Neutral Citation [2012] IEHC 145

THE HIGH COURT

[2007 No. 52CA]

BETWEEN

PATRICK KELLY

PLAINTIFF

AND

NATIONAL UNIVERSITY OF IRELAND

DEFENDANT

AND

THE DIRECTOR OF THE EQUALITY TRIBUNAL

NOTICE PARTY

Judgment of Mr. Justice Hedigan delivered on the 30th of March 2012.

1. The plaintiff brings four motions before the Court. The first of these is a motion seeking leave to commit for contempt of court. I will deal with each of the four motions in order.

2. The first motion is the plaintiff's application for leave to attach and commit for contempt. The application is for:

> (a) leave to apply for declarations that certain journalists together with the editorial officers of their newspapers are in contempt of court;
>
> (b) leave to apply for the attachment and committal to prison of these same people in respect of their alleged contempt;
>
> (c) leave to apply for sequestration of the assets of the said newspapers.

3. The applications are made by the plaintiff in the course of proceedings before this Court which arise from an appeal from an order of the President of the Circuit Court made in 2007. The President refused an application for discovery of documents which the plaintiff considers essential to his case against the defendant. The High Court on this appeal ultimately made an Article 267 reference to the European Court. Five questions were asked. Answers were given to these questions by the Court of Justice of the European Union on the 21st July, 2011.

4. On the 22nd July, 2011 articles appeared in the Irish Times and the Irish Independent concerning the plaintiff's case. Both articles stated, in slightly different ways in their headlines and in the body of the articles, that the plaintiff had lost his case. He protested to both and the Irish Times carried a "correction and clarification". The plaintiff considered this correction to be incorrect also and therefore inadequate. The Irish Independent seems to have offered to publish a correction but this also did not appear adequate to the plaintiff and does not appear to have been published. Complaints have been made to the Press Ombudsman and appeals in relation to the decisions thereof are in train. The gist of the plaintiff's application today is that both of these articles and even the Irish Times correction totally misrepresented what had happened in the European Court and also stated that he had lost his case. It is his contention that publication of these articles in the course of the discovery appeal amounts to a criminal contempt.

5. What is at issue in this application is on the one hand the freedom of the press to report on cases which carries within it the inevitable possibility that sometimes a journalist may get it wrong and on the other hand the right of a party to legal proceedings to get a fair hearing of his case.

6. The reporting of cases in court proceedings is often a difficult task and although accuracy therein is obviously essential, there must exist within that freedom of the press the right to be wrong. The duty on journalists and editors is to do everything they can to minimise the occurrence of such errors.

7. But the law requires much more than just getting it wrong in order for contempt to be found.

8. Dealing with the issue of contempt and freedom of speech, Denham J., as she then was, in *Wong v. The Minister for Justice* [1994]1 I.R. 223 cited with approval a number of authorities. For the purposes of this application, I consider the most apt to be that of Lord Reid in the House of Lords in *Attorney General v. Times Newspapers* [1974] AC 273. Denham J. (at p. 233) cites the following passage:

> *"The law on this subject is and must be founded entirely on public policy. It is not there to protect the private rights of parties to a litigation or prosecution. It is there to prevent interference with the administration of justice and it should, in my judgment, be limited to what is reasonably necessary for that purpose. Public policy generally requires a balancing of interests which may conflict. Freedom of speech should not be limited to any greater extent than is necessary but it cannot be allowed where there would be a real prejudice to the administration of justice. "*

9. I consider the approach of the law outlined in this passage is dispositive of this application. At the close of his reply yesterday, Mr. Kelly stated what I think are his real complaints about these articles. He said they affect the public perception of him and he added that he did not deserve to be portrayed as a failure. These are understandable feelings. Any member of the public, more particularly one who is in the midst of legal proceedings may be greatly angered or upset by what he perceives to be an inaccurate account of those proceedings.

10. However, as Lord Reid observed and Denham J. approved, the law of contempt is not there to protect the private rights of parties to litigation. It is there to prevent interference with the administration of justice and it must be limited to what is necessary for that purpose. Freedom of speech and freedom of the press should not be limited more than is necessary to prevent a real prejudice to the administration of justice.

