The Court of Appeal for Bermuda

CIVIL APPEAL No. 21 of 2016

B E T W E E N:

THE MINISTER OF EDUCATION

Appellant

-v-

KAREN CLEMONS

Respondent

Before: **Baker, President**
Bell, JA
Clarke, JA

Appearances: Michael Taylor and Brian Moodie, Attorney-General's Chambers, for the Appellant
Karen Clemons, the Respondent appearing in Person

Date of Hearing: **9 March 2018**
Date of Judgment: **23 March 2018**

JUDGMENT

Duty of care to employee – breach – foreseeability and causation of injury – whether hypertension an injury – proof of exacerbation of hypertension – need for medical evidence – fairness of proceedings

BAKER P

Introduction

1. Between 2000 and 2006 Ms Clemons, the Respondent to this appeal, was employed as an IT teacher at Cedarbridge Academy ("CBA"). On 14 September 2016, after a hearing lasting 13 days, the Chief Justice found the Minister for Education, the Appellant, liable for having caused her an injury, namely exacerbating her pre-existing hypertension. Damages were to be assessed at a later date. The primary aspect of the Respondent's claim, all of which was based on the stressful environment in which she was required to work, was that she had suffered post-traumatic stress disorder ("PTSD"), but on this she failed. The Chief Justice did, however, find that she had suffered exacerbation of her pre-existing hypertension.

2. The Appellant has appealed against the Chief Justice's decision on a number of grounds which may be summarised as follows:

   - He was not in breach of his duty of care.
   - Exacerbation of hypertension was not proved.
   - Exacerbated hypertension was not foreseeable by the Appellant.
   - The Chief Justice did not afford the Appellant a fair trial and appeared to be biased in favour of the Respondent.

Bias

3. I take the allegation of apparent bias first in order summarily to dispose of it. During the course of a trial the judge frequently has to make rulings on issues such as the admissibility of evidence or the conduct of the trial. A ruling alleged to be erroneous can be examined by the Court of Appeal who will decide whether it was and, if so, the effect on the trial. That is what we have done in the present case. It should be noted that the Appellant succeeded on the main issue in the present case. The fact that a judge rules against a party on an issue or a number of issues does not mean that he is biased against that party. In a rare case in which there is evidence of bias, or apparent bias, the appropriate course is to invite the judge to recuse himself and, if he refuses, the judge's decision may be

appealed. Although the Chief Justice was invited to recuse himself, in particular when he had made an order regarding the examination of a witness by Skype and there was a ground of appeal alleging a reasonable apprehension of bias if he continued to hear the case, this ground was not advanced as such on the appeal. Rather the appeal proceeded, appropriately, on the basis that there were a number of findings by the Chief Justice that were wrong.

The Law

4. There is no dispute about the law that apples in this case. Both sides agree that it was correctly stated by the Chief Justice. The Appellant's contention is that he misapplied it. The leading authority is *Hatton v Sutherland and ors* [2002] EWCA Civ 76. I gratefully adopt the principles set out in the Chief Justice's judgment at paragraph 68:

> *"1. There are no special control mechanisms applying to claims for psychiatric or physical illness or injury arising from the stress of doing the work that the employee is required to do.*
>
> *2. The threshold question is whether the particular kind of harm – an injury to health (as distinct from occupational stress) which was attributable to stress at work (as distinct from other factors) – to the particular employee was reasonably foreseeable.*
>
> *3. Unless he knows of some particular problem or vulnerability, an employer is entitled to assume that the employee is up to the normal pressures of the job.*
>
> *4. An employee who returns to work after a period of sickness without making further disclosure or explanation to his employer is usually implying that he believes himself fit to return to the work which he or she was doing.*
>
> *5. An employer is generally not required to make searching enquires of the employee or seek permission to make further enquires of his other medical advisors.*

6. In view of the difficulties of knowing when and why a particular person will go over the edge from pressure to stress and from stress to injury to health, the indication must be plain and obvious for any reasonable employer to realize that he should do something about it.

