Neutral Citation Number: [2010] IEHC 473

THE HIGH COURT

[2010 No. 84 I.A.]

IN THE MATTER OF SECTION 73 OF THE MENTAL HEALTH ACT 2001

AND IN THE MATTER OF INTENDED PROCEEDINGS

BETWEEN

M.P.

PLAINTIFF/APPLICANT

AND

THE ATTORNEY GENERAL, THE HEALTH SERVICE EXECUTIVE AND SHEILA CASEY

DEFENDANTS

JUDGMENT of Mr. Justice John MacMenamin delivered on 21st of December, 2010

1. This judgment should be read in conjunction with one concerning the same applicant delivered on 27th April, 2010, (the "April judgment"). There, I considered an earlier application brought by the plaintiff/applicant seeking leave to institute proceedings regarding her involuntary detention in the year 2009, pursuant to s. 73 of the Mental Health Act 2001 (the "Act of 2001"). The section provides:-

> "73(1) No civil proceedings shall be instituted in respect of an act purporting to have been done in pursuance of this Act save by leave of the High Court and such leave shall not be refused unless the High Court is satisfied:
>
> (a) that the proceedings are frivolous or vexatious, or
>
> (b) that there are reasonable grounds for contending that the person against whom the proceedings are brought acted in bad faith or without reasonable care.
>
> (2) Notice of an application for leave of the High Court under *subsection (1)* shall be given to the person against whom it is proposed to institute the proceedings and such person shall be entitled to be heard against the application.
>
> (3) Where proceedings are, by leave granted in pursuance of *subsection (1)* of this section, instituted in respect of an act purporting to have been done in pursuance of this Act, the Court shall not determine the proceedings in favour of the plaintiff unless it is satisfied that the defendant acted in bad faith and without reasonable care."

In this judgment I now consider a further application seeking leave to issue proceedings brought by the plaintiff/applicant, and also an application by the intended defendants for various prohibitory reliefs, including 'Isaac Wunder' orders.

2. The April judgment concerned intended proceedings against three defendants arising from the applicant's detention in Cavan General Hospital Psychiatric In-Patients Unit between 3rd February and 13th March, 2009. Those defendants were the Health Service Executive ("HSE"), the Minister for Justice, Equality and Law Reform ("the Minister") and Dr. Sheila Casey.

3. Two sets of proceedings had by then been brought by the plaintiff/applicant. The first, bearing record number [2009 No. 3538P], had been issued against the same defendants and was struck out by order dated 9th November, 2009, by reason of the plaintiff/applicant's failure to seek leave under s. 73 of the Act of 2001. The plaintiff/applicant then sought to issue a second set of proceedings, bearing record number [2009 No. 69 I.A.], against the same defendants. The defendants issued cross motions seeking that the plaintiff/applicant's proceedings be struck out as frivolous and vexatious. The leave application was refused and the cases were dismissed in the April judgment. The proceedings were held to be frivolous, vexatious and an abuse of process. The judgment also established that there was no evidence that any of the defendants had acted in bad faith or without reasonable care in their treatment of the plaintiff/applicant. (See s. 73(1)(b) of the Act of 2001).

4. Here, in the instant proceedings [2010 No. 84 I.A.], the plaintiff/applicant seeks leave to sue in respect of her detention on unspecified dates in the year 2010. She seeks further orders compelling the defendants to produce medical records so far withheld from her, and also for telephone service providers to produce records of phone communications and tapping allegedly carried out upon her. As will be seen, there is much overlap between the prior cases and the present application.

5. In her grounding affidavit herein, the plaintiff/applicant states that she came to Ireland in 2000 to investigate her deceased sister's alleged activities with the IRA in the United Kingdom. She alleges:-

> (a) that MI5 provided the Irish Government with incorrect information about herself and her family;
>
> (b) that various persons and agencies have been carrying out surveillance upon her, using listening devices and hidden cameras;

(c) that she has resorted to various devices to throw these agencies off her trail; and

(d) that British intelligence agencies profiled her as being "bipolar" and that the Irish Government and the HSE (the second named defendant) accepted this without medical investigation.

These are matters the plaintiff/applicant raised earlier at the hearing of her recent application and in correspondence at that time.

