

15.4.2002

IN CHAMBERS

IN THE GRAND COURT OF THE CAYMAN ISLANDS

CAUSE NO: 127 OF 2001

CORAM: THE HON MR. JUSTICE KELLOCK

BETWEEN: SHANE WILLIAM CONOLLY
AN INFANT BY HIS NEXT FRIEND DENISE DACRES
AND DENISE DACRES



File in bundle.

*Done
23/4/02*

PLAINTIFFS

AND: MARLON BUNTING

DEFENDANT

Appearances:

Mrs. Sheridan Brooks of Brooks & Brooks for the plaintiff
Mr. Keith Collins Esq. Of Keith Collins & Co for the defendant



REASONS FOR JUDGMENT

This action (commenced by writ issued March 6th 2001) came on for trial (limited to the assessment of damages) on April 5th 2002 and was continued on April 12th when Judgment was reserved.

On April 5th I made an order amending the style of cause (nunc pro tunc to the commencement of the action) to that shown above on Mrs. Brooks'

undertaking to file the written consent of the mother (Denise Dacres) to act as her son's next friend. That consent has not yet been filed and this Judgment is not to issue until it is.

On Sunday June 15th 1988 at about 2pm the infant plaintiff(who I will call "Shane") was swimming in the ocean off the Public Beach at Smith's Cove. His mother was on the beach at the time watching him. Shane was then 8 years old.

At the same time a Rottweiler dog was also swimming in the ocean near Shane and attacked him. The dog grabbed Shane's head dragging him under water. The statement of claim alleges that the dog was under the care and control of the defendant. An acknowledgement of service of the writ was filed by Mr. Keith Collins on behalf of the defendant on March 19th 2001.

Default judgment calling for an assessment of damages was issued April 24th 2001. Accordingly the defendant is deemed to have admitted liability for the horrible injuries sustained by Shane on that Sunday afternoon.

Shane was rescued from the dog and the ocean by several onlookers and taken to the Emergency Department of the Cayman Islands Hospital. He was looked after there by Dr. Jha, a specialist in facial lacerations and Dr. Robertson, the Emergency Room physician on duty.

As one would expect Shane was extremely upset, bleeding profusely and the scalp on both sides of his head was laid back in flaps. He had lost a significant amount of blood. Although he did not need a blood transfusion, he did require intravenous sedation and intravenous antibiotics to allow the doctors to surgically clean and close the wounds.

The extent of the closing (or stitching) operation is graphically shown by the photographs which were marked as Exhibit 1. When asked how many stitches were required Dr. Robertson testified that they were too numerous to count.

It is simply impossible to adequately describe the trauma this little boy suffered as a result of the attack and its aftermath. The hospital surgery took 2 ½ hours to complete.

In July 1998 Shane was referred by Dr. Robertson to Ann Morris an expert in child psychotherapy. Shane had been suffering from headaches, initially headaches described by Dr. Robertson as tension headaches due to abnormal muscle tone in the tissue over the skull and later migraine headaches.

He was also suffering from nightmares and fright. Ms. Morris was of the opinion that Shane was suffering from Post-Traumatic Stress Disorder (PTSD) and this was still the case in August 1999.

There was in addition a concern that Shane's vision had been adversely affected by the trauma he sustained but the ophthalmologist (Dr. Phelps) has reported that his visual acuity is 20/20 without correction and his eyes and vision are normal.

As a result of these troubles Shane was having difficulty at school and his mother thought it in his best interest to have him repeat a year. He was experiencing head aches every time he exerted himself and as a result had to give up Physical Education classes.

I saw Shane in the Court room on April 5th, the visible scars are on the right side of his forehead and extend down to his right eyebrow. The other scars are concealed by his hair. The visible scars cannot be seen at a distance of About 20 feet. They are slightly visible at about twelve feet.

The wounds appear to have healed well and it appeared to me that the surgery carried out by Doctors Jha and Robertson was skillfully done. Doctor Robertson testified that the wounds Shane sustained would have been extremely painful. Shane still complains that his scalp is sore and this may well be a permanent condition.

Dr. Lisk, a neurologist who has treated Shane and saw him on 4th April 2002, also testified.

Dr. Lisk made a diagnosis on March 8th 2001 of "Probable Migraine" headaches. He explained that some of Shane's migraine attacks were associated with vomiting photophobia and phonophobia (that is to say sensitivity to light and sound). Dr. Lisk reported that relief from the headaches with adult Tylenol was transient.

In Dr. Lisk's opinion Shane may have been pre-disposed to migraine headaches because his mother's brother suffered from migraines many years ago. However that may also not be the case.

Dr. Lisk confirmed that there is insufficient information available to the medical profession to permit the formation of firm opinions as to the cause or causes of migraine headaches.

Taking into account all of the circumstances Dr. Lisk testified that the headaches Shane suffered and still suffers were and are probably caused by the attack of June 15th 1988. Shane's condition has improved in the past year and Dr. Lisk is hoping to be able to reduce and then eliminate Shane's reliance on prophylactic drugs.

In summary it is my conclusion that Shane suffered severe pain and shock as a result of the attack and has suffered greatly since. He will be reminded of this trauma on a daily basis each time he looks in a mirror and that might trigger a migraine headache from time to time. He will be fortunate if the pain he still experiences and the headaches he still suffers from are not a permanent aspect of his remaining years.

I have therefore concluded that Shane is entitled to recover by way of damages for the pain and the loss of the amenities of life (including the suffering which may or may not be properly described as PTSD), the sum of CI\$50,000.00. This sum includes an allowance on account of future medical expenses which may or may not involve cosmetic surgery.

This amount less the sum of CI\$1000 which is to be paid to the mother in order to provide some immediate benefit to Shane (eg: a new bicycle) is to be paid into Court.

In addition the plaintiff Denise Dacres is entitled to recover from the defendant:

- a) CI\$ 20,400.00 for past medical expenses.
- b) CI\$ 20,400.00 for past home care for Shane.

The plaintiffs are also entitled to recover their costs of this action.

Kellock
Judge of the Grand Court
Dated this 15th day of April 2002

