[2016] JMCA Civ 15

JAMAICA

IN THE COURT OF APPEAL

SUPREME COURT CIVIL APPEAL NO 60/2010

BEFORE: THE HON MR JUSTICE PANTON P
THE HON MR JUSTICE DUKHARAN JA
THE HON MR JUSTICE HIBBERT JA (AG)

BETWEEN	**BEVOLYN STONA-LEWIS**	**APPELLANT**
AND	**THE ATTORNEY-GENERAL**	**1ST RESPONDENT**
AND	**DR WINSTON DAWES**	**2ND RESPONDENT**

Mrs Marvalyn Taylor-Wright instructed by Taylor-Wright & Company for the appellant

Mrs Trudy-Ann Dixon-Frith and Mrs Gayle Mitchell instructed by the Director of State Proceedings for the respondents

27, 28 October 2011 and 18 March 2016

PANTON P

[1] On 31 March 2010, Frank Williams J (Ag), as he then was, dismissed the appellant's claim for negligence against the respondents. The appellant has sought an order reversing the judgment and remitting the matter to the Supreme Court for damages to be assessed.

The claim

[2] In her particulars of claim, the appellant, who was residing in the Bahamas, alleged that in December 2000 she was on a visit to Jamaica. At that time, she said, she was three months pregnant. The pregnancy had been confirmed prior to her trip to Jamaica. On 27 December 2000, she was "experiencing lower abdominal pains and light bleeding" so she visited Dr Dawes, the 2nd respondent, who referred her to the May Pen Hospital where she was admitted as a patient. Dr Dawes was at that time in the employ of the May Pen Hospital.

[3] While the appellant was at the hospital, an ultrasound of her pelvic area was done. She claimed that the medical practitioner who did the procedure was negligent in reading the results of the examination and consequently advised her that she was not pregnant. He also informed her that she "would have to undergo a surgical procedure known as dilation and curettage". Before this procedure was done, further tests were done on the appellant and same confirmed her pregnancy. Notwithstanding this confirmation, Dr Dawes, according to the appellant's claim, performed the procedure on 30 December 2000. After the procedure, the appellant complained of vomiting and bleeding. Further tests were done and she was advised by medical personnel at the hospital that she had a molar pregnancy which "required early chemotherapy". The diagnosis caused her "severe mental anguish, stress and trauma". She suffered from a distended stomach, "developed complications, became septic and had to be placed on intravenous antibiotics".

[4] The appellant claimed that Dr Dawes never attended to her after the surgery although her condition had worsened. On Dr Dawes' instruction, she was discharged from hospital on 8 January 2001 with a swollen stomach, while "still complaining of weakness constant pain and bleeding". However, on 10 January, she went to Dr Dawes who performed a suction procedure on her and told her that she was not pregnant. He prescribed pills for her and gave her a medical report for her doctor in the Bahamas. The report, she said in her claim, included a histopathology report from the University of the West Indies.

[5] According to the particulars of claim, the appellant's doctor in the Bahamas advised her that she was still pregnant but that she had suffered a left ruptured ectopic pregnancy with severe intra-abdominal haemorrhage. In order to save her life, she underwent emergency surgery resulting in the loss of her left fallopian tube and ovary.

[6] The appellant claimed that Dr Dawes performed two unnecessary surgical procedures on her, namely, the dilation and curettage and the suction. She claimed that he did not have proper regard for her symptoms, and that his actions and inaction, as the case may be, caused her unnecessary pain and suffering.

The defence

[7] The respondents deny that the appellant had informed them that she was pregnant and that such pregnancy had been confirmed before she came to Jamaica. There is also a denial that the ultrasound report had been misread and misinterpreted by medical personnel at the May Pen Hospital. The report did not reveal an ectopic

pregnancy; rather, along with Dr Dawes' examination of the appellant, it revealed that she had a non-viable pregnancy. The diagnosis was appropriate and the surgical procedure that was performed was in keeping with the diagnosis. The prescription of antibiotics is done as a matter of course after a dilation and curettage procedure.