6. The plaintiff/applicant then goes on to depose:-

> "I was sectioned *twice* by the HSE and they attempted to section me on two other occasions whenever I stand up to them in my homes, neighbourhoods, workplaces or social life. HSE psychiatrists refuse to listen to me that I am mentally well, acting on behalf of MI5 instead as well as Fianna Fáil. I gave these psychiatrists names and details of my investigations, but they dismissed these, stating I am psychotic and unwell." (Emphasis added)

The plaintiff/applicant here made it clear in her submission that her focus now is on her involuntary detention in 2010. But in her grounding affidavit the applicant refers to earlier matters such as threatening text messages allegedly sent to her by members of An Garda Síochána and neighbours. She claims these have not been examined by HSE psychiatrists. The plaintiff/applicant suggests these texts are also of a threatening nature to her child (who was placed in foster care). She says the third named defendant and also Dr. Vincent Russell of Cavan General Hospital Psychiatric Unit, dismissed these texts as being "imaginary".

7. The plaintiff/applicant makes complaint concerning alleged intensive surveillance carried out upon her in her private life. She repeats a complaint about broadcasts which were carried out on RTÉ in December, 2009 "specifically" for her benefit; and an "intellectual lecture" allegedly aired to guide her out of the country. She repeats complaints about the British Intelligence Services and an alleged campaign by those services against her. All these issues were raised in the earlier unsuccessful leave application. There was, and is, no corroborative evidence as to any of these allegations.

8. The contents of this later affidavit, therefore, very closely reflect her earlier testimony and the correspondence which formed the basis of the April judgment.

9. I should emphasize that in oral submissions in the present application, the plaintiff/applicant clarified that she did not wish to reopen any earlier issues (where the judgment was not appealed); but rather wished to challenge a second involuntary detention which she said occurred after April, 2010 and which may have occurred on unspecified dates between July and September of that year. The plaintiff/applicant has not set out any details of who was involved in that detention, where she was detained or the reasons therefor. Thus a person unfamiliar with the background might be readily forgiven for concluding that the affidavit sworn in these intended proceedings deals with precisely the same matters as dealt with in the earlier judgment. I have been assured, however, that this is not so. But the evidential difference lies only in a couple of sentences.

10. The proceedings are complex. They have been made so by the plaintiff/applicant. It will convenient now to deal with the defendants in reverse order. I refer to a brief chronology of events thus far. The primary focus here is on the third named defendant but it will serve as a general outline of what has occurred in regard to each defendant.

Chronology of proceedings against the third defendant

22nd April, 2009: The first plenary summons [2009/3538P] was served on the third named defendant.

1st May, 2009: An appearance was entered on behalf of the third named defendant.

11th May, 2009: A statement of claim was delivered.

24th July, 2009: A motion was issued by the third named defendant to strike out proceedings for failure to seek and obtain leave pursuant to s. 73 of the Act of 2001, grounded on the affidavit of her solicitor, Ms. Kate McMahon.

5th August, 2009: A statement of claim was delivered claiming damages of €2 million.

23rd September, 2009: The plaintiff/applicant issued a motion [2009/69 I.A.] seeking leave, grounded on an affidavit of the same date - neither was served on the third named defendant.

5th October, 2009: A statement of claim was delivered claiming damages of €10 million.

12th October, 2009: This was the first return date of third named defendant's motion to strike out the proceedings. The plaintiff/applicant did not appear, but telephoned the third named defendant's solicitor to say she had been in court but had left. The court directed an adjournment of three weeks and that a replying affidavit be filed within ten days.

2nd November, 2009: This was the adjourned date for the third named defendant's motion to strike out the plaintiff/applicant's proceedings. There was no appearance by the plaintiff/applicant and no replying affidavit had been filed. The court adjourned the matter for one further week and directed the defendant's motion be heard with the plaintiff/applicant's motion for leave in proceedings numbered 2009/69 I.A.

9th November, 2009: This was the first return date for plaintiff/applicant's motion to seek leave. No papers were served on the third named defendant by the applicant. The court struck out proceedings [2009/3538 P] and [2009/69 I.A.] with no order as to costs. The provisions of s. 73 of the Act of 2001 were explained to the plaintiff/applicant who was present. In particular, she was informed she must seek leave of the court to bring such proceedings.

23rd November, 2009: No leave application was brought. Instead, a document entitled 'Statement of Claim (Continuation)' [2009/3538P] seeking damages of €20 million was received by the third named defendant's solicitor. A letter of response was furnished, stating that these proceedings had already been struck out.

3rd December, 2009: A further letter was sent by the third named defendant's solicitor to the plaintiff/applicant, pointing out that

the proceedings had been struck out.

6th January, 2010: The plaintiff/applicant issued a motion seeking leave, pursuant to s. 73 of the Mental Health Act 2001, grounded on an affidavit sworn on 23rd September, 2009.

18th January, 2010: The third named defendant's solicitors received the plaintiff/applicant's motion.

19th January, 2010: The first return date for the plaintiff/applicant's motion. No appearance by the plaintiff/applicant.

