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CASE NOTE

“Pushing the *Boate* Out: Testing the Boundaries of *Paul*”

Boate v Twin Ventures International Ltd [2026] EWCC 66



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In *Boate v Twin Ventures International Ltd* [2026] EWCC 66, HHJ Holmes considered whether a mother who administered morphine to her daughter (the dosage of which had been negligently prescribed and dispensed) could pursue a claim for psychiatric injury as a secondary victim. The defendants sought strike out and summary judgment, seeking to rely on the Supreme Court's judgment in *Paul v Royal Wolverhampton NHS Trust* [2024] UKSC 1. The applications were dismissed. The decision explores the boundary between an *"accident"* and a *"medical crisis"*, and the significance of a claimant's unwitting participation in the injury-causing event.

PAUL: WHAT THE SUPREME COURT DECIDED

In *Paul*, the Supreme Court dismissed three claims for psychiatric injury brought by individuals who had witnessed their relatives' deaths, and/or the immediate aftermath thereof, following earlier negligent failures by the relevant defendant NHS trusts to diagnose and/or treat disease which ultimately led to those deaths. The *Paul* claimants sought to establish a duty of care owed to them as secondary victims. The House of Lords had previously clarified in the leading cases of *McLoughlin v O'Brian* [1983] 1 AC 410, *Alcock v Chief Constable of South Yorkshire Police* [1992] 1 AC 310 and *Frost v Chief Constable of South Yorkshire* [1999] 2 AC 455 that such liability arises where a claimant suffers a recognised psychiatric illness as a result of directly perceiving a catastrophic event occur to the primary victim, to whom they have a close relationship of love and affection, and where they are proximate in both time and space to the event.

In dismissing the *Paul* claims, the Supreme Court reaffirmed that by way of catastrophic event, secondary-victim liability requires an "*accident*" – an unexpected and unintended external event causing, or risking, injury by violent external means (*Paul* at [24], [52] and [105]) – and that it is the accident, rather than the later manifestation of injury, which must be perceived. As such, a medical crisis resulting from an untreated condition is not, without more, an accident. Crucially, however, at [123] the Supreme Court expressly left open whether secondary-victim liability could otherwise arise from accidents in a medical setting. In doing so, the Court referred to "*various hypothetical examples … such as a scenario where a doctor injects a patient with a wrong dose or a wrong drug, inducing an acute adverse reaction which is witnessed by a close relative.*" The Court ultimately concluded that "*the issues raised by such examples are best left to be addressed in a case where they actually arise on the facts*."



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During pupillage, David gained experience of a breadth of work done in Chambers, including professional negligence, clinical negligence, commercial law and costs.

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BOATE

Boate concerns a claim by a mother who witnessed the sudden collapse and respiratory arrest of her four-month-old baby after the claimant herself administered to her morphine, the dosage of which had been negligently prescribed and dispensed.

Juanita Boate, born in May 2020 with serious congenital conditions, was receiving palliative care at home, including morphine through a naso-gastric tube. In August 2020, her GP practice issued an ambiguous prescription and the pharmacy dispensed a solution approximately twenty times stronger than intended, without specifying the volume to administer. On 3 September 2020 her mother, Esther Boate, administered it. Juanita immediately collapsed, developed respiratory arrest and required emergency treatment and intubation. She died six days later.

An inquest into baby Juanita's death recorded her congenital conditions and accidental morphine overdose as the medical causes of death.

Ms Boate brought a claim against the GP practice and pharmacy as a secondary victim, alleging that she had suffered post-traumatic stress disorder and severe depressive disorder as a result of witnessing baby Juanita's sudden collapse and respiratory arrest leading to her ultimate death.

Both defendants applied under CPR 3.4(2)(a) to strike out the claim as disclosing no reasonable grounds, and under CPR 24.3 for summary judgment on the basis that it had no real prospect of success and no other compelling reason for trial. The central question was whether the administration of morphine could constitute an "*accident*" as required by the Supreme Court's judgment in *Paul*, rather than merely the onset of a medical crisis.

The defendants characterised the relevant act as an ordinary, familiar administration of medication. Their submission was that Ms Boate had performed it previously and could not perceive the act itself as dangerous. They suggested that observing the disastrous *consequences* of the act alone was insufficient under *Paul* and so maintained that the claim therefore had no real prospect of success.

The claimant argued that the administration of an excessive dose was itself an accident, directly witnessed and indeed performed by her. She relied particularly on *Paul* at [123], submitting that the Supreme Court had deliberately reserved this type of case and that the issue should not be determined summarily.