[8] The respondents denied that the appellant was not attended to properly while she was hospitalized. She was regularly examined and treated by Dr Dawes and his team at the May Pen Hospital. It is admitted that after the surgical procedure, the appellant complained of vomiting and bleeding. Consequently, a haemoglobin test was conducted. There was no confirmation of a pregnancy, and there was no indication that the appellant became septic. It is denied that the appellant was, at the time of her discharge from hospital, complaining of weakness, constant pain and bleeding and that her stomach had remained swollen. On 10 January 2001, she attended at Dr Dawes' office and requested a letter to take to her doctor in the Bahamas. At that time, she indicated that she was still experiencing some bleeding. Consequently, a suction curettage was done. There was no discussion then as regards the appellant being pregnant.

[9] The respondents denied any form of negligence on their part and said that the appellant "was provided with diagnosis, treatment and care to the highest standard". The medical care provided by Dr Dawes "was to a standard acceptable by a responsible body of medical men". Further, said the respondents, if the appellant had an ectopic pregnancy, a surgical procedure would have been required in any event and this would have occasioned a prolonged period of recuperation.

The statements

[10] In her witness statement, the appellant said that there was a typographical error in the particulars of claim as regards the age of her pregnancy; she was two months (not three months) pregnant when she arrived in Jamaica. There appears to have been a further error in the particulars because attached to her statement is a letter (exhibit BSL 16) from her doctor in the Bahamas, Dr Reginald Carey, indicating that the appellant's last menstrual period was given as 9 November 2000, so she would have been pregnant for "6.5 weeks at the time of admission to hospital in Jamaica" and not two or three months. That letter also contained the following response to a question posed by the appellant's attorney-at-law:

> "After 5 weeks gestation a pregnancy in the uterus would be seen on abdominal or vaginal ultrasound scan. If none is seen and the patient is pregnant, the inference is that of ectopic pregnancy until proven otherwise. i.e. early miscarriage."

The appellant also exhibited to her statement a report by Dr Horace Charoo, an obstetrician and gynaecologist, who did an abdominal and endo vaginal scan of her while she was in Jamaica. The report states that her uterus was enlarged with what appeared to be "products of conception" but no foetus was seen. There were small cysts in the ovaries. There were no other pelvic masses or fluid in the pelvis, and the doctor formed the impression that there was a non-viable pregnancy. Incidentally, the appellant had joined Dr Charoo in this action but later discontinued against him.

[11] The appellant stated that she attended at Dr Dawes' office on 27 December 2000 as that morning she had noticed that she was "bleeding lightly from the vagina". She

stated that she told him she was pregnant. He examined her "vaginally and generally" and referred her to the May Pen Hospital where she was admitted. On the following day, Dr Charoo conducted the abdominal and endo vaginal scan on her. She stated that a Dr Robinson who was employed at the hospital told her that one of her blood tests results indicated that she was pregnant, but the scan done by Dr Charoo did not show a live baby. In the circumstances, she stated, Dr Robinson said that it would be necessary for a dilation and curettage procedure to be done. After the operation, she said that she still felt pain and was bleeding, but on Dr Dawes' instruction, she was discharged from the hospital. She complained of lack of attention from Dr Dawes after the surgical procedure, but stated that she returned to him at his private office after she had been discharged as her condition had worsened. At that time, he performed the suction procedure.

[12] Dr Reginald Carey is a consultant in obstetrics and gynaecology at the Princess Margaret Hospital in Nassau, Bahamas. According to his witness statement, the appellant was his patient and he had attended to her prior to January 2001 because she was pregnant. He saw the appellant on 16 January 2001 and diagnosed that she had a ruptured ectopic pregnancy. She was admitted to the Princess Margaret Hospital where a laparotomy was performed. He opined that the dilation and curettage procedure performed on the appellant in Jamaica was "an unnecessary procedure" which would have had no effect on the ruptured ectopic except to delay the appropriate treatment of her condition. The removal of the fallopian tube with the ruptured ectopic was the appropriate surgery for the appellant's condition. He could think of no good reason for

the doctors in Jamaica to have entertained the idea that the appellant had a molar pregnancy without first ruling out an ectopic pregnancy.