7. An employer would only be in breach of duty if he failed to take steps which were reasonable in the circumstances.

8. An employer could only reasonably be expected to take steps that were likely to do some good, and the court would likely need expert evidence on that.

9. If the only reasonable and effective step would be to dismiss the employee, or demote the employee, the employer would not be in breach of duty in allowing the employee to continue in the job.

10. If there is no alternative solution, it has to be for the employee to decide whether or not to carry on in the same employment and take the risk of a breakdown in his or her health or whether to leave that employment and look for work elsewhere.

11. Even if the employee is able to show a breach of duty, it is still necessary for the employee to show that the particular breach of duty found caused the harm. It is not enough that occupational stress caused the harm."

The Facts

5. The basic facts in the present case are as follows. Immediately before employment by the Appellant at CBA the Respondent had been employed for six years as a Special Education Instructor in Fort Worth, Texas, USA. She came to Bermuda with an excellent reference from her former employer and had no disciplinary or health issues there. She was employed at CBA between 2002 and the autumn of 2006 when she was transferred elsewhere because of mould, but that transfer has nothing to do with the issues in this appeal. At CBA she and other teachers were unhappy about the educational environment, believing it had serious shortcomings in terms of the quality of the provision for students with learning difficulties. She was not hesitant in expressing her views and

advocating change. She felt that as a result she was singled out for disciplinary attention and grievances she filed were resolved against her. She found the environment stressful. The judge rejected the Respondent's claim that she had been deliberately treated in a manner likely to cause her physical or psychiatric injury and dismissed her claim that any harm had been intentionally inflicted. Likewise he strongly rejected the Appellant's claim that she was a malingerer. The question that remained was whether she had suffered any compensable injury as a result of the Appellant's negligence. He accepted that there were strong grounds for suspecting that she suffers from complex PTSD as a result of work related stress but was unable to find that she actually sustained such an injury because there was no expert evidence to support it.

The Progress of the Trial

6. It is plain that the Respondent's claim to have suffered exacerbated hypertension as a consequence of the way she was treated at CBA, although pleaded in the statement of claim, received little attention for most of the trial because the focus was on PTSD. The Chief Justice said at paragraph 36 of his judgment that the Respondent never abandoned her case in relation to this comparatively minor injury even if she clearly focussed on the more serious complex PTSD. He added: "*However I myself did not focus on the hypertension injury in the course of the trial and accordingly failed to invite the Defendant's counsel to address this alternative factual basis of liability (the legal basis of the claim for all the injuries being the same) in their closing submissions. I assumed (and doubtless conveyed this impression to counsel) that the Plaintiff's case stood or fell on the complex PTSD injury."* He did, however give the Appellant the opportunity to file supplementary submissions to address the point which he took up.

7. There is a related matter that is of significance. It concerns a statement made by Dr Boonstra, the Appellant's G.P. which the Respondent introduced as an exhibit

to one of her affidavits. The Chief Justice dealt with this at paragraphs 15 and 16 of his judgment where he said:

> *"15. The Plaintiff included in the Trial Bundle a letter from Dr Boonstra chronicling her medical history between 2003 and 2011 and opining that she had suffered "physical symptoms and medical manifestations due to psychological stress". This letter was never expressly admitted or agreed by the Defendant although the Plaintiff's own testimony at trial about her medical history (in terms of why she was given sick leave from work) was not, or not seriously, challenged. Dr Boonstra was not called, it having been my understanding prior to trial that the substantive elements of the Plaintiff's claim related to purely psychological injury which only Ms Adhemar was competent to give expert evidence as to. In hindsight I perhaps ought to have invited the Plaintiff as a litigant in person to consider whether she wished to call Dr Boonstra to opine as to (the) whether the Plaintiff suffered non-psychological injuries as a result of stress. From his letter it is far from obvious that he would regard himself as competent to give expert evidence in a trial on these matters. And for reasons which are set out below, I find that expert medical evidence was not required, in all the circumstances of the present case, to support a finding that the Plaintiff suffered a physical illness in the form of a worsening of an existing hypertension or high blood pressure condition. Nor was expert evidence necessary to support a finding that such an illness can be (or was in the present case) caused by stress.*
>
> *16. I mention this because near the end of the trial when it became apparent that the Court was unlikely to place much reliance on the evidence of Ms Adhemar, the Plaintiff made reference to the evidence of Dr Boonstra as if it formed part of the evidence before the Court. Although the Plaintiff had quite confidently negotiated with counsel on which statements would or would not be read in and which witnesses would have to made available for cross-examination at trial, I was anxious that she might have been genuinely mistaken as to the evidential status of Dr Boonstra's opinion letter. I have accordingly considered, having reserved judgment, whether I should not in the interests of fairness take the exceptional step of reopening the trial and afford the Plaintiff an opportunity to call this*

potential witness. For reasons which I set out below when recording my findings on the evidence, I have decided that no useful purpose would be served by pursuing this course."

8. In the event the Chief Justice accepted in evidence the factual matters referred to in the statement, but not the doctor's opinion that the Appellant had suffered "*physical symptoms and medical manifestations due to psychological stress."* (see paragraph 55 of the judgment).

9. In my judgment the Chief Justice was in error in finding that medical evidence was not required to support a finding that the Respondent suffered a physical illness in the form of a worsening hypertension or high blood pressure, and also in his finding that expert evidence was not required to support a finding that an illness can be (or in the present case was) caused by stress. I shall explain my reasons later in this judgment.

10. I do not think that in the circumstances of the present case the Chief Justice was wrong to admit the statement of Dr Boonstra as evidence of the factual matters in it. There was no objection until a late stage of the trial and there was unlikely to be any dispute about what the doctor had obviously recorded from his notes. Further, there was agreed evidence in the form of annual statements from a chemist of the drugs that had been prescribed for the Respondent.

11. The problem in my judgment arises because there was no evidence from Dr Boonstra or anyone else about the cause of the Respondent's initial hypertension, the level of her blood pressure and when, and the extent to which, it was exacerbated and his opinion on the reason or reasons for this.

Breach of Duty

12. The first question is to determine the point at which the Appellant was put on notice that the Respondent's health might be damaged if appropriate action was not taken. As Hale L.J. put it in *Hatton:*

> "27……*If the employee or his doctor makes it plain that unless something is done to help there is a clear risk of a breakdown in mental or physical health, then the employer will have to think what can be done about it.*
>
> *28. Harm to health may sometimes be foreseeable without such an express warning. Factors to take into account would be frequent or prolonged absences from work which are uncharacteristic for the person concerned; these could be physical or psychological complaints; but there must also be good reason to think that the underlying cause is occupational stress rather than other factors; this could arise from the nature of the employee's work or from complaints made about it by the employee or from warnings given by the employee or others around him."*

13. The Chief Justice said at paragraph 49 that the breach of duty was alleged to have occurred not through the ordinary operation of the employer's work processes, but because specific actions which ought to have been avoided when viewed objectively, were obviously inappropriate. He concluded at paragraph 80 that the Respondent's case could best be determined by identifying one or more specific and unusual instances of inappropriate managerial conduct which a reasonable employer would have foreseen placed the Respondent at risk of injury to her health. He identified three.

- Having her room given to a para-educator in October 2003
- Being placed on review at the beginning of the school year 2004-2005
- Having her car towed away and clamped in January 2006, and pursuing complaints into February when she was required to respond to minor disciplinary complaints.