25th January, 2010: An affidavit was filed by Ms. Kate McMahon, solicitor for the third named defendant, in the Central Office.

29th January, 2010: The matter came before the court for directions. The plaintiff/applicant had still failed to serve a grounding affidavit on the defendants and was directed to do so. This was done.

11th February, 2010: The affidavit of third named defendant was filed in the Central Office.

17th February, 2010: The application came before the court for mention.

22nd February, 2010: The applications were heard and judgment was reserved. By then all the intended defendants had all brought motions seeking that the plaintiff/applicant's proceedings be struck out as being frivolous and vexatious. These were considered together.

27th April, 2010: Judgment was delivered. There was no appearance by the plaintiff/applicant. The court ordered that the application for leave be dismissed and found that the plaintiff/applicant's intended proceedings against each defendant were frivolous and vexatious. There was no order as to costs.

30th September, 2010: A motion was filed by the plaintiff/applicant seeking leave to issue yet further proceedings [2010/84 I.A.]. These are the proceedings in suit here.

1st November, 2010: This was the first return date for the plaintiff/applicant's motion which was listed first for mention before the President of the High Court. The plaintiff/applicant apparently again left the courtroom before her case was called. It is said she returned to court at the request of the solicitor for the third named defendant. The President of the High Court transferred the matter back to this Court.

30th November, 2010: The application herein was heard. The plaintiff/applicant sought to leave court. It was again necessary to persuade her to return as she wished to go back before the President of the High Court, expressing the view that the defendants had misconstrued the nature of her application.

I have outlined briefly the history as to the third defendant; the pattern of non appearances and non-observance of court procedure can be found equally in the case of the other two defendants. I turn now to the other defendants.

The second named defendant – the HSE
12. The only employee of the second named defendant identified in the current application is Dr. Vincent Russell, consultant psychiatrist. As outlined, the plaintiff/applicant's previous application for leave [2009/69 I.A.] concerned her involuntary admission to Cavan General Hospital and Psychiatric Department under Dr. Russell's care between 3rd February, 2009, and 13th March, 2009.

13. Even in the previous proceedings, Dr. Russell swore that, as of 10th February, 2010, he too had his last interaction with the plaintiff/applicant on 13th March, 2009, when the plaintiff/applicant was discharged from Cavan General Hospital. For the purposes of these present proceedings, he confirms that he has had no further interaction with the plaintiff/applicant since that date. This is not disputed.

Summary as to the second and third named defendants
14. It follows, therefore, that insofar as the plaintiff/applicant makes complaints against Dr. Russell and the third named defendant Dr. Casey, those complaints can only arise out of acts done during the period prior to or during the plaintiff/applicant's detention in Cavan General Hospital between 3rd February, 2009, and 13th March, 2009. This Court has already dismissed the plaintiff/applicant's application for leave to bring proceedings against both defendants in respect of that period of detention.

The first named defendant – the Attorney General
15. The main substantive allegation against the first named defendant arose from the alleged actions of named gardaí in assisting her detention. That matter was also considered in the April judgment.

16. The first named defendant was joined because it was alleged that the gardaí had acted in breach of duty in detaining the applicant pursuant to s. 12 of the Act of 2001. I found there was no such evidence and that the case against the first named defendant be dismissed.

The order made on foot of the April judgment
17. In April 2010, I sought to identify and apply a proportionate application of the s. 73 of the Act of 2001. Thus, in refusing the plaintiff/applicant leave to bring proceedings, I held that the order should start as and from the date of the plaintiff/applicant's first contact with the third named defendant, that 3rd November, 2008, and end the date of her last contact with Dr. Russell who treated her in Cavan General Hospital, that is, 13th March, 2009.

18. I would re-emphasise that there was no evidence before the court of any evidence of want of *bona fides* on the part of the doctors who treated her, nor was any *prima facie* case established of breach of duty under s. 12 of the Act of 2001 by members of An Garda Siochána in detaining the applicant.

19. In the course of the April judgment, I specifically adverted to the possibility that the plaintiff/applicant might, "in some form of collateral" proceeding, seek "in the future to re-litigate the same grievances or concerns against these defendants under another guise, or in the form of other proceedings". I added, "such an action could very well give rise to a finding of abuse of the court process and might (unless justified) bring into consideration remedies relating to a constitutional right of access to the courts generally". Unfortunately, these observations proved accurate.

