

THE HIGH COURT

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

Between:

C

Applicant

– and –

DR CASEY, JUNIOR

Respondent

JUDGMENT of Mr Justice Max Barrett delivered on 17th May, 2018.

1. This is an application brought by Mr C seeking leave, pursuant to s.73 of the Mental Health Act 2001, to commence proceedings against Dr Casey. The proceedings concern Mr C's involuntary admission to a mental health unit back in 2013. Mr C alleges that on 23rd April, 2013, while Mr C was in Garda custody, Dr Casey was induced by a Garda superintendent wrongfully to complete a form recommending the involuntary admission of Mr C to a mental health unit pursuant to the provisions of the Mental Health Act 2001. Mr C also alleges various other wrongdoings on the part of individual members of An Garda Síochána stationed at the relevant Garda station at the time of the incidents in question and on the part of the Garda Ombudsman. For the sake of good form the court notes that the foregoing remain unproven allegations.

2. In September 2014, Mr C, without having obtained prior leave under s.73 of the Act of 2001, instituted Circuit Court proceedings concerning his involuntary admission. Those proceedings, as against Dr Casey, were dismissed on 14th June, 2017, with an order for costs being made against Mr C. The Circuit Court proceedings as against another 12 defendants remain in being.

3. Mr C was previously before this Court in the spring of 2017 when application was made by Dr Casey for a leave previously granted to be revoked, as having been granted retrospectively. The court adjourned its determination of that application for a month and expressly stated that it was doing so to allow Mr C to bring a fresh leave application on the adjourned date. Mr C failed to bring any such application and the previous leave was revoked. A year later, Mr C sought to make the within application for leave. Although Mr C is a lay-litigant and although any deprivation of individual liberty is a serious matter, it seems to the court that there must, in fairness to Dr Casey and at a remove of five years from the incidents in issue, be some end to the indulgence that is afforded Mr C in his efforts properly to commence proceedings. In this regard the court notes that Mr C has had two previous opportunities to obtain leave and to issue his proceedings correctly, viz. at the point in time when the Circuit Court proceedings were commenced (without leave) in September 2014, and in the spring of last year when this Court adjourned its determination of the application then before it to allow Mr C to bring a fresh leave application at that time.

4. Section 73(1) of the Act of 2001 provides that leave shall not be refused unless the High Court is satisfied "(a) that the proceedings are frivolous or vexatious, or (b) that there are no reasonable grounds for contending that the person against whom the proceedings are brought acted in bad faith or without reasonable care". There can be something of an overlap between the two categories in that, as Barron J. observes in *Farley v. Ireland* (Unreported, Supreme Court, 1st May, 1997), "If [a plaintiff] has no reasonable chance of succeeding then the law says that it is frivolous to bring the case", the reason why the law takes objection in this regard being, Barron J. continues, because "it is a hardship on the Defendant to have to defend something which cannot succeed and the law calls that vexatious."

5. The contents of Dr Casey's own affidavit evidence indicate that he acted bona fide and reasonably. There is only mere assertion to the contrary. So Dr Casey is being asked to defend a case that is unsupported by independent evidence and which rests on mere assertion. The court notes that in *P v. Health Service Executive & ors* [2010] IEHC 161, following a helpful analysis of applicable principle, MacMenamin J., at para.78, poses the question "What should be a proportionate application of s.73 of the Act of 2001 in the leave application?" and answers "One must have regard to the fact that the matters outlined by the applicant have not been previously fully litigated. But that is in the nature of a leave application. However the other tests outlined earlier are of particular relevance. To reiterate, the affidavits sworn by the medical practitioners involved indicate that they acted bona fide and reasonably. There is no evidence to the contrary, save assertion." That is the situation that presents in the within proceedings. In *P.*, the leave sought was refused.

6. Additionally, in acting to involuntarily admit Mr C, Dr Casey was at all times acting in his professional capacity. To the extent that Mr C wishes to pursue a professional negligence claim against Dr Casey, the court notes that pursuant, *inter alia*, to *Reidy v. National Maternity Hospital* (Unreported, Barr J., 31st July, 1997), *Cooke v. Cronin and Neary* [1999] IESC 54, and *Greene v. Triangle Developments Ltd* [2008] IEHC 52 no professional negligence proceedings may be commenced against a medical doctor without having a sufficient expert opinion available that would allow an assessment to be made that there is a stateable case for the professional negligence intended to be asserted. There is no such opinion before the court.

7. A further factor of relevance in the court's considerations is that, by way of additional protection for a person whom it is sought to admit involuntarily, upon arrival at an approved centre a person is examined by a consultant psychiatrist. Here, Mr C was examined by a consultant psychiatrist on the morning of his involuntary admission. In his submissions, Mr C made the bald assertion that this further examination was negligently done. The court cannot but respectfully note that the relevant "patient admission/discharge summary form", as exhibited in Dr Casey's affidavit evidence, indicates that Mr C presented with "paranoid persecutory delusions", that he was put in "high risk nursing care", and that he had "[o]ngoing paranoid delusions about police and the black jeep", the final diagnosis being "Psychosis (NOS)". The contents of this document are uncontroverted.

8. The court is mindful, *inter alia* of (i) the importance that the public should have access to their courts, and (ii) the significance of the court's refusing to grant the leave sought, most especially where the proceedings concern the deprivation of personal liberty. The court is mindful too that (a) the events in issue occurred about five years ago, (b) no expert report or independent evidence appears to have been procured by Mr C during that time, (c) Dr Casey is being confronted therefore with mere assertion, and (d) while a desire for fairness tends to lead the courts to extend some lee-way to personal litigants in the commencement and conduct of their proceedings, the same demands of fairness, when it comes to their opponents, likewise demands that there must be a limit to such lee-way as is extended. The court considers on the basis of the evidence now before it, and having heard the extensive submissions of both sides, that, at this time, Mr C has no reasonable chance of succeeding in his intended proceedings against Dr Casey, yielding

the unavoidable conclusion that the proceedings in respect of which leave is sought are, from a legal perspective, and adopting the reasoning of Barron J. in *Farley*, frivolous. The court will therefore respectfully decline to grant the leave now sought. The court notes that Mr C's related proceedings against individual members of An Garda Síochána and the Garda Ombudsman remain in being and Mr C is free to prosecute those proceedings.

9. Finally, the court notes that after the initial hearing of the leave application that is the subject of this judgment, the court was supplied with further material by Mr C and a fresh hearing convened at which counsel for Dr Casey appeared but not Mr C (of whom the court makes no criticism in this regard). Counsel for Dr Casey submitted that he was satisfied for the court, in its discretion, to decide whether to consider the additional material, taking issue only with one document which was effectively an objection to a ruling made by this Court at the initial hearing. The court has considered the said documentation in reaching its conclusions, save for the document to which objection was taken.