THE COURT OF APPEAL

UNAPPROVED

Neutral Citation Number [2020] IECA 293
Record Number: 2014/1019

Noonan J.
Power J.
Binchy J.

BETWEEN

FRANCES KELLY

APPELLANT

- AND -

PROFESSOR DUNCAN SLEEMAN, UNIVERSITY COLLEGE CORK, NATIONAL UNIVERSITY OF IRELAND AND THE SOUTHERN HEALTH BOARD

RESPONDENT

JUDGMENT of Ms. Justice Power delivered on the 29th day of October 2020

1. This appeal is brought from the Judgment (*ex tempore*) and Order of the High Court (Barr J.) of 25 October 2013 whereby the trial judge dismissed the proceedings taken by the appellant, (as plaintiff) against the respondents (as defendants) on the basis that a *prima facie* case had not been established. At the hearing of this appeal the Court was informed that the appellant's claim as against the first named respondent was no longer being pursued and that the case was proceeding only as against the second to fourth named respondents.

Background

2. The appellant was involved in a car accident on 4 May 2000 and suffered serious facial injuries. She was taken to Cork University Hospital ('CUH') where she came under the care of

the respondents. The following day, she underwent extensive medical treatment in CUH which included, *inter alia*, the suturing of lacerations to her tongue, significant dental procedures and the fixation of mandibular fractures.

3. The appellant developed necrosis of part of her tongue which, ultimately, required to be removed and debrided. It is the appellant's case that the '*partial amputation*' of her tongue and the adverse sequalae that followed were caused by the reason of the negligence and breach of duty on the part of the respondents in or about the timely provision of medical and/or surgical treatment.

4. Just under three years post-accident, proceedings were instituted by way of Plenary Summons dated 11 April 2003. A further three years elapsed before a Statement of Claim was delivered. It sets out various particulars of negligence and breach of duty against the respondents which include failing to exercise reasonable care, skill and diligence in treating the injuries, failing to suture the appellant's tongue as soon as practicable, failing to advise her of the risk of not suturing her tongue until 27 hours post injury, and causing or permitting the development of necrosis. It is also alleged that the respondents carried out the appellant's treatment, care and management '*in a manner that lacked the skill which would normally be exhibited by a surgeon who had the necessary professional care, skill and competence'*. A plea of *res ipsa loquitur* is also made.

5. Thereafter, several Notices of Intention to Proceed were served on behalf of the appellant and the case eventually came on for hearing before Barr J. on 24 October 2013. The appellant did not have legal representation at trial.

High Court

6. During the hearing the appellant gave evidence in chief as to how the accident had occurred and as to the medical treatment she had received thereafter. She was subjected to cross

examination. When she had completed her evidence, she did not call any witnesses in support of the serious allegations of professional negligence which she had made against the respondents.

7. An application to dismiss the case was then made on the basis that the appellant had failed to make out a *prima facie* case against the respondents. Judgment was delivered on the same day.

8. In his judgment, the learned judge outlined the significant injuries to her head, face and mouth suffered by the appellant in the car accident noting, in particular, the '*serious injury to her tongue*'. He pointed out that the appellant '*ran this case on her own*' and observed that she was clearly *'a woman of considerable intelligence and resilience*'. She had given her evidence '*in a logical and clear manner*'. The judge noted that the appellant had not been able to offer any expert evidence in support of her claim.