11. Could these articles create a real prejudice to the administration of justice? To do so they would have to be capable of so influencing the Judge hearing the proceeding as to create a real risk of an injustice. The proceedings in question are circuit court ones and, in this court, an appeal from a discovery order of the Circuit Court made therein. Both of these will be heard by a Judge sitting alone. Public perceptions of the plaintiff and any press report of the decision of the Court of Justice of the European Union are not capable of affecting in any way the judgment of such a Judge sitting alone. Judges are well used to dealing with cases around which much publicity and controversy exists. No Judge would even consider, much less be affected conclusively by a press report of the decision of another court. All Judges would seek the true meaning of any such decision in the decision itself. Where any ambiguity might exist, the Judge would hear argument as to its true meaning. There is in my judgment no risk in this case of prejudice to the administration of justice created by the publication of these two articles.

Leave must therefore be refused.

12. There will be an order for costs in favour of the Irish Times and Independent Newspapers and also costs of the defendant who, as the plaintiff agreed, was obliged to be present during the hearing of this motion.

13. In relation to motion number two, the plaintiff seeks an order setting aside the judgment delivered by McKechnie J. on 31st July, 2008, in which he decided that the documents sought by the plaintiff in his appeal to the Circuit Court were confidential and contained information which was personal in nature and which related to abuse or other sensitive personal events experienced or witnessed by the successful applicants for the course in question. He held that even the removal of names would not suffice to protect the confidentiality of the persons in question. The Judge based his decision on the affidavit of Suzanne Quin who was extensively cross-examined on her affidavit. In a subsequent application brought by the plaintiff to set aside this ruling on the basis of fraud, Professor Quin swore a further affidavit in that application, denying perjury and reiterating her strong objection to the provision of what she regarded as personal information of the successful applicants.

14. McKechnie J. subsequently and usefully summarised his reasons for this decision in the Article 267 reference to the Court of Justice of the European Union. At para. 22 thereof he stated:

> *"This Court took the view that the documents sought by Mr. Kelly contained 'abuse information' which was of a personal and sensitive nature, including, inter alia, circumstances of personal or family sexual abuse, drug abuse or other similar situations, which may have influenced the successful candidates in applying for a position on the relevant course in the first instance. The course applicants, when conveying this information, would have reasonably assumed that its disclosure would be restricted to all, save for those UCD personnel considering their individual application. They would have a legitimate expectation to this end. The defendant offered to provide some material in redacted form, in that relevant names and other sensitive information would be removed. However, this offer was refused by the plaintiff. Another means of mitigating the loss of confidentiality, e.g. by limiting disclosure to legal advisors, was not available in the circumstances of self-representation. Accordingly, this Court, acting as a court of final instance, found that the defendant did not have to produce the documents as sought; in the particular circumstances, confidentiality prevailed over the right to obtain and therefore, under national law, the documents did not have to be produced in unredacted form. This decision was, however, provisional and could be reviewed in light of the opinion of the Court of Justice on the within reference. "*

15. This finding by the learned judge was squarely based upon the evidence of Professor Quin. Her evidence was clear and compelling. There is no basis for the plaintiffs claim that the judge's decision was not based on evidence. It was based on her evidence. This is the sole ground for his application. I do not, therefore, consider it necessary to consider the issues of law in connection with setting aside a judgment of the Court, as there is no basis in fact for the application.

16. In relation to motion number three, I am informed by counsel for the defendant that if the presence of the witnesses sought to be subpoenaed is necessary in the High Court, they will be made available. They will be available in the Circuit Court for the hearing of the appeal. No issue therefore is in dispute. The motion may be struck out with no order as to costs on the basis there may have been some ground for doubt as to the exact position in regard to the availability of these witnesses.

17. In relation to motion number four, I ascertained from the plaintiff that he had, in fact, complied with the order of McKechnie J. of 26th November, 2009. He said he did so immediately, but that the information still remained on the Internet because it had been downloaded by many people.

18. Having now read through all the papers in this case, it is clear that McKechnie J. investigated with great care every complaint and application made by the plaintiff. He delivered a number of judgments. At the end of all this, the plaintiff placed on the Internet the vile abuse of the judge which is outlined in the body of the order sought. Such a response rises little above that of a petulant child. It is irresponsible behaviour and highly reprehensible.

I will not allow the application which is utterly devoid of merit and will dismiss this motion with an order for costs in favour of the defendant.