

ZGONEC-ROZEJ & ORS V DR PEREIRA

[2025] EWCA CIV 171



FEBRUARY 2025

1. The Court of Appeal has recently dismissed the Claimants' appeal in *Zgonec-Rozej & Ors v Dr Pereira* [2025] EWCA Civ 171. In doing so, they have confirmed that – despite being pleaded relatively indiscriminately – the doctrine of material contribution is of limited applicability, arising only where the Court is unable to determine causation on a 'but-for' basis. The case also gives rise to interesting points on evidence and strategy in claims relating to suicide.
5. In assessing the evidence before the Court, Mr Justice Bourne noted that Mr Jones appeared to be presenting normally and rationally when interacting with the Hospital staff on the morning of his death, including during the telephone call made in the minutes before he died. He also made reference to the CCTV footage of Mr Jones' death, which was said to show him to acting in a calm and purposeful manner. On the basis of this evidence the learned judge found that, whilst Mr Jones was clearly very unwell, at the time of his death he had not lost his autonomy and therefore a reduction of damages of 25% to reflect contributory negligence would have been appropriate.

The Case at First Instance

2. The claim in *Zgonec-Rozej* arose out of the tragic death of Mr John Jones QC while under the care of the Defendant Consultant Psychiatrist. At the time of his death by suicide, Mr Jones was a voluntary in-patient at the Nightingale Hospital in London. Claims in negligence against the Hospital and against another Consultant Psychiatrist, Dr Bakshi, were settled without admission of liability.

3. At trial, Mr Justice Bourne found that the Defendant had breached his duty of care in several respects, including in failing to conduct an adequate handover when transferring Mr Jones to the care of Dr Bakshi while he went on holiday. However, causation was not established and the claim accordingly failed. Two points of the trial judge's decision on causation merit particular attention:

- (a) Despite the complex web of factors which may lead to or prevent suicide, Mr Justice Bourne concluded that on the evidence before him he was able to determine causation on the balance of probabilities. Accordingly, the doctrine of material contribution had no role to play.
- (b) As the claim against Dr Bakshi had been settled, there was no evidence before the Court as to the merits or demerits of her treatment of Mr Jones. It followed inexorably from this lack of evidence that a finding that the Defendant's inadequate handover to Dr Bakshi caused or materially contributed to the death could not properly be made. Such a finding would necessarily rely on the Court making findings of fact as to what Dr Bakshi would have done but-for the Defendant's breach – a question which had not been tried.

4. Although he dismissed the claim on the basis of causation, Mr Justice Bourne went on to set out the findings he would have made on the issue of contributory negligence had liability been established. After considering the well-known case of *Corr v IBC Vehicles Ltd* [2008] UKHL 13 in some detail, the learned judge directed himself that the question to be determined was the degree of autonomy in the suicidal act – in other words, the extent to which the deceased's will had overborn by their illness.

The Case on Appeal

6. The Claimants appealed, among other things, against the trial judge's findings on material contribution and contributory negligence.
7. On the first of these points, the Claimants argued that because the learned judge had found that there were a number of overlapping contributory factors to Mr Jones' death, including his own actions, this was a paradigm case for the doctrine of material contribution to be applied.
8. The Court of Appeal accepted Mr Porter KC's submissions on behalf of the Defendant and rejected the Claimants' argument entirely. The Court reaffirmed that the 'but-for' principle is the primary mechanism for determining factual causation in the law of tort. Material contribution is a recognised exception to this, but its scope is limited. As authoritatively summarised by the Court of Appeal in *Bailey v Ministry of Defence* [2009] 1 WLR 1052 and by the Privy Council in *Williams v Bermuda Hospitals Board* [2016] AC 888, where the evidence before the court is such that factual causation can be determined on a 'but for' basis in either party's favour, the doctrine of material contribution does not arise.
9. As to contributory negligence, the applicable legal principles were not in meaningful dispute. However, the Claimants contended that in the absence of a suicide note or any other direct evidence that Mr Jones had *planned* to take his own life, there was insufficient evidence to upon which the learned judge could properly have found that he was acting autonomously at the relevant time.
10. In response, Ms Mason-Thom argued that requiring direct evidence as to the reality of a deceased individual's state of mind at the moment of the suicidal act was both unrealistic and unnecessary. It was therefore entirely appropriate for Mr Justice Bourne to assess the totality of the evidence before the Court as to Mr Jones' mental state in the preceding hours and days and make appropriate inferences as to whether, on

the balance of probabilities, he retained sufficient personal autonomy over his actions to justify a finding of contributory negligence. As the trial judge's dismissal of the claim on grounds of causation was upheld by the Court of Appeal, they declined to determine this point. The nature of the evidence required to establish contributory negligence therefore remains a (somewhat) open question.

Key Takeaways

11. Although not breaking any radical new ground, the decision of the Court of Appeal in *Zgonec-Rozej* is to be welcomed. It restates a point often overlooked by claimants when pleading clinical negligence claims and by defendants when responding to them: material contribution is a doctrine with limited and well-defined boundaries. Even where causation of the injury complained of is clearly multi-factorial, the Court should first attempt to decide the case on the 'but-for' basis. It is only where a 'but-for' finding cannot be made in either party's favour that the Court is free to consider material contribution.
12. The case also brings to light two important strategic points. The first is the need to be mindful, when settling claims against some but not all defendants, of the impact their absence at trial will have on the claimant's ability to adduce evidence against the remaining parties. As confirmed by the Court of Appeal, in such circumstances a trial judge would be entitled to decline to find causation on the basis that to do so would be to speculate on issues which had not been tried.
13. The second is the importance, insofar as is possible, of supporting allegations of contributory negligence in cases of suicide with evidence of the deceased's likely state of mind *at the time of death*. However, this point should not be overstated. Trial judges are accustomed to extrapolating from available material to reach conclusions on matters on which there is no direct evidence. As long as those conclusions have some evidential basis and are rationally explained, it is the opinion of this author that a finding of contributory negligence made on such a basis would be wholly sound.

Martin Porter KC and **Paige Mason-Thom** acted for the successful Respondent, Dr Pereira, at trial and on appeal.



Martin Porter KC



Paige Mason-Thom