9. Barr J. then considered the application to dismiss the claim which had been made on behalf of the respondents. They had submitted that in the light of *Hetherington v Ultra Tyre Service Ltd* [1993] 2 I.R. 535 and *O'Toole v Heavey* [1993] 2 I.R. 544, the question which the court had to decide was whether a *prima facie* case had been made out by the appellant as against the respondents. Noting the absence of any expert evidence against the respondents, the trial judge recalled the judgment of the Supreme Court in *Sugg v O'Keeffe & Anor.* [2005] IESC 92 wherein Geoghegan J. had stated that: -

> *"A court will never hold a professional person guilty of negligence without professional evidence from another professional supporting the assertion of the claim of negligence and that is wholly absent here."*

10. Barr J. was satisfied that, in the absence of any medical evidence against the respondents, a *prima facie* case had not been established. He also rejected the plea of *res ispa loquitur*, observing that the mere fact of the operation being carried out on the day after the accident, could not be, of itself, indicative of negligence on the part of the respondents. Accordingly, the trial judge made an order striking out the appellant's claim and he awarded the costs of the action to the respondent, with a stay in the event of an appeal.

Grounds of Appeal

11. Without identifying how or why the High Court judge fell into error, the appellant, in her Grounds of Appeal, pleads that:

1. 'the respondents remain vicariously liable for breach and/or failure in omission/delay in the provision of a surgical consultation, clinical examination, diagnosis, management or treatment of severe injuries and resultant danger, bleeding, pain and loss therefrom and/or until there is provided disclosure of evidence proving to the contrary';
2. a highly complex personal injuries case, such as this one, involving a severe and unique wound was quickly dismissed prior to and without consultation or advice from any medical doctor or specialist in the field, independent or otherwise, and in the absence of the appellant's medical expert;
3. there are ongoing breaches and/or transgressions of Constitutional and human rights; and
4. there has been an additional failure of non-judicial authorities, such as, the Medical Council to avert or avoid judicial process through flawed investigation and/or procedure, thereby, forcing prolonged litigation and exceptional circumstances of severe hardship.

In an additional, undated, document entitled 'Grounds of Appeal' the appellant contended that the trial judge erred in that his conclusions were not based on evidence; that 'fairness' required the granting of an adjournment and that the trial judge '*unfairly favoured the defence*'.

Submissions

Appellant's Submissions

12. The appellant agrees with the trial judge's description of the car accident as 'serious' but submits that his description of her mouth injury as 'significant' is 'an understatement'. Her submissions set out, in great detail, the injuries she suffered when she, as '*an inexperienced provisional driver*', lost control of the car she was driving and collided with an oncoming vehicle.

She claims she was caused to suffer '*severe and life-threatening injuries*' which included a *'partial amputation*' of the distal one third of her tongue, a '*through and through laceration*' of her lower lip, a '*severely fractured mandible*', the snapping off of '*both lower jaw hinges'* and the shattering of '*most if not all*' of her teeth. She describes how her General Practitioner, Dr. Colin Gleeson, had attended the scene of the accident, diagnosed a *'traumatic partial amputation of the tongue*' and referred her to Bantry Surgical Unit.

13. The appellant then details a number of wrong steps and unfortunate mishaps that occurred as she was taken by ambulance(s) arriving, eventually, at Cork University (Dental) Hospital from where she was later transferred to the Accident and Emergency Department. She claims that as of midnight on the day of the accident she had not received a '*surgical consult, exam, diagnosis, or any meaningful treatment*'. She identifies as her '*core complaint*' the '*omission of treatment for 27 hours*'.

14. The appellant complains that the trial judge failed to mention certain details in his judgment, such as, the duration of the delay in treatment. In view of his acknowledgment that she had given evidence in a logical and clear manner, she queries why he overlooked 'such low standards' of treatment. She submits that she has '*answered'* the cases of *Hetherington v Ultra Tyre Service Ltd* and *O'Toole v Heavey*, to which the trial judge referred, because neither of these cases is comparable to what happened in her case. Referring to 'the conclusion' of an expert report prepared on her behalf by Professor Ayoub, the appellant claims that there is expert, documentary and physical evidence against the respondents. She then sets out her explanation of what Professor Ayoub had intended in his report. She claims that the decision in *Sugg v O'Keeffe & Anor* does not apply because her medical expert's letter '*remained unread'* by the trial judge. She submits that her expert evidence was not '*absent*,' but that it was '*wholly ignored',* with the judge refusing to accept her '*documentation*'.

