Neutral Citation [2013] IEHC 312

THE HIGH COURT

[2012 No. 8876 P]

BETWEEN/

D.F. (SUING BY HIS TESTAMENTARY GUARDIAN AND NEXT FRIEND, K.M.)

PLAINTIFF

AND

GARDA COMMISSIONER, MINISTER FOR JUSTICE, EQUALITY AND DEFENCE, ATTORNEY GENERAL AND IRELAND (NO.2)

DEFENDANTS

JUDGMENT of Mr. Justice Hogan delivered on the 11th day of June, 2013

1. Where a plaintiff suffering from an acute intellectual disability sues for false imprisonment and intentional trespass to the person along with a claim for negligence is he entitled to do so anonymously? Or does the fact that these proceedings directly or indirectly reflect on the good name of individual members of the Gardaí have a bearing on this question? These are the problematic issues which arise on the plaintiff's motion pursuant to s. 27 of the Civil Law (Miscellaneous Proceedings) Act 2008 ("the 2008 Act") to have reporting restrictions imposed which would prevent the disclosure of his identity in open court. At its most basic, this application presents a dilemma for the judicial branch, since it involves choosing between a desire to protect a vulnerable, disabled young man on the one hand, while preserving the Constitution's preference for open justice and the equal treatment of accuser and accused on the other. As will be seen from the discussion which now follows, it is simply not possible to give effect to all of these values in the context of this application.

2. The background to the present case is as follows: The plaintiff is a 27 year old young man who is severely autistic. His testamentary guardian, Ms. K.M. – who is herself a special needs assistant – has sworn an affidavit to the effect that the plaintiff is extremely intellectually disabled and that he has a very limited ability to communicate. When not attending an adult learning disability centre, Mr. F. spends much of his days looking at horses as they gambol in a field adjoining his grandparents' house. He rarely moves from this area when he is at home and repetitive behaviour of this kind is, apparently, a feature of his severely autistic condition. While the State defendants originally pleaded that they had no direct knowledge of these disabilities, it is now accepted by them following a medical examination of the plaintiff that he is severely autistic.

3. The incident which gave arise to these proceedings occurred on 24th September, 2010. The plaintiff's testamentary guardian, Ms. M., contends that Mr. F. had taken up his habitual position outside his grandparents' house when he was unlawfully arrested by members of An Garda Síochána at about 5pm in the evening and brought to a local Garda station. It is contended that no effort was made by the Gardaí to speak with either his mother or father, both of whom lived close by. Sadly, the plaintiff's mother died in January, 2012. While she was not living with the plaintiff's father at the time of her death, both parents were actively involved in caring for him.

4. According to Ms. M., the arrest of Mr. F. and his detention in unusual surroundings caused him acute and unusual distress. The custody records show that the plaintiff had been detained for just under an hour and that he had been arrested under s. 12 of the Mental Health Act 2001. He was released when his father – a registered medical practitioner – attended (along with the plaintiff's mother) at the Garda station and explained that he suffered from severe autism.

5. The defence filed by the State defendants does not dispute a good deal of this. It is contended, however, that a member of the public saw the plaintiff chase two women with a large stick or a branch of a tree in the general vicinity of the plaintiff's grandparent's house, although neither woman was actually struck. The Gardaí were then alerted and, on their arrival, following a minor altercation, the plaintiff was then identified as the individual who had given chase to the two women. When one of the Gardaí involved, a Garda Fallon, attempted to speak to Mr. F., he realised that he was suffering from a mental condition, as he was unable to get Mr. F.'s name or any other pertinent details. Garda Fallon arrested Mr. F. pursuant to s. 12 of the Mental Health Act 2001. Mr. F. was then placed in handcuffs and conveyed by the patrol car to the local Garda Station.

6. Upon arrival at the Garda station at around 5.10pm, the Gardaí endeavoured to contact some local general practitioners, but to no avail. Recorded messages in both cases suggested that the general practitioners in question would come on duty again at 6 pm. It appears, however, that another member attached to the station recognised the plaintiff, although he could not immediately recall his name. This member then made appropriate inquiries and, having satisfied himself as to the plaintiff's identity, drove to the plaintiff's house where he spoke with the plaintiff's mother and informed her of the arrest.