14. The Chief Justice found (see paragraph 80 of his judgment) that the first of these incidents was "*very narrowly, just sufficient to put the defendant on notice that the Plaintiff was at risk of illness as a result (of) incidents which she found distressing."*

15. It is necessary to examine each of the incidents in the context of the respondent's medical history.

Loss of Room in October 2003

16. The Chief Justice accepted the Respondent's evidence that she was surprised to discover the reassignment of her classroom to a para-educator. He found, on balance, that it was done deliberately to snub the Respondent. Thereafter she spent two days wandering with her class looking for a vacant room. This was the trigger for her October 2003 sick leave. He also accepted the unchallenged evidence of Ms Rose-Green as to the Respondent's distress and humiliation caused by the incident. Whilst the judge was not satisfied that the Respondent suffered any legally actionable injury at this time, he did find that because she was on sick leave for two weeks shortly after this incident it was: *"reasonably foreseeable that exposing the Plaintiff to treatment which she would legitimately perceive as humiliating and/or unfair created a risk of stress-induced harm to her health through an illness such as hypertension."*

17. Dr Boonstra's statement records that the Respondent was first seen for a stress reaction and anxiety in October 2003 for which she was certified 14 days' sick leave by Dr Price. This was the only occasion at CBA that the Respondent took sick leave. There is no mention in Dr Boonstra's statement of hypertension at this point. There were some hospital records, which we were not shown during the appeal, which apparently said that Dr Boonstra had ordered a stress test for the Appellant in April 2002 and that at this point she had mild systolic and moderate diastolic hypertension, but there is no mention of this in Dr Boonstra's statement and there is no evidence of its cause or duration. The Chief Justice found that on balance the Appellant knew or ought to have known that the Respondent's medically certified sick leave was caused by the 2003 event. Mr Taylor, for the Appellant, submitted that there was no evidence to support this finding and that an employer is not obliged to inquire why an employee has gone

on sick leave and is entitled to assume an employee is fit to resume at the end of a period of sick leave. Furthermore, the Respondent never told her employer of any health problem and provided no medical evidence. It might have been helpful to see the doctor's sick note but Mr Taylor was unable to provide it or tell us whether it had been produced in evidence.

18. I have had some hesitation in deciding whether the Chief Justice's finding that this event put the Appellant on notice that the Respondent was at risk of stress-induced harm can stand. However, he had the advantage of hearing all the evidence and seeing the witnesses over many days, which this court has not, and I would be reluctant to interfere.

Placed on Review in 2004

19. The Chief Justice found that the trigger for the Respondent being placed on a second blood pressure medication in 2004 was being put on review just before the beginning of the 2004-2005 academic year. He further found that in mid-September 2004 she was prescribed anxiety medication in the prelude to a meeting with the Senior Education Officer about her Summative Evaluation Report.

20. Dr Boonstra records that: *In July 2004 she was diagnosed with hypertension and continued anxiety. She was put on anti hypertensive and anti anxiety medication. She claimed the stressor was her working conditions."* It should be noted that the doctor did not indicate whether or not he accepted this claim. The chemist's records show a prescription for 5mg Norvasc blood pressure tablets on 16 July 2004. Neither the doctor's notes nor the chemist's records make any reference to anxiety medication in September 2004, although the chemist's records show a prescription for Amitriptyline on 13 September 2004 which is said to be an anti-depressant; there is no record of it having been prescribed on any other occasion.

21. The Respondent's evidence was that her grandmother died on 24 June 2004, in the last week of the school term. She was on bereavement leave and did not return to work at the school before the summer break. In consequence she was not given an opportunity to comment on or sign her Summative Evaluation Report which was forwarded to the principal without her comments and which led to her being placed on review for the following academic year. The report was signed on 2 July 2004 and a copy was posted to her soon afterwards without her section completed or her signature. Her overall rating was "marginal". The next she heard was when she received a letter dated 27 August 2004 from Mr Christopher, the Chief Education Officer, saying that she had been placed on review. The first opportunity she was given to comment on the report was on 15 September 2004 at a meeting at which the Senior Education Officer, the principal and others were present. The result was that her review placement was upheld. The Chief Justice accepted the Appellant's case was that she had been unfairly placed on review because (1) the decision had been made before she'd had an opportunity to comment on the evaluation; (2) she had a valid explanation for one of the matters for which she'd been given a marginal grade; and (3) she'd been singled out unfairly from the rest of her Department.