15. During the hearing of the appeal the appellant claimed that her medical expert was willing to attend court on her behalf but had been unable to do so. In this regard, she referred to a letter dated 16 October 2013 from Professor Ayoub which is included in the file wherein he stated that he was '*not available to attend court the week of 21 to 25 October 2013 due to international commitments outside the UK'*. In the letter he went on to say that he would be '*happy to attend a mutually agreed date in the future*'.[1]

16. In the appellant's view *'[t]he mere fact of the operation being carried out the following day is of itself indicative of negligence on the part of the defendants*' and the principle of *res ipsa loquitur* applies. No proper evidence of a valid defence had been adduced. No explanation was given for the reattachment procedure '*in the twenty eighth hour'*, when this should have been done within the first '*6 hours'.*

17. The appellant further claims that all of her requests to meet with the surgeon prior to surgery were ignored and that she was anaesthetized against her will. She also claims that part of her tongue was removed without consent. She cites *Sidaway v Bethlem Royal Hospital* [1985] A.C. 871 in support of a patient's right to decide whether to consent to treatment which involved a substantial risk of grave consequences.

18. Finally, the appellant contends that the second and third named respondents are vicariously responsible for the alleged wrongs allegedly suffered due to their failure to ensure the existence of and compliance with appropriate protocols and procedures. The findings of the trial judge are '*erroneous'* and unsupported by credible evidence and the costs order made against her is also the subject of this appeal.

[1] At p. 11 of the Core Book

The *Respondents' Submissions*

19. The respondents, firstly, set out a brief synopsis of the appellant's case and the history of these proceedings. Thereafter, their submissions may be summarized as follows. During the course of trial, the appellant attempted to introduce a claim for lack of informed consent. It was pointed out to the trial judge that this had not been pleaded in the Statement of Claim which, clearly, had been drafted by lawyers. Moreover, the appellant did not call any expert evidence in support of her case. She had indicated that she wished to call Professor Ayoub as an expert, but that he had been unable to attend trial. The trial court was advised that the appellant had been consulted about the trial date and had been informed in adequate time of when the matter was to be listed. When an issue arose about Professor Ayoub, she was informed that if she wished to make an application for his evidence to be given via video link, then this should be made well prior to the date of trial. The respondents referred to correspondence from their solicitors dated 25 July 2013 which had been opened to the trial court as evidence of these matters which stated: -

> "*We will not accept Professor Ayoub's report in evidence unless he is available for cross examination. If you wish to make any applications to the court in relation to allowing evidence by video conferencing or other matters, we would ask you to put all the Defendants on notice of your intention to make any such application and make the application in a timely manner and well in advance of the hearing of the 23rd of October 2013."*

20. The respondents point out that no application—for an adjournment or for leave to have Professor Ayoub's evidence taken by way of video link—had been made by the appellant prior to the hearing date and that the trial had proceeded '*without demur'*. During the trial, she had given evidence on her own behalf and she did not call any other witness to testify in support of her claim. Legal authorities had been opened to the trial judge who then applied the legal principles applicable in this jurisdiction as *per* the cases of *Hetherington v Ultra Tyre Service Ltd* [1993] 2 I.R. 535, *O'Toole v Heavey* [1993] 2 I.R. 544 and *Sugg v O'Keeffe & Anor* [2005] IESC 92. The appellant has not suggested in any papers filed that the trial court had erred in its application of those legal principles.

21. Finally, the respondents point out that, pursuant to S.I. No. 391/1998, the appellant had furnished to them the medical report of Professor Ayoub, dated 5 November 2010, which had been prepared more than 7 years after the institution of proceedings.

Discussion

22. During the course of this appeal (in which only the respondents had legal representation) and, indeed, throughout her submissions, the appellant's principal complaint was that she was left without '*treatment*' for 27 hours following what she describes as a '*life threatening*' injury to her tongue. In her view, this alleged delay in '*treatment*' amounted to negligence and breach of duty on the part of the defendants and caused her to suffer damage, including, the significant loss of one third of her tongue.