7. The plaintiff's mother then arrived at the station shortly after 5.30 p.m. and comforted her son. The member in charge, a Sergeant Galvin, was informed by her that her son suffered from severe autism. The plaintiff's father then arrived about twenty minutes later. On being informed that the plaintiff's father was a registered medical practitioner who could confirm that the plaintiff did indeed suffer from severe autism, he was released by Sergeant Galvin at about 6.05 p.m.

8. Much of this background was already summarised by me in the earlier judgment which I gave regarding the plaintiff's entitlement to jury trial: see *DF v. Garda Commissioner (No.1)* [2013] IEHC 5. In that case I ruled that the plaintiff was entitled to jury trial, save that all issues concerning the legality of the arrest (including the question of whether the Gardaí were negligent) was to be determined by the trial judge and not by the jury.

9. The plaintiff's legal advisers now seek an order restraining the disclosure of his identity under s. 27 of the 2008 Act and, if necessary, pursuant to the inherent jurisdiction of the Court. They candidly admit that the object of this application is to protect and shield the plaintiff from press publicity. For perfectly understandable reasons, the plaintiff's family fear that publicity would bring unwelcome attention to him and thereby perhaps expose him to prurient and mawkish curiosity.

10. There is no question but that the plaintiff is a vulnerable person deserving of protection. The State contend, however, that this is

not a case where the court should impose reporting restrictions. First, it is said that the plaintiff does not come within the terms of s. 27 of the 2008 Act because his medical condition is such that he would not have any realisation of the implications of the litigation or the publicity attending it. The defendants accordingly argue that it could not be shown that the plaintiff would suffer "undue stress" for the purposes of s. 27(3)(b) as a result. Second, it is said that even if the present case come within the parameters of s. 27, it would be prejudicial to the interests of justice within the meaning of s. 27(3)(c) to make this order because if reporting restrictions are imposed in favour of the plaintiffs, this would be unfair to the defendants. In other words, the defendants object to the lack of mutuality in respect of the reporting restrictions, given that these proceedings in substance – albeit not in form – challenge the good name and professionalism of named Gardaí.

11. I should record that I had previously made an order on an *ex parte* basis pursuant to s. 27 directing reporting restrictions in respect of the plaintiff's identity. In essence, the question which I am now required to consider is whether I should now continue the order which I had previously made *ex parte*.

12. We may now proceed to examine each of these arguments in turn. It is, however, first necessary to summarise the relevant provisions of s. 27 of the 2008 Act.

Section 27 of the 2008 Act
13. Section 27(1) of the 2008 Act provides that:-

> "(1) Where in any civil proceedings (including such proceedings on appeal) a relevant person has a medical condition, an application may be made to the court in which the proceedings have been brought by any party to the proceedings for an order under this section prohibiting the publication or broadcast of any matter relating to the proceedings which would, or would be likely to, identify the relevant person as a person having that condition."

Section 27(2) states that an application for an order under this section may be made at any stage of the proceedings. However, s. 27(3) provides:-

> "(3) The court shall grant an order under this section only if it is satisfied that—
>
> (a) the relevant person concerned has a medical condition,
>
> (b) his or her identification as a person with that condition would be likely to cause undue stress to him or her, and
>
> (c) the order would not be prejudicial to the interests of justice."

The phrase "relevant person" is defined by s. 27(11) as meaning:

> "(a) a party to the proceedings, or
>
> (b) a person called or proposed to be called to give evidence in the proceedings."

14. At the heart of the State's objections to this application is the contention that as the plaintiff would not have the capacity to understand the significance of the litigation, his case could not come within the conditions stipulated by the section governing the exercise of the jurisdiction to impose reporting restrictions. As I previously observed i*n Temple Street University Hospital v. D.* [2011] IEHC 1, there are features of the drafting of this section which are not, perhaps, altogether satisfactory. While the section is undoubtedly designed to permit those litigants suffering from a medical condition to be shielded from the gaze of publicity under certain circumstances, the literal wording of the section suggests that protection is available only to those litigants (or, as the case may be, witnesses). who would actually be conscious that the revelation of the existence of the medical condition might cause them undue stress

15. This was highlighted by the facts of *D.* itself. Here the question was whether the parents of a very young child who was gravely ill were justified in refusing a hospital permission to administer a blood transfusion on religious grounds. If the language of the section were applied strictly, then it would have followed that this case fell outside its parameters, because, of course, the child itself could have had no consciousness or awareness of any publicity surrounding the litigation.