22. The Chief Justice said he accepted the Appellant's evidence that she received the report shortly after 2 July and that "*this was the trigger for her filing her first prescription for a second blood pressure medication on 16 July 2004 as confirmed by her pharmacy's records.*" Whilst it is correct that Dr Boonstra's statement records that in July 2004 the Appellant was diagnosed with hypertension and continued anxiety and put on anti-hypertensive and anti-anxiety medication, claiming the stressor was her working conditions, and that the chemist's records show a prescription for Norvasc 5mg tablets on 16 July 2004, there was no medical evidence that the Appellant was already on blood pressure medication. The records did however show that the Appellant had for some time been prescribed Triamzide which is used to treat, among other things, fluid retention. The difficulty for the Court is that there was no medical evidence to confirm the

Appellant's evidence that she had longstanding hypertension and, more particularly, the cause and level of it. Furthermore, the Appellant had shortly before visiting Dr Boonstra lost a close family member.

The Car Towing Incident in 2006

23. At the beginning of January 2006 the Appellant's car was towed away and clamped. She described this as *"the straw that broke the camel's back."* It was improperly parked against a background of warnings that cars parked there would be towed away. The penalty was, the judge found, unprecedented because other cars similarly parked in the prohibited area were not removed. The Appellant had genuine reasons for parking there as she had to transport some books to other premises. The Chief Justice also found that the primary motive for removal of the Appellant's car was to teach her a lesson as she was viewed as a thorn in the side of certain elements of the CBA administration. The nature of the penalty, he said, was inherently likely to cause her embarrassment in the eyes of colleagues and students.

24. Significantly, the Chief Justice held that it was reasonably foreseeable that this incident, like the review incident, would place the Appellant at risk of harm to her health. However, there is no evidence that any harm to her health was in fact caused by this incident. Whilst the chemist's records show regular prescriptions of 5mg Norvasc up until the end of 2005, the next prescription is not until 8 June 2006, at which date the prescription was increased to 10mg tablets. That is five months after the car towing incident. Dr Boonstra says the Appellant was seen nine times in 2006, and that all of the visits related to hypertension, anxiety and respiratory allergies. The chemist's records do not match Dr Boonstra's statement, showing just the one prescription for 10mg Norvasc on 8 June. Accordingly I cannot accept the Chief Justice's conclusion that it is easy to infer that at least one of the nine visits mentioned in Dr Boonstra's statement was to a material extent contributed to by the car towing incident and the drama that followed. I also have difficulty with the Chief Justice's statement that: "*It seems*

obvious that the distress of the car-towing incident would have contributed to at least a temporary elevation of the Plaintiff's blood pressure (which would not have mitigated the injury sustained in July 2004.") A temporary elevation of blood pressure is not the same thing as hypertension. The Chief Justice returned to the subject at para 111 of his judgment saying: *"Having found that being placed on review in July 2004 materially caused the only health injury which the Plaintiff has proved, no further finding is required in relation to the car-towing incident."* But then he went on to add that it was self-evident that this incident and its aftermath was sufficiently traumatic to at the very least, ensure that her elevated blood pressure did not return to its former level. That is a finding that should not have been made absent expert medical evidence to support it.

Discussion

25. The Chief Justice's fundamental finding was (see paragraph 66) that the Respondent suffered a physical illness (elevated blood pressure or hypertension) from which she suffered between 2004 and 2006. It is apparent from his conclusion at para 115 that this finding relates to an exacerbation of an existing condition.