23. It is common case between the parties that the only evidence tendered by the appellant during the course of the trial was her own. She set out her account of what had transpired in terms of the management of her condition and, at times, attempted to give medical evidence as to how and when her '*unique and complicated injury'* should have been treated. Her testimony in this regard was based on what she alleged she had been told by her General Practitioner and on internet and other research which she had conducted in relation to her injury. When counsel for the respondents objected, Barr J. explained to the appellant the rule against hearsay. Her invitation that he '*have a word*' with her doctor by telephone or regard her research evidence as '*off the record'* was declined by the trial judge. It is a fundamental principle of civil litigation in this jurisdiction that *'(s)he who asserts must prove'*. It is not for a respondent and still less for a judge to assist such a person in establishing his or her case. In my view, the trial judge was entirely correct in pointing out to the appellant that he could not telephone a witness nor take account of the matters to which she referred based on her internet research.

24. In proceedings alleging medical malpractice a plaintiff is obliged to adduce before the court expert testimony in support of such a claim. This long-standing principle was articulated by the Supreme Court in *Dunne v. National Maternity Hospital* [1989] I.R. 91, where Finlay C.J. (at p. 109) identified, in the following terms, that which is required in order to prove medical negligence:

> *"1. The true test for establishing negligence in diagnosis or treatment on the part of a medical practitioner is whether he has been proved to be guilty of such failure as no medical practitioner of equal specialist or general status and skill would be guilty of if acting with ordinary care."*
>
> *2. If the allegation of negligence against a medical practitioner is based on proof that he deviated from a general and approved practice, that will not establish negligence unless it is also proved that the course he did take was one which no medical practitioner of like specialisation and skill would have followed had he been taking the ordinary care required from a person of his qualifications."*

25. This requirement to substantiate a medical negligence claim by reference to expert evidence has been applied, consistently, by the courts. Moreover, the superior courts have confirmed that to prosecute such proceedings in the absence of the requisite evidence amounts to an abuse of process. In *Reidy v. National Maternity Hospital* [1997] IEHC 143, Barr J. held that: -

> *"It is irresponsible and an abuse of the process of the court to launch a professional negligence action against institutions such as hospitals and professional personnel without first ascertaining that there are reasonable grounds for so doing. Initiation and prosecution of an action in negligence on behalf of the plaintiff against the hospital necessarily required appropriate expert evidence to support it."*

26. The same approach was taken by Kelly J. in *Connolly v Casey* [1998] IEHC 90. He had '*no difficulty'* in endorsing this position and considered that the commencement of proceedings alleging professional negligence constitutes an abuse of process '*unless the persons advising such proceedings have reasonable grounds for so doing*' (p.19). Confirmation that this line of reasoning was correct in law was provided by the Supreme Court in *Cooke v Cronin & Neary* [1999] IESC 54 with Denham J. stating that: -

> *"To issue proceedings alleging professional negligence puts an individual in a situation where for professional or practice reasons to have the case proceed in open Court may be perceived and feared by that professional as being unprofessional conduct."*

27. These authorities all point to the fact that, sincere as the appellant may be in her belief that the respondents were negligent in the management and treatment of her injuries, that belief, in itself, is insufficient to ground proceedings alleging professional negligence. The plaintiff in *Sugg v O'Keeffe* was also '*absolutely sincere*' in his belief that negligence in the care of his late wife had led to her death and, like the appellant in this case, he, as a lay litigant, had prosecuted his claim in a perfectly courteous manner. Notwithstanding the sincerity of his belief, however, the Supreme Court upheld the trial court's dismissal of his action on the basis that he had adduced no expert evidence of any kind to support his case.

