THE HIGH COURT

JUDICIAL REVIEW

[2018 No. 487 J.R.]

BETWEEN

MICHAEL LOUGHLIN AND PAULA LOUGHLIN

APPLICANTS

AND

THE CORONER FOR THE COUNTIES OF SLIGO AND LEITRIM

RESPONDENT

JUDGMENT of Mr. Justice Noonan delivered on the 3nd day of April, 2019

Relevant facts

1. The applicants' son, James Loughlin died on the 24th February, 2018 as a result of a violent assault by a third party who was charged with his murder and awaits trial. The applicants believe that the third party in question has a history of mental illness and violent behaviour.

2. In the affidavit grounding this application for judicial review sworn by the applicants' solicitor, Damien Tansey, Mr. Tansey avers that the applicants instruct him that it is widely rumoured in the Sligo area that the third party has a history of violent behaviour and admissions to psychiatric facilities. It is the applicants' belief that the third party was discharged from such a facility in the period immediately preceding the death of their son. The respondent ("the Coroner") has determined to hold an inquest into the death.

3. By letter of the 15th March, 2018, Mr. Tansey wrote to the Coroner and said:

> "We also understand that the assailant in this matter has a long history of mental illness and has been a patient of the Health Service Executives mental health services. Accordingly, you might please confirm that you have requested the medical chart of the assailant from the aforesaid mental health and psychiatric services including St. Columba's Hospital, Sligo."

4. The Coroner responded on the 20th March, 2018:

> "From an inquest point of view this person is a potential witness. It is not appropriate that their psychiatric history be obtained by the Coroner."

5. Mr. Tansey responded on the 26th March, 2018 reiterating the alleged history of the assailant and contending that this history was material to the inquest. The Coroner replied on the 28th March stating that if the family wished it, he would call the assailant as a witness and continued:

> "In view of the wording of s. 30 of the Coroner's Act, 1962 it is not my intention to explore or delve into criminal liability or civil liability.
>
> The request to a third party in this instance to produce documentation in relation to an individual perhaps involved in the death is not a matter which the Coroner can become involved in."

6. Mr. Tansey wrote again on the 13th April, 2018 referring to a number of judgments in support of the family's contention that s. 30 of the Coroner's Act, 1962 did not in fact preclude the Coroner from inquiring into the matters in issue.

7. In his further response of the 23rd April, 2018, the Coroner said:

> "In relation to the death of James Loughlin it is my contention that the terms of Article 2 of the European Convention and (sic) Human Rights are not engaged on the facts of the case and for the following reasons.
>
> (a) There is no engagement, in relation to the death, by the agents of the State of Ireland.
>
> (b) It appears that James Loughlin and the third party/attacker were not known to one another.
>
> (c) It appears that the attack is solely one of chance and was totally unpredictable.
>
> As enunciated in the Middleton case in the U.K. in 2004 Article 2 of the European Convention and (sic) Human Rights is not engaged and hence a wide scope investigation by the Coroner is not warranted and I as Coroner should not therefore have the right to seek the medical records of an attacker."

8. Mr. Tansey again took issue with the Coroner in a further letter of the 2nd May, 2018 followed by a lengthy letter of the 22nd May, 2018 effectively comprising detailed legal submissions in support of the family's position.

9. The Coroner replied on the 28th June, 2018. In this letter, the Coroner reiterated reliance on Article 2 of the ECHR saying:

> "It is my contention that it is only pursuant to an Article 2 type inquest under the European Convention on Human Rights that an investigation can be made into the medical history of the person who assaulted James Loughlin.
>
> In the circumstances of the applicability of Article 2 the Coroner can investigate whether the agents of the State, in looking after [the alleged assailant], failed to provide adequate medical attention to him and/or released into society while he was still a danger to members of society.

It is only when Article 2 applies that a Coroner conduct an investigation into the actions of this third party.

If the inquest is not determined to be an inquest under Article 2 of the European Convention and Human Rights then there is no scope at common law or under the Coroner's Act, 1962 for the Coroner to investigate the actions of the third party involved in the assault on James Loughlin.

There is not, in my view, any power for a Coroner to produce documents to you and to investigate the actions of a third party if the facts and circumstances of the case are outside that of Article 2 of the European Convention and Human Rights."

