

IN THE SUPREME COURT

Madeleine Bassett

-v-

The Market Snodsbury NHS Foundation Trust

On the 14th February 2014, at 8pm, Madeleine Bassett, a 25-year-old artist, presented herself at the reception of the Accident and Emergency (A & E) Department of the Market Snodsbury NHS Foundation Trust. She told the receptionist that she was suffering from very severe abdominal pains, had been vomiting, and felt feverish and very unwell. To an observer, she looked very pale, feverish and sweaty, and was obviously ill. The receptionist informed her that she would be seen by a triage nurse within 30 minutes, but that the department was busy, because it was Valentine's Day and the waiting room was full of drunken couples who had sustained injuries as a result of intoxication or incidents of domestic violence, and that there was currently a waiting list of 4-5 hours for treatment.

Madeleine sat down to wait in the A & E Department's waiting room. However, at 7.45pm that evening, there was a train derailment just outside Market Snodsbury Railway Station, and by 8.25 that evening the A & E Department was inundated by patients who had sustained injuries of a very wide range of severity as a result of that accident. The triage nurses were very busy dealing with these patients and Madeleine's name was not called out by a triage nurse until 10pm. Unfortunately, at 9.45pm, Madeleine had temporarily stepped outside the A & E department, to have a vape. Whilst standing in a shady nook outside the department, she passed out and was not found and brought into the A & E Department until midnight. At that stage, she was immediately seen by a doctor, who ordered a CT scan of Madeleine's abdomen. This was performed at 12.45am and indicated that Madeleine's appendix had ruptured. She underwent an emergency appendectomy at 2.30am on the 15th February.

During the surgery, it was discovered that Madeleine's appendix had burst, leading to peritonitis, and that there was a good deal of pus in her abdominal cavity. As a result of this, she developed sepsis, which caused infection and injury to her uterus and ovaries. On the 16th February, as a result of this infection, Madeleine had to undergo a hysterectomy with salpingo-oophorectomy (removal of her ovaries), in order to save her life.

Madeleine brought an action in negligence against the Trust in 2015. By then she had married Ronald Psmith, a renowned actor, who spends several months each year filming in Hollywood, USA. As part of her claim for damages, Madeleine included the cost of commercial surrogacy expenses in California, so that she and her husband can have a child that is genetically his.

At trial, the accepted expert evidence was that the process of rupture had begun after Madeleine had arrived at the hospital, and that it would have taken 3-5 hours for pus to form within her abdomen, leading to sepsis. The judge, Potter Pirbright J., rejected the claimant's claim, holding that the failure of the triage nurse to see Madeleine within the 30 minute period was not negligent, as allowance had to be made for the "battle conditions" under which the hospital was operating at the time (*Wilsher v Essex AHA* [1987] QB 730, *per* Mustill LJ at 749). In any

event, the Trust were not responsible for causing Madeleine's injury, because if she had been seen at 10pm, the sepsis and complications arising from that would have been avoided. The delay to surgery was caused by Madeleine's decision to leave the A & E Department.

On appeal, the Court of Appeal allowed the appeal, holding that the Trust were negligent: given the symptoms explained to the receptionist and Madeleine's evidently ill appearance, she should have been seen by a triage nurse within the 30-minute period. The influx of patients from the derailment did not lessen that requirement: The Trust was required to organise its services in such a way that a reasonable level of care was provided to patients and they had fallen below that standard on this occasion. In any event, the reception staff were at fault in failing to advise Madeleine that there would be further delay before she would be seen by a triage nurse. Had Madeleine been seen within 30 minutes, she would have stayed within the waiting area, would not have collapsed outside the hospital, and the delay to her surgery would have been avoided. Causation was therefore established (following *Darnley v Croydon Health Services NHS Trust* [2018] UKSC 50; *Williams v Bermuda Hospitals Board* [2016] UKPC 4). However, Madeleine could not recover the cost of commercial surrogacy services in California, as this was contrary to public policy because commercial surrogacy services are unlawful in the UK (*Briody v St Helens & Knowsley AHA* [2001] EWCA Civ 1010; *XX v Whittington Hospital NHS Trust* [2017] EWHC 2318 (QB)).

The Trust has been granted leave to appeal to the Supreme Court on the following issues:

- (1) Liability in negligence
- (2) Causation

Madeleine has been granted leave to cross appeal on the issue of whether damages in respect of the cost of commercial surrogacy services in California are recoverable as a matter of policy.

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