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Judgment: approved by the Court for handing down  
(subject to editorial corrections)\*

Delivered: 23/02/2016

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

RLC (a protected person) by KN her sister and next friend

Plaintiff:

v

REGIONAL HEALTH AND SOCIAL CARE BOARD

Defendant:

STEPHENS J

**Introduction**

[1] The plaintiff, "RLC," who was born in September 1992, brings this clinical negligence action by her sister and next friend, "KN." Her mother brought the circumstances of the plaintiff's birth to the attention of the plaintiff's solicitors in 2013. The plaintiff's solicitors issued a writ which was served on the defendant on 16 October 2014. Unfortunately, the plaintiff's mother suffers from a number of serious conditions and that is why she is not the plaintiff's next friend but rather KN, the plaintiff's sister, is the next friend. I am informed that KN is in her twenties or thirties.

[2] Unfortunately the plaintiff suffers from severe physical and mental difficulties and it is suspected, by those who advise her, that those difficulties were caused by reason of oxygen deprivation during the birth process. The plaintiff's allegation is that her mother attended at hospital in labour but after an assessment and incorrectly, she was sent home. That subsequently the plaintiff's mother returned to hospital in established labour but that there was a breach presentation which required an emergency caesarean section. That during the course of that operation, both the plaintiff and her mother, lost blood. It is alleged that the outcome for the plaintiff has been appalling. I have been informed that genetic reasons for the plaintiff's conditions have been excluded leaving open the suggestion that those conditions are due to some delay during the course of the birth process and that

there was deprivation of oxygen at birth causing her conditions. It is obvious that this case calls for the most careful analysis and preparation by the plaintiff's legal advisers. The plaintiff, her sister and her mother do not know what has caused the outcome for the plaintiff. The most likely source of information will be contained in the mother's and the plaintiff's hospital notes and records. The very first step should have been to obtain those notes and records and to analyse them. Another vital source of information would be the plaintiff's and her mother's GP notes and records.

[3] The plaintiff's solicitors first attempted to obtain legal aid by sending a letter out to the plaintiff's mother asking her to call into the office. That letter is dated 18 September 2014. It was followed by a number of further letters. It took approximately 9 months for the legal aid application form to be completed. I make it absolutely clear that delays of that nature will not be tolerated. If a client is not responding to telephone calls or to letters or if the client is unwell, then other methods have to be found to obtain proper instructions in order to carry out the simple task of filling in a legal aid application form. To wait 9 months to perform that task is quite simply unacceptable from the point of view of the client and from the point of view of the prompt disposal of cases.

[4] The legal aid application form having been completed in June 2015 it took the legal aid authorities 4 months to refuse legal aid. On the basis of what I have been informed today I am not surprised that legal aid was refused because there has been little, if any, analysis of what it is that the plaintiff alleges was the negligence committed by the hospital authorities. At the very least there should be an analysis of the sequence of events to determine what steps were taken and to identify potential areas which require the assistance of expert medical evidence.

[5] After legal aid had been refused in October 2015 there was a review by the legal aid authorities. In order to carry out that review the legal aid authorities requested the plaintiff's solicitors to obtain all the general practitioner's notes and records. These documents should and could have been obtained by the plaintiff's solicitors at a much earlier stage. They were only obtained by the plaintiff's solicitors in 2016. They were then sent to the legal aid authorities who upheld their original decision to refuse legal aid.

[6] The plaintiff's solicitors then appealed the refusal of legal aid which appeal was partially successful in that they have now been given a limited certificate to obtain all the hospital notes and records in relation to the plaintiff's mother and the plaintiff.

[7] So the position is that 3 years after this case was first brought to the attention of the plaintiff's solicitors they are now seeking to gain access to the plaintiff's medical notes and records and the mother's medical notes and records held by the hospital. That is quite an extraordinary period of time to take to obtain the most fundamental documents in relation to the investigation of a medical negligence action.

[8] As soon as those notes and records have been obtained there should be an analysis of them by the plaintiff's legal advisers. It is not simply a question of sending a bundle of medical notes and records to the legal aid authorities and saying we would like you to analyse them to determine whether there is any case worth investigating. The initial analysis must be carried out by the plaintiff's advisers. It should be a relatively simple task to go through those notes and records to see what the sequence of events was, to set that out clearly and precisely for the legal aid authorities and to highlight the areas of concern during the course of the birth process. That should be done in a timely manner. Medical notes and records arrive in vast bundles of documents. The initial experts in this area are the legal advisers. The Legal Services Commission will not have the ability to analyse unless they are pointed in the right direction.

[9] It is against that background of extraordinary delay to date that at the next review hearing I will consider making unless orders against the plaintiff or alternatively costs orders in relation to the review hearings against the plaintiff's solicitors personally.

[10] I will anonymise the transcript of this ruling because of the disabilities from which both the plaintiff and her mother suffer.