[13] The second respondent, Dr Winston Dawes, was the Senior Medical Officer at the May Pen Hospital. On 27 December 2000, the appellant attended at his private office complaining of experiencing low abdominal pain and light bleeding. She indicated that she had not seen her period since 9 November 2000. He referred her to the May Pen Hospital where she was admitted the same day. According to Dr Dawes' witness statement, the appellant told him that she had been on the contraceptive drug Depo Provera up to February 2000 and had been given the fertility drug Clomid between 9 and 13 November 2000. While the appellant was at the May Pen Hospital, she was referred to Dr Charoo to undergo a pelvic ultrasound. After perusing the ultra sound report, and based upon his (Dr Dawes') examination of the appellant, he diagnosed her as having a non-viable pregnancy, which is one that cannot develop into a baby and would die at some stage before birth. He stated that the types of non-viable pregnancies include an ectopic pregnancy, a molar pregnancy and a blighted ovum. His statement describes each of these pregnancies.

[14] In the circumstances, according to Dr Dawes' witness statement, he informed the appellant that it would be necessary for her to undergo a dilation and curettage procedure which involved dilating the cervix and using a curette to remove some of the contents of the uterus. Dr Dawes performed the procedure on 29 December 2000. Thereafter, the appellant was placed on intravenous antibiotics. She was provided with diagnosis, treatment and care of the highest standard at the May Pen Hospital by a

team of doctors led by Dr Dawes. The respondents admitted that a suction curettage was performed by Dr Dawes on the appellant on 10 January 2001 when she attended at the doctor's office complaining that she still had some bleeding. By this procedure, a suction machine was used to remove the contents of the uterus. Dr Dawes then prescribed some pills for her and gave her 20 days sick leave with instructions to rest. He also gave her a medical report to be taken to her doctor in the Bahamas. It is denied that Dr Dawes had a histopathology report on the appellant as there is no record of any specimens in relation to her being sent to a laboratory. It is also denied that she complained of weakness, pain and bleeding or that her stomach had remained swollen after the operation of 29 December 2000.

The evidence

[15] During cross-examination, the appellant admitted that she had been on the contraceptive drug Depo Provera. However, whereas Dr Dawes said she had told him she was on it up to February 2000, she said it was up to 1999. She also admitted that it was incorrect for her to have said in her witness statement that Dr Dawes had not seen her after the dilation and curettage procedure, because she had gone to him on 2 January 2001. She said it was her sister who took her specimen items to the University Hospital laboratory, and who also collected the report on the specimens. She does not know to whom her sister had delivered the report.

[16] Dr Reginald Carey said, in examination-in-chief, that he first met the appellant in December 2000. Under cross-examination, he said that the date was 16 December 2000 and that was the only time in December 2000 that he had seen her. He said that

she told him that she suspected that she was pregnant as she had missed her period for five weeks. She also told him that she had taken the fertility drug chlomid clomofine filtrate, prior to seeing him. He was not aware of when she stopped taking that drug. He carried out blood and urine pregnancy tests on her and they confirmed that she was pregnant. The blood pregnancy test revealed that she was at least four weeks pregnant. On 27 December, she would have been "6.5 weeks pregnant". At that age, according to Dr Carey, a foetus "weighs ½ inch [sic]." He was asked how would he diagnose an ectopic pregnancy, and he replied thus:

> "You do an ultrasound scan and notice that there is no pregnancy the uterus [sic]. If the ectopic had ruptured, you would see blood in the uterus and pelvis. If it's a leaking ectopic, there would be a small amount of fluid."

He was asked further if an ectopic pregnancy would be less easily detectable if the foetus is ½ inch. He replied:

> "Sometimes it's very difficult to make ectopic pregnancy. It's very difficult to see pregnancy in the tube and the physician has to have a strong indication that the pregnancy is in the tube if there's an absence of a foetus in the uterus. All you will see is a mass on side of the uterus which is empty."

[17] Dr Carey also said that if the ultrasound shows no pregnancy, it is possible that the patient could have aborted. The symptoms of ectopic pregnancy "mimic other illnesses" so it is not an easy diagnosis to make. The correct procedure when a patient presents with symptoms is to have an ultrasound procedure done. To be absolutely certain, he said, a doctor quite often has to "look inside the patient", although the

ultrasound helps in the diagnosis. If an ultrasound is done, and there is no sign of an ectopic pregnancy, it could be that the patient has an infection in the bowels. Once a patient is pregnant, it is the duty of the doctor to make sure that the pregnancy is "where it's supposed to be in the uterus". A patient is ectopic, he said, until proven otherwise.