16. I proceeded, however, to reject such an interpretation of s. 27, drawing attention to the potential for anomaly which such an interpretation would tend to create:

> "If this is correct, then it would mean that the court would be powerless to make an order under s. 27 of the 2008 Act where - as here - the subject-matter of the application was a baby or a very young child, even though the identification of the child might cause immense distress to the parents or other close relatives. It would likewise mean that no order could be made under s. 27 where the proceedings concerned a patient who was unconscious or in a coma. I find it difficult to believe that the Oireachtas intended to create such an anomalous state of affairs.
>
> It is clear that the literal rule remains the primary rule of interpretation…But given that s. 27 is essentially a remedial provision designed to complement the traditional concepts of medical confidentiality in a legal setting, it can be interpreted "as widely and liberally as can fairly be done": see *Bank of Ireland v. Purcell* [1989] I.R. 327 at 333, per Walsh J."

17. For good measure I also invoked the provision of s. 5(1)(b) of the Interpretation Act 2005, as such a literal interpretation "would fail to reflect the plain intention" of the Oireachtas. I continued thus:

> "In these circumstances, I believe that it is permissible to adopt a teleological approach to s. 27 by interpreting it broadly and without doing too much violence to the statutory language so as to permit the making of an order in a case such as the present, even though the child in question who has the medical condition will not by reason of its very young age suffer the stress which the language of s. 27(3)(a) would otherwise appear to require."

18. I respectfully adhere to the views. It follows that, while I accept that the plaintiff will have almost no consciousness of the potential impact of the litigation, that is not the real point. The whole object of the section was that the Oireachtas sought to protect vulnerable litigants suffering from a medical condition such as the plaintiff so that they would not become the object of public attention simply because of the fact that they happened to be engaged in litigation. In these circumstances, in line with my earlier

reasoning in *D.*, I would hold that the present plaintiff comes within the ambit of s. 27

Whether it would be unfair to the defendants to make such an order
19. The mere fact that the plaintiff comes within the scope of the section does not in and of itself determine the question, since it is also necessary for the court to be satisfied that the condition specified in s. 27(3)(c), namely, that the order would not be prejudicial to the interests of justice, is also fulfilled. This was the aspect of the case on which counsel for the State, Mr. Keane S.C., laid the greatest emphasis in submissions which were powerfully and forcefully expressed. He submitted that it was pointedly unfair if the law could allow one party to make allegations against another without being prepared to have their identity revealed. This submission calls for a number of observations.

20. First, it is necessary again to recall the Constitution's own preference for open justice as reflected in Article 34.1. As the language of Article 34.1 itself makes clear ("…such special and limited cases as may be prescribed by law…."), it is plain that any exceptions to this rule of open justice must truly fall within the category of "special and limited cases".

21. Second, as the Supreme Court pointed out in *Re R. Ltd.* [1989] I.R. 126, publicity is an indispensable aspect of the administration of justice. This in turn means that a litigant may not sue anonymously unless this is either authorised by law (*i.e.*, by statute) or this is necessary to vindicate that person's constitutional rights: see, *e.g.*, *Roe v. Blood Transfusion Services Board* [1996] 3 I.R. 67, *Re Ansbacher (Cayman) Ltd.* [2002] 2 I.R. 517, *Doe v. Revenue Commissioners* [2008] IEHC 5, [2008] 3 I.R. 328 and *McKeogh v. John Doe 1* [2012] IEHC 95.

22. In *Roe* the plaintiff who had contracted Hepatitis C from infected blood products sought to sue anonymously through the use of a pseudonym, but Laffoy J. held that this was not possible ([1996] 3 I.R. 67, 71):

> "The plaintiff's stated objective in seeking to prosecute these proceedings under a fictitious name is to keep her identity out of the public domain. In my view, in the context of the underlying rationale of Article 34.1, the public disclosure of the true identities of parties to civil litigation is essential if justice is to be administered in public. In a situation in which the true identity of a plaintiff in a civil action is known to the parties to the action and to the court, but is concealed from the public, members of the general public cannot see for themselves that justice is done."