28. The rationale behind the requirement that a claimant must have expert evidence in medical negligence cases was considered by this Court in *Mangan v Dockery & Others* [2019] IECA 45.[2] McGovern J. recognized (at para. 11) that the above line of authority

> *". . . arises out of an understanding by the courts that claims for professional negligence can have very serious consequences for a medical practitioner or hospital transcending the particular proceedings even where there is no finding made."*

In *Mangan*, counsel for the appellant, relying on *Connolly v.* Casey, had advanced an argument that expert evidence was not necessary for the purpose of issuing proceedings. McGovern J., for his part, was prepared to accept that the requirement for a party to have a credible basis for commencing medical negligence proceedings '*does not necessarily require that a written report is available, although in most cases one would expect this to be the case"*. However, in qualifying this observation, he considered (at para. 20) that:

> *'In the event that the matter proceeds to trial it will be necessary for such a witness to produce a report, and for it to be furnished under the provisions of Statutory Instrument 391 of 1998 if the witness is to give evidence'.*

29. A review of the transcript of the trial in this case discloses that the plaintiff had consulted several experts and that some reports had been prepared by them on her behalf. Her own testimony was that in one case, the report '*was just not quite of the standard that you want to bring into*

[2] Counsel for the respondent informed the Court that this case is under appeal to the Supreme Court.

court'[3]. At another point she testified that she was already three years into litigation before she was told '*that this really isn't going to be successful*'.[4] Thereafter, her evidence was that she went for '*another medical report and another medical report*'.[5] The upshot was that by the time the matter had come on for trial some thirteen years after the events in issue, the appellant's position was, broadly, similar to that of Mr Sugg's in terms of the complete dearth of expert evidence to support her claim of negligence and breach of duty in or about the manner in which her injuries had been treated.

30. There can be little doubt but that the appellant has undergone significant suffering both at the time of the initial injuries and as a consequence thereof. She has also endured the certain stress of pursuing litigation for the past thirteen years. She has shown remarkable courage, resilience and strength of character in dealing with her injuries and her efforts to overcome the adverse consequences caused thereby are remarkable. Moreover, throughout these proceedings she prosecuted her claim in a courteous, articulate and dignified manner. She is clearly a person of intelligence and ability.

31. Ultimately, however, this Court must apply the law, faithfully, to the facts of this case before it and it must do so without fear or favour to either side. It must hold the appellant to establishing, with the support of expert testimony, that her treating practitioner was *'guilty of such failure as no medical practitioner of equal specialist or general status and skill would be guilty of if acting with ordinary care'* (*per Dunne*). There is good reason for maintaining such a rigorous test. As Finlay C.J. in *Dunne* (at p. 110) observed: -

> *"The development of medical science and the supreme importance of that development to humanity makes it particularly undesirable and inconsistent with the common good that doctors should be obliged to carry out their professional duties under frequent threat of unsustainable legal claims."*

[3] Transcript of Trial, Day 1, page 28, lines 6 and 7.
[4] Transcript of Trial, Day 1, page 32, lines 6 and 7.
[5] Transcript of Trial, Day 1, page 32, lines 7 and 8.

32. With a view to guarding against unsustainable legal claims, the law in this jurisdiction requires that if a plaintiff makes damaging allegations of negligent treatment against a professional skilled in a particular branch of medicine, then that plaintiff must have the evidence of another professional, of equivalent skill and standing, who has formed the opinion that the treatment administered fell below the necessary standard required of such a professional and that it did, in fact, constitute negligence and/or a breach of professional duty. Such a high threshold has been set by the courts because of the '*serious consequences'* that an unfounded allegation of medical negligence may have for clinical practitioners. Without '*professional evidence from another professional'* supporting a claim of medical negligence, a court could never make a finding of negligence (*per Sugg*).

33. Notwithstanding the appellant's repeated allegations that a delay in treating her injury caused her to lose a substantial part of her tongue, she has produced no medical evidence to corroborate her claim in this regard. Despite having consulted several experts during the long course of these proceedings, the fact remains that she was not in a position at the trial of her action to call any expert testimony to support her allegations against the respondents herein.