[18] Under further cross-examination, having been shown Dr Charoo's report, Dr Carey was asked if it would have been inappropriate for a dilation and curettage procedure to be done where a miscarriage is suspected. He replied that such a decision would lie with the physician who would have had to put the "whole history together, ultrasound and symptoms and then make a decision". He said that clinical decisions cannot be made only on a report and that a sonographer cannot make the clinical decision. The dilation and curettage procedure, he said, could have been beneficial when it was determined that there was no pregnancy in the uterus.

[19] Dr Carey also said that he did an ultrasound when the appellant came to see him in December 2000. He did not rule out an ectopic pregnancy then as he did not have the opportunity, he said, as the appellant had left for Jamaica. He added: "At 5 weeks gestation, it would be early to make such a diagnosis. I did not see anything in the uterus". And the record of appeal shows the following:

> "Q: You never advised her that it could be an ectopic pregnancy?

A: She knew that it was a possibility. It was more of a differential diagnosis. She was told that it was a possible ectopic.

…

Q: Is there a possibility that it ruptured at 6 wks?

A: It is a possibility.

Q: Could it have ruptured on the plane?

A: I'm looking at Dr Charoo's report. He said no pelvis mass or fluid, therefore it had not ruptured. There's nothing to suggest that.

…

Q: If a person is suspected of having an ectopic, are they usually allowed to travel?

A: If you have strong suspicion of ectopic pregnancy, then you advise them not to travel."

[20] Dr Winston Dawes gave evidence. Under cross-examination, he said that the appellant did not inform him that she was pregnant. However, he thought there was a possibility of that so he sent her for an ultrasound. He thought there was the possibility of a septic pregnancy, an ectopic pregnancy, or an abortion. He referred her to Dr Charoo for an ultrasound, Dr Charoo being a sonographer and specialist in gynaecology, so that he could give him some advice. The team of doctors at the May Pen Hospital had a preoperative diagnosis that it was a molar pregnancy.

[21] Dr Dawes was challenged as to his competency in these matters. He agreed that he had no competency to treat a molar pregnancy but stated that he had no intention

of doing so. As regards an ectopic pregnancy, however, he said he had treated hundreds but up to the time when he last saw the appellant, there were no conclusive signs of an ectopic pregnancy. When asked why he had not referred the appellant to a specialist, he pointed out that in a Type C hospital, one cannot send all persons coming with abdominal pain to a specialist. However, he did refer the appellant to Dr Charoo as part of her care. Having received Dr Charoo's report, they were awaiting the histology report prior to referral to a specialist. The first time that he saw the histology report was in October 2004 in the Attorney-General's Chambers.

[22] He said that given what has occurred, if he had known it was an ectopic pregnancy, he would have treated it differently. He did not know then, but he knows now in retrospect. Based on the information he had, he concluded that it was a non-viable molar pregnancy, for which the line of treatment was for the washing out of the products of conception. He decided to do the dilation and curettage procedure because the ultrasound examination had suggested that there were products of conception indicating a molar pregnancy. The dilation and curettage was done "to get specimen to send to histology to confirm/deny the diagnosis". Given what was presented at the time, Dr Dawes held firm to the view that the treatment given to the appellant was correct. In his opinion, the dilation and curettage procedure had no effect on the ectopic pregnancy. Further, if an ectopic pregnancy is close to the ovary, then the ovary may have to be removed.

The expert's report and evidence

[23] Dr Rudolph A Stevens the Senior Medical Officer at the Victoria Jubilee Hospital in Kingston, Jamaica gave evidence. He had been senior medical officer since 2008. He said that the diagnosis of ectopic pregnancy is a clinical one and does not need an ultrasound examination. Where an ectopic pregnancy is not ruptured, one would use an ultrasound to rule out the normal pregnancy and then use a biochemical test. Where there has been a rupture, one should be able to see fluid in the pelvic area. The normal treatment for an ectopic pregnancy is the removal of the fallopian tubes. He added that it would not be unreasonable for a doctor who sees an ultrasound report such as that which came from Dr Charoo to do a dilation and curettage. However, that would be just delaying the diagnosis, he said. In the instant case, he was of the view that the dilation and curettage procedure was unnecessary. As regards the suction procedure, he said he would allow that.