23. Roe was admittedly decided before the enactment of s. 27 of the 2008 Act and to that extent the Oireachtas has now supplied a statutory jurisdiction which might suggest a different result if that case were to be decided today. Yet the underlying principle that litigation which shields the true identity of the litigants from the public represents a departure from the principle of open justice which is a central of Article 34.1 remains, even if such reporting restrictions are justifiable or are even required in particular categories of cases in the manner prescribed by statute.

24. This principle was underscored by two other cases involving litigation by persons who had (apparently) failed to make appropriate returns of income to the Revenue Commissioners. In *Ansbacher (Cayman) Ltd.* McCracken J. rejected the argument that the constitutional right to privacy and to a good name could in themselves justify a litigant suing anonymously ([2012] 2 I.R. 517, 529):

> "No case has been cited to me in which a right to good name or a right to privacy can justify anonymity in court proceedings. A request for such anonymity was expressly refused by Laffoy J. in *Roe v. The Blood Transfusion Service Board* [1996] 3 I.R. 67, although that case was heard before *Irish Times Ltd v. Ireland* [1998] 1 I.R. 359. However, the rationale for refusing anonymity as set out in that case seems to me to remain perfectly valid."

25. These principles were again re-stated by Clarke J. in *Doe*, a case where the plaintiff wished to challenge his identification as a tax defaulter by the Revenue Commissioners. He claimed that he could not effectively do this without the protection of anonymity, as the object of the proceedings would otherwise have been defeated. Clarke J. first summarised the relevant principles thus([2008] 3 I.R. 328,339-340):

> "Firstly, the obligation that justice, save in special and limited circumstances, be administered in public includes an obligation that all parts of the court process be available to the public. That means that the identity of the parties to proceedings, amongst other things, must, prima facie, be made public. See in particular *Roe v. The Blood Transfusion Service Board* and in *Re Ansbacher (Cayman) Ltd*.
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> Secondly, in the absence of an express statutory provision permitting either that all (or the appropriate part) of a relevant proceeding be heard otherwise than in public or prohibiting the publication of the identity of parties to the relevant proceedings, the only circumstances in which it has been established that a court may restrain a full publication of all that transpired during a court hearing (including the names of the parties) is where the restrictive court order concerned is necessary to prevent a real risk of an unfair trial, and where the damage which would result from not making the order concerned would not be capable of being remedied by appropriate directions to a jury or otherwise.
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> Thirdly, it seems clear that parties are not entitled to call in aid the undoubted constitutional right to a good name or to privacy, as a countervailing factor to the constitutional imperative that justice be administered in public. It is only where there is no other means of achieving the undoubted entitlement of parties to a just determination of their proceedings, that it has been established that a court has a constitutional entitlement to interfere with the obligation that justice be fully administered in public, and even then the court is constrained to interfere as little as possible with that imperative"

26. Clarke J. then continued by analysing the case at hand ([2008] 3 I.R. 328, 342):

> "However, it is clear that McCracken J. *in Re Ansbacher (Cayman) Ltd* came to the view that rights of privacy or rights to a good name are not sufficient to displace the constitutional imperative to the effect that justice be administered in public. I agree with the views expressed by McCracken J., to the effect that those rights are not of the same weighty nature (in distinction to the right of an accused to a fair trial) such as could displace the clear obligation to conduct the administration of justice in public. To the extent, therefore, that the plaintiffs may have a general constitutional right to privacy which applies to such matters concerning their revenue affairs as may be deemed confidential by statue and where there is no other overriding requirement (such as the proper determination of litigation), those rights cannot interfere with the clear and weighty constitutional obligation to the effect that justice be administered in public.
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> It is important to keep in mind the fact that revenue proceedings in this court are conducted fully in public and frequently involve the disclosure of not only the identity of the taxpayers concerned, but also such relevant details of the taxpayers finances as are necessary to determine the tax issues before the court. Such proceedings not only involve defaulting

taxpayers but also those in respect of whose tax liability there may be genuine, and often complex issues, arising out of the proper interpretation of the Taxes Act.