10. The Coroner enclosed with this letter a copy letter sent to the legal representatives of the State Claims Agency canvassing their views and those of the HSE as to whether the inquest should be an inquest under Article 2.

The Issues

11. The applicants contend that the refusal of the Coroner to seek the documents in question is unlawful. They argue that he has misconstrued the meaning and effect of s. 30 of the Coroners Act, 1962, as amended and has further misconstrued the meaning and effect of Article 2 of the European Convention on Human Rights.

12. In his statement of opposition, the Coroner contends that he has not yet made any decision which is final and/or irreversible. He further contends that in the light of the pending criminal proceedings, it would be premature for him to accede to the request to obtain the third party's medical records. In his replying affidavit, the Coroner avers that he has not yet formally opened the inquest but were he to do so, he would be obliged on application made by a Garda inspector to adjourn the inquest pending the determination of the criminal proceedings. The Coroner also says in his affidavit that he had made no final decision on the issues canvassed by Mr. Tansey and had sought the views of other parties before doing so.

Discussion

13. The first reason given by the Coroner for refusing to seek the documents sought by the applicants was that the third party is a potential witness at the inquest. That appears not to have been pursued in subsequent correspondence and the first substantial reason advanced for the refusal was that s. 30 of the Coroners Act, 1962 precluded the Coroner from seeking such documents. Section 30 provides:

"Questions of civil or criminal liability shall not be considered or investigated at an inquest and accordingly every inquest shall be confined to ascertaining the identity of the person in relation to whose death the inquest is being held and how, when, and where the death occurred."

14. Section 31 further provides:

"(1) Neither the verdict nor any rider to the verdict at an inquest shall contain a censure or exoneration of any person.

(2) Notwithstanding anything contained in subsection (1) of this section, recommendations of a general character designed to prevent further fatalities may be appended to the verdict at any inquest."

15. The purpose of an inquest was described in two judgments of the Supreme Court in *Farrell v. Attorney General* [1998] 1 I.R. 203 at p. 233 and *Eastern Health Board v. Farrell* [2001] 4 I.R. 627. In the latter case, Keane C.J. delivering the court's judgment identified the public policy considerations underlying the requirement for holding an inquest (at p. 637):

"I. to determine the medical cause of death;

II. to allay rumours or suspicion;

III. to draw attention to the existence of circumstances which, if unremedied, might lead to further deaths;

IV. to advance medical knowledge;

V. to preserve the legal interests of the deceased person's family, heirs or other interested parties."

16. The provisions of s. 30 have been considered in a considerable number of cases which demonstrate that the courts in this jurisdiction adopt an expansive view of the construction of "how" the death occurred at an inquest. The mere fact that issues may be considered at an inquest which may also be material in the context of civil or criminal proceedings does not, of itself, preclude them from consideration. As the Chief Justice observed in the same case about s. 30 (at p. 637):

"While this provision undoubtedly lays stress on the limited nature of the inquiry to be conducted at an inquest, the prohibition on any adjudication as to criminal or civil liability should not be construed in a manner which would unduly inhibit the inquiry. That would not be in accord with the public policy considerations relevant to the holding of an inquest to which I have referred. It is clear that the inquest may properly investigate and consider the surrounding circumstances of the death, whether or not the facts explored may, in another forum, ultimately be relevant to issues of civil or criminal liability."

17. In *Ramseyer v. Mahon*, [2006] 1 I.R. 216, the Supreme Court reiterated these principles and Fennelly J., delivering the judgment of the court, cited the earlier judgments of Keane C.J. with approval and gave a practical example of the operation of s. 30 (at p. 232):

"'How' is a less neat notion. It leaves more room for argument about the scope or extent of the coroner's inquiry. Where, for example, the evidence shows that the deceased died from head wounds inflicted by an axe swung at him by a named person, the jury can scarcely be constrained to state merely that he suffered head wounds caused by an axe without mention of the human agent. They must not, of course, say that he was murdered, or, by the same token, that the death was accidental."