[24] Dr Stevens, having looked at the visual images from the report, said that they were poor. He added that the only reasonable conclusion that could be drawn from the report was that there was a non-viable pregnancy. Such a pregnancy, he said, is seen where "there are signs and features that life will continue for it to develop into a foetus or baby". A molar pregnancy is a form of non-viable pregnancy, he said.

The findings of the learned trial judge

[25] In a very careful and compact judgment, the learned trial judge expressed the opinion that the appellant's evidence on all factual matters was to be approached with caution. He found her "at best, a most unreliable witness". He made specific findings as follows:

i. the appellant did not inform Dr Dawes that she was pregnant and so Dr Dawes was denied the opportunity of having a complete and true picture of the appellant's immediate medical history and prior diagnosis;

ii. the appellant was untruthful in saying that she had not told Dr Dawes that she had been on a fertility drug. Dr Dawes could not have known of this so as to mention it in his referral letter to the May Pen Hospital unless the appellant had told him. It was later confirmed by Dr Carey, her own doctor, that she was indeed on a fertility drug;

iii. the appellant was "possessed of [sic] the gift of gross exaggeration" as noted in her evidence as to the length of the procedures of dilation and curettage and suction. She said they lasted hours, whereas Dr Dawes as well as the expert witness Dr Stevens said each would have lasted a matter of minutes; and

iv. at the time of the discharge of the appellant from the May Pen Hospital, Dr Dawes was not aware of the contents of the report done by the Pathology Department of the University of the West Indies Hospital on the specimen taken from the appellant by way of the dilation and curettage procedure.

[26] The learned trial judge noted that there was a disagreement between Dr Carey and Dr Stevens as to the value of an ultrasound examination in the case of an ectopic pregnancy. Whereas Dr Stevens was of the view that it was unnecessary, Dr Carey thought it fit to perform two such tests – one before the appellant travelled to Jamaica, and the other on her return to the Bahamas. In the face of this disagreement, the learned trial judge took the view that such a test is a useful diagnostic tool in a case such as the appellant's, "as evidenced by Dr Carey's use of it on two occasions – especially on the second, when the clinical symptoms would have been far more apparent". The learned trial judge therefore concluded that Dr Dawes "adopted the correct course in directing that an ultrasound be done as one of the first parts of his plan of action in attempting to come to a correct diagnosis of the (appellant's) condition".

[27] In the opinion of the learned trial judge, Dr Dawes cannot be faulted for referring the appellant to Dr Charoo, a very experienced obstetrician/gynaecologist. Dr Charoo's report indicated that there was a non-viable pregnancy which could have been

molar in nature. The report suggested the need for a dilation and curettage procedure. Dr Dawes and his team at the May Pen Hospital, the learned trial judge concluded, acted in keeping with the report from this experienced professional. On the basis of the report, the learned trial judge was unable to agree with Dr Stevens that the dilation and curettage procedure was unnecessary.

[28] The learned trial judge, in deciding the standard by which Dr Dawes and his medical team were to be judged in their handling of the appellant's treatment and care, was guided by the words of McNair J in **Bolam v Friern Hospital Management Committee** [1957] 2 All ER 118 at 121 E-F:

> "The test is the standard of the ordinary skilled man exercising and professing to have that special skill. A man need not possess the highest expert skill at the risk of being found negligent. It is well-established law that it is sufficient if he exercises the ordinary skill of an ordinary competent man exercising that particular art."

In the opinion of Frank Williams J (Ag), the "special skill" or "particular art" was that of general surgery. He had earlier in his judgment wondered why the appellant had chosen to visit a general surgeon when she knew she was pregnant and so needed to see an obstetrician/ gynaecologist instead. The learned trial judge found that the treatment administered to the appellant was within the wide variety of matters that a general practitioner would normally have to contend with. It was not a case that was outside Dr Dawes' competence. There was no basis, he said, for him to find negligence on the part of Dr Dawes or the rest of the medical team. In fact, he found that Dr

Dawes used reasonable skill and judgment. In the circumstances, he dismissed the claim, and awarded costs to the respondents to be taxed, if not agreed.