Legal authorities

20. I have earlier considered the number of authorities in relation to the operation of s. 73 of the Act of 2001, its predecessor Act, and the inherent jurisdiction of the court to dismiss proceedings that are frivolous or vexatious. These authorities included *Murphy v. Greene* [1990] 2 I.R. 566; *Blehein v. Minister for Health and Children* [2009] I.R. 275; *Wunder v. Hospital Trust (1940) Ltd.* (Unreported, Supreme Court, 24th January, 1967) (Unreported, Supreme Court, 22nd February, 1972); *Bula Holdings and Others v. Roche and Others* [2008] IEHC 208; (Unreported, Supreme Court, Edwards J. 6th May, 2008), *Fay v. Tegral Pipes Ltd*. [2005] 2 I.R. 261; *Riordan v. Ireland (No. 5)* [2001] 4 I.R. 463; *Riordan v. Hamilton* [2002] IESC 65 (Unreported, Supreme Court, 9th October, 2002) and *Riordan v. Government of Ireland* [2006] IEHC 312(Unreported, High Court, 6th October, 2006). I rely on the principles established in these authorities again.

21. Turning to the evidence, suffice it to say that in the new grounding affidavit there is just one, oblique reference to the plaintiff/applicant having been detained in 2010, and to a large degree repetition of matters already explored in the plaintiff/applicant's intended 2009 proceedings. The plaintiff/applicant was given ample warning that any process of re-litigation is not permissible and might give rise to more serious remedies with regard to access to the courts.

22. For the purposes of this judgment, I propose to take the plaintiff/applicant at her word on one issue. She quite clearly said that she did not wish to join the third name defendant in the new proceedings at all. This does not explain why she was in fact joined as a defendant nor does it explain why the new grounding affidavit retraces old ground. The applicant/plaintiff must, by now, be well aware of the legal principles and the nature of the remedies which are available to the court in order to prevent frivolous and vexatious proceedings and abuse of the court process. Any objective perusal of the chronology and the series of events which have taken place thus far can now only lead to the conclusion that not only has the plaintiff/applicant, whether wittingly or not, sought to re-ignite proceedings held to be frivolous and vexatious, but she has also engaged in abuse of the court process by repeatedly seeking to litigate the same matter, by failing to advert to directions of the courts aimed at assisting her, by launching and relaunching proceedings not in accordance with the rules of court and by failing to adhere even to ordinary or accepted standards of conduct in litigation, in absenting herself from court hearings. There is a public interest aspect to litigation and court time, especially at a time of scarce national resources.

23. A court must not lend itself to such a situation (see *Bula Ltd. (In Receivership*) *v. Crowley and Others* [2009] IESC 35 (Unreported, Supreme Court, 3rd April, 2009) and the observations contained therein from *Henderson v. Henderson* [1843] 3 HARE 100 at pp. 114 and 115).

24. As Denham J. observed in *Bula Ltd. (In Receivership) v. Crowley & Ors* (referred to above)*,* at paragraph 59:-

> "There is a constitutional right to access the courts. However, it is not an absolute right. With that right comes responsibility. Circumstances may arise where a person loses the right to initiate proceedings. For example, if there has been an excessive amount of litigation initiated by a person, or on his behalf, the courts have an inherent jurisdiction, and indeed, a duty, to review the use of court time. Court time is limited and there is a duty to use it justly."

25. It is necessary, however, that an order of the court which delimits constitutional rights must be proportionate. The grounding affidavit simply does not address the plaintiff/applicant's 2010 detention in any substantive way. I do not think it would be just to restrain the plaintiff/applicant from initiating *any* proceedings relating to matters which have not been properly ventilated, or in the course of this application. But I now make clear that were it to transpire that the plaintiff/applicant again seeks to re-litigate earlier matters, the court has ample jurisdiction to restrain such conduct, and if necessary any future conduct of litigation on the part of the plaintiff/applicant.

26. For the moment, the court will again confine itself to making a proportionate order *viz* that the plaintiff/applicant will be restrained from initiating or re-litigating against any of the named defendants, their servants or agents, any matter appertaining to actions taken by such defendants, their servants or agents, with regard to the treatment of the plaintiff/applicant between 3rd November, 2008, and 13th March, 2009. In plain words, therefore, the plaintiff/applicant is now debarred from initiating any further proceedings against all of the named defendants and also Dr. Russell in relation to her previous detention.

27. I do not consider that it would be either fair or just to make a radical order against the plaintiff/applicant in relation to any detention in the year 2010 when, effectively, there is no evidence concerning the circumstances. I will, therefore, simply strike out the plaintiff/applicant's application for leave under s. 73 of the Act of 2001. I repeat, however, that any attempt at further re-litigation of the same issues against these defendants under the guise of a further application for leave under s. 73 of the Act of 2001, could very well lead to significantly broader consequences with regard to her general right of access to the courts. I also repeat the warning against re-litigating the same issues against other defendants, unless the plaintiff/applicant is able to satisfy the requirements of s. 73 of the Act of 2001.