It is illustrative to note that the true issue between the plaintiffs and the Revenue, which underlies the substantive question in this case, concerns whether, as a matter of the proper construction of the provisions of the Taxes Acts to which I have referred, the plaintiffs are liable to significant penalties. If the plaintiffs are so liable then it is common case that publication follows automatically. If the plaintiffs are not so liable, then publication would not seem to be permitted. However if the issue of the liability of the plaintiffs to pay the penalty concerned came before this court as a Revenue matter, there is no doubt but that any relevant proceedings would have been conducted fully in public. Thus if these plaintiffs had contested the obligation to pay a significant penalty, such proceedings, if they came to this court, would have been fully public. Such proceedings would, as I have pointed out, involve exactly the same point as the substantive issue which would have required to be determined in this case had it gone ahead. It is also worth noting that publicity attaches to revenue proceedings, and thus to the relevant financial affairs of the taxpayers concerned, even where the taxpayer is found by this court to be correct as to his or her contentions in relation to the tax liability concerned.

In all those circumstances I was not satisfied that any right to privacy which the plaintiffs might be able to assert could conceivably be of the weighty nature necessary to counter balance the constitutional imperative that justice be administered in public. The first issue raised on behalf of the plaintiffs did not, therefore, in my view, provide any basis for the asserted jurisdiction to direct that these proceedings might be maintained anonymously."

27. Pausing at this point, it may be observed that no one has suggested that the very subject-matter of the present proceedings (*i.e.*, a claim for damages following an arrest) was of such a nature as warranted the proceedings being *held in camera*. Counsel for the plaintiff, Ms. Walley S.C., has nonetheless forcefully argued that without the protection of anonymity, the plaintiff's family might well be dissuaded from proceeding with the litigation in order to safeguard him from unwelcome attention with which he might not otherwise be able to cope. This, however, was the very issue which Clarke J. considered in the second part of his judgment in *Doe* ([2008] 3 I.R. 328,343-345):

"The plaintiffs' argument was to the effect that a requirement that they be named as plaintiffs would, in practical terms, deprive them of the opportunity to bring proceedings designed to protect their anonymity. There is, of course, a sense in which that assertion is factually correct. A finding by the court that the construction which the plaintiffs seek to place on the relevant provisions of the Taxes Acts was correct, would mean that the plaintiffs could not properly be included in the periodic list of tax defaulters published by the Revenue. However, the fact that the plaintiffs were tax defaulters who had entered into a settlement of the type which I have described earlier in this judgment would, of course, become public knowledge through the route of the court proceedings which, if not permitted to be brought anonymously would, of course, identify the plaintiffs as the tax defaulters concerned.

Thus, it was said, that where the purpose of the proceedings is to prevent the publication of a particular piece of information, then those proceedings are rendered largely useless if the party concerned has to be named in order to bring the proceedings in the first place.

However, similar considerations apply to a greater or lesser extent in many cases. It is, as McCracken J. pointed out in *Re Ansbacher (Cayman) Ltd*, the case that persons who wish to restrain an alleged defamation are required to be named and are, in practice, required to at least generally identify the defamatory material which it is believed is likely to be published. Plaintiffs who wish to restrain the use or publication of undoubtedly confidential material arising in, for example, a commercial context, are also required to be named though it has to be said that it may be possible to frame such proceedings and the evidence presented in a way which does not disclose in detail the confidential information concerned. Nonetheless such parties will be required to bring into the public domain at least such a sufficient description of the material concerned as may be necessary for the determination of the proceedings and the making of any appropriate order.

Other examples could be given. There are, in addition, very many cases, such as the circumstances which underlay the decision of Laffoy J. in *Roe v. Blood Transfusion Service Board*, where parties may have wholly understandable reasons for not wishing to be identified. It may well be that in some such cases parties may, in practice, be dissuaded from invoking the jurisdiction of the court, precisely because of the publicity implications of so doing.

I appreciate that the instant case is, perhaps, somewhat stronger than *Roe v. Blood Transfusion Services Board*. In this case it was not simply that publicity attaching to the identity of the litigants may give rise to some collateral embarrassment which, from the subjective perspective of the litigant concerned, might lead such litigant not to bring the proceedings. Here, the intended proceedings were concerned with preventing the identification of the plaintiffs as tax defaulters. However, as I have pointed out, there are a number of other categories of litigation where the same situation applies. A plaintiff who wishes to restrain what is contended to be a libel or to restrain the publication of generally confidential information are cases in point. In no such case has it ever been suggested that an entitlement on the part of the potential litigant concerned to conduct their litigation anonymously, might be necessary to afford effective access to the courts on an anonymous basis, notwithstanding the clear constitutional imperative to the contrary. Similarly a dispute between the plaintiffs and the Revenue, as to the liability of the plaintiffs to pay the penalty which is at the heart of the substantive issue in this case, would, in this court, have had to be debated fully in public with an identical disclosure of the details of the plaintiffs' default.