The grounds of appeal

[29] The appellant relied on the following grounds of appeal:

> "1 The decision of the learned trial Judge that the Respondents were not negligent in their diagnosis, care and treatment of the Appellant is unreasonable and against the weight of the evidence, which on no account could be regarded as flimsy.
>
> 2. The learned trial Judge erred in law when in applying the standard of proof in assessing the Appellant's case he chose to use such a **high degree of probability** so as to arrive at a decision that no negligence on the part of the Respondents was proved.
>
> 3. The learned trial judge erred in law in rejecting the evidence of the only independent body of medical opinion available to the court in assessing the Respondents' care and treatment of the Appellant in a case where the standard of appropriate care is a matter for '**a responsible body of medical men skilled in that particular art'** in keeping with the Bolam test and in equating that 'special skill' and 'particular art' with 'general surgery' when those terms are applicable to the care and treatment of the relevant diagnoses by using the appropriate procedure.
>
> 4. The learned trial judge erred in law in arriving at a decision that the Respondents were not negligent in circumstances where they provided no evidence to sanction that their care and treatment of the Appellant was reasonable, logical and in accordance with the appropriate medical practice or procedure for the differential diagnoses which were made.

5. The learned trial judge erred in law in rejecting the evidence of the medical experts who testified at the trial on the basis that they were specialists and not general surgeons when the said experts at no time gave evidence that their opinion of the proper diagnoses care and treatment of the Appellant was predicated on that which should or would have been provided by a specialist instead of any average competent medical doctor or general surgeon.

6. The learned trial judge erred in law in not recognizing that the admission by the first respondent that the May Pen Hospital provides specialist medical treatment and advice, and the admission by the second respondent, that he was employed by the 1st respondent to give specialist medical treatment and in his evidence that he also practiced in the specialist areas of obstetrics and gynaecology rendered him and the 1st respondent liable to be judged by the standard and skill of practitioners in those specialist areas in his diagnoses, care and treatment of the Appellant.

7. The learned trial judge erred in law when he ignored the clear testimony of Dr. Stevens (which is nowhere evident in the written judgment) that as a general surgeon, the 2nd respondent had no competence to treat a patient diagnosed with molar pregnancy, in arriving at the decision that the second Respondent was not negligent." (Emphasis as in original)

The submissions

[30] Mrs Marvalyn Taylor-Wright for the appellant, as foreshadowed by the grounds of appeal, submitted that the evidence was overwhelmingly in support of the claim of negligence on the part of the respondents. This was so, she said, in fact and in law. Dr Dawes, she said, was treating the appellant for a condition which he had no competency to deal with. Further, she submitted that the learned trial judge was in

error in ignoring or rejecting the evidence of the independent witnesses, Drs Carey and Stevens, who are specialists in the particular field. Also, she said that he applied the wrong test in arriving at his decision.

[31] According to Mrs Taylor-Wright, the respondents failed to correctly diagnose and treat the appellant's condition. The respondents, she said, held themselves out as providing specialist care so they should be judged on the standard expected of specialist medical personnel skilled in the art of caring for the appellant's medical complaint; in any event, she said, they are to be judged as ordinary doctors who sought to fill those shoes. Mrs Taylor-Wright said that Dr Dawes was treating the appellant for a molar pregnancy although he had no competence to treat same. According to her, "once he suspected a molar pregnancy, he should have referred the appellant to a competent person in that field".

[32] Mrs Trudy-Ann Dixon-Frith, for the respondents, challenged the construction placed by the appellant on Dr Stevens' evidence. She pointed out that a good deal of what Dr Stevens had said in his report had been tempered by his evidence under cross-examination. Furthermore, she said, in considering much of the evidence of Drs Carey and Stevens, it had to be borne in mind that they, unlike the respondents, had the benefit of hindsight; they also had the benefit of the histology report, and the benefit of the knowledge that the appellant was pregnant. These pieces of information were denied to Dr Dawes and his team while the appellant was in their care.