26. There are several questions. The first question seems to me to be whether hypertension or exacerbated hypertension is an actionable injury or illness at all. The Respondent's claim to have suffered psychological injury failed because she failed to prove the injury (PTSD). What matters is reasonable foreseeability of some stress-related injury or illness, the precise nature of which does not have to be foreseen. As Hale L.J. said in *Hatton* at par 24: *"Stress is a subjective concept: the individual's perception that the pressures placed upon him are greater than he may be able to meet. Adverse reactions to stress are equally individual, ranging from minor physical symptoms to major mental illness."* Given the judge's finding that some injury was foreseeable to the Appellant its precise nature is irrelevant, but the Respondent has to prove some *injury or illness*.

27. Leaving aside for a moment the facts of the present case, is hypertension or exacerbated hypertension an injury/illness or simply a condition? In other words, if it is negligently caused by a defendant, is it something that gives rise to damages? Hypertension is often symptomless and there was no evidence that the Respondent suffered from any kind of heart disease. There are many different causes of hypertension and it may be secondary to some other condition. There was no evidence of the cause of the Respondent's hypertension that the Appellant is said to have exacerbated. I incline to the view, without deciding the point, that hypertension can, in appropriate circumstances, be described as an injury. Suppose A deliberately and persistently adds a large amount of salt to B's diet causing B to suffer persistently elevated blood pressure i.e. hypertension, I think that could properly be described as causing B an injury. Even though B may not suffer immediate physical symptoms it will place him at greater risk of other conditions such as heart attack or stroke.

28. The next question is, assuming hypertension can be described as an injury, whether it can be caused by stress. The Chief Justice relied on some words of Hale LJ in *Hatton*. In that case all four claimants had alleged psychiatric injury. She said at paragraph 10: "*the same issues might arise had they instead suffered some stress-related physical disorder, such as ulcers, heart disease or hypertension."* The Appellant drew our attention to three Canadian Tribunal cases, Case No 327/93 1993 Can LII 6355 (ON WSIAT), Decision No. WCAT-2011-00189 2011 Can LII 14154 (BC WCAT) and Decision No. WCAT-2003-03480-RB 2003 Can LII 69513 (BC WCAT). These cases illustrate that the Chief Justice's finding at para 60 that it is a notorious fact that hypertension is an illness frequently caused by stress is, or at least was in 1993, not a view shared by some medical experts. Be that as it may, what seems to me to be critical in the present case is whether this Respondent's hypertension was caused by the proved stress that she suffered at CBA and whether that is a matter on which the Chief Justice's finding was justified in the absence of any medical evidence.

At the very least Dr Boonstra should have been called to explain the history of the Respondent's high blood pressure with reference to her medical notes, the blood pressure readings and his opinion as to the cause.

29. In my judgment the Chief Justice was in error in finding that expert medical evidence was not required to support findings both that the Respondent suffered a physical illness in the form of a worsening of existing hypertension and that such an illness can be, and was in this case, caused by stress.

30. The Appellant also challenges the finding of the Chief Justice that it was effectively conceded that the Respondent suffered an exacerbation of an existing hypertension condition. He based this on the fact that this was pleaded and asserted in documents that stood as the Respondent's evidence in chief and that *"she never abandoned her case in relation to that comparatively minor injury even if she did focus on the more complex PTSD."* The Chief Justice accepted that he himself did not focus on the hypertension injury in the course of the trial and accordingly failed to invite the Appellant's counsel to address this alternative basis of liability in closing submissions. He added that he assumed, and doubtless conveyed the assumption to counsel, that the Respondent's case stood or fell on the complex PTSD injury. It is true that the judge gave the Appellant the opportunity to file supplementary written submissions on the issue and that this opportunity was taken up. However, the Appellant submits, with some force, that the email inviting further submissions made it pretty clear that the Chief Justice had already decided that the Respondent had proved the relevant injury. He was disadvantaged by having previously been told that the case stood or fell on PTSD and thus being prevented from making oral submissions on the point. More significantly, had the point been live during the trial he should have been given an opportunity to cross-examine Dr Boonstra. I think there is force in this complaint. It is unfortunate that the Chief Justice, having decided that the Respondent's claim was not proved on the main issue, embarked, as an

afterthought, on a finding on a different basis that had never been properly considered during the trial. On any view his finding in favour of the Respondent was marginal as is apparent from his conclusion at paragraph 83 of his judgment that the room reassignment incident in 2003 was: "*just sufficient to put the Defendant on notice that the Plaintiff was at risk of illness as a result of incidents which she found distressing.*" In my judgment the finding that the Respondent suffered an exacerbation of existing hypertension was not effectively conceded by the Appellant and was not justified on the evidence.