I was not satisfied, therefore, that this case was any different from the examples I have given. It was not, therefore, in my view necessary to determine whether the circumstances in which other constitutional rights can be said to justify a departure from the constitutional imperative in favour of the conduct of litigation in public, are confined to cases where the other constitutional requirement or right concerned is the entitlement of an accused in a criminal process to a trial in due course of law. It could well be said that, if there were circumstances which might prevent a court in civil proceedings from reaching a just determination because of publicity attaching to part of the process, then those circumstances too might confer on the court a jurisdiction to restrain, in a proportionate manner, the publicity concerned. Such a situation could well arise in civil proceedings before a jury, where it is also possible that there may be a so-called "trial within a trial" concerning legal issues or issues concerning the admissibility of evidence which is conducted in the absence of a jury. It is, it must be said, difficult to envisage circumstances where similar considerations would apply in relation to a trial being conducted by a judge alone.

However, be that as it may, I was not satisfied that the fact that publicity attaching to proceedings might be,

> understandably from a potential plaintiff's perspective, counterproductive to the benefit of bringing the proceedings is, of itself, a reason why such a plaintiff should be entitled to bring the proceedings anonymously.
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> There is, in my view, a distinction of some importance to be drawn between, on the one hand, a case where the benefit of bringing proceedings (even if they be successful) would be impaired (even to a significant extent) by the necessity to have the proceedings conducted in full publicity, and on the other hand, a situation where the very outcome of the proceedings themselves could be affected by such publicity. Each of the judgments of the Supreme Court in *Irish Times* emphasised the heavy constitutional weight to be placed on ensuring that the administration of justice is conducted in a fair manner. Publicity which might affect the fair and just result of proceedings has the potential, therefore, to be a significant interference with the administration of justice. In those circumstances significant weight has to be attached to a consideration of measures which may be designed to promote the likelihood of a fair and just result to litigation. I was not satisfied that an equivalent weight ought be attached to circumstances where there was no risk that the ultimate determination of the court, in the exercise of the administration of justice, would be other than fair, but where it might be said that publicity attaching to proceedings might, even to a significant extent, devalue the benefit of bringing the proceedings on anything other than an anonymous basis."

28. The final example is supplied by the judgment of Peart J. in *McKeogh v. John Doe 1* [2012] IEHC 95. This case arose out of an incident in November 2011 when a young man exited a taxi without paying a fare. The taxi driver in question posted video footage of the young man in question on YouTube in an effort to discover the identify the fare evader. Another person using a pseudonym purported to identify the plaintiff as that evader, but this identification was entirely erroneous as the plaintiff was in Japan on the relevant date. This wrong identification then gave rise to what Peart J. described in the following graphic passage as:

> "the most appalling stream of vile, nasty, cruel, foul, and vituperative internet chatter and comment on YouTube and on Facebook directed against this entirely innocent plaintiff, and the anonymous authors of which have chosen to believe and assume is the man who did not pay his taxi fare, and who feel free to say what they wish about him, and in language the vulgarity of which offends even the most liberal and broadminded, and which I will not repeat."

29. The plaintiff then commenced proceedings seeking to have this defamatory material removed. He also sought orders directed at preventing the newspapers identifying him as the plaintiff in this litigation, contending that his constitutional rights to good name and privacy might otherwise be compromised. Drawing on the decisions of Laffoy J. in *Roe* and McCracken J. in *Ansbacher Cayman*, Peart J. then observed:

> "It is a matter of profound regret to me that this entirely innocent plaintiff finds himself in his present predicament whereby his good name has been sullied in the manner in which it has, and where he seeks to remedy that by restraining any reporting of his proceedings which identifies him as the plaintiff, and where this Court must refuse his application for the reliefs sought on the present motion. But I cannot conclude that the facts of this case are so exceptional as to entitle this Court not to follow the law as it has been pronounced at the highest level in this country."

30. Peart J. thus found himself obliged to refuse to grant the plaintiff the reporting restrictions which had, in effect, sought.

