

THE HIGH COURT

2008 1277 P

BETWEEN

DUBLIN CITY COUNCIL

PLAINTIFF

AND

MARTIN GAVIN AND OTHERS

DEFENDANTS

JUDGMENT of Mr Justice Michael Peart delivered on the 3rd day of November, 2009

Having decided in my judgment in this regard delivered on the 19th December 2008 that the defendants are trespassing upon the lands in question in these proceedings, I went on to conclude that no injunction requiring them to leave the lands and remove all their property should be made at that point as I considered it to be an exercise in futility given the acceptance at that time by the plaintiff council that there was no alternative site available to which they could locate themselves lawfully, as the only available site, namely that at St. Dominick's Park, was not at that stage in a suitable condition. I adjourned the question of making any such order until the plaintiff council could satisfy the Court that there was some such suitable site available and at which the defendants could reside.

Following upon my judgment, it appears that some discussions have taken place between the relevant parties, including An Garda Síochána. In addition, the plaintiff council has undertaken some works at St. Dominick's Park and they are of the opinion that this site is now available for the defendants. It would appear that the site has been cleared and cleaned up, and essential services are in place to the extent that it is now suitable as a temporary unserviced site. In addition, it appears that some CCTV cameras have been installed in an effort to assuage the fears expressed by the defendants that, if they were to return to St. Dominick's Park, they would once again become the object of attacks and other acts of violence at the hands of the McDonagh families who occupy an adjacent site.

Further affidavits have been filed in this case by the defendants in response to the plaintiff's application now that the Court should make the injunction orders sought since there is now available a site to which the defendants can return. These affidavits reiterate their firmly held belief that if they are forced to leave their present safe haven and return to St. Dominick's Park they will be attacked, and that to do so would be to put them in imminent and immediate danger of risk to life and limb given the previous history of intimidation and attacks from the McDonagh families. There is evidence even in the form of an affidavit of Sgt Charles McConologue of Santry Garda Station in which, *inter alia*, he states the following:

"I say that if the Gavin family return to St Dominick's Park, no wall or CCTV camera will preserve the peace for long. There are too many opportunities for members of the two families to meet entering and leaving the site, in nearby shops, at the post office and on the street. I believe that all it takes is one small incident to ignite the violence. As we have seen with the feuding in Mullingar, also involving members of the McDonagh family, the younger members of the family get all fired up. I say that petrol bombs, which are particularly lethal when thrown at flammable caravans, have been thrown at the Gavins in St. Dominick's Park on previous occasions, and there is every reason to believe that it would happen again".

He goes on to state his view that, as the majority of the Gavin families consist of women and young children, St. Dominick's Park is not a safe environment for them. He states also that he has been a member of An Garda Síochána for 29 years and in his view if the family is to return to St. Dominick's Park he fears *"a serious perhaps even fatal incident will occur"*.

The council has not sought by any affidavit to contradict these views. The evidence before me has suggested that the defendants have not come to the adverse attention of An Garda Síochána at their present location, and there has been no evidence of any significant incidents of disorder or threat to public safety. The view of Sgt McConologue is that the Gavin families are decent and law-abiding citizens.

The plaintiff council states that the site is now an available and suitable unserviced site, and that the council has fulfilled its statutory duty to the defendants in making the site available. It has also adopted a new Traveller Accommodation Programme for the next three years as they are required to do, and this takes account of the needs of the defendant families. The Council's view is that in so far as the defendants fear for their safety at the hands of the neighbouring McDonagh families, questions surrounding the safety and protection of the defendants is a matter purely for An Garda Síochána, and that the Council itself has no role to play in protecting the defendants from any threatened or apprehended violence. The concept of a safe site, in the Council's view, and as far as the provision of a safe site is one of its obligations, is confined to safety in a physical sense, and does not extend to safety from attacks from other families who might be located nearby. In all respects the council believes that it has complied with its obligations and can do no more.

The defendants are of the view that unless they are provided with some form of 24 hour protection at St. Dominick's Park by An Garda Síochána or by the Council, their lives and safety will be put at serious and inevitable risk, and they ought not to be required to return to St. Dominick's Park as it is not a safe location for them to live in.

The first thing to be said by way of conclusion is that the plaintiff's applications do not include any application for a mandatory injunction requiring the defendants to return to the site at St. Dominick's Park. It is an application confined to bringing to an end their trespass to the land they presently occupy by leaving same, and to remove their property.

I have at all stages of this case been anxious that following my earlier judgment steps would be taken by all concerned, and discussions take place between all stakeholders including with the Gardai, in order to try and arrive at a situation whereby the site at St. Dominick's Park would be adapted from a security point of view so as to enable the defendants to voluntarily return there, as it appears to be the only site on offer to them by the plaintiff council. The council says that there is no other site available. I have received some evidence on the defendant's behalf that other sites exist which could be considered by the council as alternative sites for occupation by the defendants, and submissions that these should be explored rather than insisting that St. Dominick's Park is the only option. However, the council is adamant that there is only the one site available or possible at the present time, and it points to current lack of resources as far as purchasing other land is concerned.

