

IN THE COUNTY COURT AT MANCHESTER

Claim No: A27YP880

Manchester Civil Justice Centre
Bridge Street West
Manchester

23rd September 2016

Before

DISTRICT JUDGE HOVINGTON

GILLIAN WARNER

(Claimant)

-v-

THE PENNINE ACUTE HOSPITAL NHS TRUST

(Defendant)

APPROVED JUDGMENT

APPEARANCES

For the Claimant:

MR SNARR

For the Defendant:

MISS HALLMARK
(Instructed by Acumension Ltd)
MISS SPENCER
(Instructed by Weightmans)

Transcribed from an audio recording by
J L Harpham Limited
Official Court Reporters and Transcribers
55 Queen Street
Sheffield S1 2DX

GILLIAN WARNER -v- THE PENNINE ACUTE HOSPITAL NHS TRUST

APPROVED JUDGMENT

DISTRICT JUDGE HOVINGTON:

1. I am conscious of the fact that we are well over our allotted time and we still have this contentious issue to address. What I am being asked to do in this case is to give the claimant permission to amend her cost budget; a cost budget that was before me in October of last year when I approved a budget in the sum of £277,081. There is an inextricable link of course between the budget and the court's directions with regard to the future conduct of the litigation. The relevant provision in the Practice Direction that the claimant relies upon is paragraph 7.6 which in fact imposes an obligation on the parties to revise their budget in certain circumstances because it says each party *shall* revise its budget in respect of future costs upwards or downwards if significant developments in the litigation warrant such revisions. It then goes on to say what steps the parties should take, culminating in the provision to say if you cannot agree it you have to make an application, and that is what the claimant has done. It comes down to a question of how one interprets the words "significant developments in the litigation" and the Practice Direction really offers me no assistance in that regard.
2. The only guidance that I have been provided with is the decision of the court in the case of *Churchill v Boot*. In that instance there had been a significant increase in one head of claim because the care report when it was finalised valued that element of the claim significantly higher than the parties originally anticipated. The High Court Master who was asked to permit a variation in the budget said no. He did not regard that as being a significant development in the litigation which required or warranted adjustment to the budget. Mr Snarr has been careful not simply to place all reliance upon the fact that I have given permission for the value of this claim to be increased. He seeks to emphasise not so much

the increase in the value but the increase in the level of complexity that he seeks to identify. Going back to the case law, the Master's decision was appealed unsuccessfully, the Court of Appeal considering that the response which the Master had taken to the issue before him was within the reasonable range of responses, therefore not a decision which ought to be interfered with. To that extent the report, in terms of it being higher authority, does not really help me a great deal because it leaves open still the question of what is likely or may constitute a significant development in the litigation warranting an amendment to the costs budget. Each case of course has to be looked at on its individual merits and on the facts that it throws up.

3. The essence of the argument in support of a variation in this case is Mr Snarr says that we are now dealing with a case which is a different case in some respects to that which was before me in October of 2015. The reason I am invited to regard it as such is because having followed through the initial guidance given by the medical experts and obtaining further expert evidence it has become apparent that the impact of the claimant's injuries is, some of the experts say, likely to have a significant impact on her life expectancy and there is perhaps more emphasis now put on the risk that she will require dialysis than was apparent at the outset, but that is not to say that the risk of deterioration and the need for dialysis has come totally out of the blue. It is significant in this case I think that the originally pleaded particulars of claim included a paragraph indicating the intention to invite the court to make an order for provisional damages. Clearly therefore on any view it was anticipated by the claimant that this was a lady whose condition might well deteriorate.
4. What has changed, in essence, is the way in which the claimant's advisers now seek to address that risk of deterioration with the benefit of the further medical evidence, and that of course is further medical evidence for which provision was made at the time of the directions order and therefore budgeted for. The decision has been taken to seek to amend the particulars of claim to include an express pleading of a claim for periodical payments and

that is presented as the primary ‘significant development’ in the litigation, but is it? Is it something which has come about that was unforeseen and not in any way anticipated at the stage of the original cost budgeting exercise? I go back to what I said before that cost budgeting goes hand in hand with case management and the case management directions expressly provided for the parties to address the question of periodical payments. To that extent, in setting the budget at the level and at the time that I did, from the court’s perspective I have taken that factor into account. That the claimant now seeks to deal with that issue with the benefit of advice from leading counsel rather than simply rely upon Mr Snarr or indeed Mr Garrett, and the fact that they say, we may well need input from an IFA, are not matters, it seems to me, that were beyond the realms of contemplation at the outset and the question, had it been raised at the time specifically in those terms, would of course be by reference to the proportionality of that expense in the context of the case at that stage.

5. It is right, as Mr Snarr points out, to say that in the original costs budget there had been provision for involvement by leading counsel. I took the view that it was not a case that merited that and I declined to approve those costs. In effect what the claimant now seeks to do is to go behind that and bring that issue back into play. But that again is predicated on the basis that I am dealing with a case that is a different case in some material respect to that which was before me back in October. Every case evolves. Evidence comes forward that is not available at the time of the original case management conference but the whole essence of budgeting is to endeavour to anticipate that and set a framework within which the case is then to be conducted. ‘Significant developments in the litigation’ seems to me to require that the case has gone off in a different direction in some manner or other, that it has taken a turn that was not reasonably foreseeable or envisaged at the time of the original exercise. The fact that the expert evidence tells us something that we had not totally anticipated is not in itself I think sufficient to pass that ‘significant development’ test.

6. At its very simplest level, and I appreciate I am over-simplifying, this was a clinical

negligence claim against a doctor in a hospital by a lady who had suffered very, very serious and debilitating injury where there was a perceived risk of future deterioration. I appreciate that the precise nature and extent of that deterioration may not have been entirely clear in October 2015 and that is why I gave permission for further experts; but what has changed in terms of the essence of the case? I still have a lady who is suffering serious and debilitating symptoms from her injuries and with the risk of future deterioration. I made provision in the directions for the parties to address the question of periodical payments. To that extent I am not sure that that becoming now a significant feature in the case can properly be characterised as a significant development. For those reasons the application to amend the budget is refused.

7. That does not of course preclude the claimant from engaging such representation as the claimant considers fit. What it does mean of course is that in the event that the claimant succeeds and the matter proceeds to detailed assessment the onus will be upon the claimant to demonstrate that if that involved exceeding the budget that I set last year that is reasonable and proportionate in all the circumstances.