THE DECISION

HHJ Holmes dismissed the applications, finding that the claim had a real prospect of success. Although the allegedly negligent prescription and dispensing occurred in Ms Boate's absence, the relevant external event could be conceptualised as the introduction of toxic medication into Juanita's body. The Supreme Court's use of the word "*violent*" in *Paul* did not necessarily impose a minimum threshold of physical force. As such, an injection could qualify, and there was no principled reason to exclude administration through a naso-gastric tube. If the reaction followed immediately or almost immediately, the requisite connection between event and injury could be established, notwithstanding that Ms Boate did not anticipate harm when administering the dose (see [36]–[38]).

The judge also stressed proximity and foreseeability. Unlike a passive observer of a relative's illness, Ms Boate was integral to the home-care plan and had been placed, through the defendants' alleged negligence, in the position of unwittingly harming her child. The judge drew an analogy with the cases of *Dooley v Cammell Laird & Co. Ltd*. [1951] 1 Lloyd's Rep. 271, *Galt v British Railways Board* (1983) 133 N.L.J. 870, and *Wigg v British Railways Board*, The Times, 4 February 1986. These had been discussed in *Alcock* and concerned scenarios where a defendant's negligence had put claimants into the position of causing or apparently causing harm to others. Assuming the factual basis of the claimant's pleaded case to be true, the judge considered that the GP practice and pharmacy owed Ms Boate a duty not to place her in a position where she might unwittingly administer a toxic substance to her daughter (see [39]–[41]). On that basis, HHJ Holmes found that the claim has a real prospect of success and therefore both applications were dismissed.

COMMENT ON *BOATE*

Even though Boate is only a strike out/summary judgment application, it reminds us that the Supreme Court's judgment in *Paul*, while removing medical crises following misdisagnosis from the scope of secondary victim claims, does not bar all such claims arising in a clinical setting. *Boate* tests the opening preserved at [123] of *Paul* for such claims, on assumed facts which are almost identical to the hypothetical posed by the Supreme Court in that paragraph.

What is interesting about the judgment is the emphasis that is placed on how Ms Boate's role as an unwitting instrument of harm distinguishes her from a passive observer. In HHJ Holmes' judgment, this perhaps assuages potential concerns about treating the administration of an apparently routine medicine as "*violent*". However, level of participation in the accident is not strictly a factor which must be considered among the *Alcock* principles. Moreover, the Judge's reliance on the pre-*Alcock* authorities of *Dooley, Malt* and *Wigg*, and the phrasing that the defendants owed Ms Boate *"a duty of care to ensure that they did not prescribe or dispense something which was toxic so that she did not unwittingly administer a toxic substance to her daughter*", suggests something of a bypassing of the strict *Alcock* framework. Indeed, in *Alcock* itself, Lord Oliver draws a distinction between the unwilling participant and unwilling witness scenarios:

> *"It is customary to classify cases in which damages are claimed for injury occasioned in this way under a single generic label as cases of "liability for nervous shock." This may be convenient but in fact the label is misleading if and to the extent that it is assumed to lead to a conclusion that they have more in common than the factual similarity of the medium through which the injury is sustained - that of an assault upon the nervous system of the plaintiff through witnessing or taking part in an event - and that they will, on account of this factor, provide a single common test for the circumstances which give rise to a duty of care. Broadly they divide into two categories, that is to say, those cases in which the injured plaintiff was involved, either mediately or immediately, as a participant, and those in which the plaintiff was no more than the passive and unwilling witness of injury caused to others. In the context of the instant appeals the cases of the former type are not particularly helpful, except to the extent that they yield a number of illuminating dicta, for they illustrate only a directness of relationship (and thus a duty) which is almost self-evident from a mere recital of the facts."*

The reasoning in *Boate* clearly relies on the element of unwilling participation, but the judge does not go as far as distinguishing it from an unwilling witness case in terms of the applicable legal principles, although this seems to be Lord Oliver's suggested approach in *Alcock*. This is perhaps something which claimants bringing similar claims might seek to do.

Ultimately, as an interlocutory decision, *Boate* may be of limited assistance. Nonetheless, it does provide a useful example of how *Paul* might be applied by first-instance judges in cases such as those envisaged by the Supreme Court itself. Given the finely balanced submissions on both sides in *Boate*, this is perhaps an issue which could be back in front of Their Lordships sooner rather than later.
David Horvath-Franco

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