I have to say that I had earnestly hoped that following my earlier judgment, meaningful steps would be taken by the Council to address what seem to me to be the very genuine concerns of the defendants as to their safety – concerns indeed which are shared by Sgt McConologue. One possibility canvassed at some stage was that some sort of high wall or boundary would be erected at St. Dominick's Park to divide that area from the adjoining area occupied by the McDonagh families, or otherwise ensure that the defendants' safety was reasonably assured. That has not occurred. Some CCTV cameras have apparently been installed, but that is the extent to which these concerns have been sought to be addressed. I have to say that it seems to me that this is a minimalist approach to addressing the defendants' legitimate concerns, and gives me no comfort that if I make the order sought, it will result in the defendants feeling reasonably safe and secure if they should decide to return to St. Dominick's Park.

However, it is correct to state, as submitted by the Council, that it is the body empowered by the Oireachtas to make suitable provision for the accommodation of travellers, and it is given specific duties and obligations to perform, such as the preparation, in accordance with the procedures laid down, of a Traveller Accommodation Programme every three years. That has been done in the present instance.

It is also correct to state, and as I stated earlier in my judgment, that matters of law and order are matters solely within the remit of An Garda Síochána. What that means in effect is that when an incident has taken place it is a matter for An Garda Síochána to investigate any complaint which may be made by the victim of the incident or on his or her behalf, and in the case of an uttered threat of violence, to investigate that complaint and to take such steps as may be appropriate in the circumstances, including the consideration of a prosecution of the alleged perpetrator(s). But it is not within the remit of An Garda Síochána to provide 24 hour protection to a group of citizens who may fear that they will be the victim of some aggressive behaviour, violence or other threat to their health and well-being. There may be exceptional circumstances whereby some form of protection is provided to a person or persons whom the Gardai may believe are the victims of a serious and known threat to their life and safety; but it cannot be the case that in the circumstances in which the defendants find themselves there is an onus upon An Garda Síochána to provide some form of round the clock protection to the defendant families were they to return to the site at St. Dominick's Park. As far as I can see, their role would be relevant only in the aftermath of any such attack which might take place.

That cannot be any comfort to the defendants or assurance that they will be protected prospectively against any adverse attention they may receive at the hands of the neighbouring families.

This Court's function on this application is limited. Within that limit I have thus far felt entitled to refuse to order that the defendants remove themselves and their belongings from the lands which they presently occupy, and that was on the ground, then existing in my view, that such an order was futile, as it was accepted at the time that the defendants would be forced, in the absence of a suitable alternative and permitted site, to relocate once again on some other person's or body's property, which would, as sure as night follows day, result in some other landowner seeking an injunction for their removal, just as when this Court ordered the defendants to vacate certain lands in the Fingal area some time ago, they complied with my order but had no alternative at that time but to unlawfully occupy other lands. I dealt in my earlier judgment with the question of whether the doctrine of necessity provided the defendants with a defence to a claim in trespass, and decided for the reasons stated that it did not.

I feel now obliged to make the orders sought by the plaintiff Council, given that in one sense there is, as a matter of fact, an unserved site deemed suitable by the plaintiff council for the accommodation of the defendant families. It is available in the sense that it has been cleared of all rubbish and debris, and is in a physical state whereby it can be occupied by them. In my view the plaintiff council are entitled under law to now obtain the orders sought.

I will therefore make the orders sought, but in recognition of the very real problems facing the defendants in making a decision to return to St. Dominick's Park, I will place a stay on the orders for a period of three months in the hope, which I express once again for what it is worth, that meaningful discussions will take place between all relevant parties as to what course is to be adopted in the future, and in the hope that something more than the installation of CCTV cameras can be discussed and considered in an effort to provide some encouragement to the defendants to resume their lives at St. Dominick's Park, or indeed at some other location which may become available. It seems to me that this situation is somewhat unique, and requires a special approach to take account of real and uncontradicted fears expressed not only by the defendants themselves but by a senior member of An Garda Síochána who is very familiar with the history of hostility between these two sets of families going back over many years. If the Council insists that this site at St. Dominick's Park is the only possible option and that no other solution will be considered and explored, I can readily and easily anticipate that at the conclusion of the three month stay which I am placing on the orders, this Court will be presented with an identical set of proceedings at the suit of some other landowner, be it private or otherwise, onto whose lands the defendants move in order to comply with this Court's order.

In my view, this is not a situation in which the defendants are in some unreasonable way, insisting on having a veto on where they should be accommodated. That would undoubtedly be the situation were it not for the fact that their concerns for their safety at St. Dominick's Park are serious, rationally-based on past experience which forced them to depart in the first place, and which concerns are accepted and shared by a senior member of An Garda Síochána stationed in the relevant area.

I urge a fresh, imaginative and realistic approach to dealing with this otherwise intractable problem, which will not go away, and which otherwise may keep returning to this Court for some form of inevitably short-term solution.