31. It is also to be observed that the finding was on liability only. Damages were to be assessed at a later date, in all probability by a different judge. The Chief Justice said at paragraph 112 that he found no breach of duty after the Respondent left CBA in September 2006 due to suspected mould allergy because he accepted the Appellant's case that genuine attempts were made to find alternative work for her after it became clear that she was unable to return to the classroom. He said that as far as exacerbating her hypertension, there were no further breaches of duty that caused harm during this period. He said that in the post CBA period of her employment it was more likely than not that she was suffering from some form of emotional or psychological imbalance which made it impossible for her to teach on a fulltime basis. The Appellant did his best to try and accommodate her in less stressful roles between 2006 and 2012 and there was no evidence any employee or other agent of the Appellant caused her any physical harm during this period. In my judgment the judge's finding in the absence of any medical evidence that the Appellant's hypertension was exacerbated is likely to give the judge deciding the quantum of damages real problems. The judge deciding quantum is bound by the judge's findings on liability, but as the Chief Justice pointed out, at the quantum stage of the proceedings the judge is required to make fine judgments about the extent of the injury for which the Appellant is legally responsible. As the Chief Justice recognised at paragraph 60 of his judgment, this is likely to involve medical evidence and this evidence may present a very different picture depending on the

reason for the Appellant's original hypertension and the reasons for various prescriptions.

Conclusion

32. I would not interfere with the Chief Justice's finding that the Appellant did or permitted to be done things to the Respondent which did not form part of the ordinary operations of CBA, properly carried out and which placed her at risk of suffering the physical injury she sustained, in particular by the review placement and car towing incidents. The Appellant was thus in breach of duty of care. (Judgment paragraph 107). I am unpersuaded that the Respondent has proved causation. The fact that the Respondent *"filled her first prescription for an additional hypertension medication within days of receiving the relevant (evaluation) report"* does not raise the maxim *res ipsa loquitur* as the judge claimed. (Paragraph 110). Whilst it may be reasonably foreseeable that the Respondent would suffer some injury as a result of the Appellant's breach of duty, the death knell to the Respondent's claim is that there was simply no evidence of the cause of the Respondent's hypertension or any exacerbation of it. I would accordingly allow the appeal and enter judgment for the Appellant.

Postscript

33. This was a bitterly fought case in the Supreme Court in which there were prolix pleadings and unsubstantiated allegations were made by both sides. The Chief Justice was faced with having to guide a litigant in person through difficult legal waters in a case in which there was no love lost between the two sides. On the appeal the Court has had less assistance than is to be expected from the Attorney-General's Chambers. Much of the Appellant's skeleton argument was directed to allegations of breach of natural justice and apparent bias on the part of the judge when it would have been better directed at meritorious grounds of appeal. Vast numbers of documents were copied, apparently indiscriminately, and most were not referred to. When the Court asked to see relevant documents Mr Taylor, who led for the Appellant on the appeal, was unable to find them. A

complete transcript of the trial comprising nearly 3000 pages was provided very shortly before the hearing. Only one page was referred to. This was a complete waste of public funds. On the morning of the appeal a core bundle of transcripts was provided. Mr Taylor referred to only a few pages.

34. In an appeal of this nature two things are essential. First a chronology setting out the material facts and the dates on which they occurred and secondly a core bundle comprising those documents that are essential to the issues on the appeal. I hope this will be done in future appeals.

Baker P

Bell JA

Clarke JA