[33] Mrs Dixon-Frith submitted that the burden of proof was on the appellant. There was no obligation on the respondents to adduce evidence that they were not negligent, she said. The appellant had to prove not only that there was a duty of care to her, but also that the respondents had acted in a manner which breached that duty and resulted in damage. In the instant case, she submitted, the central question was whether, "even with the best of treatment, and the exercise of all due care, and had the correct diagnosis been made initially by the 2nd respondent, would the Appellant have endured her pleaded injuries, including pain and lost a part of her fallopian tubes?". She said that the answer had to be in the affirmative considering that even Dr Stevens admitted during cross-examination that despite any alleged breach of care, the appellant would have had to remove the ectopic and would have had to do the surgery. Dr Carey's evidence, she pointed out, supported the position of Dr Stevens in this regard.

Reasoning and decision

[34] It seems to me that a very important finding of fact was made by the learned trial judge when he found that the appellant did not communicate to Dr Dawes that she was pregnant. This means that Dr Dawes and his team were deprived of critical information, and so were hampered in determining the appropriate treatment and care for the appellant. The respondents cannot be blamed in any way for this failure on the part of the appellant. Subsequent events have to be viewed against that factual background as found by the judge.

[35] Dr Dawes, having examined the appellant, directed that she be admitted as a patient at the May Pen Hospital. There followed a referral to Dr Charoo for a pelvic

ultrasound to be done. Dr Charoo is an experienced obstetrician/gynaecologist. He conducted the ultrasound and prepared a report which contained an "impression" that there was a non-viable pregnancy, with a question mark as to whether it was of the molar type. The uterus was enlarged and contained what appeared to be products of conception. No foetus was seen, but there was a small cyst in each of the left and right ovaries. There was no mass or fluid in the pelvis. However, the report suggested that there should be an evacuation of the uterus, followed by the administering of a stated drug. It was on the basis of this report that Dr Dawes then proceeded to do a dilation and curettage procedure. Incidentally, Dr Stevens was not impressed by the quality of the pictures from the ultrasound. Later, when the appellant complained of further discomfort, Dr Dawes performed the suction curettage. In his evidence, Dr Stevens said that in the circumstances, he would "allow" that procedure, meaning that he has approved it as one that should or could have been done.

[36] The doctors who gave evidence were in agreement that it is generally difficult to diagnose an ectopic pregnancy. Dr Charoo's report indicated that there was a non-viable pregnancy; and Dr Stevens testified that the only reasonable conclusion to be drawn from the report was that there was a non-viable pregnancy. The removal of the appellant's fallopian tubes was inevitable. Dr Stevens' report was to the effect that it can be reasonably presumed that at the time of presentation at the May Pen Hospital, the appellant's left fallopian tube had already been ruptured. He concluded that whether the surgery was done by Dr Dawes within 24 hours of presentation, or later in the Bahamas, the position in terms of damage to her reproductive tract would have

been no different. In other words, neither Dr Dawes nor the medical team at the May Pen Hospital can be faulted for this unfortunate loss.

[37] It is my view that Dr Dawes acted in keeping with his experience in matters of this nature, and that what he did was also in keeping with good medical practice. What he did has not been discredited by the other medical personnel who gave evidence before the learned trial judge. There seems to have been substantial approval of the procedures that he followed. It is accepted that he was not trained in obstetrics and gynaecology and could not have been expected to perform at that level. However, that which he did was in keeping with his training and experience, and did not contribute to the hospitalization of the appellant or the surgical operation that she underwent in the Bahamas. It has not been shown that Dr Dawes or the medical personnel at the May Pen Hospital performed in any way that demonstrated a lack of skill or competency in their treatment of the appellant. In the circumstances, I am of the view that the learned trial judge was correct in dismissing the claim. I would dismiss this appeal and award costs to the respondents to be agreed or taxed.

DUKHARAN JA

[38] I have read in draft the judgment of Panton P. I entirely agree with his reasoning and conclusion. I too would dismiss the appeal. There is nothing useful that I can add.

HIBBERT JA (AG)

[39] I have read the draft judgment of Panton P and agree with his reasoning and conclusion.

PANTON P

ORDER

The appeal is dismissed. The order of F Williams J (Ag) made on 31 March 2010 is affirmed. Costs to the respondents to be agreed or taxed.