Adjournment

34. As noted above, it is the appellant's contention that she did, in fact, have expert evidence but that it was '*wholly ignored'* by the trial judge because he did not grant an adjournment. The evidence to which she refers is the testimony of Professor Ayoub. He had prepared a report on her behalf which was not admitted into evidence. He had been willing to attend court but was unavailable at the time for which the trial was listed. It is the appellant's view, that the trial judge should have granted an adjournment. She made this submission, on appeal, notwithstanding the fact that she had neither requested an adjournment at the outset of the trial nor had sought one prior to the hearing date. Moreover, the issue of adjournment was not properly raised in the Grounds

of Appeal. In any event, I am satisfied that, having regard to what transpired in the lead-up to trial, the issue of an adjournment is devoid of any merit.

35. The Court was referred to a letter sent by the respondents' solicitors to the appellant (see para. 19 above) in which they specifically confirmed the trial date and requested that they be put on notice of any application which the appellant may wish to make to court. Upon receipt of this letter it must have been clear to the appellant, from the contents thereof, that the respondents would not accept Professor Ayoub's evidence unless he were available for cross-examination. They had, however, intimated that she may wish to apply for his evidence to be given, remotely.

36. At this point, it was open to the appellant to apply to the court either for an adjournment of the case based on her expert's non-availability or for permission to have his evidence provided to the court, remotely. She made no application in this regard. Her evidence was that she '*took the chance*' coming to trial without her medical expert. Barr J., in my view, cannot be faulted for allowing the proceedings to continue, as scheduled, in the absence of any request by the appellant to adjourn the proceedings or to allow her expert to testify by way of video-conferencing.

Informed consent

37. An issue arose during the course of the trial when the appellant complained that on the 12th day of May 2000, a piece of necrotic tongue had been removed without her consent.[6] She had also protested, generally, that she had not seen 'the doctor' on the morning before her surgery and thus had not given her consent to the medical procedure that was subsequently performed.[7] Upon hearing these allegations, counsel for the respondents objected and argued that the appellant was extending her case beyond the pleadings. In answer to a question posed by this Court, she submitted that expert medical evidence on informed consent would also have been required if the appellant's claim in this regard were to succeed. I am satisfied from a review of the pleadings in

[6] Transcript of Trial, Day 1, page 19, lines 18 and 19.
[7] Transcript of Trial, Day 1, page 46, line 26.

this case that an alleged failure to obtain informed consent was not pleaded in the Statement of Claim although, arguably, indirect reference is made thereto in Replies to Particulars which were delivered almost six years after the events in issue. The case as pleaded was, undoubtedly, about delay in the provision of medical treatment. In circumstances where the trial judge did not consider that the issue of consent was a matter that fell to be determined at trial and since there are no findings in this regard in the judgment of the High Court, I am bound to conclude that this is not a matter that is properly before this Court on appeal. Moreover, it is not an issue raised by the appellant in her Grounds of Appeal.

The Application for a Direction

38. As noted above, when the appellant had completed her evidence at trial, counsel for the respondents sought a direction that there was, in fact, no case for her clients to answer and that, accordingly, the claim should be dismissed. She reserved the right to go into evidence in the event that the trial judge refused. In such an application, what is required, as a matter of law, is for the trial judge *'to reach a decision as to whether the plaintiff has made out a prima facie case"* (*O'Toole* at p. 546). In the absence of any expert testimony indicating that medical negligence and/or breach of duty was evident in the management and treatment of the appellant's injuries, the trial judge concluded that a *prima facie* case had not been made out and, accordingly, he dismissed the claim. To my mind, his decision reflects a correct application of the relevant legal principles and I see no reason to interfere with his decision in this regard. For the sake of completeness, I should also confirm my agreement with the trial court's finding that the principle of *res ipsa loquitur* does not apply to the circumstances of the case. As Barr J. correctly noted in his judgment '*[t]he mere fact of the operation being carried out on the following day is not of itself indicative of negligence on the part of the defendants*'.

