaintiff was swinging on the lamp post at the time it fell is a much more probable scenario than the one described by the plaintiff. Whether this swinging was an association with others and explains the reference to vandalism in the replies I do not decide.

[18] I had at one stage considered approaching and analysing the case on the basis that the minor plaintiff was, contrary to her evidence, swinging on the lamp post but I accept that that would be an impermissible approach in this case having regard to her evidence and the case as pleaded. In this respect the court was referred to the unreported judgments in the case of Graham v. Dunlop [1977] 1 NIJB followed by Coghlin J, as the then was, in Leitch v. South Eastern Library Board, unreported, 15th January 1998.

[19] In Leitch the court stated as follows:

> "Mr Bentley QC in his closing submissions argued that if I was not satisfied that Mrs Turkington had been the teacher concerned the plaintiff could nevertheless succeed on the basis that whoever the teacher was the defendant was vicariously liable for her negligence.
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> He sought to distinguish the decision of the Northern Ireland Court of Appeal in Graham v. Dunlop Limited [1977] 1 NIJB by submitting that this case did not involve two separate and distinct versions of the accident but simply an issue as to the identity of the relevant teacher. However it seems to me that the identity of Mrs Turkington as the teacher who is said to have wrongfully required the plaintiff to participate in PE activities was fundamental to the case which the plaintiff alleged and sought to prove.
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> That was the case which the defendant's advisers had prepared themselves to meet and which I hold on the balance of probabilities they have successfully rebutted. Since the case pleaded was made only against Mrs Turkington and not the other named or unnamed teacher I simply do not know what evidence the defendant would have been able to produce in order to rebut such an alternative case."

[20] Given my rejection of the plaintiff's evidence and the failure of the case as pleaded the action must be dismissed. Had the pleaded case been consistent with the account given to the ambulance man the plaintiff might have been on stronger ground although such a case would have inevitably prompted different lines of enquiry. Whilst I have every sympathy for the young girl in respect of her injuries there have been so many variations in the case she presented that I simply cannot be satisfied on the balance of probabilities that the case as pleaded is made out and accordingly as I have already indicated the action must be dismissed.