31. It seems, clear, therefore that Article 34.1 requires the identification of the parties to the litigation as part of the open administration of justice unless (a) the imposition of reporting restrictions is permitted (or even required) by statute or (b) the publication of this information would compromise the fair administration of justice. Again, this latter proviso does not apply and while so the question reduces itself to whether the court ought to make an order in these terms under s. 27 of the 2008 Act, the court must be mindful that restrictions on the identification of the plaintiff nonetheless represent a departure from the principles enshrined in Article 34.1. Certainly, cases such as *Roe*, *Ansbacher Cayman*, *Doe and McKeogh* illustrate that this is a step that this court should not lightly take.

32. Third, it must be recalled that these proceedings effectively call into question to one degree or another the professionalism and good name of certain named Gardai who arrested the plaintiff. Given the compelling aspects of the plaintiff's condition and circumstances it is perhaps easy to overlook the parallel obligation to look at the case from the perspective of these Gardai. While it is true that they are not formally defendants, it is undeniable that the plaintiff's case raises serious issues which directly impugn their constitutional right to a good name as protected by Article 40.3.2. There are also wider issues of principle at stake here.

33. If one leaves the plaintiff's personal tragic medical circumstances aside, it would have to be said as a general rule that it would be manifestly unfair if the accuser could advance serious charges anonymously while the accused must face the glare of publicity. There are few things worse in life than having to face the false accusation. Two thousand years of human history has shown that there is no shortage of persons willing to throw the first stone, especially if they can so in safety and with no risk to themselves. The cloak of anonymity assists that process in that it helps to foster an environment where allegations can recklessly be made against a named and publicly identifiable individual with few, if any, personal consequences. Indeed, if empirical proof of this were required, one need not go further than the facts of *McKeogh* itself. If Article 40.3.2 is to have any real meaning, the courts are accordingly bound to devise procedures which protect the substance an individual's right to a good name.

34. In this context, the equal treatment of both accuser and accused in terms of publicity assumes a particular importance. Looked at from the perspective of the person accused of wrong-doing, it is unfair that the accused's identity should remain hidden while he or she must face the glare of publicity. Where such person has been falsely accused – as in *McKeogh* – the sense of injustice must be especially acute.

35. Moreover, equality of treatment is a critical dimension of any system of justice. As Kearns P. observed in *Fleming v. Ireland* [2013] IEHC 2, the equality guarantee contained in Article 40.1 represents "a normative statement of high moral value." To this one might add the comments of Henchy J. in *Kiely v. Minister for Social Welfare(No.2)* [1977] I.R. 267, 281 that the "dispensation of justice, in order to achieve its ends, must be even-handed in form as well as in content".

36. In expressing these views I am nonetheless acutely conscious of the vulnerable status of the plaintiff, a young man who needs – and is entitled to – the protection and care of society and the community. As Kearns P. observed in *Fleming*:

> In the case of persons with disabilities, within appropriate limits of feasibility and practicality, Article 40.1 will often permit - when it does not otherwise require - separate and distinct legislative treatment of persons with disabilities so that all "are truly held equal before the law in the real sense which the Constitution enjoins": see *DX v. Buttimer* [2012] IEHC 175."

37. Returning then to the dilemma which I identified at the start of this judgment, I find myself forced to choose between a desire to protect a vulnerable plaintiff on the one hand and the equally desirable goals of advancing open justice and the equal treatment of accuser and accused on the other.

38. Quite obviously s. 27 must be interpreted in the light of the Constitution itself. I cannot lightly ignore the Constitution's commitments to open justice in Article 34.1, equality of treatment in Article 40.1 and the effective protection of good name in Article 40.3.2 as reflected in cases such as *Roe*, *Ansbacher Cayman*, *Doe* and *McKeogh*. Not without some reluctance, therefore, I find myself coerced to the conclusion that permitting the plaintiff to sue anonymously in the circumstances of the present action for damages would be prejudicial to the interests of justice within the meaning of s. 27(3)(c) of the 2008 Act. As, accordingly, the conditions specified by s. 27(3) as prerequisites to the making of an order providing for reporting restrictions are not all satisfied, I must accordingly refuse to grant the relief sought.

Conclusions

39. It follows from the foregoing that I will accede to the application of the defendants and I will not continue the order previously made by me on an *ex parte* basis under s. 27 of the 2008 Act.

40. It equally follows that, for the reasons stated, insofar as I have any inherent jurisdiction in the matter independently of s. 27 of the 2008 Act, I must decline to exercise it, again for the reasons just stated.