Unanswered Questions?

39. Throughout the hearing of this appeal, the appellant stated, repeatedly, that she wants 'answers' to questions which she considers remain unanswered. In contrast to the continental legal system operative in many parts of Europe, litigation in our common law system is not an inquisitorial process. It is an adversarial one. The onus, therefore, rests upon a person who brings a claim in negligence, to prove it. This Court does not have any inquisitorial or investigative role, nor may it consider evidence or arguments that were not canvassed in the court below. Its function is to review matters of law as decided by the trial court in order to determine whether the trial judge fell into error in deciding the appellant's case in accordance with law. Findings of fact by the trial judge will not be interfered with by this Court where there is credible evidence to support such findings (*Hay v O'Grady* [1992] 1 IR 210). Where the trial judge had no evidence at all upon which to make a finding, including a finding of professional negligence or breach of duty, then this Court can have no basis for interfering with his decision to dismiss the proceedings in all the circumstances that prevailed.

Costs

40. The order made by the High Court on the 25th day of October 2013 included an order that the respondents are to recover against the appellant the costs of the action when taxed and ascertained. In her Notice of Appeal, the appellant seeks from this Court an order '*to stop all costs*' awarded against her '*due to exceptional circumstances of permanent and severe hardships caused by injury, disability, loss and litigation*'. As the law currently stands, an 'entirely successful' party is 'entitled' to an award of costs unless the court orders otherwise (and it may do so having regard to various matters set out in the relevant legislation).[8] It seems to me that in view of the history and prosecution of these failed proceedings instituted by the appellant, the

[8] See s. 169(1) of the Legal Services Regulation Act, 2015.

respondents, as 'entirely successful' parties, would be entitled to their costs. During the course of the hearing of this appeal, however, counsel for the respondents informed the Court that her clients were willing to waive their entitlement to costs incurred, not only in this appeal but also in the court below. Having regard to the general rule in respect of costs as noted above, the Court considers this to be a particularly generous gesture on the part of the respondents having regard to the extensive costs, which they have, undoubtedly, incurred in defending these proceedings—proceedings in which they have, over two jurisdictions, prevailed.

Conclusion

41. There is little doubt but that the appellant genuinely believes that she has been the victim of a serious injustice. She is convinced that the injuries she suffered are attributable to the alleged wrongs committed by the respondents. In her view, had she been seen by a consultant and received medical 'treatment' sooner, then she would not have suffered the significant long-term consequence of her injury, namely, the partial amputation of her tongue.

42. In this case, the question of what treatment ought to have been afforded to the appellant and when, and the further question as to whether such treatment would have made any difference to the final outcome are matters that, clearly, lie beyond the expertise of judges, lawyers and, indeed, of the appellant herself. They are issues that could only be determined on the basis of expert medical opinion. No such opinion was tendered in this case. Sincere as the appellant's beliefs and convictions may be, they are not, in themselves, sufficient to sustain a claim of medical negligence against the respondents**.** As already noted, the appellant is an impressive and articulate litigant, but she did, perhaps, display a certain misunderstanding as to the role of the courts in determining disputes that arise between parties. At the end of the appeal, she expressed the view that she had thought '*that the judge was there to mind me*'. I am sure that, on reflection, the

appellant will appreciate that the function of the court is always to administer justice between the parties and not to 'mind' one side over another.

43. For the reasons set out above, I am satisfied that the trial judge did not fall into error in his determination of the appellant's claim and, consequently, I would dismiss the appeal.

44. Having regard to the respondents' position on costs as indicated to the Court, I propose to make no order as to the costs of the appeal and to vacate that part of the order of the High Court awarding costs to the respondents.

As this judgment is being delivered, electronically, both Noonan J. and Binchy J. have indicated their agreement with the reasoning and conclusions reached in respect of this appeal.