18. In *Lawlor v. Geraghty* [2011] 4 I.R. 486, Kearns P. referred to these authorities in explaining the scope of an inquest (at pp. 494 – 495):

> "Thus a coroner at an inquest is not concerned with civil or criminal liability, though the proceedings are inquisitorial in nature. However, the 'how' requires an investigation into by what means and in what circumstances the death occurred…
>
> The judgment in *Ramseyer v. Mahon* also re-affirmed that the coroner has a relatively wide jurisdiction in terms of inquiring into the circumstances surrounding a person's death - in other words, the prohibition on contemplating issues of civil or criminal liability does not operate in any other way to constrict or hamper the margins of the investigation which a coroner can carry out other than to restrict him or her from pronouncing or touching upon such liability. While a person or persons may not be found by a coroner to be 'guilty' in any way in respect of a death or 'liable' for such death, he or she may nonetheless carry out a very full, wide investigation."

19. Such investigation must respect the legitimate interests of the family of the deceased and their entitlement to pursue appropriate lines of inquiry, provided they do not extend beyond the scope of an inquest.

20. In the present case, the applicant from the outset drew the Coroner's attention to certain rumours and suspicions concerning the third party in question which may bear on how the deceased met his death. It seems to me that it cannot be gainsaid that this is a legitimate line of inquiry which the family are entitled to pursue and they would be unfairly hampered in doing so without access to the evidence sought, particularly in circumstances where the allaying of rumour and suspicion is one of the fundamental purposes of an inquest.

21. Insofar as the Coroner in the present case relied upon s. 30 as a justification for refusing to seek the evidence requested, such reliance was plainly erroneous. In that regard also, I note that at the hearing of this matter, counsel for the Coroner conceded that he was no longer placing reliance on s. 30 which, in the light of the foregoing authorities, was a proper concession to make.

22. The second reason advanced by the Coroner for refusing the applicant's request was that the circumstances of the death did not engage Article 2 of the European Convention on Human Rights as there was no involvement of State agents. He placed reliance in that regard on *R. (Middleton) v. West Somerset Coroner* [2004] 2 AC 182. The Coroner appeared to consider he was precluded from carrying out a wide ranging inquiry unless Article 2 was engaged but as I have noted above, s. 30 requires him to carry out precisely such an inquiry as demonstrated by the cases to which I have referred, none of which concerned Article 2. The ECHR of course does not have direct effect but only insofar as provided for in domestic law by the ECHR Act, 2003.

23. The Coroner seems to be of the opinion that Article 2 applies in some way to restrict the operation of s. 30 but of course that cannot be the case. Insofar as the Coroner came to the view that the ECHR could operate in some way as to limit rights under domestic legislation, this is plainly a fundamental misconception. Here again, counsel for the Coroner in oral argument did not seek to stand over the Coroner's interpretation of the ECHR which is manifestly erroneous. In effect therefore, at the hearing of this matter, the Coroner abandoned the reasons given in his correspondence for refusing the applicant's request. That, in my view, should be sufficient to determine the matter.

24. However, in his statement of opposition and written and oral argument, the Coroner sought to advance new reasons why the court should refuse relief. The first of these was that the application is premature in the light of the pending criminal trial. Even if that were correct, the Coroner never gave that as a reason for refusing the request at any time prior to the institution of these proceedings. Accordingly, it cannot avail him now and indeed, if that was the Coroner's true reason for refusing the request, his failure to give it as such reason amounts to a clear denial of fair procedures.

25. It would also be somewhat surprising that the Coroner should hold back this reason, if it was the reason that motivated him, in the face of detailed legal argument and submission by the applicants' solicitor citing many of the authorities to which I have referred above. Even if the Coroner had given this as his reason at an early stage, it would still not be valid in circumstances where the applicants are not seeking that he hold an inquest prior to the criminal trial but rather that he seek evidence preparatory to the ultimate hearing of the inquest. There is nothing in the Coroner's Act, 1962 which prevents the Coroner from doing so.

26. The second substantial defence relied upon by the Coroner is that the application is premature in circumstances where he has made no final decision on the subject matter. I cannot accept that proposition. In the correspondence to which I have referred above, the Coroner reaches clear conclusions which I have held to be erroneous. At no stage was it suggested that these were somehow provisional or that he was liable to be persuaded by further argument. On the contrary, when presented with such argument he entirely ignored it.

27. Indeed, at no stage prior to the actual hearing of this matter did the Coroner seek to resile from the views he initially expressed concerning s. 30 and Article 2. I fail to see therefore how it can reasonably be suggested by the Coroner that he has not arrived at any concluded view of this matter in advance of the inquest taking place.

28. For these reasons therefore I am satisfied that the applicants are entitled to relief and I will discuss further with counsel the appropriate form of such relief.